

PENDING FEE RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
Senate Resources &
Environment Committee
66th Idaho Legislature
First Regular Session – 2021



Prepared by:

*Office of the Administrative Rules Coordinator
Division of Financial Management*

January 2021



State of Idaho
DIVISION OF FINANCIAL MANAGEMENT
Executive Office of the Governor

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

January 11, 2021

MEMORANDUM

TO: **Members of the 2021 Idaho State Legislature**

FROM: **Alex J. Adams, Administrator** *Alex J. Adams*
Bradley A. Hunt, Rules Coordinator *Bradley A. Hunt*

SUBJECT: **Overview of Executive Agency Rulemaking in 2020**

Background. Governor Little initiated a rules moratorium for calendar year 2020 and thus the volume of rulemaking is down substantially relative to most years. Most rules published in the Legislative Rules Review book are simply re-published because the 2020 Legislature adjourned *sine die* without passing a concurrent resolution approving any pending fee rules as specified in Section 67-5224, Idaho Code. The necessary fee rules were re-published in the following special bulletins:

- [April 15](#) – Temporary Fee Rules
- [September 16](#) – Proposed Fee Rules
- [November 18](#) – Pending Fee Rules

Changes in Existing Fee Rules. Since all fee rules expired upon sine die, there is no existing rule available to amend. Therefore, only a clean version of the rule chapter is able to be presented to the Legislature in January 2021. In some cases, fee rules were modified based on public comment, or to implement Executive Order [2020-13](#), among other reasons. Given the unprecedented volume, all edits are incorporated within a single docket and presented as a clean fee rule chapter. There are several ways that legislators may view previous rules for comparison purposes:

- An [archive of any rule](#) since 1996 is available on the DFM website. This allows legislators to see the evolution of a rule over time.
- The Legislative Services Office analyzes all proposed rules. You can find their analysis of proposed rules which, in some cases, may discuss changes to rules between sine die and the proposed rules. These may be found on the [Legislature's website](#).
- Changes made between the proposed and pending rule stages were noted in the [November 18th](#) bulletin where applicable.

Process for Approving/Extending Rules. Below, you will find a brief description on legislative actions and outcomes regarding the rules review process and contents of the Legislative Rules Review Books:

- Pending Fee Rules must be affirmatively approved by both bodies via adoption of concurrent resolution to become final.
- Temporary Rules must be affirmatively approved by both bodies via adoption of concurrent resolution to be extended.
- Pending Rules become final and effective sine die unless rejected, in whole or in part, via concurrent resolution adopted by both bodies.
 - Pending rules may be approved, in whole or in part, or rejected if determined to be inconsistent with legislative intent of the governing statute.
 - If rejected, new or amended language must be identified at a numerical or alphabetical designation within the rule and specified in the concurrent resolution.
- A link to LSO's proposed rule analysis is provided at the beginning of each docket and includes any required supporting documentation (e.g. Cost Benefit Analysis (CBA), Incorporation By Reference Synopsis (IBRS)) as part of the analysis.
- All 2021 review books can be accessed on the DFM website [here](#).

Contact Information. If questions arise during the rules review process, please do not hesitate to contact the Rules Coordinator, Brad Hunt: Brad.Hunt@dfm.idaho.gov; 208-854-3096.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 13 – DEPARTMENT OF FISH AND GAME

DOCKET NO. 13-0000-2000F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 36-104, 36-303, 36-404, 36-407, 36-409, 36-412, 36-701, 36-703, and 36-708, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing sections within rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 13, rules of the Department of Fish and Game:

IDAPA 13

- 13.01.02.200 and 201, only, *Rules Governing Mandatory Education and Mentored Hunting*;
- 13.01.04.601, only, *Rules Governing Licensing*;
- 13.01.08.263, only, *Rules Governing the Taking of Big Game Animals*;
- 13.01.10.410, only, *Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife*; and
- 13.01.19.102, only, *Rules for Selecting, Operating, Discontinuing, and Suspending Vendors*.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the Sept. 16, 2020, Idaho Administrative Bulletin, [Vol. 20-9SE, pages 532-538](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

- 13.01.02.200 and 13.01.02.201 implement a statutory mandate to charge for hunter, archery, and trapping education. Section 36-412, Idaho Code, mandates that the Commission implement education programs in hunting, trapping, and archery and provides the “commission shall establish fees for each program not to exceed eight dollars (\$8).” This rule carries out this statutory mandate by implementing an eight dollar (\$8) fee for hunter, archery, and trapper education. These fees have been in effect since March 24, 2017.
- IDAPA 13.01.04.601 provides that non-resident general season and controlled hunt deer or elk tag fees may be refunded in certain circumstances. This rule establishes a \$50 processing fee for tag refunds or a sliding scale for tag refunds in these special circumstances. This fee or charge is being imposed pursuant to Sections 36-104, 36-404, 36-407, and 36-409, Idaho Code. This rule has been in effect since April 6, 2005.
- IDAPA 13.01.08.263 provides that overpayment of fees of more than five dollars (\$5) will be refunded and overpayment of five dollars (\$5) or less will not be refunded and will be retained by the Department. This fee or charge is being imposed pursuant to Sections 36-104, 36-404, 36-407, and 36-409, Idaho Code. This rule has been in effect since July 1, 1993.
- IDAPA 13.01.10.410 provides bond requirements for large commercial wildlife facilities of fifty thousand dollars (\$50,000) or an amount equal to ten percent (10%) of the total facility construction cost plus two thousand dollars (\$2,000) per animal. This bond is meant to guarantee performance of license conditions and

to reimburse the Department for any costs incurred for clean-up of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. This fee or charge is being imposed pursuant to Sections 36-104, 36-701, 36-703, and 36-708, Idaho Code. This rule has been in effect since July 1, 1999.

- IDAPA 13.01.19.102 implements a \$10,000 minimum surety bond requirement for vendors that present an undue risk. This bonding requirement ensures license vendors have sufficient coverage to ensure the Department is fully reimbursed for license sales and mitigating undue risk that may otherwise be placed upon the Department in the absence of such bonding. Sections 36-106(e)(11) and 36-303, Idaho Code, authorizes the Department to require a surety bond for license vendors. These vendor bonding rules have been in place since March 20, 1997.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Paul Kline, Deputy Director at (208) 334-3771.

Dated this 27th day of October 2020.

Paul Kline
Deputy Director
Idaho Department of Fish and Game
600 S. Walnut, P.O. Box 25
Boise, ID 83707
Phone: (208) 334-3771
Fax: (208) 334-4885
rules@idfg.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 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, 36-303, 36-404, 36-407, 36-409, 36-412, 36-701, 36-703, and 36-708, Idaho Code.

PUBLIC HEARING SCHEDULE: Opportunity for presentation of oral comments concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the purpose of the proposed rulemaking:

This proposed rulemaking re-publishes the following existing temporary rule sections previously submitted to and reviewed by the Idaho Legislature under IDAPA 13, rules of the Department of Fish and Game:

IDAPA 13

- 13.01.02.200 and 201, only, *Rules Governing Mandatory Education and Mentored Hunting*;
- 13.01.04.601, only, *Rules Governing Licensing*;
- 13.01.08.263, only, *Rules Governing the Taking of Big Game Animals in the State of Idaho*;

- 13.01.10.410, only, *Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife*; and
- 13.01.19.102, only, *Rules for Selecting, Operating, Discontinuing, and Suspending Vendors*.

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules.

- IDAPA 13.01.02.200.02 and 13.01.02.201.02 implement a statutory mandate to charge for hunter, archery, and trapping education. Section 36-412, Idaho Code, mandates that the Commission implement education programs in hunting, trapping, and archery and provides the “commission shall establish fees for each program not to exceed eight dollars (\$8).” This rule carries out this statutory mandate by implementing an eight dollar (\$8) fee for hunter, archery, and trapper education. These fees have been in effect since March 24, 2017.
- IDAPA 13.01.04.601.01 provides that non-resident general season and controlled hunt deer or elk tag fees may be refunded in certain circumstances. This rule establishes a \$50 processing fee for tag refunds or a sliding scale for tag refunds in these special circumstances. This rule has been in effect since April 6, 2005.
- IDAPA 13.01.08.263.01.d. provides that overpayment of fees of more than five dollars (\$5) will be refunded and overpayment of five dollars (\$5) or less will not be refunded and will be retained by the Department. This fee rule has been in effect since July 1, 1993.
- IDAPA 13.01.10.410.03 provides bond requirements for large commercial wildlife facilities of fifty thousand dollars (\$50,000) or an amount equal to ten percent (10%) of the total facility construction cost plus two thousand dollars (\$2,000) per animal. This bond is meant to guarantee performance of license conditions and to reimburse the Department for any costs incurred for cleanup of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. This fee rule has been in effect since July 1, 1999.
- IDAPA 13.01.19.102.04 requires a \$10,000 minimum surety bond for vendors that present an undue risk. This bonding requirement ensures license vendors have sufficient coverage to ensure the Department is fully reimbursed for license sales and mitigating undue risk that may otherwise be placed upon the Department in the absence of such bonding. Section 36-303, Idaho Code, authorizes the Department to require a surety bond for license vendors. These vendor bonding rules have been in place since March 20, 1997.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Paul Kline, (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 within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of August, 2020.

THE FOLLOWING IS THE TEXT OF OMNIBUS FEE DOCKET NO. 13-0000-2000F

13.01.02 – RULES GOVERNING MANDATORY EDUCATION AND MENTORED HUNTING

(BREAK IN CONTINUITY OF SECTIONS)

200. HUNTER AND ARCHERY EDUCATION.

01. Mandatory Hunter and Archery Education Programs. A person may obtain certification of completion of hunter/archery education to comply with Section 36-411, Idaho Code, through classroom or on-line study, or other approved methods. The Department manages the Hunter Education Program pursuant to the Idaho Hunter Education Policy and Procedure Manual. “Equivalent certification” for hunter/archery education means completed instruction by an authorized agency or association including firearms/archery safety, wildlife management, wildlife law, hunter ethics, first aid/survival, and practical experience in handling and shooting firearms/archery equipment. ()

02. Fees. The Department will charge a fee of eight dollars (\$8) to each student enrolling in the Hunter or Archery Education Program. ()

03. Parent to Attend Shooting Clinic with Student. Students under the age of twelve (12) may only attend a Hunter Education Shooting Clinic if accompanied by a parent, legal guardian or other adult designated by the parent or legal guardian. ()

201. TRAPPER EDUCATION.

01. Mandatory Trapper Education Program. No person who first purchased an Idaho trapping license on or after July 1, 2011 may be issued a trapping license unless that person presents a certificate of completion in trapper education issued by the Department or proof of equivalent certification from an authorized agency or association in Idaho or elsewhere. “Equivalent certification” for trapper education means completed instruction including safe trapping methods and rules, non-target species avoidance techniques, wildlife identification, and good conduct and respect for the rights and property of others. Trapping education specific only to wolves in Idaho or elsewhere is not equivalent certification. ()

02. Fee. The Department will charge a fee of eight dollars (\$8) to each student enrolling in the Trapper Education Program. ()

03. Exemption. Persons who are acting pursuant to Section 36-1107, Idaho Code, are exempt from Subsection 201.01. ()

(BREAK IN CONTINUITY OF SECTIONS)

13.01.04 – RULES GOVERNING LICENSING

(BREAK IN CONTINUITY OF SECTIONS)

601. REFUNDS TO NONRESIDENTS.

The Department will not refund any fee for any nonresident license (as defined in Section 36-202(aa), Idaho Code), except as follows, and provided the refund request is in writing, is accompanied by the original license and tag, and is received or postmarked on or before December 31 of the calendar year in which the license was valid. ()

01. Refund. Nonresident general or controlled hunt deer or elk tag fees and hunting license fees may be refunded due to the death of licensee; illness or injury of licensee that totally disabled the licensee for the entire length of any applicable hunting season; or military deployment of licensee due to an armed conflict; as substantiated by death certificate, published obituary, written justification by a licensed medical doctor, copy of military orders, or similar documentation. The hunting license fee will not be refunded if it was used to apply for any controlled hunt or to purchase a turkey, mountain lion, or bear tag. The amount refunded will be the amount of the applicable deer or elk tag and hunting license fees, less all issuance fees and a fifty dollar (\$50) processing fee. ()

02. Partial Refund. Nonresident general and controlled hunt deer or elk tag fees may be partially refunded for a reason other than those in the preceding subsection based on the postmark date in the below table. The hunting license fee will not be refunded.

| Postmarked | Percent of Tag Fee Refunded |
|----------------------------|------------------------------------|
| Before April 1 | 75% |
| In April through June | 50% |
| In July and August | 25% |
| September through December | 0% |

()

03. Department Error. The Department will refund fees when it determines that a Department employee made an error in the issuance of the license. ()

(BREAK IN CONTINUITY OF SECTIONS)

13.01.08 – RULES GOVERNING THE TAKING OF BIG GAME ANIMALS

(BREAK IN CONTINUITY OF SECTIONS)

263. REFUNDS OF CONTROLLED HUNT FEES.

01. Refunds. ()

a. Controlled hunt tag fees will be refunded to unsuccessful or ineligible applicants for moose, sheep, mountain goat, and grizzly bear. Unsuccessful applicants may donate all or a portion of refunded tag fees 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. ()

b. Fees for hunting licenses will not be refunded to unsuccessful or ineligible controlled applicants. ()

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

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. ()

e. Controlled hunt application fees are nonrefundable. ()

f. Fees for resident and nonresident adult controlled hunt tags subsequently designated to a minor child or grandchild are not refundable. ()

g. Fees for special controlled hunt application, tag and related hunting license are not refundable. ()

(BREAK IN CONTINUITY OF SECTIONS)

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

(BREAK IN CONTINUITY OF SECTIONS)

410. LARGE COMMERCIAL WILDLIFE FACILITIES.

Commercial wildlife facilities that are of a size large enough or with a large number of animals incompatible with the cage or enclosure requirements of Section 400 may, in the Director's discretion, be addressed with facility-specific license terms. Only facilities housing at least three (3) or more species or encompassing display or exhibit areas larger than one (1) acre will qualify for this consideration. ()

01. Animal Display and Security. Any cage or enclosure shall be of such structure or type of construction to prevent escape of the captive wildlife, or damage to native wildlife through habitat degradation, genetic contamination, competition, or disease. In identifying facility-specific license terms, the Department may refer to standards such as those set by the American Zoological Association for cage, open space, shelter, enclosure, and display in a natural-appearing environment and in such a way as to preserve animal dignity. Terms may include, but are not limited to, fence specifications, electric fence specifications, pits or moats, buried fencing, and display features to enhance appreciation for the species and its natural history. ()

02 Application. Application for a large commercial wildlife facility license will generally meet the requirements of Subsection 400.04, and will identify the veterinarian of record for the facility. ()

03. Bond. The Department will require, as a license condition, any large commercial wildlife facility to provide a bond to the Department in the amount of fifty thousand dollars (\$50,000), or an amount equal to ten percent (10%) of the total facility construction cost plus two thousand dollars (\$2,000) per animal, whichever is greater, executed by a qualified surety duly authorized to do business in the state of Idaho, to guarantee performance of license conditions and to reimburse the Department for any costs incurred for clean up of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. With prior approval, the applicant may instead submit a cash bond to the Department including, but not limited to, certificates of deposit, registered checks, certified funds, and money orders. ()

04. Specific Requirements. The Director has discretion to identify specific license conditions, and violation of any such condition is a violation of these rules. ()

(BREAK IN CONTINUITY OF SECTIONS)

13.01.19 – RULES FOR SELECTING, OPERATING, DISCONTINUING, AND SUSPENDING VENDORS

(BREAK IN CONTINUITY OF SECTIONS)

102. SELECTION.

The following factors will be considered for selecting an applicant to become a license vendor: ()

01. Low Numbered Vendors. Applicants classified in lower-numbered vendor classifications will be given priority over applicants in higher-numbered classifications from the same general location. ()

02. Class Six Applicants. Class six (6) applicants will be approved only when they demonstrate a significant public benefit to have a license vendorship at their location. ()

03. Unsettled Debts. Applicants who have unsettled debts listed with a credit bureau will not be approved. Unsettled debts that are in dispute will not be considered against the applicant. ()

04. Surety Bond. The Department may require an applicant to provide for each location, a ten thousand dollar (\$10,000) surety bond from a corporate surety authorized to do business in the state of Idaho, which guarantees the payment of all state funds collected as a result of licenses issued by the vendor if it appears from the application or other information that an undue risk might otherwise be placed upon the Department in the absence of such bonding. Applicants who otherwise qualify for a vendorship and have been in business less than three (3) years will be required to furnish the Department a ten thousand dollar (\$10,000) surety bond in the form and length as determined by the Director. Upon request, at the completion of two (2) years of service, the Department may release the vendor from the bonding requirement based on a review of financial risk. ()

05. Permanence and Accessibility. Applicants who do not have a permanent place of business open and accessible to all segments of the public will not be approved. ()

06. Number of Existing Vendors in Area. The three (3) closest existing vendors, their hours and days of operation, classification, accessibility to the public, and other pertinent information, including their distance to the applicant, will be compared to the applicant. ()

07. Minimum Sales Volume. If the applicant is seeking to replace an existing vendor at the prior vendor's location, the prior vendor's sales volume will be used to estimate the applicant's sales volume. ()

08. Performance Record. An applicant who was a license vendor or the manager for a vendor within the past five (5) years will not be approved unless the applicant's performance record was satisfactory. ()

09. Fish and Game Violations. No owner or store manager (if the applicant is a corporation) may have had a fish and game violation other than an infraction within the past five (5) years. ()

(BREAK IN CONTINUITY OF SECTIONS)

**IDAPA 15 – OFFICE OF THE GOVERNOR
IDAHO FOREST PRODUCTS COMMISSION**

DOCKET NO. 15-0300-2000F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 38-1508, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 15.03, rules of the Idaho Forest Products Commission:

IDAPA 15.03

- IDAPA 15.03.01, *Rules of Administrative Procedure of the Idaho Forest Products Commission.*

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the Sept. 16, 2020, Idaho Administrative Bulletin, [Vol. 20-9SE, pages 539-541](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The fees or charges specify the collection and remittance of the assessment provided in Section 38-1515, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Jennifer Okerlund, Director, Idaho Forest Products Commission (208) 334-3292, ifpc@idahoforests.org.

Dated this 18th day of November, 2020.

Jennifer Okerlund, Director
Idaho Forest Products Commission
350 N. 9th Street, Suite 102
Boise, Idaho 83702
(208) 334-3292
ifpc@idahoforests.org

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS 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 38-1508, Idaho Code.

PUBLIC HEARING SCHEDULE: Opportunity for presentation of oral comments concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the purpose of the proposed rulemaking:

This proposed rulemaking re-publishes the following existing temporary rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 15.03, rules of the Idaho Forest Products Commission:

IDAPA 15.03

- IDAPA 15.03.01, *Rules of Administrative Procedure of the Idaho Forest Products Commission.*

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. The fees or charges specify the collection and remittance of the assessment provided in Section 38-1515, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jennifer Okerlund, Director, Idaho Forest Products Commission (208) 334-3292, ifpc@idahoforests.org.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of August, 2020.

THE FOLLOWING IS THE TEXT OF OMNIBUS FEE DOCKET NO. 15-0300-2000F

**IDAPA 15 – OFFICE OF THE GOVERNOR
IDAHO FOREST PRODUCTS COMMISSION**

**15.03.01 – RULES OF ADMINISTRATIVE PROCEDURE OF THE IDAHO
FOREST PRODUCTS COMMISSION**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 38, Chapter 15, Idaho Code. ()

001. TITLE AND SCOPE.

The title of this chapter is “Rules of Administrative Procedure of the Idaho Forest Products Commission,” and cited as IDAPA 15.03.01. These rules set forth the practices and procedures for the activities of the Idaho Forest Products Commission. ()

002. -- 003. (RESERVED)

004. DEFINITIONS.

In addition to the definitions set forth in Section 38-1502, Idaho Code, as used in this chapter: ()

01. Assessment. The fee authorized by Section 38-1515, Idaho Code, which is levied against financial supporters for their individual share of the Commission budget for the assessment year. The assessment will be based upon data compiled from the base year. ()

02. Financial Supporter. Person who pays an assessment to the Commission. ()

03. Person. An individual, partnership, association, corporation or other entity qualified to do business in the state of Idaho. ()

005. -- 099. (RESERVED)

100. NOMINATIONS, VACANCIES AND TERMS.

01. Chair and Vice-Chair. The Commission nominates and elects, by majority vote, a Chair to serve as presiding officer at all Commission meetings. The Commission may also nominate and elect, by majority vote, a Vice-Chair to accept the duties of the Chair in the event that the Chair is unable to attend a meeting of the Commission. The term of the office of Chair and Vice-Chair is one (1) year, commencing July 30 of each year. ()

02. Nominations. Nominations for expiring seats on the Commission will be made by the financial supporters of the Commission from the district in which the seat is expiring, or from all districts in the case of an at-large member, no later than June 1 of that year. The Commission will provide nomination applications to all financial supporters and will forward the names of all qualified nominees to the Governor. The Commission may also make recommendations or nominations. In making the appointments, the Governor will take into consideration recommendations made to him by the Commission and by organizations that represent or are engaged in harvesting, transporting or manufacturing forest products. ()

03. Vacancies. Vacancies in any unexpired term will be filled by the Governor for the remainder of the unexpired term. The Commission will identify qualified candidates and forward their names to the Governor. The member appointed to fill the vacancy will represent the same region and interests as the person whose seat has become vacant. The at-large member will represent all regions. ()

04. Terms. Terms of office for Commission members consist of three (3) year terms beginning on July 1 of the year of appointment. ()

101. -- 199. (RESERVED)

200. ASSESSMENTS AND FEES.

An assessment for all logs harvested, measured or processed within the state of Idaho and for all employees, including self employed, engaged in the harvest or transport of timber, logs, unfinished lumber, chips, sawdust, shavings or hog fuel in Idaho, and for each acre of forest land owned by a business entity or person that owns more

than ten thousand (10,000) acres of forest land will be set by the Commission no later than January 1 of the assessment year. Notice of the assessment will be mailed no later than the last day of the fourth week of May of the assessment year to the last known address of each financial supporter. Assessment will not be reduced for financial supporters who cease business during an assessment year. ()

01. Payment Method. Financial supporters of the Commission may choose to pay their assessment in either one (1) full payment due thirty (30) days after the date the notice of assessment is mailed, or in four (4) equal payments with payment in full made by December 31 of the assessment year. ()

02. Assessments Levied. Assessments on logs processed into various manufactured products will be levied against the forest products manufacturer that initiates the manufacturing process. ()

03. Insufficient Funds Checks. The Commission will establish a policy and schedule for insufficient funds checks that will be reviewed annually. This policy and schedule will be available to the public under the procedures set forth by the Public Records Act, Title 74, Chapter 1, Idaho Code. ()

201. -- 299. (RESERVED)

300. LATE PAYMENTS AND PENALTIES.
Whenever payment in full or a quarterly payment is not received within thirty (30) days of the posting date of an assessment invoice, the payment will be considered delinquent. Interest of one percent (1%) per calendar month on the balance due will be levied against all delinquent accounts, commencing thirty-one (31) calendar days after the posting date of the assessment invoice. The Commission may proceed with legal action against delinquent accounts in Fourth Judicial District Court or under the provisions of the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and seek attorney fees and costs in such proceedings. ()

301. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-2000F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULES

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: These rules have been adopted by the agency, the Idaho State Board of Land Commissioners, the Idaho Oil and Gas Conservation Commission (as to IDAPA 20.07.02), and the Idaho Board of Scaling Practices (as to IDAPA 20.06.01), and are now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, these pending rules will not become final and effective until they have been approved by concurrent resolution of the legislature because of the fee being imposed or increased through these rulemakings. The pending fee rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted pending rules. The action is authorized pursuant to:

- Sections 38-132 and 38-402, Idaho Code;
- Title 38, Chapter 12, including Section 38-1208, Idaho Code;
- Title 47, Chapters 3, 7, 8, 13, 15, 16 and 18, including Sections 47-314(8), 47-315(8), 47-328(1), 47-710, 47-714, and 47-1316, Idaho Code;
- Title 58, Chapters 1, 3, 6, 12 and 13, including Sections 58-104, 58-105, 58-127, and 58-304 through 58-312, Idaho Code;
- Title 67, Chapter 52, Idaho Code;
- Article IX, Sections 7 and 8 of the Idaho Constitution; and
- The Equal Footing Doctrine (Idaho Admission Act of July 3, 1890, 26 Stat. 215, Chapter 656).

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

These pending fee rules adopt and re-publish the following existing rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 20, Rules of the Idaho Department of Lands:

IDAPA 20

- 20.02.14, *Rules for Selling Forest Products on State-Owned Endowment Lands;*
- 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho;*
- 20.03.02, *Rules Governing Mined Land Reclamation* (as noted below);
- 20.03.03, *Rules Governing Administration of the Reclamation Fund;*
- 20.03.04, *Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho;*
- 20.03.05, *Riverbed Mineral Leasing in Idaho;*
- 20.03.08, *Easements on State-Owned Lands;*
- 20.03.09, *Easements on State-Owned Submerged Lands and Formerly Submerged Lands;*
- 20.03.13, *Administration of Cottage Site Leases on State Lands;*
- 20.03.14, *Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases;*
- 20.03.15, *Rules Governing Geothermal Leasing on Idaho State Lands;*
- 20.03.16, *Rules Governing Oil and Gas Leasing on Idaho State Lands;*
- 20.03.17, *Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands;*
- 20.04.02, *Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws;*

The Idaho Board of Scaling Practices adopts the following pending fee rule under IDAPA 20.06:

- 20.06.01, *Rules of the Idaho Board of Scaling Practices*

The Oil and Gas Conservation Commission adopts the following pending fee rule under IDAPA 20.07:

- 20.07.02, *Rules Governing Conservation of Oil and Natural Gas in the State of Idaho*

These pending fee rules adopt and publish changes to IDAPA 20.03.02, Rules Governing Mined Land Reclamation. The previously approved and codified chapter of IDAPA 20.03.02 has been amended through the negotiated rulemaking process to incorporate changes required by the passing of HB141 during the 2019 legislative session. Following are the changes to the previously codified rule: including surface impacts of underground mines, setting fees for reclamation plans, incorporating water treatment and post-closure activities in reclamation plans as needed, requiring that all reclamation tasks in a plan be completed and covered by financial assurance, estimating actual cost of reclamation and post-closure activities, expanding the types of financial assurance, and reviewing every plan at least once every five years. Also, compliance with [Executive Orders 2019-02](#) and [2020-01](#) required additional changes, and rulemaking by the Department of Environmental Quality on the Ore Processing by Cyanidation Rules (IDAPA 58.01.13) required parallel changes to IDAPA 20.03.02.

The original text of the proposed rules was published in the September 16, 2020 Idaho Administrative Bulletin (Special Edition), [Vol. 20-9SE, pages 985-1192](#). The text of the pending rule for IDAPA 20.03.02, Rules Governing Mined Land Reclamation, has been amended in accordance with Section 67-5227, Idaho Code; changes were made to the proposed rule in order to provide more clarity, further implement [Executive Order 2020-01](#), correct errors, respond to comments, and ensure continuity with IDAPA 58.01.13. This pending rule is being adopted to fully implement the changes required by HB141. These rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho, to give mine operators in Idaho more choices in providing financial assurance, and to update Idaho's mining regulations.

FEE SUMMARY: Following is the fee summary for IDAPA 20.03.02, Rules Governing Mined Land Reclamation:

HB 141 passed during the 2019 legislative session and authorized application fees for reclamation plans. Fees were implemented through a temporary rule prior to August 1, 2019 as required by HB 141. The temporary rule was extended to allow time for more negotiation toward a proposed rule. The base fees in the 2019 temporary rule have not changed, but the pending rule allows additional application fees to be charged if an application processed under Section 069 of the rules is incomplete and increases the length of the review past 20 hours of staff time. For applications processed under Section 070 of the rules, a cost recovery agreement may be entered into instead of submitting the base application fee. The proposed fees reflect cost recovery for IDL administrative costs associated with the review and approval of new plans and amended existing plans that are reviewed within the required five-year period. The proposed fees align with fees charged by other mineral-producing states in the western United States for reclamation plan review, approval, and amendments. The fees are estimated to generate annual revenue of approximately \$27,000 and will be placed into a dedicated account authorized under Idaho Code § 47-1513(f)(1). These funds are expected to offset additional IDL expenses anticipated with implementation of the five-year plan review process and increase in plan inspections now required under Idaho Code § 47-15.

For the following rule chapters, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature.

The following is a specific description of the fees or charges:

- 20.02.14 – Stumpage payments and associated bonding for removal of state timber from endowment land pursuant to timber sales. This charge is being imposed pursuant to Sections 58-104, 58-105 and 58-127, Idaho Code.
- 20.03.01 – Application fee, amendment fee, assignment fee, and inspection fee for all dredge and placer permits in the state of Idaho. This fee is being imposed pursuant to Sections 47-1316 and 47-1317, Idaho Code.
- 20.03.03 – Annual payment for Reclamation Fund participation. This charge is being imposed pursuant to Section 47-1803, Idaho Code.
- 20.03.04 – Application fees for encroachment permits and assignments and deposits toward the cost of newspaper publication. This fee is being imposed pursuant to Sections 58-127 and 58-1307, Idaho Code.
- 20.03.05 – Fees for applications, advertising applications, and approval of assignments for riverbed mineral leases and exploration locations. This fee is being imposed pursuant to Section 47-710, Idaho Code.
- 20.03.08 – Application fee, easement consideration fee, appraisal costs, and assignment fee for easements on state-owned lands. This fee is being imposed pursuant to Sections 58-127, 58-601, and 58-603, Idaho Code.

- 20.03.09 – Administrative fee, appraisal costs, and assignment fee for easements on state-owned submerged lands and formerly submerged lands. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-603, Idaho Code.
- 20.03.13 – Annual rental payment paid to the endowment for which the property is held. This charge is being imposed pursuant to Section 58-304, Idaho Code.
- 20.03.14 – Lease application fee, full lease assignment fee, partial lease assignment fee, mortgage agreement fee, sublease fee, rental payment, late rental payment fee, minimum lease fee, and lease payment extension request fee on state endowment trust lands. This fee or charge is being imposed pursuant to Section 58-304, Idaho Code.
- 20.03.15 – Application fee, assignment fee, late payment fee, royalty payments, and annual rental payment for geothermal leases on state-owned lands. This fee or charge is being imposed pursuant to Sections 47-1605 and 58-127, Idaho Code.
- 20.03.16 – Exploration permit fee, nomination fee, processing fee, royalty payments, and annual rental payment for oil and gas leases on endowment lands. This fee or charge is being imposed pursuant to Sections 47-805 and 58-127, Idaho Code.
- 20.03.17 – Application fee, rental rate, and assignment fee for leases on state-owned submerged lands and formerly submerged lands. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-304, Idaho Code.
- 20.04.02 – Fee imposed upon the harvest and sale of forest products to establish hazard management performance bonds for the abatement of fire hazard created by a timber harvest operation, and fees imposed upon contractors for transferring fire suppression cost liability back to the State. This fee or charge is being imposed pursuant to Sections 38-122 and 38-404, Idaho Code.
- 20.06.01 – Scaling assessment fee paid to a dedicated scaling account for all scaled timber harvested within the state of Idaho; administrative fees for registration, renewal, and transfer of log brands; fees for testing and issuance of a temporary scaling permit, specialty scaling license, and standard scaling license; fee to renew a specialty or standard scaling license; and fee for a requested check scale involving a scaling dispute. This fee is being imposed pursuant to Section 38-1209, Idaho Code.
- 20.07.02 – Bonding for oil and gas activities in Idaho and application fees for seismic operations; permit to drill, deepen or plug back; multiple zone completions; well treatment; pits and directional deviated wells. This fee or charge is being imposed pursuant to Sections 47-315(5)(e) and 47-316, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the fees charged under IDAPA 20.03.02 are expected to cover the additional costs imposed by HB141, and none of the other rule chapters have changed their fees.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Scott Phillips at (208) 334-0294.

Dated this 18th day of November, 2020.

Dustin Miller, Director
Idaho Department of Lands
300 N. 6th St, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0242
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS 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 38-132 and 38-402, Idaho Code;
- Title 38, Chapter 12, including Section 38-1208, Idaho Code;
- Title 47, Chapters 3, 7, 8, 13, 15, 16 and 18, including Sections 47-314(8), 47-315(8), 47-328(1), 47-710, 47-714, and 47-1316, Idaho Code;
- Title 58, Chapters 1, 3, 6, 12 and 13, including Sections 58-104, 58-105, 58-127, and 58-304 through 58-312, Idaho Code;
- Title 67, Chapter 52, Idaho Code;
- Article IX, Sections 7 and 8 of the Idaho Constitution; and
- The Equal Footing Doctrine (Idaho Admission Act of July 3, 1890, 26 Stat. 215, Chapter 656).

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

PUBLIC HEARING

**Wednesday, September 30, 2020
9:00 a.m. - 10:30 a.m. (MDT)**

**Joe R. Williams Building
East Conference Room
700 W. State Street
Boise, ID 83702**

**Or Join the Public Hearing via Teleconference
or Web Conference:**

Attend via Zoom web conference:

Visit <https://idl.zoom.us/j/99125556496?pwd=WmwrQXczcmUyc0VLb2VvS1puNVdFUT09>

Meeting ID: 991 2555 6496

Passcode: 104469

Watch via Facebook Live: Visit

<https://www.facebook.com/IdahoDepartmentofLands>

**Attend via telephone: Dial in using any of the following numbers
and enter meeting ID “991 2555 6496” and passcode: “104469”**

(253) 215 8782

(346) 248 7799

(408) 638 0968

(669) 900 6833

(646) 876 9923

(301) 715 8592

(312) 626 6799

The first hour of the hearing will be dedicated to public comment on the proposed rule for IDAPA 20.03.02, Rules Governing Mined Land Reclamation (9:00 to 10:00 a.m. MT). The remainder of the hearing will be dedicated to public comment on any proposed fee rule under IDAPA 20, Rules of the Idaho Department of Lands (10:00 to 10:30 a.m. MT).

The hearing site will be accessible to persons with disabilities and compliant with applicable local guidelines at the time of the hearing. 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 the purpose of the proposed rulemaking:

With the passing of HB 141 during the 2019 legislative session, the Department began the negotiated rulemaking process for IDAPA 20.03.02, Rules Governing Mined Land Reclamation (previous chapter title: Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities). A temporary rule was approved prior to August 1, 2019 as required by HB 141, and additional negotiation (from August through November 2019 under Docket Number 20-0302-1901 and from May through August 2020 under Docket Number 20-0302-2001) was needed to reach consensus on a proposed rule.

This proposed rulemaking incorporates the following changes into IDAPA 20.03.02, Rules Governing Mined Land Reclamation: including surface impacts of underground mines, setting fees for reclamation plans, incorporating water treatment and post-closure activities in reclamation plans as needed, requiring that all reclamation tasks in a plan be completed and covered by financial assurance, estimating actual cost of reclamation and post-closure activities, expanding the types of financial assurance, and reviewing every plan at least once every five years. Also, compliance with [Executive Orders 2019-02](#) and [2020-01](#) required additional changes, and rulemaking by the Department of Environmental Quality on the Ore Processing by Cyanidation Rules (IDAPA 58.01.13) required parallel changes to the proposed rule for IDAPA 20.03.02.

Additionally, this proposed rulemaking re-publishes the following existing temporary rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 20, Rules of the Idaho Department of Lands:

IDAPA 20

- 20.02.14, *Rules for Selling Forest Products on State-Owned Endowment Lands;*
- 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho;*
- 20.03.02, *Rules Governing Mined Land Reclamation* (as noted from above);
- 20.03.03, *Rules Governing Administration of the Reclamation Fund;*
- 20.03.04, *Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho;*
- 20.03.05, *Riverbed Mineral Leasing in Idaho;*
- 20.03.08, *Easements on State Owned Lands;*
- 20.03.09, *Easements on State Owned Submerged Lands and Formerly Submerged Lands;*
- 20.03.13, *Administration of Cottage Site Leases on State Lands;*
- 20.03.14, *Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases;*
- 20.03.15, *Rules Governing Geothermal Leasing on Idaho State Lands;*
- 20.03.16, *Rules Governing Oil and Gas Leasing on Idaho State Lands;*
- 20.03.17, *Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands;*
- 20.04.02, *Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws;*
- 20.06.01, *Rules of the Idaho Board of Scaling Practices;*
 - In this proposed rulemaking, the Idaho Board of Scaling Practices re-publishes the existing temporary rule previously submitted to and reviewed by the Idaho Legislature.
- 20.07.02, *Rules Governing Conservation of Oil and Natural Gas in the State of Idaho*
 - In this proposed rulemaking, the Oil and Gas Conservation Commission re-publishes the existing temporary rule previously submitted to and reviewed by the Idaho Legislature.

FEE SUMMARY: Following is the fee summary for IDAPA 20.03.02, Rules Governing Mined Land Reclamation:

HB 141 passed during the 2019 legislative session and authorized application fees for reclamation plans. Fees were implemented through a temporary rule prior to August 1, 2019 as required by HB 141. The temporary rule was extended to allow time for more negotiation toward a proposed rule. The base fees in the 2019 temporary rule have not changed, but the proposed rule allows additional application fees to be charged if an application processed under Section 069 of the rules is incomplete and increases the length of the review past 20 hours of staff time. For applications processed under Section 070 of the rules, a cost recovery agreement may be entered into instead of submitting the base application fee. The proposed fees reflect cost recovery for IDL administrative costs associated with the review and approval of new plans and amended existing plans that are reviewed within the required five-year period. The proposed fees align with fees charged by other mineral-producing states in the western United States for reclamation plan review, approval, and amendments. The fees are estimated to generate annual revenue of approximately \$27,000 and will be placed into a dedicated account authorized under Idaho Code § 47-1513(f)(1). These funds are expected to offset additional IDL expenses anticipated with implementation of the five-year plan review process and increase in plan inspections now required under Idaho Code § 47-15.

For the following rule chapters, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature.

The following is a specific description of the fees or charges:

- 20.02.14 – Stumpage payments and associated bonding for removal of state timber from endowment land pursuant to timber sales.
- 20.03.01 – Application fee, amendment fee, assignment fee, and inspection fee for all dredge and placer permits in the state of Idaho.
- 20.03.03 – Annual payment for Reclamation Fund participation.
- 20.03.04 – Application fees for encroachment permits and assignments and deposits toward the cost of newspaper publication.
- 20.03.05 – Fees for applications, advertising applications, and approval of assignments for riverbed mineral leases and exploration locations.
- 20.03.08 – Application fee, easement consideration fee, appraisal costs, and assignment fee for easements on state-owned lands.
- 20.03.09 – Administrative fee, appraisal costs, and assignment fee for easements on state-owned submerged lands and formerly submerged lands.
- 20.03.13 – Annual rental payment paid to the endowment for which the property is held.
- 20.03.14 – Lease application fee, full lease assignment fee, partial lease assignment fee, mortgage agreement fee, sublease fee, rental payment, late rental payment fee, minimum lease fee, and lease payment extension request fee on state endowment trust lands.
- 20.03.15 – Application fee, assignment fee, late payment fee, royalty payments, and annual rental payment for geothermal leases on state-owned lands.
- 20.03.16 – Exploration permit fee, nomination fee, processing fee, royalty payments, and annual rental payment for oil and gas leases on endowment lands.
- 20.03.17 – Application fee, rental rate, and assignment fee for leases on state-owned submerged lands and formerly submerged lands.
- 20.04.02 – Fee imposed upon the harvest and sale of forest products to establish hazard management performance bonds for the abatement of fire hazard created by a timber harvest operation, and fees imposed upon contractors for transferring fire suppression cost liability back to the State.
- 20.06.01 – Scaling assessment fee paid to a dedicated scaling account for all scaled timber harvested within the state of Idaho; administrative fees for registration, renewal, and transfer of log brands; fees for testing and issuance of a temporary scaling permit, specialty scaling license, and standard scaling license; fee to renew a specialty or standard scaling license; and fee for a requested check scale involving a scaling dispute.
- 20.07.02 – Bonding for oil and gas activities in Idaho and application fees for seismic operations; permit to drill, deepen or plug back; multiple zone completions; well treatment; pits and directional deviated wells.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Negotiated rulemaking for IDAPA 20.03.02, Rules Governing Mined Land Reclamation was conducted pursuant to Section 67-5220(1), Idaho Code. The following notices were published in the Idaho Administrative Bulletin:

- Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 1, 2019 Idaho Administrative Bulletin [Volume 19-5, Page 69](#), under Docket Number 20-0302-1901.
- (Second) Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the October 2, 2019 Idaho Administrative Bulletin [Volume 19-10, Page 220](#), under Docket Number 20-0302-1901.
- (New Chapter) Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 6, 2020 Idaho Administrative Bulletin [Volume 20-5, Page 95](#), under Docket Number 20-0302-2001.

Materials pertaining to the negotiated rulemaking, including rule drafts and research materials, can be found on the Department's website at: <https://www.idl.idaho.gov/news/rulemaking/minerals-rulemaking-for-idapa-20-03-02/>

Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking for the other rule chapters was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

Materials pertaining to omnibus rulemaking for IDAPA 20 can be found on the Department's website at <https://www.idl.idaho.gov/news/rulemaking/docket-no-20-0000-2000f/>.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Amy Johnson at (208) 334-0255 or rulemaking@idl.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin.

Dated this 11th day of September, 2020.

THE FOLLOWING IS THE TEXT OF OMNIBUS FEE DOCKET NO. 20-0000-2000F

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

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 38-1201, et seq.; 58-104(6); 58-105; 67-5201, et seq.; Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.02.14 “Rules for Selling Forest Products on State-Owned Endowment Lands.” ()

02. Scope. These rules govern the selling of forest products from state endowment lands. ()

002. INCORPORATION BY REFERENCE.

The following document is incorporated by reference into these rules: American National Standard Institute, 05.1, 2002 Edition, published by the Alliance for Telecommunication Industry Solutions and available to purchase on the Internet at <http://www.atis.org>. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners. ()

02. Contract. Timber sale contract in a form prescribed by the Department. ()

03. Department. The Idaho Department of Lands. ()

04. Development Credits. A stumpage credit received by the purchaser for the construction or reconstruction of roads, bridges, or other permanent improvements. ()

05. Director. The director of the Idaho Department of Lands or his authorized representative. ()

06. Forest Products. Marketable forest materials. ()

07. Net Appraised Value. The minimum estimated sale value of the forest products after deducting the development credit. ()

08. Net Sale Value. The final sale bid value of the forest products after deducting the development credit. ()

09. Purchaser. A successful bidder for forest products from a state sale who has executed a timber sale contract. ()

10. Roads. Forest access roads used for the transportation of forest products. ()

011. -- 018. (RESERVED)

019. FIREWOOD AND OTHER PERSONAL USE PRODUCT PERMITS.

Forest product permits for personal use will be sold on a charge basis. The Director will determine permit rates and maximum permit values. ()

020. DIRECT SALES.

The sale of forest products without advertisement may be authorized by the Director if the net appraised value does not exceed the maximum value established by the Board. This type of sale is to be used to harvest isolated or by-passed parcels of timber of insufficient value and volume to justify a timber sale (refer to Section 021). The direct sale will not be used when two (2) or more potential purchasers may be interested in bidding on the forest products offered for sale. The initial duration of a direct sale is six (6) months with a provision for one six (6) month extension. The purchaser must furnish an acceptable performance bond in the amount of thirty percent (30%) of the sale value with a minimum bond of one hundred dollars (\$100). Advance payment will be required and all sales will be on a lump sum basis. ()

021. TIMBER SALES.

Timber sales exceed the net appraised value or volume for direct sales established by the Board. ()

022. -- 025. (RESERVED)

026. ANNUAL SALES PLAN.

The Department will prepare an annual sales plan which will describe the timber sales to be offered for sale during the forthcoming fiscal year. The plan will be based on recommended annual harvest volumes utilizing inventory data, local stand conditions, special management problems, and economic factors. The plan will be presented to the Board for approval annually and upon approval made available to all interested parties. The plan may be altered to respond to changing market conditions or to expedite the sale of damaged or insect-infested forest products. ()

027. -- 030. (RESERVED)

031. TIMBER SALE AUCTIONS.

01. Requirements. Timber and Delivered Products sales must be sold at public auction. ()

02. Requirements for Bidding. Bidders must: ()

a. Present a bid deposit in a form acceptable to the State in the amount of ten percent (10%) of the net appraised value. ()

b. Not be delinquent on any payments to the State at the time of sale. ()

c. Not be a minor as defined in Section 32-101, Idaho Code. ()

d. If a foreign corporation, have a completed and accepted foreign registration statement with the secretary of state and comply with Title 30, Chapter 21, Part 5, Idaho Code in order to do business in Idaho and be eligible to bid on and purchase State timber. ()

032. INITIAL DEPOSIT AND BONDS.

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

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

03. Guarantee of Payment. Prior to cutting of any forest products, the purchaser must provide a bond acceptable to the Department as assurance of payment for products to be cut or removed, or both, during the next ninety (90) days. Guarantee of payment on delivered product sales will be as determined by the Department. This bond is in addition to the required initial deposit. Failure to make full and timely payment as per contract terms may result in forfeiture of all or a portion of the guarantee of payment. ()

033. -- 040. (RESERVED)

041. STUMPAGE AND INTEREST PAYMENT.

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

042. TIMBER SALE CANCELLATION.

It is the purchaser's responsibility to initiate cancellation by submitting such request in writing to the respective supervisory area office. When all contractual requirements have been completed, final payments have been received, all load tickets have been accounted for, and a written request for cancellation has been received by the Department, any credit balances and all cash bonds will be returned and/or transferred to other timber sale accounts within forty-five (45) days, as requested by the purchaser. ()

043. PREMATURE TIMBER SALE TERMINATION.

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

02. Termination Policy. ()

a. The Board may authorize premature termination of any sale under any terms considered reasonable and appropriate. Any remaining amount of the ten percent (10%) initial deposit will be retained in full and applied towards assessed damages and may not be used as payment for forest products cut and/or removed. Assessed damages in excess of the initial deposit will be applied against the performance bond. ()

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

i. The Board will seek payment of the value of the overbid for the uncut residual volume. For example, if white pine had been bid up by five dollars (\$5) per thousand board feet over the appraised price and there are one hundred thousand (100,000) board feet of white pine remaining on the sale area, the purchaser will be assessed five hundred dollars (\$500) upon termination. ()

ii. The Board will seek payment of the accrued stumpage interest due the endowed institutions based on the interest rate specified in the contract and calculated on all remaining volume from the date of sale to the date the Board approved termination of the contract. ()

iii. The Board will seek payment for any credits given for developments that remain incomplete at the time of termination. ()

iv. The Board will seek payment for estimated Department costs associated with reoffering the timber sale. ()

v. The Board may also seek payment for other expenses including, but not limited to, legal costs and Department staff time. ()

c. If logging has occurred on the sale, the purchaser must complete the units that have been partially logged according to contract standards and complete all development work as specified in the contract to the extent of allowances that have been credited to the purchaser. ()

d. The purchaser who has terminated a timber sale contract is not eligible to rebid that particular sale unless specifically authorized to do so by the Board. ()

044. -- 999. (RESERVED)

20.03.01 – RULES GOVERNING DREDGE AND PLACER MINING OPERATIONS IN IDAHO

000. LEGAL AUTHORITY.

These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to Section 47-1316, Idaho Code. The Board has delegated to the Director of the Department of Lands (“department”) the duties and powers under the act and these rules; provided that the Board retains responsibility for approval of permit and administrative review. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.01 “Rules Governing Dredge and Placer Mining Operations in Idaho.” ()

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. ()

002. ADMINISTRATIVE APPEALS.

01. Procedures for Appeals: ()

a. Any applicant or permit holder aggrieved by any final decision or order of the Board is entitled to judicial review in accordance with the provisions and standards set forth in Title 67, Chapter 52, Idaho Code, the Administrative Procedures Act. ()

b. When the Director or the Board finds that justice so requires, it may postpone the effective date of a final order pending judicial review. The reviewing court, including the court to which a case may be taken on appeal, may issue all necessary and appropriate orders to postpone the effective date of any final order pending conclusion of the review proceedings. ()

c. Notwithstanding any other provisions of these rules concerning administrative or judicial proceedings, whenever the Board determines that a Permittee has not complied with the provisions of the act or these rules, the Board may file a civil action in the district court for the county wherein the violation or some part occurred, or in the district court for the county where the defendant resides. The Board may request the court to issue an appropriate order to remedy any alleged violation. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Act. The Idaho Placer and Dredge Mining Protection Act, Title 47, Chapter 13, Idaho Code. ()

02. Approximate Previous Contour. A contour reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. ()

03. Best Management Practices. 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. ()

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. ()

05. Department. The Idaho Department of Lands. ()

06. Director. The Director of the Department of Lands or such representative as may be designated by the Director. ()

07. Disturbed Land or Affected Land. Land, natural watercourses, or existing stockpiles and waste

piles affected by placer or dredge mining, re-mining, 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. ()

08. 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. ()

09. 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. ()

10. 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. ()

11. 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. ()

12. 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. ()

13. Mulch. Vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation. ()

14. Natural Watercourse. Any stream in the state of Idaho having definite bed and banks, and which confines and conducts continuously flowing water. ()

15. 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. ()

16. Overburden Disposal Area. Land surface upon which overburden is piled or planned to be piled. ()

17. 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. ()

18. 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. ()

19. 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. ()

20. 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. ()

21. Pit. An excavation created by the extraction of minerals or overburden during placer mining or exploration operations. ()

22. Placer Deposit. Naturally occurring unconsolidated surficial detritus containing valuable minerals, whether located inside or outside the confines of a natural watercourse. ()

23. 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. ()

24. 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. ()

25. Placer or Dredge Mining or Dredge or Other Placer Mining. The extraction of minerals from a placer deposit, including remining for sale, processing, or other disposition of earth material excavated from previous placer or dredge mining. ()

26. 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. ()

27. 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. ()

28. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by placer or dredge mining operations. ()

29. 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, is not considered a road. ()

30. 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. ()

31. Surface Waters. The surface waters of the state of Idaho. ()

32. 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. ()

011. ABBREVIATIONS.

01. BMP. Best Management Practices. ()

02. DEQ. Department of Environmental Quality. ()

012. 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. ()

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. ()

03. General Provisions. In general, these rules establish: ()

- a. Requirements for placer mine exploration operations; ()
- b. Procedures for securing a placer and dredge mining permit; ()
- c. The requirements for posting a performance bond as a condition of such permit to ensure the completion of rehabilitation operations; ()
- d. Procedures for initial and periodic inspection of placer and dredge mining operations to ensure compliance with these rules; ()
- e. Prohibition of placer and dredge mining on designated watercourses (see Section 060); and ()
- f. Prohibitions against placer and dredge mining on certain lands when not in the public interest. ()

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

- 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. ()
- 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. ()
- 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. ()

013. 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. ()

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 010.24, 010.25, and 010.26 and to the following activities: ()

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

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. ()

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. ()

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

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. ()

014. ADMINISTRATION.

The Department of Lands shall administer these rules under the direction of the director. ()

015. -- 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 must, within seven (7) days of commencing exploration, notify the Director. The notice includes the following: ()

a. The name and address of the operator; ()

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

c. The anticipated size of the exploration operation and the general method of operation. ()

02. Confidentiality. The exploration notice will be treated confidential pursuant to Sections 74-107 and 47-1314, Idaho Code. ()

03. One-Half Acre Limit. Any placer or dredge exploration operation that causes a cumulative surface disturbance in excess of one-half (1/2) acre of land, including roads, is 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 that causes a cumulative surface disturbance of less than one-half (1/2) acre of land, including roads, must be restored to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operation and as outlined in Subsection 020.04. ()

04. Reclamation Required. The following reclamation activities, required to be conducted on exploration sites, must 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: ()

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

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)) ()

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 must be reclaimed within one (1) year of verification; ()

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

e. Abandoned lands disturbed by an exploration operation must 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; ()

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

021. APPLICATION PROCEDURE FOR PLACER OR DREDGE MINING PERMIT.

01. Approved Reclamation Plan Required. No Permittee may 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. ()

02. Application Package. The Permittee must submit 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: ()

a. An application completed by the applicant on a form provided by the Director; ()

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

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; ()

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; ()

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 will request, and the applicant will provide to the Director, baseline pre-project surface water monitoring information and furnish ongoing monitoring data during the life of the project. This provision does 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; ()

f. An out-of-state Permittee must 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 ()

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 will exceed one thousand dollars (\$1,000). ()

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 will not proceed on the application until all necessary information is submitted. ()

a. If the applicant is not the owner of the lands described in the application, or any part thereof, the land owner must 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 must be affixed to the application or a copy of the complete lease attached to the application. ()

04. Requirements of Maps. Vicinity maps must 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 will be of sufficient scale to adequately show the following: ()

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; ()

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; ()

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

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; ()

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

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; ()

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. ()

h. Surface and mineral control or ownership of appropriate scale for boundary identification. ()

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

a. A detailed map of the settling pond location, including: ()

i. Dimensions and orientation of the settling ponds and/or other wastewater treatment components of the operation; ()

ii. Distance from surface waters; ()

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

iv. Location of erosion control structures; and ()

v. Ten (10) year flood elevation (probable high water mark). ()

b. A detailed cross-section of the pond(s) including: ()

i. Dimensions and orientation; ()

ii. Proposed sidewall elevations; ()

iii. Proposed sidewall slope; ()

- iv. Sidewall width; ()
 - v. Distance from and elevation above all surface water; and ()
 - vi. Slope of settling pond location. ()
 - c.** Narrative of the construction method(s) describing: ()
 - i. Bottom material; ()
 - ii. Sidewall material; ()
 - iii. Pond volume; ()
 - iv. Volume of water to be used in the wash plant; ()
 - v. Discharge or land application requirements; ()
 - vi. Any pond liners or filter materials to be installed; and ()
 - viii. Compaction techniques. ()
 - d.** If the proposed ponds are: ()
 - i. Less than two thousand five hundred (2,500) feet square surface area; ()
 - ii. Less than four (4) feet high; ()
 - iii. Greater than fifty (50) feet from surface water; and ()
 - iv. Constructed on slopes of three: one (3:1) or flatter, the plans and specifications for settling ponds must contain information in Subparagraphs 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. ()
- 06. Requirements for Reclamation Plan.** A reclamation plan must be submitted in map and narrative form and include the following: ()
- a.** Show how watercourses disturbed by the mining operation will 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; ()
 - b.** Describe and show the contour of the proposed mine site after final backfilling and/or grading, with grades listed for slopes after mining; ()
 - c.** On a drainage control map, show the best management practices to be utilized to minimize erosion on disturbed lands; ()
 - d.** Show roads to be reclaimed upon completion of mining; ()
 - 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; ()

- f. The planned reclamation of tailings or sediment ponds; ()
- 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. ()
- h. Make a premining estimate of trees on the site by species and forest lands utilization consideration in reclamation. ()

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. ()

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 must 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. ()

022. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION.

01. Decision on Application. Following the Director’s review of an application for a new permit, or to amend an existing permit and provide an opportunity to correct any deficiencies, the Board will approve or disapprove the application and the Director will notify the applicant of the Board’s decision by mail. Such notice will 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 will be issued after the bonding requirements of Section 035 are met. No mining is allowed until the permit is bonded and applicant is notified by mail or telephone of approval. ()

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. ()

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. ()

04. Interagency Comment. Nonconfidential materials submitted under Section 021 will be forwarded by the Director to the Departments of Water Resources, Environmental Quality, 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 74, Chapter 1, Idaho Code. ()

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 will 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. ()

06. Water Clarification. No permit will 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.” ()

07. Permit Denial Authority. The Board has 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) ()

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 is considered a denial under Subsection 022.09. ()

09. Amended Applications. If the Board disapproves the application, the applicant will 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. ()

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 will 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 will notify the applicant of his decision in writing. ()

11. Reclamation Obligations. The permit issued by the Board governs and determines the nature and extent of the reclamation obligations of the Permittee. ()

023. -- 024. (RESERVED)

025. AMENDING AN APPROVED PERMIT.

01. Application to Amendment. If circumstances arise that require significant change in the reclamation plan, method of operation, increase in acreage, or other details associated with an approved permit, the Permittee will submit an application on a department form or exact copy to amend the permit. Application fees are to be submitted with amended applications pursuant to Subsection 021.02.g. ()

02. Processing. An application to amend a permit will be processed in accord with Section 022. ()

026. DEVIATION FROM AN APPROVED PERMIT.

01. Unforeseen Events. If a Permittee finds that unforeseen events or unexpected conditions require immediate deviation from an approved permit, the Permittee may continue mining in accord with the procedures dictated by the changed conditions, pending submission and approval of an amended permit, even though such operations do not comply with the current approved permit. This does not excuse the Permittee from complying with the BMPs and reclamation requirements of Sections 020 and 040. ()

02. Notification. Notification of such unforeseen events must be given to the department within forty-eight (48) hours after discovery, and an application to amend the permit must be submitted within thirty (30) days of deviation from the approved permit by the Permittee. ()

027. TRANSFER OF PERMITS.

Placer and dredge mining permits may be transferred from an existing Permittee to a new Permittee. Transfer is made by the new Permittee filing a notarized Department Transfer of Permit form. The new Permittee is then responsible for the past Permittee's obligations under Title 47, Chapter 13, Idaho Code, these rules, the reclamation plan, and permit. When a replacement bond is submitted relative to an approved placer/dredge mining permit, the following rider must be filed with the department as part of the replacement bond before the existing bond will be released: "(Surety company or principal) understands and expressly agrees that the liability under this bond shall extend to all acts for which reclamation is required on areas disturbed in connection with placer/dredge mining permit No., both prior and subsequent to the date of this rider." ()

028. -- 029. (RESERVED)

030. PUBLIC HEARING FOR PERMIT APPLICATION.

01. Public Hearings. During any stage of the application process the Director may conduct a public hearing. ()

02. Basis for Hearing. This action will be based upon the preliminary review of the application and upon any concern registered with the Director by the public, affected land owners, federal agencies having surface management of the affected lands, other interested entities, or upon request by the applicant. ()

03. Hearing for Water Degradation The Director will call for a public hearing when he determines, after consultation with the Departments of Water Resources, Environmental Quality, Fish and Game, and affected Indian tribes (pursuant to Paragraph 021.02.e.), that proposed placer or dredge mining operations can reasonably be expected to significantly degrade adjacent surface waters. A hearing held under this subsection will be conducted to receive comment on the measures the applicant will use to protect surface water quality from nonpoint source water pollution. ()

04. Site of Hearing. The hearing will be held, upon the record, in the locality of the proposed operation, or in Ada County, at a reasonable time and place. ()

05. Hearing Notice. The Director will give notice of the date, time, and place of the hearing to the applicant, to federal, state, local agencies, and Indian tribes which may have an interest in the decision, as shown on the application; to all persons petitioning for the hearing, if any; and to all persons identified by the applicant pursuant to Subsection 021.03.a. as an owner of the specific acreage to be affected by the proposed placer or dredge mining operation. Such hearing notice will be sent by certified mail and postmarked not less than thirty (30) days before the scheduled date of the public hearing. ()

06. Public Notice. The Director will notify the general public of the date, time, and place of the hearing by placing a newspaper advertisement once a week, for two (2) consecutive weeks, in the locale of the area covered by the application. The two (2) consecutive weekly advertisements begin between seven (7) and twenty (20) days prior to the scheduled date of the hearing. A copy of the application is to be placed for review in a conspicuous place in the local area of the proposed mining operations, in the nearest department's area office, and the department's administrative office in Boise. ()

07. Description of Effects. In the event a hearing is ordered under Subsection 030.03, the notice to the public will describe the potentially significant surface water quality degradation and contain the applicant's description of the measures that will be taken to prevent degradation of adjacent surface waters from nonpoint sources of pollution. The foregoing is to be discussed at the public hearing. ()

08. Hearing Officer. The hearing will be conducted by the Director or his duly authorized representative. Both oral and written testimony will be accepted. ()

031. -- 034. (RESERVED)

035. PERFORMANCE BOND REQUIREMENTS.

01. Submittal of Bond. Prior to issuance of a placer or dredge mining permit, an applicant must submit to the Director, on a placer or dredge mining bond form, a performance bond meeting the requirements of this rule. ()

a. The amount of the initial bond is in the amount determined by the Board to be the estimated reasonable costs of reclamation of lands proposed to be disturbed in the permit area, plus ten percent (10%). The determination by the Board of the bond amount constitutes a final decision subject to judicial review as set forth in Section 002 of these rules. The bond may be submitted in the form of a surety, cash, certificate of deposit, or other bond acceptable to the Director. ()

b. Acreage on which reclamation is completed must be reported in accord with Subsections 035.06 and 035.07. Acreage may be released upon approval by the Director. The bond may be reduced by the amount

appropriate to reflect the completed reclamation. ()

02. Form of Performance Bond. ()

a. Corporate surety bond: This is an indemnity agreement executed for the Permittee by a corporate surety licensed to do business in the state of Idaho submitted on a placer and dredge mining bond form, or exact copy, supplied by the Director. The bond is to be conditioned upon the Permittee faithfully performing all requirements of the act, these rules, the permit, and reclamation plan, and must be payable to the state of Idaho. ()

b. Collateral bond: This is an indemnity agreement executed by or for the Permittee, and payable to the Idaho Department of Lands, pledging cash deposits, governmental securities, or negotiable certificates of deposit of any financial institution doing business in the United States. Collateral bonds are subject to the following conditions: ()

i. The Director will obtain possession, and upon receipt of such collateral bonds, deposit such cash or securities with the state treasurer to hold in trust for the purpose of bonding reclamation performance; ()

ii. The Director will value collateral at its current market value, not face value; ()

iii. Certificates of deposit will be issued or assigned to the Department, in writing, and upon the books of the financial institution issuing such certificates. Interest will be allowed to accrue and may be paid by the bank, upon demand, to the Permittee, or other person which posted the collateral bond; ()

iv. Amount of an individual certificate may not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors; ()

v. Financial institutions issuing such certificates will waive all rights of set-off or liens which it has or might have against such certificates; ()

vi. Any such certificates will be automatically renewable; and ()

vii. The certificate of deposit will be of sufficient amount to ensure that the Director would be able to liquidate such certificates prior to maturity, upon forfeiture, for the amount of the required bond, including any penalty for early withdrawal. ()

c. Letters of credit: ()

i. A letter of credit ("credit") is an instrument executed by a bank doing business in Idaho, made at the request of a customer, that states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit; ()

ii. All credits are irrevocable and prepared in a format prescribed by the Director; ()

iii. All credits must be issued by an institution authorized to do business in the state of Idaho or through a confirming bank authorized to do business in the state of Idaho which engages that it will itself honor the credit in full. In the alternative, a foreign bank may execute or consent to jurisdiction of Idaho courts on a form prescribed by the Director; and ()

iv. The account party on all credits must be identical to the entity identified on the placer mining permit as the Permittee. ()

03. Blanket Bond. Where a Permittee is involved in numerous placer or dredge operations, the Director may accept a blanket bond in lieu of separate bonds under approved permits. The amount of such bond must comply with other applicable provisions of Section 035 and are equal to the total of the penalties of the separate bonds being combined into a single bond. ()

04. Bond Cancellation. Any surety company canceling a bond must give the department at least one hundred twenty (120) days' notice prior to cancellation. The Director will not release a surety from liability under an

existing bond until the Permittee has submitted to the Director an acceptable replacement bond or reclaimed the site. Replacement bonds must cover any liability accrued against the bonded principal under the permit. If a Permittee fails to submit an acceptable replacement bond prior to the effective date of cancellation of the original bond, or within thirty (30) days following written notice of cancellation by the Director, whichever is later, the Director may issue a cease and desist order and seek injunctive relief to stop the Permittee from conducting placer or dredge mining operations on the lands covered by the bond until such replacement has been received by the department. The Permittee must cease mining operations on lands covered by the bond until a suitable bond is filed. ()

05. Substitute Surety. If a surety's Idaho business license is suspended or revoked, the Permittee must, within thirty (30) days after notice by the department, find a substitute for such surety. The substitute surety must be licensed to do business in Idaho. If the Permittee fails to secure such substitute surety, the Director may issue a cease-and-desist order and seek injunctive relief to stop the Permittee from conducting placer and dredge mining operations on the lands covered by the bond until a substitution has been made. The Permittee must cease mining operations on lands covered by the bond until a bond acceptable to the department is filed. ()

06. Bond Reduction. Upon finding that any land bonded under a placer or dredge mining permit will not be affected by mining, the Permittee must notify the Director by submitting an application amending the permitted acreage, pursuant to Section 025. When the Director has verified that the bonding requirement for the amended permit is adequate, any excess reclamation bond will be released. Any request for bond reduction will be answered by the Director within thirty (30) days of receiving such request unless weather conditions prevent inspection. ()

07. Bond Release. Upon completion of the reclamation, specified in the permit, the Permittee must notify the Director in writing, of his desire to secure release from bonding. When the Director has verified that the requirements of the placer or dredge mining permit have been met, as stated in the permit, the bond will be released. ()

a. Any request for bond release will be answered by the Director within thirty (30) days of receiving such request unless weather conditions prevent inspection. ()

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: ()

i. Sixty percent (60%) of the bond may be released when the Permittee completes the required backfilling, regrading, topsoil replacement, and drainage control of the bonded area in accordance with the approved placer mining permit; and ()

ii. After revegetation activities have been performed by the Permittee on the regraded lands according to the approved placer mining permit and Section 040, the department may release an additional twenty-five percent (25%) of the bond. ()

c. The remaining bond will not be released: ()

i. As long as the disturbed lands are contributing sediment or other pollution to surface waters outside the disturbed land in excess of state water quality standards established under Title 39, Chapter 1, Idaho Code; ()

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 placer or dredge mining permit and bond by a new Permittee (this rule does not require a Permittee to remove equipment or structures from patented lands when the landowner has authorized the equipment and structures to remain on the site); ()

iii. Until all temporary sediment or erosion control structures have been removed and reclaimed or until such structures are brought under an approved placer mining permit and bond by a new Permittee; and ()

iv. Until vegetation productivity is returned to levels of yields at least comparable to productivity ()

which the disturbed lands supported prior to the permitted mining, except as stated in Subsection 040.17.b. ()

08. Forfeiture. In accord with Subsection 050.02, a bond may be forfeited if the Director determines that the Permittee has not conducted the placer and dredge mining and reclamation in accord with the act, these rules, the approved permit, and the reclamation plan. ()

09. Correction of Deficiencies. The Director may, through cooperative agreement with the Permittee, devise a schedule to correct deficiencies in complying with the permit and thereby postpone action to recover the bond. ()

10. Bonding Rate. A Permittee 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 becomes necessary for the Director to complete reclamation to the standards established in the permit and reclamation plan. ()

11. Federal Bonds Recognized. The Director may accept as a bond, evidence of a valid reclamation bond with the United States government. The bond must equal or exceed the amount determined in Subsection 035.01.a. This does not release a Permittee from bonding under these rules if the Permittee fails to continuously maintain a valid federal bond. ()

12. Insufficient Bond. In the event the amount of the bond is insufficient to reclaim the land in compliance with the act, these rules, the approved permit, and the reclamation plan, the attorney general is empowered to commence legal action against the Permittee in the name of the Board to recover the amount, in excess of the bond, necessary to reclaim the land in compliance with the act, these rules, the approved permit, and the reclamation plan. ()

036. -- 039. (RESERVED)

040. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR PLACER AND DREDGE MINING OPERATION.

01. Nonpoint Source Sediment Control. ()

a. Appropriate best management practices for nonpoint source sediment or other pollution controls must be designed, constructed, and maintained with respect to site-specific placer or dredge mining operations. Permittees will utilize best management practices designed to achieve state water quality standards and protect existing beneficial uses of adjacent surface waters. ()

b. State water quality standards, including protection of existing beneficial uses, are the standard that must be achieved by best management practices. In addition to proper mining techniques and reclamation measures, the Permittee will take necessary steps at the close of each operating season to assure that sediment movement or other pollution associated with surface runoff over the area is minimized in order to achieve water quality standards. ()

c. Sediment or pollution control measures refer to best management practices that are carried out within and, if necessary, adjacent to the disturbed land and consist of utilization of proper mining and reclamation measures, as well as specific necessary pollution control methods, separately or in combination. Specific pollution control methods may include, but are not limited to: ()

- i. Keeping the disturbed land to a minimum at any given time through concurrent reclamation; ()
- ii. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; ()
- iii. Retaining sediment within the disturbed land; ()

- iv. Diverting surface runoff to limit water coming into the disturbed land and settling ponds; ()
- v. Routing runoff through the disturbed land using protected channels or pipes so as not to increase sediment load; ()
- vi. 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 ()
- vii. Use of adequate sediment ponds, with or without chemical treatment. ()

02. Modification of Management Practices. If best management practices utilized by the Permittee do not result in compliance with Subsection 040.01, the Director will require the Permittee to modify or improve such best management practices to meet state water quality standards. ()

03. Clearing and Grubbing. Clearing and grubbing of land in preparation for mining exposes mineral soil to the erosive effects of moving water. Permittees are cautioned to keep such areas as small as possible (preferably no more than one (1) year's mining activity) as the Permittee is required to meet state water quality standards. Trees and slash should be stockpiled for use in seedbed protection and erosion control and such stockpiling may be a requirement of the approved permit. ()

04. Overburden/Topsoil. To aid in the revegetation of disturbed land, where placer or dredge mining operations result in the removal of substantial amounts of overburden, including any topsoil, the Permittee must remove, where practicable, the available topsoil or other growth medium as a separate operation for such area. Unless there are previously disturbed lands which are graded and immediately available for placement of the newly removed topsoil or other growth medium, the topsoil or other growth medium must be stockpiled and protected from erosion and contamination until such areas become available. ()

- a. Overburden/topsoil removal: ()
 - i. Any overburden/topsoil to be removed will be removed prior to any other mining activity to prevent loss or contamination; ()
 - ii. Where overburden/topsoil removal exposes land area to potential erosion, the Director may, as a condition of a permit, limit the size of any one (1) area having topsoil removed at any one (1) time. ()
 - iii. Where the Permittee can show that an overburden material other than topsoil is more 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. ()
- b. Topsoil storage. Topsoil stockpiles must be placed to minimize rehandling and exposure and to avoid excessive wind and water erosion. Topsoil stockpiles must 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. ()
- c. Overburden storage. Stockpiled ridges of overburden must be leveled to a minimum width of ten (10) feet at the top. Peaks of overburden must be leveled to a minimum width of fifteen (15) feet at the top. The overburden piles must be reasonably prepared to control erosion using best management practices such as terracing, silt fences, chemical binders, seeding, and mulching. ()

05. Roads. ()

- a. Roads must be constructed to minimize soil erosion. Such construction may require, but is not limited to, restrictions on length and grade of roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. ()
- b. All access and haul roads must be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. ()

c. Culverts that are to be maintained for more than one (1) year must 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. ()

d. Roads and water control structures must be maintained at periodic intervals as needed. Water control structures serving to drain roads may not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. ()

e. Roads that are to be abandoned must be cross-ditched, ripped, and revegetated or otherwise obliterated to control erosion. ()

f. Roads, not abandoned, which are to continue in use under the jurisdiction of a governmental or private landowner, are the Permittee's responsibility to comply with the nonpoint source sediment control provisions of Subsection 040.01 until the successor assumes control. ()

06. Settling Ponds -- Minimum Criteria. ()

a. Settling ponds must 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. ()

b. No settling pond, used for process water clarification, must be constructed to block a surface water drainage. ()

c. All settling ponds must be constructed and designed to prevent surface water runoff from entering the pond. ()

d. All settling ponds must be constructed and maintained to contain direct precipitation to the pond surface from a fifty (50) year twenty-four (24) hour storm event. ()

e. No chemicals may be used for water clarification or on site gold recovery without prior notification to, and approval from, the DEQ. ()

07. Dewatering Settling Ponds. Upon reclamation, settling ponds must be dewatered, detoxified, and stabilized. Stabilization includes regrading the site for erosion control, to the approximate original contour, and may require removal and disposal of settling pond contents. ()

08. Topsoil Replacement. Following completion of the requirements of Subsection 040.07, the settling ponds must be retopped with stockpiled topsoils or other soils conducive to plant growth. Where such soils are limited in quantity or not available, physical or chemical methods of erosion control may be used. All such areas are to be revegetated in accord with Subsection 040.17, unless otherwise specified in the placer mining permit. ()

09. Dam Safety. Settling ponds must conform with the Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code and with the Environmental Protection and Health Act, Section 39-118, Idaho Code, requiring plan and specification review and approval for waste treatment facilities. ()

10. Backfilling and Grading. ()

a. Every operator who conducts placer mining exploration operations that disturb less than one-half (1/2) acre must contour the disturbed land to its approximate previous contour. These lands must be revegetated in accordance with Subsection 040.17. For showing discovery on federal mining claims, unless otherwise required by a federal agency, one (1) pit may be left open on each claim pending verification by federal mining examiners, but must not create a hazard to humans or animals. Such pits and trenches must be reclaimed within one (1) year of verification. ()

b. Every Permittee who disturbs more than one-half (1/2) acre must shape and smooth the disturbed ground to a grade reasonably comparable with the natural contour of the ground prior to mining, and to a condition that promotes the growth of vegetation except as provided in Paragraph 040.17.m. or minimize erosion through other means. Any disturbed natural watercourse must be restored to a configuration and structure conducive to good fish and wildlife habitat and recreational use. ()

c. Backfill materials must be compacted in a manner to ensure stability of the fill. ()

d. After the disturbed land has been graded, slopes will be measured by the department for compliance with the requirements of the act, these rules, the placer or dredge mining permit, and the reclamation plan. ()

11. Waste Disposal - Disposal of Waste in Areas Other Than Mine Excavations. Waste materials not used in backfilling mined areas must be placed, stabilized, and revegetated to ensure that drainage is compatible with the surrounding drainage and to ensure long-term stability. ()

a. The Permittee may, if appropriate, use terraces to stabilize the face of any fill. Slopes of the fill material may not exceed the angle of repose. ()

b. Unless adequate drainage is provided through a fill area, all surface water above a fill must be diverted away from a fill area into protected channels, and drainage may not be directed over the unprotected face of a fill. ()

12. Topsoil Redistribution. Topsoil must be spread to achieve a thickness over the regraded area, adequate to support plant life. Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution must be timed so that seeding or other protective measures can be readily applied to prevent compaction and erosion. Final grading must be along the contour unless such grading will expose equipment operators to hazardous operating conditions, in which case the best alternative method must be used in grading. ()

13. Soil Amendments. Nutrients and soil amendments must, if necessary, be applied to the graded areas to successfully achieve the revegetation requirements of the permit and reclamation plan. ()

14. Revegetating Waste Piles. The Permittee must conduct revegetation activities with respect to such waste piles in accordance with Subsection 040.17. ()

15. Mulching. Mulch must be used on severe sites and may be required by the approved placer or dredge mining permit. Nurse crops 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. ()

16. Permanent Cessation and Time Limits for Planting. ()

a. Wherever possible, but not later than one (1) year after grading, seeding and planting of disturbed lands must be completed during the first favorable growth period after seedbed preparation. If permanent vegetation is delayed or slow in establishment, temporary cover of small annual grains, grasses, or legumes may be used to control erosion until adequate permanent cover is established. ()

b. Reclamation activities should be concurrent with the mining operation and may be included in the approved placer or dredge mining permit and reclamation plan. Final reclamation must begin within one (1) year after the placer or dredge mining operations have permanently ceased on a mine panel. If the Permittee 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 disturbed land, the reclamation activity on each given area must 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 disturbed land, has not permanently ceased. ()

c. A Permittee will be presumed to have permanently ceased placer or dredge mining operations on a

given portion of disturbed land where 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 previous one (1) year. ()

d. If a Permittee does not plan to use disturbed land for one (1) or more years but intends thereafter to use the disturbed land for placer or dredge mining operations and desires to defer final reclamation until after its subsequent use, the Permittee must submit a notice of intent and request for deferral of reclamation to the Director, in writing. If the Director determines that the Permittee plans to continue the operation within a reasonable period of time, the Director will notify the Permittee and may require actions to be taken to reduce degradation of surface resources until operations resume. If the Director determines that the use of the disturbed land for placer or dredge mining operations will not be continued within a reasonable period of time, the Director will proceed as though the placer or dredge mining operation has been abandoned, but the Permittee will be notified of such decision at least thirty (30) days before taking any formal administrative action. ()

17. Revegetation Activities. ()

a. The Permittee must select and establish plant species that can be expected to result in vegetation comparable to that growing on the disturbed lands prior to placer or dredge mining operations or other species that will be conducive to the post-mining use of the disturbed lands. The Permittee may use available technical data and results of field tests for selecting seeding practices and soil amendments that will result in viable revegetation. ()

b. Standards for success of revegetation. Revegetative success, unless otherwise specified in the approved placer mining permit and reclamation plan, is measured against the existing vegetation at the site prior to mining, or an adjacent reference area supporting similar vegetation. ()

c. The ground cover of living plants on the revegetated area must 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. ()

d. For purposes of this rule, ground cover is considered comparable if it has, on the area actually planted, at least seventy percent (70%) of the premining ground cover for the mined land or adjacent reference area. ()

e. For locations with an average annual precipitation of more than twenty-six (26) inches, the Director, in approving a placer mining permit, may set a minimum standard for success of revegetation as follows: ()

i. Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or ()

ii. 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. ()

f. 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 measurement. Rock surface areas, composed of rock three plus (3+) inches in diameter will be excluded from this calculation. For purposes of measuring ground cover, rock greater than three (3) inches in diameter is considered as ground cover. ()

g. For previously mined areas that were not reclaimed to the standards required by Section 040, and that are disturbed by the placer or dredge mining operations, vegetation must be established to the extent necessary to control erosion, but not be less than that which existed before redisturbance. ()

h. Introduced species may be planted if they are comparable to previous vegetation, or if known to be of equal or superior use for the approved post-mining use of the disturbed land, or, if necessary, to achieve a quick, ()

temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weeds may not be used in revegetation. ()

i. By mutual agreement of the Director, the landowner, and the Permittee, a site may be converted to a different, more desirable, or more economically suitable habitat. ()

j. 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. ()

k. The Permittee 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 must be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. ()

l. Reforestation -- Tree stocking of forestlands should meet the following criteria: ()

i. Trees that are adapted to the site should be planted on the land to be revegetated, in a density which can be expected over time to yield a timber stand comparable to premining timber stands. This in no way is to exclude the conversion of sites to a different, more desirable, or more economically suited species; ()

ii. Trees must be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and ()

iii. Forest lands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. ()

m. Revegetation is not required on the following areas: ()

i. Disturbed 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; ()

ii. Any mined land or overburden piles proposed to be used in the mining operations; ()

iii. Any mined land or overburden pile, where lakes are formed by rainfall or drainage run-off from adjoining lands; ()

iv. Any mineral stockpile; ()

v. Any exploration trench which will become a part of any pit or overburden disposal area; and ()

vi. Any road which is to be used in mining operations, so long as the road is not abandoned. ()

041. -- 049. (RESERVED)

050. TERMINATION OF A PERMIT.

01. Completion of Reclamation. A placer or dredge mining permit terminates upon completion of all reclamation activity to the standards specified in the permit and reclamation plan, and final inspection and approval has been granted by the Director. Upon termination, the Director will release the remaining portion of the bond. ()

02. Involuntary Termination. For continuous operation, the bonded permit will remain valid.

- Administrative action may be taken to terminate a placer and dredge mining permit if: ()
- a. The permit does not remain bonded; ()
 - b. The placer and dredge mining operations are not commenced within two (2) years of the date of Board approval; ()
 - c. The placer and dredge mining operations are permanently ceased and final reclamation has not commenced within one (1) year of the date of permanent cessation; ()
 - d. Inspection costs are delinquent; or ()
 - e. Permittee fails to comply with the act, these rules, the permit, or the reclamation plan. ()

051. ENFORCEMENT AND FAILURE TO COMPLY.

01. Inspection. The Director may inspect the operation under permit from time to time to determine compliance with the act, these rules, the permit, and the reclamation plan. The cost and expense of such inspections will be borne by the Permittee. ()

a. Cost of inspection is assessed at a flat rate of two hundred and fifty dollars (\$250) per year for each permit. Permits upon U.S. Forest Service administered lands is assessed at a flat rate of one hundred dollars (\$100) per year for each permit, to reflect the reduced inspection work for the department. ()

b. A billing for inspection costs will be made in advance each May 1, with the costs due and payable within thirty (30) days of receipt of an inspection cost statement. Inspection fees become delinquent if not paid on or before June 1, and the department may assess the greater of the following; either a twenty-five dollars (\$25) late payment charge or penalty at the rate of one percent (1%) for each calendar month or fraction thereof, compounded monthly, for late payments from the date the inspection fee is due. Such costs constitute a lien upon equipment, personal property, or real property of the Permittee and upon minerals produced from the permit area. Should inspection fees be delinquent, the department will send a single notice of delinquent payment by certified mail, return receipt requested, to the Permittee. If payment is not received by the department within thirty (30) days from the date of receipt, the department may take appropriate administrative action to cancel the permit as provided by Subsection 050.02. ()

c. Inspection costs related to a reported violation are assessed at actual costs and in addition to those costs in Paragraph 051.01.a. Costs include mileage to and from the mine site, employee meals, lodging, personnel costs, and administrative overhead. Costs are due and payable thirty (30) days after receipt of the inspection cost statement. ()

02. Department Remedies. Without affecting the penal and injunctive provisions of these rules, the department may pursue the following remedies: ()

a. When the Director determines that a Permittee has not complied with the act, these rules, the permit, or the reclamation plan, the Director will notify the Permittee in writing and set forth the violations claimed and the corrective actions needed. ()

b. If the Permittee fails to commence and diligently proceed to complete the requested corrective action within a specified number of days after notice of the violation, unless a cooperative agreement has been reached pursuant to Subsection 035.09, the Director may take administrative action as provided within this rule to terminate the permit and forfeit the bond. ()

c. The Board may cause to have issued and served upon the Permittee alleged to be committing such violation, a formal complaint that specifies the provisions of the act, the permit, the reclamation plan, or these rules which the Permittee allegedly is violating, and a statement of the manner in and the extent to which said Permittee is alleged to be violating the provisions of the act, the permit, the reclamation plan, or these rules. Such complaint may be served by certified mail, and return receipt, signed by the Permittee, an officer of a corporate Permittee, or the

designated agent of the Permittee, will constitute service. ()

d. The Permittee is required to answer the formal complaint and request a hearing before a hearing officer appointed by the Director, which authority to appoint is hereby delegated by the Board to the Director, within thirty (30) days of receipt of the complaint if matters asserted in the complaint are disputed. The hearing will be held at a time not less than thirty (30) days after the date the Permittee requests such a hearing. The Board will issue subpoenas at the request of the Director and at the request of the charged Permittee. The hearing will be conducted in accordance with Sections 67-5209 through 67-5213, Idaho Code, and these rules. ()

e. The hearing officer will enter an order in accordance with Section 67-5212, Idaho Code, that, if adverse to the Permittee, will designate a time period within which prescribed corrective action, if any, should be taken. The designated time period will be sufficient to allow a reasonably diligent Permittee to correct any violation. Procedure for appeal of an order is outlined in Subsection 002.01. ()

f. Upon the Permittee's compliance with the order, the Director will consider the matter resolved and take no further action with respect to such noncompliance. ()

g. If the Permittee fails to answer the complaint and request a hearing, the matters asserted in the complaint will be deemed admitted by the Permittee, and the Director may proceed to cancel the placer mining permit and forfeit the bond in the amount necessary to pay all costs and expense of restoring the lands and beds of streams damaged by dredge or other placer mining of said defaulting Permittee and covered by such bond and remaining unrestored, including the department's administrative costs. ()

03. Violation of an Order. Upon request of the Director, the attorney general may institute proceedings to have the bond of a Permittee forfeited for violation of an order entered pursuant to Subsection 051.02.e. ()

04. Injunctive Procedures. ()

a. The Director may seek injunctive relief, as provided by Section 47-1324(b), Idaho Code, against any Permittee who is conducting placer mining or exploration operations when: ()

i. Under an existing approved permit, reclamation plan, and bond, a Permittee violates or exceeds the terms of the permit; ()

ii. A Permittee violates a provision of the act or these rules; or ()

iii. The bond, if forfeited, would not be sufficient to adequately restore the land; ()

b. The Director may seek injunctive relief to enjoin a placer mining operation for the Permittee's violation of the terms of an existing approved permit, the reclamation plan, the act, and these rules, and if immediate and irreparable injury, loss, or damage to the state may be expected to occur. ()

c. The Director will request the court to terminate any injunction when he determines that all conditions, practices, or violations listed in the order have been abated. Termination will not affect the right of the department to pursue civil penalties for these violations in accordance with Subsection 051.06. ()

05. Civil Action. In addition to the injunctive provisions above, the Board may maintain a civil action against any person who violates any provision of the act or these rules, to collect civil damages in an amount sufficient to pay for all the damages to the state caused by such violation, including but not limited to, costs of restoration in accordance with Section 47-1314, Idaho Code, where a person is conducting placer or dredge mining without an approved permit or bond. ()

06. Civil Penalty. ()

a. Pursuant to Section 47-1324(d), Idaho Code, any person violating any of the provisions of the placer and dredge mining act or these rules or violating any determination or order pursuant to these rules, is liable for

a civil penalty of not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) for each day during which such violation continues. Such penalty is recoverable in an action brought in the name of the state of Idaho by the attorney general. ()

b. Pursuant to Section 47-1324(d), Idaho Code, any person who willfully or knowingly falsifies any records, plans, specifications, or other information required by the Board or willfully fails, neglects, or refuses to comply with any of the provisions of these rules, is guilty of a misdemeanor and will be punished by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) or imprisonment, not to exceed one (1) year, or both. ()

07. Hearing Procedures. ()

a. Process and procedures under these rules will be as summary and simple as may be possible. The Director, Board, or any member thereof, or the hearing officer designated by the Director, has the power to subpoena witnesses and administer oaths. The District Court will enforce the attendance and testimony of witnesses and the production for examination of books, papers, and records. A stenographic record or other recording of the hearing will be made. Witnesses subpoenaed by the Director or the hearing officer will be allowed such fees and traveling expenses as are allowed in civil actions in the District Court, to be paid by the party in whose interest such witnesses are subpoenaed. The Board, Director, or hearing officer will make such inquiries and investigations as deemed relevant. Each hearing will be held at the county seat in the county where any of the lands involved in the hearing are situate, or in the County of Ada, as the Board or Director may designate. ()

b. A notice of hearing will be served by certified mail to the last known address of the Permittee or his agent at least twenty (20) days prior to the hearing. A certified return receipt signed by the Permittee or his agent constitutes service and time thereof. ()

c. The cost of such hearing including, but not limited to, room rental, hearing officer fees, and transcript will be assessed against the defaulting Permittee. The Director may designate a hearing officer to conduct any hearings and make findings of fact, conclusions of law, and decision on issues involving the administration of the act and these rules. ()

d. If the hearing involves a permit or application for a permit, the decisions of the Board or the hearing officer, together with the transcript of the evidence, findings of fact, and any other matter pertinent to the questions arising during any hearing will be filed in the office of the Director. A copy of the findings of fact and decision will be sent to the applicant or holder of the permit involved in such hearing, by U.S. mail. If the matter has been assigned for hearing and a claim for review is not filed by any party in the proceeding within thirty (30) days after his decision is filed, the decision may be adopted as the decision of the Board and notice thereof will be sent to the applicant or permit holder involved in such hearing by U. S. mail. ()

052. -- 054. (RESERVED)

055. COMPUTATION OF TIME.

Computation of time for these rules will be based on calendar days. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal state holiday. In such a case, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, or legal holidays are excluded from the computation when the period of prescribed time is seven (7) days or less. ()

056. -- 059. (RESERVED)

060. PLACER OR DREDGE MINING OF CERTAIN WATERBODIES PROHIBITED.

01. Prohibited Areas. Placer or dredge mining in any form is prohibited on water bodies making up the national wild and scenic river system: ()

a. The Middle Fork of the Clearwater River, from the town of Kooskia upstream to the town of Lowell; the Lochsa River from its junction with the Selway at Lowell forming the Middle Fork upstream to the

Powell Ranger Station; and the Selway River from Lowell upstream to its origin; ()

b. The Middle Fork of the Salmon River, from its origin to its confluence with the main Salmon River; ()

c. The St. Joe River, including tributaries, from its origin to its confluence with Coeur d'Alene Lake, except for the St. Maries River and its tributaries. ()

02. Mining Withdrawals. The Board, under authority provided by Title 47, Chapter 7, Idaho Code, has withdrawn certain other lands from placer and dredge mining. A listing of such withdrawals is available from the administrative offices of the Department. ()

061. -- 064. (RESERVED)

065. DEPOSIT OF FORFEITURES AND DAMAGES.

01. Mining Account. All monies, forfeitures, and penalties collected under the provisions of these rules will be deposited in the Placer and Dredge Mining Account to be used by the Director for placer and dredge mine reclamation purposes and related administrative costs. ()

02. Funds for Reclamation. Upon approval of the Board, monies in the account may be used to reclaim lands for which the forfeited bond was insufficient to reclaim in accord with these rules, or for placer or dredge mine sites for which the bond has been released and which have resulted in subsequent damage. Monies received from inspection fees are to be kept separate and used for costs incurred by the Director in conducting such inspections. ()

066. -- 069. (RESERVED)

070. COMPLIANCE OF EXISTING PLANS WITH THESE RULES.

These rules, upon their adoption, apply as appropriate to all existing placer or dredge mining operations, but will not affect the validity or modify the duties, terms, or conditions of any existing approved placer or dredge mining permits or impose any additional obligations with respect to reclamation upon any Permittee conducting placer or dredge mining operations pursuant to a placer or dredge mining permit approved prior to adoption of these rules. ()

071. -- 999. (RESERVED)

20.03.02 – RULES GOVERNING MINED LAND RECLAMATION

000. LEGAL AUTHORITY.

Title 47, Chapter 15 (“chapter”), Idaho Code, authorizes the Board to promulgate rules pertaining to mineral exploration; mining operations; reclamation of lands affected by exploration and mining operations, including review and approval of reclamation and permanent closure plans; requirements for financial assurance for reclamation and permanent closure, and to establish a reasonable fee for reviewing and approving reclamation plans and permanent closure plans, including the reasonable cost to employ a qualified independent party, acceptable to the applicant and the Board, to verify the accuracy of cost estimates for reclamation plans and permanent closure plans. The Board has delegated to the director of the Department the duties and powers under the chapter and these rules, however the Board retains responsibility for administrative review. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.02, “Rules Governing Mined Land Reclamation,” IDAPA 20, Title 03, Chapter 02. ()

02. Scope. These rules establish the notification requirements for exploration and the application, operation, and reclamation requirements for mined lands. In addition, they establish the application and closure requirements for cyanidation facilities. These rules also establish the reclamation and financial assurance requirements for all these activities, and describe the processes used to administer the rules in an orderly and predictable manner. ()

03. Other Laws. Operators engaged in exploration, mine operation, and operation of a cyanidation facility shall comply with all applicable laws and rules of the state of Idaho including, but not limited to the following: ()

a. Idaho water quality standards established in Title 39, Chapters 1 and 36, Idaho Code; IDAPA 58.01.02, “Water Quality Standards”; and IDAPA 58.01.11, “Ground Water Quality Rule,” administered by the Department of Environmental Quality (DEQ). ()

b. Requirements and procedures for hazardous and solid waste management, as established in Title 39, Chapter 44, Idaho Code, and rules promulgated thereunder including, IDAPA 58.01.05, “Rules and Standards for Hazardous Waste” and IDAPA 58.01.06, “Solid Waste Management Rules,” administered by the DEQ. ()

c. Section 39-118A, Idaho Code, and applicable rules for ore processing by cyanidation as promulgated and administered by the DEQ as defined in IDAPA 58.01.13, “Rules for Ore Processing by Cyanidation.” ()

d. Section 39-175, Idaho Code, and applicable rules for the discharge of pollutants to waters of the United States as promulgated and administered by DEQ in IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program.” ()

e. 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. ()

f. Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules promulgated and administered by the Idaho Department of Water Resources. ()

04. Applicability. These rules are to be read and applied in conjunction with the chapter. These rules apply to all exploration, mining operations, and permanent closure of cyanidation facilities on all lands in the state, regardless of ownership. ()

a. These rules apply to mining operations or exploration operations commenced after January 1, 1997. These rules in no way affect, alter, or modify the terms or conditions of any approved reclamation plan, reclamation plan amendment, or financial assurance for reclamation obtained prior to January 1, 1997. If a material change arises and is regulated in accordance with Subsection 090.01, then the operator shall submit a reclamation plan amendment. ()

b. These rules do not apply to: ()

i. Any surface mining operations performed prior to May 31, 1972. An operator will not be required to perform reclamation activities on any pit or overburden pile as it existed prior to May 31, 1972. ()

- ii. Mining operations for which the Idaho Dredge and Placer Mining Protection Act requires a permit, or which are otherwise regulated by that act. ()
- iii. Extraction of minerals from within the right-of-way of a public highway by a public or governmental agency for maintenance, repair or construction of a public highway, provided the affected land is an integral part of such highway. ()
- iv. Underground mines that existed prior to July 1, 2019, and have not expanded their surface disturbance by 50% or more after that date. ()
- c. Sand and gravel mining operations in state-owned beds of navigable lakes, rivers or streams shall constitute an approved mining plan for the purpose of these rules if the operator has all of the following: ()
 - i. A valid riverbed mineral lease granted by the Board in accordance with IDAPA 20.03.05, "Rules Governing Riverbed Mineral Leasing", with a valid mineral lease bond; ()
 - ii. An approved plan of operations for the riverbed mineral lease; and ()
 - iii. A valid stream channel alteration permit issued by the Idaho Department of Water Resources. ()
- d. Surface mining operations, conducted by a public or governmental agency for maintenance, repair, or construction of a public highway, which: ()
 - i. Disturb more than two (2) acres will comply with the provisions of Section 069; or ()
 - ii. Disturb less than two (2) acres will comply with Subsections 060.06.a. through 060.06.e. ()
- e. A cyanidation facility with a permit approved by the DEQ prior to July 1, 2005, is subject to the applicable laws and rules for ore processing by cyanidation in effect on June 30, 2005; however, if there is a material modification or material expansion to a cyanidation facility after July 1, 2005, these rules shall apply to the modification or expansion. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions set forth in the chapter, the following definitions apply to these rules: ()

- 01. Adit.** A nearly horizontal passage from the surface into an underground mine. ()
- 02. Approximate Previous Contour.** A contour that is reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. ()
- 03. Best Management Practices (BMP).** Practices, techniques or measures developed or identified by the designated agency and identified in the state water quality management plan which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals. ()
- 04. Chapter.** The Mined Land Reclamation Act, Title 47, Chapter 15, Idaho Code. ()
- 05. Department.** The Idaho Department of Lands. ()
- 06. 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. ()
- 07. Ground Water.** Any water of the state that occurs beneath the surface of the earth in a saturated

geological formation of rock or soil. ()

08. Land Application. A process or activity involving application of liquids or slurries potentially containing cyanide from the cyanidation facility to the land surface for the purpose of treatment, neutralization, disposal, or groundwater recharge. ()

09. Material Change. A change that deviates from the approved reclamation plan or permanent closure plan and causes one (1) or more of the following to occur: ()

a. Results in a substantial adverse effect to the geotechnical stability of overburden disposal areas, topsoil, stockpiles, roads, embankments, tailings facilities, cyanidation facilities or pit walls; ()

b. Substantially modifies surface water management or a water management plan, not to include routine implementation and maintenance of BMPs; ()

c. Exceeds the permitted acreage; or ()

d. Increases overall estimated reclamation costs by more than fifteen percent (15%). ()

10. Material Modification or Material Expansion. With regard to cyanidation facilities: ()

a. Any change to a permitted cyanidation facility, except as provided in Subsection 010.10.b, that the Department determines will: ()

i. Cause or increase the potential to cause degradation of waters, such as a new cyanidation process or cyanidation facility component; or ()

ii. Change the capacity, location, or process of an existing cyanidation facility component; or ()

iii. Change the site condition in a manner that is not adequately described in the original permit application. ()

b. Reclamation and closure related activities at a cyanidation facility with an existing permit that did not actively add cyanide after January 1, 2005 are not material modifications or material expansions of the cyanidation facility. ()

11. Material Stabilization. Managing or treating spent ore, tailings, other solids and/or sludges resulting from the cyanidation process to minimize waters or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility to ensure that all discharges comply with all applicable standards and criteria. ()

12. Motorized Earth-Moving Equipment. Backhoes, bulldozers, front-loaders, trenchers, core drills, and other similar equipment. ()

13. Neutralization. Treatment of process waters such that discharge or final disposal of those waters does not, or will not, violate any applicable standards and criteria. ()

14. Operating Plan. A plan that describes how a mining operation will be constructed and operated to avoid or minimize surface disturbance and potential impacts to waters of the state, and to prepare for final reclamation. ()

15. Permanent Closure. Those activities that result in neutralization, material stabilization, and decontamination of cyanidation facilities or the facilities' final reclamation. ()

16. Permit. When used without qualification, any written authorization, license, or equivalent control document issued by the DEQ. This includes authorizations issued pursuant to the application, public participation, and appeal procedures in IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," and those issued pursuant to

the application, public participation, and appeal procedures in IDAPA 58.01.25. ()

17. Pollutant. Chemicals, chemical waste, process water, biological materials, radioactive materials, or other materials that, when discharged, cause or contribute adverse effects to any beneficial use or for any other reason may impact waters of the state. ()

18. Process Waters. Any liquids 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. ()

19. Real Property. Land and appurtenances as defined in Section 55-101, Idaho Code. ()

20. Reclamation. The process of restoring an area affected by a mining operation or cyanidation facility 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. ()

21. Reclamation Plan. A plan using a combination of maps, drawings, and descriptions that describes how a mine is constructed and how reclamation of a mine's affected land is accomplished. ()

22. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by mining operations. ()

23. Shaft. A vertical or inclined passage from the surface into an underground mine. ()

24. Surface Waters. The surface waters of the state of Idaho. ()

25. Treatment. Any method, technique or process, including neutralization, that changes the physical, chemical, or biological character or composition of a waste for the purpose of disposal, or the end result of such action. ()

26. 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. ()

27. 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. ()

28. Waters of the State. All the accumulations of water, surface and underground, natural and artificial, public or private, or parts thereof that are wholly or partially within, flow through or border upon the state of Idaho. 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. ()

011. ABBREVIATIONS.

01. BMP. Best Management Practices. ()

02. DEQ. Department of Environmental Quality. ()

03. IPDES. Idaho Pollutant Discharge Elimination System. ()

04. SWPPP. Storm Water Pollution Prevention Plan. ()

05. U.S.C. United States Code. ()
012. -- 049. (RESERVED)
050. **ADMINISTRATION.**
The Department will administer these rules under the direction of the director. ()
051. -- 059. (RESERVED)
060. **EXPLORATION OPERATIONS AND REQUIRED RECLAMATION.**
01. **Diligence.** All reclamation activities required to be conducted on exploration sites must 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. ()
02. **When Exploration Is Mining.** Exploration operations may under some circumstances constitute mining operations as described in Section 47-1503(7), Idaho Code. ()
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 within seven (7) days after beginning exploration operations. No application fee or financial assurance is required for exploration that is not a mining operation. ()
04. **Contents of Notification.** The notification shall include: ()
- a. The name and address of the operator; ()
 - b. The legal description of the exploration and its starting and estimated completion date; and ()
 - c. The anticipated size of the exploration and the general method of operation. ()
05. **Confidentiality.** Any such notification is treated as confidential in accord with Section 180. ()
06. **Exploration Reclamation (Less Than Two Acres).** Every operator who conducts exploration affecting less than two (2) acres shall: ()
- a. Wherever possible, contour the affected lands to their approximate previous contour; and ()
 - 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. ()
 - c. Exploration drill holes must be plugged within thirty (30) days of drilling the holes. Upon request, the director may allow the holes to be temporarily left unplugged for up to a year, but until they are plugged the holes must be left so as to eliminate hazards to humans and animals. ()
 - d. 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 must be reclaimed within one (1) year of verification. ()
 - e. 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 meet state water quality standards. ()
07. **Exploration Reclamation (More Than Two Acres).** Reclamation of lands where exploration has affected more than two (2) acres must be completed as set forth in Subsection 060.06 and the following additional requirements: ()

a. Abandoned exploration roads must 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. ()

b. Ridges of overburden must be leveled so as to have a minimum width of ten (10) feet at the top. ()

c. Peaks of overburden must be leveled so as to have a minimum width of fifteen (15) feet at the top. ()

d. Overburden piles must be reasonably prepared to control erosion. ()

e. Abandoned lands affected by exploration must 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. ()

f. Any water containment structure created in connection with exploration, must be reasonably prepared so as not to constitute a hazard to humans or animals. ()

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. ()

061. -- 067. (RESERVED)

068. APPLICATION FEES

01. Base Application Fees. The following base fee schedule will be used for all reclamation plans and permanent closure plans and amendments to those plans. For plans processed under Section 069 of these rules, this base fee covers up to twenty (20) hours of staff time for review and processing. For plans processed under Section 070 of these rules, the applicant may instead enter an agreement with the Department as described in Subsection 068.03 of these rules. The applicable acreage is based on the proposed reclamation plan area identified in the application:

| Type of Plan | Fee (Dollars) |
|--|-------------------------------------|
| Section 069 of these rules, Reclamation Plan 0 to 5 acres | Five hundred (\$500) |
| Section 069 of these rules, Reclamation Plan >5 to 40 acres | Six hundred (\$600) |
| Section 069 of these rules, Reclamation Plan over 40 acres | Seven hundred fifty (\$750) |
| Section 070 of these rules, Reclamation Plan 0 to 100 acres | One thousand (\$1,000) |
| Section 070 of these rules, Reclamation Plan >100 to 1,000 acres | One thousand five hundred (\$1,500) |
| Section 070 of these rules, Reclamation Plan >1,000 acres | Two thousand (\$2,000) |
| Section 071 of these rules, Permanent Closure Plan | Five thousand (\$5,000) |

()

02. Additional Fees for Applications Submitted Under Section 069. Plans processed under Section 069 of these rules that require more than twenty (20) hours of staff time due to an incomplete application will result in additional fees being charged. After a revised application has been received and determined to be complete with the exception of the fee, IDL will send an invoice to the operator at a rate of forty dollars per hour (\$40/hour) for the additional review time over the initial twenty (20) hours. If this additional fee is not paid prior to the sixty (60) day approval deadline, the application will be denied. If the additional fee is paid within 30 days of the denial, the application will be considered complete and the time requirements of Subsection 080.03 will apply. ()

03. Alternative Fee Agreement for Applications Submitted Under Section 070. In lieu of paying a fee at the time the application is submitted, an applicant under Section 070 of these rules may enter into an agreement with the Department for actual costs incurred to process an application, verify a reclamation cost estimate submitted under Idaho Code § 47-1512(c), and issue a final decision. The applicant shall not commence operations until the terms of the agreement have been met, including that the Department has been reimbursed for all actual costs incurred for the permitting process. ()

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. ()

02. No Operator Shall Conduct Mining Operations. No operator shall conduct mining operations on any lands in the state until the reclamation plan has been approved by the director, and the operator has filed financial assurance that meets the requirements of the chapter and these rules. ()

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

a. An application provided by the director; ()

b. A map or maps of the proposed mining operation which includes the information required under Subsection 069.04; ()

c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 069.05; and ()

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. ()

e. The correct fee listed in Section 068 of these rules. ()

04. Map Requirements. A vicinity map must 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 mining operation site must be of sufficient scale to show: ()

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

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

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

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

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

f. The currently planned location and configuration of pits, overburden piles, crusher reject materials, ()

mineral stockpiles, topsoil storage, wash plant ponds and sediment ponds that will be utilized; ()

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

h. A surface and mineral control or ownership map of appropriate scale for boundary identification; ()

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

a. Where waters of the state are likely to be impacted or when requested by the director, documents identifying and assessing foreseeable, site-specific sources of water quality impacts from mining operations and proposed management activities, such as BMPs or other measures and practices, to comply with water quality requirements; ()

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

c. Roads to be reclaimed; ()

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; ()

e. The planned reclamation of wash plant or sediment ponds; ()

f. A drainage control map which identifies the location of BMPs that will be implemented to control erosion and water quality impacts during mining and reclamation activities; ()

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. ()

h. For operations over five (5) acres, an estimate of total reclamation cost to be used in establishing a financial assurance amount. The cost estimate will include, but is not limited to, the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent direct and indirect costs of a third-party to complete reclamation. ()

i. If construction, mining, or reclamation will be completed in phases, a description of the tasks to be completed in each phase, an estimated schedule, and proposed adjustments of financial assurance related to each phase. ()

070. APPLICATION PROCEDURE AND REQUIREMENTS FOR OTHER MINING OPERATIONS INCLUDING HARDROCK, UNDERGROUND 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 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 financial assurance. ()

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

a. All items and information required or allowed under Section 069 of these rules; ()

b. Any additional information required by Subsection 070.04; and ()

c. An operating plan, if required by Section 47-1506(b), Idaho Code, prepared in accordance with Subsection 070.05 of these rules. ()

03. Map Requirements. Maps must be prepared in accordance with Subsection 069.04 of these rules with the addition of any tailings facilities or process fluid ponds. ()

04. Reclamation Plan Requirements. Reclamation plans must include all of the information required under Subsection 069.05, including but not limited to phases as described in Subsection 069.05.i, and the following additional information: ()

a. A description of the planned reclamation of overburden disposal areas, tailings facilities, and sediment ponds; and ()

b. An estimate of total reclamation cost to be used in establishing the financial assurance amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent costs for third party reclamation. ()

c. To assist in meeting the requirements of paragraph 069.05.a in these rules, a summary of requirements from a SWPPP, IPDES permit, ground water point of compliance, and other permits or approvals or BMPs related to foreseeable water quality impacts on the affected land. ()

d. Structures that will be built to help implement a SWPPP, IPDES permit, Point of Compliance or other permits or approvals related to foreseeable water quality impacts on the affected land. ()

e. 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 reclamation plan. Such information may include, but is not limited to, one (1) or more of the following: ()

i. A description of the quantities, size, geologic characteristics, and durability of the materials to be used for final reclamation and armoring. ()

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. ()

f. The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to provide a geotechnical analysis and report. 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 ground water accumulation, and the expected seismic accelerations at the site. The report must bear the imprint of an Idaho licensed professional engineer that is both signed and dated by the engineer. The report shall show that the following features, if present, are designed in a manner that is consistent with industry standards to minimize the potential for failure: ()

i. Any waste rock or overburden stockpiles; ()

ii. Any pit walls proposed to be more than one hundred (100) feet high; and ()

iii. Any pit walls where geologic conditions could lead to failure of the wall regardless of the height. ()

g. Underground mines must provide the following additional information: ()

i. Location and dimensions of all underground mine openings at the ground surface, including but not limited to vents, shafts, and adits; and ()

ii. A description of how each mine opening in subparagraph 070.04.g.i of these rules will be secured

during reclamation to eliminate hazards to human health and safety. ()

h. A description of post-closure activities that includes the proposed length of the post-closure period and the following: ()

i. A summary of procedures and methods for water management including any likely IPDES permit, stormwater permit, and monitoring required for any ground water point of compliance, along with sufficient information to support a cost estimate for such water management activities. ()

ii. Care and maintenance for facilities after mining has ceased. ()

i. Other pertinent information the Department has determined is necessary to ensure that the operator will comply with the requirements of the chapter. ()

05. Operating Plan Requirements. A complete operating plan shall consist of: ()

a. Ore, tailings, and waste rock handling flow sheets and diagrams. ()

b. Waste rock management plan. ()

c. Water quality monitoring locations. ()

d. Anticipated concurrent reclamation prior to the cessation of mining. ()

e. Estimated throughput and timeline for mining. ()

f. Types of ore processing and beneficiation. ()

g. Process fluid pond volumes and anticipated contents, if applicable. ()

06. Monitoring Data. The Department will, as needed and through consultation with DEQ, obtain the operator's baseline data on ground water or surface water gathered during the planning and permitting process for the operation, and may require the operator to furnish additional monitoring data during the life of the project. This will not require any additional monitoring data where such data is already provided under an IPDES permit, SWPPP, ground water point of compliance, or other federal or state requirements for collecting surface or ground water data. ()

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

01. Permanent Closure Plan Approval Required. No operator shall 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 financial assurance, as required by these rules. ()

02. Permanent Closure Plan Requirements. A permanent closure plan shall: ()

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; ()

b. Include a timeline showing: ()

i. The schedule to complete permanent closure activities, including neutralization of process waters and material stabilization, and the time period for which the operator is responsible for post-closure activities; and ()

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. ()

- 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; ()
- d.** Provide a water management plan from the time the cyanidation facility is in permanent closure through the defined post-closure period. The plan must 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. ()
- 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. ()
- 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 ground waters 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 bear the imprint of an Idaho licensed professional engineer that is both signed and dated by the engineer; ()
- 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; ()
- 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. ()
- 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; ()
- j.** Provide sufficient detail to allow the operator to prepare an estimate of the reasonable costs to implement the permanent closure plan; ()
- 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: ()
- i.** Identify the incremental costs of attaining critical phases of the permanent closure plan and a proposed financial assurance release schedule; ()
- 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 financial assurance forfeiture under Section 47-1513, Idaho Code. ()
- l.** If the proposal is to complete cyanidation facility construction, operation, and/or permanent closure activities in phases: ()
- 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 ()
- ii.** Describe how any required post-closure activities will be addressed during and after each subsequent phase has begun. ()
- 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. ()

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. ()

04. Application Package for Permanent Closure. An application and its contents submitted to the Department will 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. A complete application package must be submitted to the Department. A complete application package for an operator proposing to use cyanidation shall consist of: ()

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

i. Name, location, and mailing address of the cyanidation facility; ()

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; ()

iii. Land ownership status (federal, state, private or public); ()

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

v. The legal structure (corporation, partnership, etc.) and primary place of business of the operator. ()

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

c. A permanent closure plan as prescribed in Subsection 071.02; ()

d. The DEQ application and supporting materials; ()

e. The fee as defined in Subsection 071.05.a. ()

05. Application Fee. The application fee shall consist of two (2) parts: ()

a. Processing and review fee. ()

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. ()

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. ()

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: ()

(1) Review the Department's estimate; ()

(2) Conduct a hearing where the applicant is allowed to give testimony to the Board concerning the Department's estimate; and ()

(3) Establish the amount of the application review and processing fee. ()

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. ()

v. Nothing in this section shall extend the time in which the Board must act on a plan submitted. ()

b. Permanent closure cost estimate verification fee. ()

i. Pursuant to Sections 47-1506(g) and 47-1508(f), 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. ()

ii. The applicant is 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. ()

iii. If a federal agency has responsibility to establish the financial assurance 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. ()

072. -- 079. (RESERVED)

080. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION FOR A RECLAMATION PLAN OR PERMANENT CLOSURE PLAN.

01. Return of Application. Within thirty (30) days after receipt of a reclamation plan or permanent closure plan by the Department, an application may be returned for correction and resubmission if either the reclamation plan or permanent closure plan are incomplete. Return of an application by the director shall constitute a rejection in accordance with Section 47-1507(b), Idaho Code. ()

02. Agency Notification and Comments. ()

a. Nonconfidential materials submitted under Sections 069, 070, and 071 will be forwarded by the director to the Idaho Departments of Water Resources, Environmental Quality, and Fish and Game for review and comment. The director may decide not to circulate applications submitted under Section 069 if the director determines the impacts of the proposed activities are minor and do not involve surface or ground waters. The director may provide public notice on receipt of a reclamation plan or permanent closure plan. In addition, nonconfidential contents of an application will be provided to individuals who request the information in writing, as required by the Idaho Public Records Act. ()

b. Upon receipt of a complete application for a reclamation plan or a permanent closure plan, the director shall provide notice to the cities and counties where the mining or cyanidation facility operation is proposed, in accordance with Section 47-1505(7), Idaho Code. The notice shall include the name and address of the operator,

the procedure and schedule for the Department's review, and an invitation to review nonconfidential portions of the application, if requested in writing. Such notice will be provided upon receipt of a reclamation plan, a permanent closure plan, or any amended plan for an existing operation, or an amended cost estimate to complete permanent closure of a cyanidation facility, if required under the chapter and these rules.. ()

03. Decision on Reclamation Plans. The director shall review a new reclamation plan or an amended reclamation plan pursuant to Sections 47-1507 and 47-1508, Idaho Code. ()

a. Approval. ()

i. Within sixty (60) days of receipt of an application that complies with Subsections 069 and 070 of these rules, the Department shall provide written notice to the applicant that the reclamation plan or any amendment(s) to an approved reclamation plan is approved or denied and, if approved, the amount of the financial assurance required; or ()

ii. If the director does not take action within sixty (60) days, a reclamation plan or any amendments thereof is deemed to comply with the chapter, unless the sixty (60) day time period is extended pursuant to Section 47-1507(c), Idaho Code. ()

iii. The operator and director may agree, in writing, to implement additional actions with respect to reclamation that extend beyond the requirements set forth in these rules. ()

b. Inspections. The director may determine that an inspection of the proposed mining site location is necessary if the inspection will provide additional information or otherwise aid in processing of the application. ()

i. If the director decides to perform an inspection, the applicant will be contacted and asked that he or an authorized employee or agent be present. This rule shall not prevent the Department from making an inspection of the site if the applicant does not appear. ()

ii. If weather conditions preclude an inspection of a proposed mining operation, the director shall provide written notice to the applicant that review of the reclamation plan or an amended reclamation plan has been suspended until weather conditions permit an inspection, and that the schedule for a decision will be extended for up to thirty (30) days after weather conditions permit such inspection in accordance with Section 47-1507(c), Idaho Code. ()

04. Decision on Cyanidation Facility Permanent Closure Plans. Pursuant to Sections 47-1507 and 47-1508, Idaho Code, following review of a complete application, the director shall: ()

a. Coordination with DEQ. Initiate a coordinated interagency review of the application by providing a notice in writing to the DEQ director that the Department has received an application for permanent closure of a cyanidation facility; ()

b. Approval. ()

i. Within one-hundred eighty (180) days of receipt of an application that complies with Subsection 071.04 of these rules, the Department shall provide written notice to the applicant that the permanent closure plan is approved or denied and, if approved, the amount of the permanent closure financial assurance required; or ()

ii. If the director does not take action within one-hundred eighty (180) days, a permanent closure plan, or any amendments thereof, is deemed to comply with the provisions of the chapter, unless the one hundred eighty (180) day time period is extended in accordance with Section 47-1507(c), Idaho Code. ()

c. Inspections. The director may determine that it is necessary to inspect the proposed cyanidation facility location if the inspection will provide additional information or otherwise aid in processing of the application. ()

i. If the director determines to inspect the site, the applicant will be contacted and asked that he or an authorized employee or agent be present. The Department may proceed with an inspection if the applicant or his designated employee or agent does not appear. ()

ii. If weather conditions preclude an inspection of the proposed cyanidation facility, the director shall provide written notice to the applicant that processing of the application has been suspended until weather conditions permit an inspection, and that the schedule for a decision is extended for up to thirty (30) days after weather conditions permit such inspection in accordance with Section 47-1507(c), Idaho Code. ()

05. Permanent Closure Plan Approval. ()

a. The Department may condition its approval on issuance of a permit by the DEQ for the cyanidation facility. ()

b. Except for the concurrent and additional permanent closure requirements that may be established in a permit issued by the DEQ pursuant to Section 39-118A, Idaho Code and IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," an approved permanent closure plan shall define the nature and extent of the operator's obligation under the chapter. ()

c. The permanent closure plan, as approved by the Department in coordination with the DEQ, will be incorporated by reference into the cyanidation facility permit issued by DEQ as a permit condition and will be enforceable as such. The operator shall ensure that closure complies with the approved permanent closure plan and any additional permanent closure requirements as outlined in the permit issued by DEQ. ()

d. No sooner than one hundred and twenty (120) days after an application for a permanent closure plan has been submitted to the Department, the applicant may submit a reclamation plan as required by Section 070 of these rules. The Department will review and approve the reclamation plan in accordance with Subsection 080 of these rules. ()

e. Approval of a permanent closure plan by the Department is required even if approval of such plan has been or will be obtained from an appropriate federal agency. ()

06. Denial of an Application. If the director rejects an application, the director shall deliver in writing to the applicant a statement of the reasons the application has been rejected, the factual findings upon which the rejection is based, a statement of the applicable statute(s) and rule(s), the manner in which the application failed to fulfill the requirements of these rules, and the action that must be taken or conditions that must be satisfied to meet the requirements of the chapter and these rules. The applicant may submit an amended application in accordance with Sections 069, 070 or 071 of these rules for review and, if appropriate, approval by the Department. The director shall deny a reclamation plan, permanent closure plan, or any amendments thereof if: ()

a. The application is inaccurate or incomplete; ()

b. The cyanidation facility as proposed cannot be conditioned for construction, operation, and closure to protect public safety, health, and welfare, in accordance with the scope and intent of these rules, or to protect beneficial uses of the waters of the state, as determined by the DEQ pursuant to Section 39-118A, Idaho Code and IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation" and other DEQ rules cited therein. ()

07. Public Hearing. The director may call a public hearing to determine whether a proposed application complies with the chapter and these rules. A hearing will be conducted in accordance with Section 110 of these rules. ()

08. Referral to Board. The director may refer the decision concerning an application to the Board. This action will not extend the time period for a decision to approve or deny an application. ()

09. Appeal of Final Order. Any final order of the Board regarding an application for a mining reclamation plan or for permanent closure of a cyanidation facility may be appealed as set forth in Section 47-1514, Idaho Code. ()

081. -- 089. (RESERVED)

090. AMENDING AN APPROVED RECLAMATION PLAN.

01. Cause for Reclamation Plan Amendment. In the event circumstances arise that necessitate amendments to an approved reclamation plan, the operator shall submit an application to amend the plan and state the reasons the amendment is necessary. Either the operator or the director may initiate a process to amend an approved reclamation plan. If the director identifies a material change he believes requires a change in the reclamation plan, the director must deliver in writing to the operator a detailed statement identifying the material change and the action(s) necessary to address the material changes. Plan amendments have the same requirements as described in Section 069 and 070 of these rules. ()

02. Review of Amendment. The director will process an application to amend a plan in accordance with Sections 080 and 110 of these rules, provided, however, that no land or aspect or provision of an approved reclamation plan that would not be affected by the proposed amendment, is subject to the amendment, review or reapproval in connection with processing the application. Approval of an amendment shall not be conditioned upon the performance of any actions not required by the approved reclamation plan or the proposed amendment itself, unless the operator agrees to perform such actions. ()

03. Adjustments. Adjustments to an approved reclamation plan may be made by agreement between the director and the operator, if the adjustment is consistent with the overall objectives of the approved reclamation plan and so long as applicable surface and ground water quality standards will be met. Adjustments are due to changes that are smaller than material changes. ()

091. AMENDING AN APPROVED PERMANENT CLOSURE PLAN.

01. Cause for Permanent Closure Plan Amendment. In the event circumstances arise that necessitate amendments to an approved permanent closure plan, the operator shall submit an application to amend the permanent closure plan and state the reasons the amendment is necessary. Either the operator or the director may initiate a process to amend an approved permanent closure plan. Circumstances that could require a permanent closure plan to be amended include: ()

a. A material modification or material expansion in the cyanidation facility design or operation for which the approved permanent closure plan is no longer adequate; ()

b. Conditions substantially different from those anticipated in the original permit for which the approved permanent closure plan is no longer adequate; or ()

c. A material change as defined in Subsection 010.09 of these rules. ()

02. Modifications at an Operator's Request. Requests from an operator to modify a permanent closure plan must be submitted to the Department in writing. The director shall process an application for amendment in accordance with Section 080 of these rules. An application to amend a permanent closure plan shall include: ()

a. A written description of the circumstances that necessitate the amendment; ()

b. Data supporting the request; ()

c. The proposed amendment; ()

d. A description of how the amendment will impact the estimated cost to complete permanent closure pursuant to the chapter; ()

e. A cost estimate to implement the amended permanent closure plan, prepared in accordance with Subsection 071.02 of these rules; and ()

f. Payment of a reasonable fee as may be determined by the director in accordance with Section 47-1508, Idaho Code. ()

03. Modification at Request of Director. If, following consultation with the DEQ, the director determines that cause exists to amend the permanent closure plan the director shall notify the operator in writing of his determination and explain the circumstances that have arisen which require the permanent closure plan to be amended. Within thirty (30) days or as agreed by the operator and the Department, the operator shall submit an application to amend the permanent closure plan in accordance with Subsection 091.02. ()

04. Adjustment. Adjustments to an approved permanent closure plan may be made by agreement between the director and the operator, if the adjustment is consistent with the overall objectives of the approved permanent closure plan and so long as applicable surface and ground water quality standards will be met. ()

092. -- 099. (RESERVED)

100. DEVIATION FROM AN APPROVED RECLAMATION PLAN.

01. Unforeseen Events. If a mining operator finds that unforeseen events or unexpected conditions require immediate change from an approved plan, the operator may continue mining in accordance with the procedures dictated by the changed conditions, pending submission and approval of an amended plan, even though operations do not comply with the approved reclamation plan on file with the Department. This shall not excuse the operator from complying with the requirements of Sections 140 and 120 of these rules. ()

02. Notification. The operator shall notify the director, in writing, within ten (10) days of the discovery of conditions that require deviation from the approved plan. A proposed amendment to the reclamation plan must be submitted by the operator within thirty (30) days of the discovery of those conditions. ()

101. -- 109. (RESERVED)

110. PUBLIC HEARING.

01. Call for a Hearing. A public hearing called by the director following receipt of a complete application submitted in accordance with Sections 069, 070, or 071 of these rules is conducted in accordance with Section 47-1507(d), Idaho Code. The director may call for a hearing following his preliminary review of an application for a new operation or an amendment application for an existing operation when one (1) or more of the following circumstances arises: ()

a. Public Concern. The public, potentially affected landowners, any governmental entity, or any other interested parties who may be affected by the operations proposed under the chapter have registered, in writing, a concern with the director regarding the proposed operations or cyanidation facility. The purpose of the public hearing is to gather written and oral comments as to whether the proposed reclamation plan or permanent closure plan meets the requirements of the chapter and these rules. ()

b. Agency Concern. The director determines, after consultation with the Department of Water Resources, DEQ, the Department of Fish and Game, and affected Indian tribes that the proposed mining or cyanidation facility operations could reasonably be expected to significantly degrade adjacent surface and/or ground waters or otherwise threaten public health, safety or welfare. The purpose of a public hearing held under this subsection will be to receive written and oral comments on the measures the operator is proposing to use to protect surface and/or ground water quality from nonpoint source pollution. ()

02. Consolidation. If the director determines that a hearing should be held, he shall order that such proceedings be consolidated. The applicant and the public must be advised of the specific subjects to be discussed at the hearing at least twenty (20) days prior to the hearing. The Department will coordinate with the DEQ, as appropriate, for any hearings relating to permanent closure of a cyanidation facility to streamline application processing. ()

03. Location. A hearing will be held in the locality of the proposed mine or a proposed cyanidation facility at a reasonably convenient time and place for public participation. The director may call for more than one hearing when conditions warrant. ()

04. Notice of Hearing. The director shall provide at least twenty (20) days' advance notice of the date, time, and place of the hearing to: federal, state, and local governmental agencies, Indian tribes who may have an interest in the decision as shown on the application, and the public; to all persons who petitioned for a hearing; and to any person identified by the applicant under Subsection 070.02 as a legal owner of the land that will likely be affected by the proposed operations. Notice to the applicant must be sent by certified mail and postmarked not less than twenty (20) days before the scheduled public hearing date. ()

05. Publication of Notice. The director shall provide at least twenty (20) days advance notice to the general public of the date, time, and place of the hearing. A newspaper advertisement will be placed once a week, for two (2) consecutive weeks, in the locale of the area covered by the application. ()

a. In the event a hearing is ordered under Section 110, the notice shall describe: ()

i. The potentially significant surface water quality impacts from the proposed mining operation and the operator's description of the measures that will be used to prevent degradation of adjacent surface and ground waters from sources of pollution; or ()

ii. The objectives of a permanent closure plan that have been submitted for review. ()

b. A copy of the application will be placed for review in a public place in the local area of the proposed mining operation or cyanidation facility, in the closest Department area office, and the Department's administrative office in Boise. ()

06. Hearing Officer. The hearing will be conducted by the director or his designated representative. Both oral and written testimony will be accepted. Proceedings of the hearing will be recorded on audio tape and a verbatim transcript will be prepared. ()

07. Consideration of Hearing Record. The Department will consider the hearing record when reviewing reclamation plans or permanent closure plans for final approval or rejection. ()

111. COMPLETION OF PERMANENT CLOSURE.

01. Implementation of a Permanent Closure Plan. Unless otherwise specified in the approved permanent closure plan, an operator must begin implementation of the approved permanent closure plan as follows: ()

a. Within two (2) years of the final addition of new cyanide to the ore process circuit; or ()

b. If the product recovery phase of the cyanidation facility has been suspended for a period of more than two (2) years. ()

02. Submittal of a Permanent Closure Report. The operator must submit a permanent closure report to the Department for review and approval. A permanent closure report must be of sufficient detail for the directors of the Department and DEQ to issue a determination that permanent closure, as defined by Subsection 010.15 of these rules, has been achieved. The permanent closure report shall address: ()

a. The effectiveness of material stabilization; ()

b. The effectiveness of the water management plan and the adequacy of the monitoring plan; ()

c. The final configuration of the cyanidation facility and its operational/closure status; ()

d. The post-closure operation, maintenance, and monitoring requirements, and the estimated ()

reasonable cost to complete those activities; ()

e. The operational/closure status of any land application site of the cyanidation facilities; ()

f. Source control systems that have been constructed or implemented to eliminate, mitigate, or contain short- and long-term discharge of pollutants from the cyanidation facility, unless otherwise permitted; ()

g. The short- and long-term water quality trends in surface and ground water through the statistical analysis of the existing monitoring data pursuant to the ore-processing by cyanidation permit; ()

h. Ownership and responsibility for the site upon permanent closure during the defined post-closure period; ()

i. The future beneficial uses of the land, surface and ground waters in and adjacent to the closed cyanidation facilities; and ()

j. How the permanent closure of the cyanidation facility complies with the Resource Conservation and Recovery Act, Hazardous Waste Management Act, Solid Waste Management Act, and appropriate rules. ()

03. Review of a Permanent Closure Report. The Department will immediately forward a copy of the permanent closure report to DEQ for their review and comment. ()

112. DECISION TO APPROVE OR DISAPPROVE OF A PERMANENT CLOSURE REPORT.

01. Receipt of a Permanent Closure Report. Within sixty (60) days of receipt of a permanent closure report, the director shall issue to the operator a director's determination of approval or disapproval of the permanent closure report. ()

02. Permanent Closure Report Is Disapproved. The director's determination to approve or disapprove a permanent closure report will be based on the permanent closure report's demonstration that permanent closure has resulted in long-term neutralization of process waters and material stabilization. If a permanent closure report is disapproved, the director shall provide in writing identification of: ()

a. Errors or inaccuracies in the permanent closure report; ()

b. Issues or details that require additional clarification; ()

c. Failures to fully implement the approved permanent closure plans; ()

d. Failures to ensure protection for public health, safety, and welfare or to prevent degradation of waters of the state; ()

e. Outstanding violations or other noncompliance issues; and ()

f. Other issues supporting the Department's disagreement with the contents, final conclusions or recommendations of the permanent closure report. ()

113. -- 119. (RESERVED)

120. FINANCIAL ASSURANCE REQUIREMENTS.

01. Submittal of Financial Assurance Before Mining. Prior to beginning any mining on a mine panel covered by a reclamation plan, an operator shall submit to the director, on a Department form, financial assurance meeting the requirements of this rule. ()

02. Submittal of Financial Assurance Before Operating a Cyanidation Facility. Prior to beginning operation of a cyanidation facility an operator will submit to the director, on a Department form, financial assurance meeting the requirements of Section 47-1512(a)(2), Idaho Code. The financial assurance will be in an amount equal to the total costs estimated under paragraph 071.02.k. and Section 120 of these rules. ()

03. Timely Financial Assurance Submittal. Financial assurance must be received by the Department within twenty-four (24) months of reclamation or permanent closure plan approval or the Department will cancel the respective plan without prejudice. If financial assurance is not received within eighteen (18) months of a plan approval, the Department will notify the operator that financial assurance is required prior to the twenty-four (24) month deadline. Extensions will be granted by the director for reasonable cause given if a written request is received prior to the deadline. If financial assurance or an extension request is not received by the deadline, the plan will be canceled. The operator must then submit a new plan application and application fee to restart the approval process. ()

04. Phased Financial Assurance. If the Department approves a reclamation plan or permanent closure plan with phased financial assurance, then financial assurance may increase incrementally commensurate with the additional reclamation or permanent closure liability. After construction and operation of the initial phase has commenced and after filing by an operator of the initial financial assurance, an operator will not construct any component of a subsequent phase or phases of the subject mine or cyanidation facility before filing the additional financial assurance amount that is required by the Board. If phased financial assurance is not authorized, the operator is required to file the financial assurance amount required to complete reclamation or permanent closure of all planned phases prior to any construction of the mine or operation of the cyanidation facility. ()

05. Financial Assurance for Mines with Five (5) or Less Disturbed Acres. Financial assurance will be a minimum of five thousand dollars (\$5,000) per acre unless the operator or the Department determine that the estimated reasonable costs of reclamation require a different amount. No financial assurance may exceed fifteen thousand dollars (\$15,000) for a given acre of affected land unless the condition in Subsection 120.07 of these rules have been met. ()

06. Financial Assurance for Cyanidation Facility Affecting Five (5) or Less Disturbed Acres. The Board may require financial assurance in excess of five million dollars (\$5,000,000) if the conditions in Subsection 120.07 of these rules have been met. ()

07. Process for Requiring Higher Financial Assurance. Financial assurance in excess of the amounts in Subsections 120.05 and 06 of this rule may only be obtained if: ()

a. The Board has determined that such financial assurance is necessary to meet the requirements of the chapter; and ()

b. The Board has delivered to the operator, in writing, a notice setting forth the reasons it believes such financial assurance is necessary; and ()

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

08. Financial Assurance for Mine or Cyanidation Facility with More than Five (5) Disturbed Acres. The amount of financial assurance must be the amount necessary for the Board to pay the estimated reasonable costs of reclamation required under the reclamation plan or permanent closure plan, including indirect costs in Section 120 of these rules. ()

09. Mobilization Costs are Direct Costs. Mobilization and demobilization costs will be included in financial assurance calculations as a direct cost. Costs will be calculated to the mine from the nearest community that has at least two (2) contractors able to perform the reclamation. ()

10. Indirect Costs for Reclamation Cost Calculations. Reclamation and permanent closure cost calculations shall include the following indirect costs and should fall within the percentages given. If a different

percentage is used, then a justification must be given. Alternatively, an operator may propose the use of an industry recognized standardized reclamation cost estimation tool for use in reclamation and/or permanent closure cost estimates and the use of the tool's associated indirect costs which are established using the project direct costs as identified: ()

- a. Contractor profit at six percent to ten percent (6% to 10%) of direct costs; ()
- b. Contractor overhead at four percent to eight percent (4% to 8%) of direct costs; ()
- c. Contractor insurance at one and a half percent (1.5%) of labor costs; ()
- d. Contractor bonding at two and a half percent to three and a half percent (2.5% to 3.5%) of direct costs; ()
- e. Contract administration at five percent to nine percent (5% to 9%) of direct costs; ()
- f. Re-engineering for mines or cyanidation facilities with direct reclamation costs over five hundred thousand dollars (\$500,000). Re-engineering will be three percent to seven percent (3% to 7%) of direct costs; ()
- g. Scope contingency at six percent to eleven percent (6% to 11%) of direct costs; ()
- h. Bid contingency at six percent to eleven percent (6% to 11%) of direct costs; and ()
- i. Other site specific costs as appropriate. ()

11. Salvage Value Not Allowed. Reclamation or permanent closure costs will not be reduced by assigning a salvage value to structures or fixtures to be removed during reclamation. ()

12. Mining Operation Conducted by Public or Government. Notwithstanding any other provision of law to the contrary, the financial assurance provisions of the chapter and these rules do not apply to any surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway. ()

13. Annual Financial Assurance Review for Reclamation Plans. At the beginning of each calendar year, the operator shall notify the director of any increase in the acreage of affected land beyond that covered by the existing financial assurance which will result from planned mining activity within the next twelve (12) months. A commensurate increase in the financial assurance will be required for an increase in affected acreage. Any additional financial assurance required must be submitted on the appropriate form within ninety (90) days of operator's receipt of notice from the Department that an additional amount is required. In no event will mining operations be conducted that would affect additional acreage until the appropriate form and financial assurance has been submitted to the Department. Acreage on which reclamation is complete will be reported in accordance with Subsection 120.16 of these rules and after release of this acreage from the reclamation plan by the director, the financial assurance will be reduced by the amount appropriate to reflect the completed reclamation. ()

14. Financial Assurance Provided to the Federal Government. Any financial assurance provided to the federal government that also meets the requirements of Section 120 of these rules will be sufficient for the purposes of these rules. A mine providing financial assurance through an order under the Comprehensive Environmental Response, Compensation, and Liability Act is not required to submit financial assurance to the Department as described in Idaho Code 47-1512(n). ()

15. Financial Assurance Reduction for Mines. ()

a. An operator may petition the director for a change in the initial financial assurance amount. The director will review the petition and if satisfied with the information presented a revised financial assurance amount will be determined. The revised amount will be based upon the estimated cost that the director would incur should a forfeiture of financial assurance occur and it became necessary for the director, through contracting with a third party,

to complete reclamation to the standards established in the plan. ()

b. Upon finding that any land covered by financial assurance will not be affected by mining, the operator will notify the director. The amount of the financial assurance will be reduced by the amount being held to reclaim those lands. ()

c. Any request for financial assurance reduction will be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. ()

16. Financial Assurance Release Following Mine Reclamation. Upon completion of all or a portion of the reclamation or post-closure activity specified in the plan, the operator may notify the director of his desire to secure release from financial assurance. When the director has verified that the requirements of the reclamation plan have been substantially met as stated in the plan, the financial assurance will be released. ()

a. Any request for financial assurance release will be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. ()

b. If the director finds that a specific portion of the reclamation or post-closure has been substantially completed, the financial assurance may be reduced to the amount required to complete the remaining reclamation or post-closure. The following schedule will be used to complete these financial assurance reductions unless the director determines in a specific case that this schedule is not appropriate and specifies a different schedule, or the approved reclamation plan has a different schedule based on site-specific conditions. ()

i. Sixty percent (60%) of the financial assurance may be released when the operator completes the required backfilling, regrading, topsoil replacement, and drainage control of a specific area in accordance with the approved reclamation plan; and ()

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 financial assurance. ()

c. The remaining financial assurance shall not be released: ()

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 mining operations; ()

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 financial assurance by a new operator; and ()

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 financial assurance by a new operator. ()

17. Corporate Guarantee Released First. If an operator provides part of their financial assurance through a corporate guarantee, then the corporate guarantee will be released prior to any other type of financial assurance being released. Other types of financial assurance will only be released after the corporate guarantee has been completely released. ()

18. 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 financial assurance and cancel the reclamation plan if all deficiencies are satisfactorily corrected within the time specified by the cooperative agreement. ()

19. Permanent Closure Financial Assurance Review. The Department will periodically review all financial assurances filed for permanent closure to determine their sufficiency to complete the work required by an

approved permanent closure plan. For reviews conducted under paragraphs a and b the director may employ a qualified independent party to verify the accuracy of the revised permanent closure cost estimate as described in paragraph 071.05.b. of these rules. ()

a. Once every three (3) years, the operator must submit an updated permanent closure cost estimate to the Department for review. The director will review the updated estimate to determine whether the existing financial assurance amount is adequate to implement the permanent closure plan, as approved by the Department. Any resulting change in the financial assurance amount does not in and of itself require an amendment to the permanent closure plan as may be required by Section 091 of these rules. The director will review the estimate to determine whether the existing financial assurance amount is adequate to complete permanent closure of the cyanidation facility. ()

b. When the director determines that there has been a material change in the estimated reasonable costs to complete permanent closure: ()

i. The director will notify the operator in writing of his intent to reevaluate the financial assurance amount. Within a reasonable time period determined by the Department, the operator will provide to the Department a revised cost estimate to complete permanent closure as approved by the Department. ()

ii. Within thirty (30) days of receipt of the revised cost estimate, the director will notify the operator in writing of his determination of financial assurance adequacy. ()

iii. Within ninety (90) days of notification of the director's assessment, the operator will make the appropriate adjustment to the financial assurance or the director will reduce the financial assurance as appropriate. ()

c. The Department may conduct an internal review of the amount of each financial assurance annually to determine whether it is adequate to complete permanent closure. ()

20. Permanent Closure Financial Assurance Release. ()

a. A financial assurance filed for permanent closure of a cyanidation facility will be released according to the schedule in the permanent closure plan. The schedule will include provisions for the release of the post-closure monitoring and maintenance portions of the financial assurance. The schedule may be adjusted to reflect the operator's performance of permanent closure activities and their demonstrated effectiveness. ()

b. Upon completion of an activity required by an approved permanent closure plan, the operator may request in writing a financial assurance reduction for that activity. The Department will notify the operator within thirty (30) days whether or not the activity meets the requirements of the permanent closure plan. When the director, in consultation with DEQ, has verified that the activity meets the requirements of the permanent closure plan, the financial assurance will be reduced by an amount to reflect the activity completed. ()

c. Upon the director's determination that all activities specified in the permanent closure plan have been successfully completed, the Department will, in accordance with Section 47-1512(i), Idaho Code, release the balance remaining after partial financial assurance releases. ()

21. Liabilities for Reclamation Costs Not Covered by Financial Assurance. An operator who is not required to furnish financial assurance by these rules but fails to reclaim may be subject to civil penalty under Section 47-1513(c), Idaho Code. The amount of civil penalty will be the estimated cost of reasonable reclamation of affected lands as determined by the director. Reasonable reclamation of the site will be presumed to be in accordance with the standards established in the approved reclamation plan. The amount of the civil penalty is in addition to those described in Section 47-1513(f), Idaho Code. ()

22. Appeal Process for Financial Assurance Decisions. All decisions regarding financial assurance extension requests, plan cancellation, financial assurance reduction, or financial assurance release as described in Section 120 of these rules are subject to appeal as described in Section 58-104, Idaho Code, and Section 47-1514, Idaho Code. ()

121. (RESERVED)

122. FORM OF FINANCIAL ASSURANCE.

01. Corporate Surety Bond. ()

a. A corporate surety bond is an indemnity agreement executed for the operator and a corporate surety licensed to do business in the state of Idaho, filed on the appropriate Department form. The bond must be payable to the state of Idaho and conditioned to require the operator to faithfully perform all requirements of the chapter, and the rules in effect on the date that a reclamation plan or a permanent closure plan was approved by the Department. ()

b. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties in Circular 570 of the U.S. Department of the Treasury. ()

c. When replacement financial assurance is submitted, the following rider must be filed with the Department as part of the replacement before the existing financial assurance will be released: “[Surety company or principal] understands and expressly agrees that the liability under this bond shall extend to all acts for which reclamation is required on areas disturbed in connection with reclamation plan or permanent closure plan [number], both prior to and subsequent to the date of this rider.” ()

02. Collateral Bond. A collateral bond is an indemnity agreement executed by or for the operator, payable to the state of Idaho, pledging cash deposits, government securities, real property, time deposit receipts, or certificates of deposit of any financial institution authorized to do business in the state. Collateral bonds are subject to the following conditions. ()

a. The director shall obtain possession of cash or other negotiable collateral bonds, and, upon receipt, deposit them with the state treasurer to hold them in trust for the purpose of bonding reclamation or permanent closure performance. ()

b. The director shall value the collateral at its current market value minus any penalty for early withdrawal, not its face value. ()

c. Certificates of deposit or time deposit receipts are issued or assigned, in writing, to the state of Idaho and upon the books of the financial institution issuing such certificates. Interest will be allowed to accrue and may be paid by the bank, upon demand and after written release by the Department, to the operator or another person who posted the collateral bond. ()

d. Amount of an individual certificate of deposit or time deposit receipt may not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors. ()

e. Financial institutions issuing certificates of deposit or time deposit receipts will waive all rights of set-off or liens which it has or might have against such certificates, and will place holds on those funds that prevent the operator from withdrawing funds until the Department sends a written release to the bank. ()

f. Certificates of deposit and time deposit receipts must be automatically renewable. ()

03. Letters of Credit. A letter of credit is an instrument executed by a bank doing business in Idaho, made at the request of a customer. A letter of credit states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit. Letters of credit are subject to the following conditions. ()

a. All credits must be irrevocable and prepared in a format prescribed by the director. ()

b. All credits must be issued by an institution authorized to do business in the state of Idaho or through a correspondent bank authorized to do business in the state of Idaho. ()

c. The account party on all credits must be identical to the entity identified in the reclamation plan or in the permanent closure plan and on the cyanidation facility permit as the party obligated to complete reclamation or permanent closure. ()

04. Real Property. Real property used as a collateral bond must be a perfected, first lien security interest in real property located within the state of Idaho, in favor of the state of Idaho, which meets the requirements of these rules using a deed of trust form acceptable to the Department for all lands forty (40) acres or less, or a mortgage form approved by the Department for all lands over forty (40) acres. ()

a. The following information must be submitted for real property collateral: ()

i. The value of the real property. The property will be valued at the difference between the fair market value and any reasonable expense anticipated by the Department in selling the property. The fair market value will be determined by an appraisal conducted by a licensed appraiser. The appraiser will be selected by the Department and the Department will provide appraisal instructions; however, the operator may propose an appraiser to the Department. The appraisal will be performed in a timely manner, and a copy sent to the Department and the operator. The expense of the appraisal will be borne by the operator. The real property will be reappraised every three (3) years; ()

ii. A description of the property and a site improvement survey plat to verify legal descriptions of the property and to identify the existence of recorded easements; ()

iii. Proof of ownership and title to the real property; ()

iv. A current title binder which provides evidence of clear title containing no exceptions, or containing only exceptions acceptable to the director; and ()

v. Phase I environmental assessment. ()

b. Real property will not include any lands in the process of being mined, reclaimed, or planned to be mined under an approved reclamation plan. The operator may offer any lands within a reclamation plan that have received full release of financial assurances. In addition, any land used as a security will not be mined or otherwise disturbed while it is a security. The acceptance of real property within the permit boundary will be at the discretion of the director. ()

05. Trusts. Trusts are subject to the requirements of Sections 47-1512(1) and 68-101 et seq. Idaho Code. The proposed trustee, range of investments, initial funding, schedule of payments, trustee fees, and expected rate of return are subject to review and approval by the Department through a memorandum of agreement with the operator. The trustee will invest the principal and income of the fund in accordance with general investment practices. Investments can include equities, bonds, and government securities and be well diversified in accordance with the following conditions: ()

a. The joint party on the trust must be identical to the entity identified in the reclamation plan or in the permanent closure plan as the party obligated to complete reclamation or permanent closure. ()

b. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. ()

c. Equities may include stock funds, stock index funds, or individual stocks, but an individual stock may not exceed five percent (5%) of the total value of the trust. Direct investments in the operator's company or parent company are not allowed. Corporate equities must not exceed seventy percent (70%) of the total value of the trust fund. ()

d. Bonds or money market funds must be investment-grade rated securities from a nationally recognized securities rating service. Individual corporate bonds may not exceed five percent (5%) of the total value of the trust. ()

- e. Payments into the trust will be made as follows: ()
 - i. When used to cover reclamation or permanent closure costs, the trust fund will be initially funded in an amount needed to cover any surface disturbance in the first year of the trust fund. Annual payments into the trust will occur as needed prior to the disturbance of additional affected land at the mine or cyanidation facility. ()
 - ii. When used to cover a portion of reclamation or permanent closure costs in combination with other types of financial assurance, the initial and annual payments will be the pro-rata amount of the reclamation or permanent closure costs as described in subparagraph 122.05.e.i of these rules. ()
 - iii. When used to cover the anticipated post-closure costs, a payment schedule will be created in the memorandum of agreement. The trust fund, together with the anticipated earnings, must be enough at the expected start of the post-closure period to cover the costs of the post-closure period. ()
- f. Disbursements from the trust will only occur upon written authorization of the Department. Disbursements include payments to the trustee or any other payment of funds not related to financial assurance release and not specifically mentioned in the memorandum of agreement. ()
- g. Trusts will be irrevocable. ()
- h. Income accrued on trust funds will be retained in the trust, except as otherwise agreed by the director under the terms of an agreement governing the trust. ()
- 06. Corporate Guarantees.** ()
 - a. Up to fifty percent (50%) of required financial assurance for reclamation costs may be provided by a corporate guarantee. Post-closure costs for reclamation plans and permanent closure plans cannot be covered by a corporate guarantee. ()
 - b. Only operators who submit plans under Sections 070 or 071 of these rules may provide a corporate guarantee. ()
 - c. Operators who want to provide financial assurance through a corporate guarantee must provide an audited financial statement from a third-party certified public accountant that meets the requirements of IDAPA 24.30.01, the Idaho Accountancy Rule. The audited financial statement must show the operator meets two (2) of the following three (3) criteria and the criteria in paragraph d of this section: ()
 - i. Ratio of total liabilities to stockholder's equity is less than two (2) to one (1); ()
 - ii. Ratio of sum of net income plus depreciation, depletion, and amortization to total liabilities greater than ten one-hundredths (0.1) to one (1); or ()
 - iii. Ratio of current assets to current liabilities greater than one and fifty one-hundredths (1.5) to one (1). ()
 - d. The following financial criteria must also be met for a corporate guarantee: ()
 - i. Net working capital and tangible net worth are each equal to or greater than the total reclamation or permanent closure cost estimate; ()
 - ii. Tangible net worth of at least ten million dollars (\$10,000,000); and ()
 - iii. At least ninety percent (90%) of the corporation's total assets are in the United States, or the total assets in the United States are at least six (6) times greater than total reclamation or permanent closure cost estimate. ()

e. A corporate guarantee can be provided by a parent company guarantor if that guarantor meets the conditions of paragraphs (c) and (d) in this section as if it were the operator. The terms of this corporate guarantee will provide for the following: ()

i. The operator and the parent company will submit to the Department an indemnity agreement signed by corporate officers from both companies who are authorized to bind their corporations. The operator or parent company must also provide an affidavit certifying that such an agreement is valid under all applicable federal and state laws. The indemnity agreement will bind each party jointly and severally; ()

ii. If the operator fails to complete reclamation or permanent closure, the parent company guarantor will do so or the guarantor will be liable under the indemnity agreement to provide funds to the Department sufficient to complete reclamation or permanent closure as per the plan, but not to exceed the financial assurance amount; ()

iii. The corporate guarantee will remain in force unless the parent company guarantor sends notice of cancellation by certified mail to the operator and to the Department at least ninety (90) days in advance of the cancellation date, and the Department accepts the cancellation; and ()

iv. The cancellation will be accepted by the Department only if the operator obtains replacement financial assurance before the cancellation date or if the lands for which the corporate guarantee, or portion thereof, was accepted have not been disturbed. ()

v. If the operator is a partnership or joint venture, the indemnity agreement will bind each partner or member who has a beneficial interest, directly or indirectly, in the operator. ()

f. The operator, or parent company guarantor, is required to either complete the approved reclamation or permanent closure plan for the lands in default, or pay to the Department an amount necessary to complete the approved reclamation, not to exceed the amount established in Section 120 of these rules. ()

g. The operator or parent company guarantor will submit an annual update of the information required under paragraphs (c) and (d) of this section by April 1 following the issuance of the corporate guarantee. ()

h. If the operator or parent company guarantor's financial fitness falls below the eligibility for providing a corporate guarantee they will immediately notify the Department, and the Department will require the operator to submit replacement financial assurance within ninety (90) days of being notified. ()

i. The Department may require the operator or parent company guarantor to provide an update of the information in paragraphs (c) and (d) in this section at any time. The update must be provided within thirty (30) days of being requested. The requirements of paragraph (h) in this Section will then apply. ()

07. Blanket Financial Assurance. Where an operator is involved in more than one (1) reclamation plan or permanent closure plan permitted by the Department, the director may accept a blanket financial assurance in lieu of separate reclamation or permanent closure financial assurances under the approved plans. The amount of such financial assurance must be equal to the total of the requirements of the separate financial assurances being combined into a single financial assurance, as determined pursuant to Section 47-1512, Idaho Code, and in accordance with Section 120 of these rules. The principal is liable for an amount no more than the financial assurance filed for completion of reclamation activities or permanent closure activities if the Department takes action against the financial assurance pursuant to Section 47-1513, Idaho Code and Section 123 of these rules. ()

08. Reclamation Fund. Reclamation plans processed under Section 069 of these rules may provide financial assurance through the Reclamation Fund established by Section 47-18, Idaho Code, and IDAPA 20.03.03. If financial assurance is provided through the Reclamation Fund, no other type of financial assurance may be combined with it on an individual mine site. ()

09. Multiple Forms of Financial Assurance Accepted. An operator may combine more than one type of financial assurance, within the limitations of each type of financial assurance, to reach the full amount of the required financial assurance for a reclamation plan or permanent closure plan. ()

123. FORFEITURE OF FINANCIAL ASSURANCE.

A financial assurance may be forfeited in accordance with Section 47-1513, Idaho Code, when the operator has not conducted the reclamation or has not conducted permanent closure in accord with an approved plan and the applicable requirements of these rules. ()

124. -- 129. (RESERVED)

130. TRANSFER OF APPROVED PLANS.

01. Reclamation Plans. A reclamation plan may be transferred from one (1) operator to another only after the Department's approval. To complete a transfer, the new applicant must file a notarized assumption of reclamation plan form as prescribed by the Department and provide replacement financial assurance. The new operator is responsible for the past operator's obligations under the chapter, these rules, and the reclamation plan. ()

02. Permanent Closure Plans. An approved permanent closure plan permit may be transferred to a new operator if he provides written notice to the director that includes a specific date for transfer of permanent closure responsibility, coverage, and liability between the old and new operators no later than ten (10) days after the date of closure. An operator is required to provide such notice at the same time he provides notice to the DEQ as required IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation." To complete a transfer, the new applicant must: ()

- a. File a notarized assumption of permanent closure plan form as prescribed by the Department; and ()
- b. File a replacement permanent closure plan financial assurance on a form approved by the Department. ()

131. -- 139. (RESERVED)

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

These are the minimum standards expected for all activities covered by these rules. Specific standards for individual mines may be appropriate based on site specific circumstances, and must be described in the plan. ()

01. Nonpoint Source Control. ()

a. Appropriate BMPs for nonpoint source controls will be designed, constructed, and maintained with respect to site-specific 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. State water quality standards, as administered by DEQ, is the standard that must be achieved by BMPs. ()

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. ()

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 mining or exploration operations, whichever is the more appropriate 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: ()

- a. Keeping the disturbed area to a minimum at any given time through progressive reclamation;

- ()
- b. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; ()
- c. Retaining sediment within the disturbed area; ()
- d. Diverting surface runoff around the disturbed area; ()
- e. Routing runoff through the disturbed area using protected channels or pipes so as not to increase sediment load; ()
- 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 ()
- g. Use of adequate sediment ponds, with or without chemical treatment. ()

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 is 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. ()

04. Overburden/Topsoil. To aid in the revegetation of affected lands where 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 will be stockpiled and protected from erosion and contamination until such areas become available. ()

- a. Overburden/Topsoil Removal. ()
 - i. Any overburden/topsoil to be removed should be removed prior to any other mining activity to prevent loss or contamination; ()
 - 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 ()
 - 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. ()
- b. Topsoil Storage. Topsoil stockpiles will be placed to minimize rehandling and exposure to excessive wind and water erosion. Topsoil stockpiles will 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. ()
- c. Overburden Storage. Stockpiled ridges of overburden will be leveled in such a manner as to have a minimum width of ten (10) feet at the top. Peaks of overburden will be leveled in such a manner as to have a minimum width of fifteen (15) feet at the top. The overburden piles will be reasonably prepared to control erosion using best management practices; such activities may include terracing, silt fences, chemical binders, seeding, mulching or slope reduction. ()
- d. Topsoil Placement. Abandoned affected lands must 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 will be timed so that seeding, or other protective measures, can be readily applied to prevent compaction and erosion.

- ()
- e. Fill. Backfill and fill materials should be compacted in a manner to ensure stability. ()
- 05. Roads.** ()
- a. Roads must 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. ()
 - b. All access and haul roads must be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. ()
 - c. Culverts that are to be maintained for more than one (1) year must 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. ()
 - d. Roads and water control structures will be maintained at periodic intervals as needed. Water control structures serving to drain roads must not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. ()
 - e. Roads that will not be recontoured to approximate original contours upon abandonment will be cross-ditched and revegetated, as necessary, to control erosion. ()
 - f. Roads that are not abandoned and continue to be used under the jurisdiction of a governmental or private landowner, will comply with the nonpoint source sediment control provisions of Subsection 140.02 until the successor assumes control. ()
- 06. Backfilling and Grading.** ()
- a. Every operator who conducts 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 must be revegetated in accordance with Subsection 140.11. ()
 - b. An operator who conducts 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. ()
 - c. Backfill and fill materials should be compacted in a manner to ensure mass and surface stability. ()
 - d. After the disturbed area has been graded, slopes will be measured for consistency with the approved reclamation plan or the permanent closure plan. ()
- 07. Disposal of Waste in Areas Other Than Mine Excavation.** Waste material not used to backfill mined areas will be transported and placed in a manner designed to stabilize the waste piles and control erosion. ()
- 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. ()
 - b. All surface water flows within the disposal area must 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 must 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. ()

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. ()

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. ()

e. Unless adequate drainage is provided through a fill area, all surface water above the fill must be diverted away from the fill area into protected channels, and drainage shall not be directed over the unprotected face of the fill. ()

f. The operator will conduct revegetation activities with respect to such waste piles in accordance with Subsection 140.11 of these rules. ()

08. Settling Ponds; Minimum Criteria. ()

a. Sediment Storage Volume. Settling ponds will 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. ()

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. ()

c. Emergency Spillway. In addition to the sediment storage volume and water detention time, settling ponds must 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. ()

09. Tailings Facilities. All tailings ponds, dams, or other types of tailings facilities must be designed, constructed, operated, and decommissioned so that upon their abandonment, the dam and impoundment area will meet applicable surface and ground water quality standards and not otherwise constitute a hazard to human or animal life. ()

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. ()

b. Topsoil will be removed from the area to be affected by the impounding structure, tailings pond, or other tailings facilities in accordance with Subsection 140.04 of these rules. ()

c. Abandonment and Decommissioning of Tailings Impoundments. ()

i. Dewatering. Tailings ponds will be dewatered to the extent necessary to provide an adequate foundation for the approved post-mining use. ()

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 must 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. ()

iii. Detoxification. Hazardous chemical residues within the tailings pond must be detoxified or covered with an adequate thickness of non-toxic material, to the extent necessary to achieve water quality standards in waters of the state. ()

iv. Reclamation. After implementing the required dewatering, detoxification, and surface drainage

control measures, the reservoir and impounding structure will be covered with topsoil or other material conducive to plant growth, in accordance with Subsection 140.04 of these rules. 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 of these rules, unless specified otherwise. ()

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 are required to conform with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. ()

10. Permanent Cessation and Time Limits for Planting. ()

a. Seeding and planting of affected lands or a permanently closed cyanidation facility should be conducted during the first normal period for favorable planting conditions after final seedbed preparation. ()

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 must begin within one (1) year after the 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 must 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. ()

c. An operator is presumed to have permanently ceased 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 mining operations and desires to defer final reclamation until after its subsequent use, the operator must 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 mining operations will not be continued within a reasonable period of time, the director may proceed as though the mining operation has been abandoned, but the operator will be notified of such decision at least thirty (30) days before taking any formal administrative action. ()

11. Revegetation Activities. ()

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 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. ()

b. Unless otherwise specified in the approved reclamation or permanent closure plan, the success of revegetation efforts is measured against the existing vegetation on site prior to the mining or cyanidation facility operation, or against an adjacent reference area supporting similar types of vegetation. ()

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. ()

ii. For purposes of this rule, ground cover is 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; ()

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. ()

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. ()

v. For previously mined areas that were not reclaimed to the standards required by Section 140, and which are affected by the 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 ()

vi. Vegetative cover shall not be less than that required to control erosion. ()

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. ()

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. ()

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. ()

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 will be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. ()

g. Reforestation. Tree stocking of forestlands should meet the following criteria: ()

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; ()

ii. Trees will be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and ()

iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. ()

h. Revegetation is not required on the following areas: ()

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; ()

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; ()

iii. Any mined area or overburden stockpile, where lakes are formed by rainfall or drainage runoff

- from adjoining lands; ()
- iv. Any mineral stockpile; ()
 - v. Any exploration trench which will become a part of a pit or an overburden disposal area; and ()
 - vi. Any road which is to be used in mining operations, so long as the road is not abandoned. ()
- 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. ()

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. ()

141. -- 149. (RESERVED)

150. TERMINATION OF A PLAN.

01. Terminate upon Request of the Operator. A reclamation plan shall terminate upon request of the operator, upon inspection by the director, and a determination that all reclamation activity has been completed to the standards specified in the plan, and following final approval by the director. Upon termination, the director will release the remaining financial assurance, notify the operator, and any authority to conduct any mining operations under the subject plan shall terminate. ()

02. Terminate a Permanent Closure Plan. The director shall terminate a permanent closure plan upon request of the operator, provided all the provisions and objectives of the permanent closure plan have been met, as determined by the director under Sections 111 and 112 of these rules. Upon a determination that permanent closure has been completed in accordance with the approved permanent closure plan and upon consultation with the DEQ that the operator's request to terminate a plan should be approved, the director will notify the operator that any authority to continue cyanidation operations shall cease and he will release the balance of the financial assurance in accordance with Subsection 120.20. ()

151. -- 154. (RESERVED)

155. FIVE (5) YEAR UPDATES AND PERIODIC INSPECTIONS.

01. Five (5) Year Updates. The Department may require operators to submit an update on their mining operation at least every five (5) years. The update will be on a Department form, and will be used to assist the Department in determining whether or not adjustments are needed for financial assurance or if a plan amendment is required due to a material change. Failure by an operator to complete the form and return it to the Department, or an operator providing false statements on the form, may result in the penalties in Section 47-1513(g), Idaho Code. ()

02. Right of Inspection. Authorized representatives of the Department have the right to enter upon lands affected or proposed to be affected by exploration, mining operations, or cyanidation facilities to determine compliance with the reclamation or permanent closure plans and these rules. Inspections will be conducted at reasonable times in the presence of the operator or his authorized representative. The operator shall make such a person available for the purpose of inspection. This rule does not prevent the Department from making an inspection of the site if the operator fails to make a representative available on request. ()

03. Frequency of Inspection. ()

a. Mining operations with an approved reclamation plan will be inspected at least once every five (5) years to determine compliance with the approved plan and adequacy of the financial assurance. Inspections may need to be more frequent due to the large size, rapid pace of mining, complexity of an operation, or high financial assurance. ()

b. Cyanidation facilities with an approved permanent closure plan will be inspected as often as is needed, but at least once a year. ()

156. -- 159. (RESERVED)

160. ENFORCEMENT AND FAILURE TO COMPLY.

01. Financial Assurance Forfeiture. Upon request by the director, the attorney general may institute proceedings to have the financial assurance for reclamation or permanent closure forfeited for violation of an order entered pursuant to Section 47-1513, Idaho Code and these rules. ()

02. Civil Penalty. An operator with no financial assurance, or an operator who violates these rules by performing an act which is not included in an approved reclamation plan or an approved permanent closure plan that is not subsequently approved by the Department, will be subject to a civil penalty as authorized by Section 47-1513(c), Idaho Code. ()

03. Injunctive Procedures. The director may seek injunctive relief and proceed with legal action, if necessary, to enjoin a mine operator or cyanidation facility operator who violates the provisions of the chapter, these rules, or the terms of an existing approved reclamation or permanent closure plan. Any such action will follow the procedures established in Section 47-1513, Idaho Code. ()

04. Appeal of Final Order. An operator dissatisfied with a final order of the Board may within sixty (60) days after receiving the order, file an appeal in accordance with Section 47-1514, Idaho Code. ()

161. -- 169. (RESERVED)

170. COMPUTATION OF TIME.

Computation of time will be based on calendar days. In computing any period of time prescribed by the chapter, the day on which the designated period of time begins is excluded. The last day of the period is included unless it is a Saturday, Sunday or legal holiday when the Department is not open for business. In such a case, the time period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Intermediate Saturdays, Sundays or legal holidays are excluded from the computation when the period of prescribed time is seven (7) days or less. ()

171. -- 179. (RESERVED)

180. PUBLIC AND CONFIDENTIAL INFORMATION.

01. Information Subject to Disclosure. Information obtained by the Department pursuant to the chapter and these rules is subject to disclosure under Title 74, Chapter 1, Idaho Code ("Public Records Act"). ()

02. Use by Board. Any plans, documents, or materials submitted as confidential and held as such shall not prohibit the Board, director, or Department from using the information in an administrative hearing or judicial proceeding initiated pursuant to Section 47-1514, Idaho Code. ()

03. Plans and BMPs. An operator will not unreasonably designate as confidential portions of reclamation or permanent closure plans which detail proposed BMPs to meet state surface and ground water quality standards. Confidential portions of reclamation or permanent closure plans may be shared with DEQ in its coordinating role under these rules, as reasonably necessary. ()

181. -- 189. (RESERVED)

190. DEPOSIT OF FORFEITURES AND DAMAGES.

All fees, penalties, forfeitures, and civil damages collected pursuant to the chapter, will be deposited with the state treasurer in the following accounts as appropriate: ()

01. Mine Reclamation Fund. The mine reclamation fund to be used by the director for mined land reclamation purposes and to administer the reclamation provisions of the chapter and these rules. ()

02. Cyanidation Facility Closure Fund. The cyanidation facility closure fund to be used by the director to complete permanent closure activities and to administer the permanent closure provisions of the chapter and these rules. ()

191. -- 199. (RESERVED)

200. COMPLIANCE OF EXISTING RECLAMATION PLANS.

01. Plans Approved Prior to 2019. Reclamation plans approved prior to July 1, 2019, or reclamation plans that have permanently ceased operations prior to July 1, 2019, are not subject to the 2019 legislative amendments to the chapter regarding financial assurance and post-closure. New reclamation plans or plan amendments received after July 1, 2019, will be subject to the 2019 legislative amendments to the chapter. ()

02. Plans Submitted in 2019. Reclamation plan applications submitted prior to July 1, 2019, but not yet approved, have until July 1, 2020 to submit post-closure plans and financial assurances as described in the 2019 legislative amendments to the chapter. ()

201. -- 999. (RESERVED)

20.03.03 – RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

000. LEGAL AUTHORITY.

These rules are promulgated by the Idaho State Board of Land Commissioners under Sections 58-104(3) and (6), Idaho Code, and Title 47, Chapter 18, Idaho Code. The Board has delegated to the Director of the Idaho Department of Lands the duties and powers under Title 47, Chapter 18, Idaho Code and these rules, except that the Board retains responsibility for administrative review. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.03, “Rules Governing Administration of the Reclamation Fund,” IDAPA 20, Title 03, Chapter 03. ()

02. Scope. These rules constitute the Department’s administrative procedures and participation criteria for the Reclamation Fund, which is an alternative form of financial assurance for certain mines in Idaho. These rules are to be construed in a manner consistent with the duties and responsibilities of the Board and of operators, permit holders, or lessees as set forth in Title 47, Chapter 7, Idaho Code, “Mineral Rights in State Lands;” Title 47, Chapter 13, Idaho Code, “Dredge Mining;” Title 47, Chapter 15, Idaho Code, “Mined Land Reclamation;” Title 47, Chapter 18, Idaho Code, “Financial Assurance;” IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho;” IDAPA 20.03.02, “Rules Governing Mined Land Reclamation;” and IDAPA 20.03.05, “Riverbed Mineral Leasing In Idaho.” ()

002. ADMINISTRATIVE APPEALS.

Any person aggrieved by a final agency action or a party aggrieved by a final order of the Board arising from its administration of the Reclamation Fund Act is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, “Administrative Procedure Act,” and IDAPA 20.01.01, “Rules of Practice and Procedure Before the State Board of Land Commissioners.” ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

Except as provided in these rules, the Board adopts the definitions set forth in the Mineral Leasing Act, the Dredge Mining Act, and the Mined Land Reclamation Act. As used in these rules: ()

01. Actual Allowable Cost. The allowable total reclamation cost as set by the Board to allow participation in the Reclamation Fund. ()

02. Actual Allowable Disturbance. The area of disturbed acres or affected land as set by the Board to allow participation in the Reclamation Fund. ()

03. Board. The Idaho State Board of Land Commissioners or its authorized representative. ()

04. Department. The Idaho Department of Lands. ()

05. Disturbed Acres; Affected Lands. Any land, natural watercourses, or existing stockpiles or waste piles affected by placer or dredge mining, remining, exploration, stockpiling of ore, waste from placer or dredge mining, or construction of roads, settling ponds, structures, or facilities appurtenant to a placer or dredge mine. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at a mine. The land area disturbed by motorized exploration of state land under a mineral lease. ()

06. Dredge Mining Act. Title 47, Chapter 13, Idaho Code, and IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho.” ()

07. Financial Assurance. Cash, corporate surety bond, collateral bond, or letter of credit as described in the Dredge Mining Act, the Mineral Leasing Act, or a mineral lease. Financial assurance as defined in the Mined Land Reclamation Act. ()

08. Mine; Mine Panel. All areas designated by the operator on the map or plan submitted pursuant to Section 47-703A, Idaho Code, or Section 47-1506, Idaho Code, or as an identifiable portion of a placer or dredge mine on the map submitted under Section 47-1317, Idaho Code. ()

09. Mined Land Reclamation Act. Title 47, Chapter 15, Idaho Code, and IDAPA 20.03.02, “Rules

Governing Mined Land Reclamation.” ()

10. Mineral Lease. Lease executed by the Board and the mineral lessee pursuant to the Mineral Leasing Act. ()

11. Mineral Lessee. The lessee of a mineral lease. ()

12. Mineral Leasing Act. Title 47, Chapter 7, Idaho Code. ()

13. Mining Reclamation Plan. Any reclamation plan approved pursuant to the Mined Land Reclamation Act. ()

14. Motorized Exploration. Exploration which may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques which employ the use of earth moving equipment, seismic operations using explosives, and includes sampling with a suction dredge having an intake diameter greater than two (2) inches when operated in a perennial stream. When operated in an intermittent stream, suction dredges shall be considered motorized exploration regardless of intake size. ()

15. Operator. Any person or entity authorized to conduct business in Idaho, partnership, joint venture, or public or governmental agency required to have any reclamation plan under the Mined Land Reclamation Act or the Mineral Leasing Act, or a permit under the Dredge Mining Act, whether individually or jointly through subsidiaries, agents, employees, or contractors. ()

16. Permit. Dredge or placer mining permit issued pursuant to the Dredge Mining Act. ()

17. Reclamation Fund. The interest-bearing dedicated fund authorized pursuant to the Reclamation Fund Act. ()

18. Reclamation Fund Act. Title 47, Chapter 18, Idaho Code, and IDAPA 20.03.03, “Rules Governing Administration of the Reclamation Fund.” ()

011. -- 015. (RESERVED)

016. REQUIRED PARTICIPANTS.

Any operator, with the exception of the mines and operators listed in Section 017 of these rules, shall be required to provide alternative financial assurance through the Reclamation Fund to assure the reclamation of disturbed acres or affected lands. Alternative financial assurance pursuant to the Reclamation Fund Act is in lieu of other types of financial assurance as set forth in the Mined Land Reclamation Act, the Mineral Leasing Act, or the Dredge Mining Act. ()

017. INELIGIBLE MINES OR OPERATORS.

The following types of mines and operators are not allowed to participate in the Reclamation Fund and must file proof of other acceptable financial assurance as required by the Department. ()

01. Disturbed Acres Limit. A mine or mineral lease with un-reclaimed disturbed acres in excess of the actual allowable disturbance may not provide alternative financial assurance through the Reclamation Fund. Un-reclaimed disturbance is that which does not meet the final financial assurance release criteria in the Dredge Mining Act, the Mined Land Reclamation Act or a mineral lease. ()

02. Reclamation Cost Limit. Operators with an estimated reclamation cost in excess of the actual allowable reclamation cost, regardless of the disturbed acres. ()

03. Phosphate Mines. Operators or mineral lessees of phosphate mines. ()

04. Hardrock Mines. Operators or mineral lessees of hardrock mines such as gold, silver, molybdenum, copper, lead, zinc, cobalt, and other precious metal mines. ()

05. Potential Heavy Metal Releases. Operators of mines with a reasonable potential to release heavy metals or other substances harmful to human health or the environment, but not including substances such as fuels and other materials commonly used in excavation or construction. ()

06. Oil and Gas Conservation. Oil and gas exploration and development under Title 47, Chapter 3, Idaho Code. ()

07. Oil and Gas Leasing. Oil and gas leases and associated exploration and development under Title 47, Chapter 8, Idaho Code. ()

08. Geothermal. Operators or mineral lessees of geothermal wells and development under Title 47, Chapter 16, Idaho Code. ()

09. Off Lease Exploration. Motorized exploration on state lands that are not under a mineral lease or exploration location. ()

10. Violators. Mines or operators in violation of the Reclamation Fund Act, Dredge Mining Act, Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease. ()

11. Reclamation Fund Forfeitures. Operators, permittees or lessees who have not reimbursed the Reclamation Fund for a forfeiture from the Reclamation Fund due to their violations of the Reclamation Fund Act, Dredge Mining Act, Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease. ()

12. Other Forfeitures. An operator who has forfeited any financial assurance. ()

13. Operators Providing Acceptable Financial Assurance. An operator who provides proof of financial assurance accepted by the Department that is greater than or equal to the minimum dollar per acre for each acre of affected land at a mine. ()

018. ACREAGE AND RECLAMATION COST LIMITATIONS.

01. Actual Allowable Participation. The Board will establish by policy the actual allowable disturbance, actual allowable reclamation cost, and the minimum dollar per acre of disturbance in order to provide financial assurance to opt out of participation in the Reclamation Fund. ()

02. Maximum Disturbance and Reclamation Cost. The maximum disturbance and maximum reclamation costs in these rules are maximums. The maximum allowable disturbance is eighty (80) acres; the maximum allowable reclamation cost is four hundred forty thousand dollars (\$440,000). ()

03. Multiple Plans or Permits. An operator who has multiple mining reclamation plans or permits that have a total disturbance in excess of the actual allowable disturbance, or with total reclamation costs in excess of the actual allowable reclamation cost, may participate in the Reclamation Fund with one (1) or more sites that together contain less than both of the Board-established actual allowable limits. ()

019. OPTIONAL PARTICIPATION.

Operators who have one (1) or more mines or mineral leases that are ineligible to participate in the Reclamation Fund as set forth in Section 017 or 018 of these rules may choose to not participate in the Reclamation Fund with respect to all other eligible mines or mineral leases in their name. An operator who does not participate in the Reclamation Fund must secure all mines with other types of financial assurance approved by the Department. ()

020. FEDERAL AGENCY NON-ACCEPTANCE OF RECLAMATION FUND.

If a federal agency will not accept an operator's participation in the Reclamation Fund as proof of reclamation security, the operator will be required to provide the Department with proof of other types of financial assurance acceptable to the Department. ()

021. -- 025. (RESERVED)

026. PAYMENT.

01. Board Approved Payment Schedule. The Board will adopt a payment schedule that determines the annual Reclamation Fund payment for each operator participating in the Reclamation Fund. Any changes to the payment schedule will be approved by the Board. Participating operators shall pay all required payments annually. ()

02. Acreage Calculation. The annual payment for each participant in the Reclamation Fund will be established based upon the number of disturbed acres at each mine. The acres used to calculate the annual payment will include the total current disturbed acres of affected lands and the acres planned to be disturbed or affected during the next twelve (12) months. The total acreage calculation will not be rounded when determining annual payments. ()

03. Annual Payments Non-Refundable. Payments to the Reclamation Fund are non-refundable. Payments will be billed annually and, if not timely paid, will accrue late fees and interest as established by the Board. New participants will be assessed a pro-rated payment based on the Department's established billing cycle. ()

04. Supplemental Payments. If an operator affects more acreage than the acreage secured through the Reclamation Fund for a current period, the Department may require supplemental Reclamation Fund payments. ()

05. Assignment. When a mineral lease, mining reclamation plan, or permit is assigned, all financial assurance requirements must be assumed by the new operator. No Reclamation Fund payments will be refunded following an assignment. If the new operator is ineligible to participate in the Reclamation Fund, the new operator must provide proof of other acceptable financial assurance before the assignment may be approved. ()

06. Non-Payment Constitutes Lack of Bonding. For any operator participating in the Reclamation Fund, non-payment of the annual payment shall be considered a failure to provide financial assurance as required by the Dredge Mining Act, the Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease. ()

027. -- 030. (RESERVED)

031. ENFORCEMENT AND FAILURE TO COMPLY.

01. Forfeiture. Prior to withdrawing monies from the Reclamation Fund due to a violation of the Dredge Mining Act, the Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease, the Department will comply with the respective financial assurance forfeiture procedures. ()

02. Penalties. If an operator fails to provide financial assurance as required by these rules or has forfeited monies from the Reclamation Fund and has not repaid those monies, the Board shall be authorized to file liens against personal property and equipment of the operator to recover costs. The operator shall be liable for actual costs of all unpaid annual payments, interest, and late payment charges, the actual reclamation costs, and administrative costs incurred by the Department in reclaiming the disturbed or affected lands. Authorization to obtain a lien under these rules and Section 47-1804, Idaho Code, shall be in addition to, not in lieu of, any other legal remedy available to the Board and the Department pursuant to the Dredge Mining Act, Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease. ()

032. MINIMUM BALANCE FOR THE RECLAMATION FUND.

The Board will determine a reasonable minimum balance for the Reclamation Fund. ()

033. -- 999. (RESERVED)

**20.03.04 – RULES FOR THE REGULATION OF BEDS, WATERS, AND AIRSPACE
OVER NAVIGABLE LAKES IN THE STATE OF IDAHO**

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Sections 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code; Title 58, Chapter 13, Idaho Code; and Title 67, Chapter 52, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.04, “Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho.” ()

02. Scope. These rules govern encroachments on, in, or above navigable lakes in the state of Idaho. ()

002. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the board is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, IDAPA 20.01.01, Title 58, Chapter 13, Sections 58-1305 and 58-1306, Idaho Code, and Sections 025, 030, and 080 of these rules. ()

003. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: ()

01. IDAPA 24.39.10, “Rules of the Idaho Electrical Board.” IDAPA 24.39.10 is available at <https://adminrules.idaho.gov/rules/current/24/243910.pdf>. ()

02. IDAPA 24.39.20, “Rules Governing Plumbing.” This rule is available at <https://adminrules.idaho.gov/rules/current/24/243920.pdf>. ()

03. 33 CFR Part 62, revised as of July 27, 2015 (United States Aids to Navigation System). The Electronic Code of Federal Regulations (eCFR) is available at <http://www.ecfr.gov/cgi-bin/ECFR>. ()

004. -- 009. (RESERVED)

010. DEFINITIONS.

01. Adjacent. Contiguous or touching, and with regard to land or land ownership having a common boundary. ()

02. Aids to Navigation. Buoys, warning lights, and other encroachments in aid of navigation intended to improve waterways for navigation. ()

03. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. ()

04. Beds of Navigable Lakes. The lands lying under or below the “natural or ordinary high water mark” of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. ()

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

06. Boat Garage. A structure with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area. ()

07. Boat Lift. A mechanism for mooring boats partially or entirely out of the water. ()

08. Boat Ramp. A structure or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers. ()

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

10. **Commercial Navigational Encroachment.** A navigational encroachment used for commercial purposes. ()
11. **Community Dock.** A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner’s associations. No public access is required for a community dock. ()
12. **Covered Slip.** A slip, or group of slips, with a frame, fabric canopy, and eaves that do not extend beyond the underlying dock. ()
13. **Department.** The Idaho Department of Lands or its designee. ()
14. **Director.** The head of the Idaho Department of Lands or his designee. ()
15. **Encroachments in Aid of Navigation.** Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term “encroachments in aid of navigation” is used interchangeably with the term “navigational encroachments.” ()
16. **Encroachments Not in Aid of Navigation.** Includes all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation, such as float homes and boat garages. The term “encroachments not in aid of navigation” is used interchangeably with the term “nonnavigational encroachments.” ()
17. **Floating Home or Float Home.** A structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling and is not self-propelled. These structures are usually dependent for utilities upon a continuous utility linkage to a source originating on shore, and must have either a permanent continuous connection to a sewage system on shore, or an alternative method of sewage disposal that does not violate local, state, or federal water quality and sanitation regulations. ()
18. **Floating Toys.** Trampolines, inflatable structures, water ski courses, and other recreational equipment that are not permanently anchored to the lake bed or an encroachment and are either located between the shoreline and the line of navigability or are waterward of the line of navigability for less than twenty-four (24) consecutive hours. ()
19. **Jet Ski Ramp, Port, or Lift.** A mechanism for mooring jet skis or other personal watercraft similar to a boat lift. The lifts may be free standing or attached to a dock or pier. ()
20. **Line of Navigability.** A line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question. ()
21. **Low Water Mark.** That line or elevation on the bed of a lake marked or located by the average low water elevations over a period of years, and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation. ()
22. **Moorage.** A place to secure float homes and watercraft including, but not limited to, boats, personal watercraft, jet skis, etc. ()
23. **Natural or Ordinary High Water Mark.** The high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. ()
24. **Navigable Lake.** Any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes.

This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency. ()

25. Party. Each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. ()

26. Person. A partnership, association, corporation, natural person, or entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. ()

27. Piling. A metal, concrete, plastic, or wood post that is placed into the lakebed and used to secure floating docks and other structures. ()

28. Plans. Maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same. ()

29. Public Hearing. The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who acts as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the Department by tape recorder. The hearing coordinator exercises such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. ()

30. Public Trust Doctrine. The duty of the State to its people to ensure that the use of public trust resources is consistent with identified public trust values. This common law doctrine has been interpreted by decisions of the Idaho Appellate Courts and is codified at Title 58, Chapter 12, Idaho Code. ()

31. Pylon. A metal, concrete, or wood post that is placed into the lakebed and used to support fixed piers. ()

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

33. Riparian or Littoral Owner. The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed, lease, or other grant. ()

34. Riparian or Littoral Right Lines. Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline. ()

35. Side Tie. Moorage for watercraft where the dock or pier is on only one (1) side of the watercraft. ()

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

37. Slip. Moorage for boats with pier or dock structures on at least two (2) sides of the moorage. ()

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

39. Two-Family Dock. A structure providing noncommercial moorage that serves two (2) adjacent

waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line. ()

40. Upland. The land bordering on navigable lakes, rivers, and streams. ()

011. ABBREVIATIONS.

01. ATON. Aids to Navigation. ()

02. HDPE. High-Density Polyethylene. ()

012. POLICY.

01. Environmental Protection and Navigational or Economic Necessity. It is the express policy of the State of Idaho that the public health, interest, safety and welfare requires that all encroachments upon, in or above the beds or waters of navigable lakes of the state be regulated in order that the protection of property, navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality be given due consideration and weighed against the navigational or economic necessity or justification for, or benefit to be derived from the proposed encroachment. Moreover, it is the responsibility of the State Board of Land Commissioners to regulate and control the use or disposition of state-owned lake beds, so as to provide for their commercial, navigational, recreational or other public use. ()

02. No Encroachments Without Permit. No encroachment on, in or above the beds or waters of any navigable lake in the state may be made unless approval has been given as provided in these rules. An encroachment permit does not guarantee the use of public trust lands without appropriate compensation to the state of Idaho. ()

03. Permitting of Existing Encroachments. ()

a. The provisions of Title 58, Chapter 13, Section 58-1312, Idaho Code, apply. ()

b. Any new encroachments, or any unpermitted encroachments constructed after January 1, 1975, are subject to these rules. ()

013. -- 014. (RESERVED)

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. ()

a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark may exceed ten (10) feet in width, excluding the slip cut out. ()

b. Total surface decking area waterward of the natural or ordinary or artificial high water mark may not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and may not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. ()

c. No portion of the docking facility may 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. ()

d. A variance to the standards in this Subsection 015.01 may be approved by the Department when justified by site specific considerations, such as the distance to the established line of navigability. ()

02. Community Docks. ()

a. A community dock is considered a commercial navigational aid for purposes of processing the application. ()

b. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark may exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the Department. ()

c. A community dock may 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 is 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. ()

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. ()

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: ()

i. A new application for an encroachment permit. ()

ii. Text and drawings that describe which moorage will be public and which moorage will be private. ()

03. Commercial Marina. ()

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. ()

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. ()

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 must be provided. In the event of conflict, the local ordinances prevail. ()

d. If a commercial marina can be accessed from a road, marina customers must be allowed access via that road. ()

e. Moorage that is not available for public use as described in Paragraph 015.03.a. of these rules is private moorage. ()

f. When calculating the moorage percentage, the amount of public moorage is to be compared to the amount of private moorage. Commercial marinas with private float home moorage are 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. ()

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. ()

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.” ()

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 must describe, in text and in drawings, which moorage will be public and which moorage will be private. ()

04. Covered Slip. ()

a. Covered slips, regardless of when constructed, may not have a temporary or permanent residential area. ()

b. Slip covers should have colors that blend with the natural surroundings and are approved by the Department. ()

c. Covered slips may not be supported by extra piling nor constructed with hard roofs. ()

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. ()

e. Fabric covered slips must be constructed as canopies without sides unless the following standards are followed: ()

i. At least two (2) feet of open space is left between the bottom of the cover and the dock or pier surface; and ()

ii. Fabric for canopy and sides will transmit at least seventy-five percent (75%) of the natural light. ()

05. Boat Garage. ()

a. Boat garages are considered nonnavigational encroachments. ()

b. Applications for permits to construct new boat garages, 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. ()

c. Existing permitted boat garages may be maintained or replaced with the current square footage of their existing footprint and height. ()

d. Relocation of an existing boat garage will require a permit. ()

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 does 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 must be designed to counter wave actions of known wave heights and wave lengths. ()

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. ()

08. Riprap. ()

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 must be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap must overlie a distinct filter layer which consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer must 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. ()

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. ()

09. Mooring Buoys. Buoys must be installed a minimum of thirty (30) feet away from littoral right lines of adjacent littoral owners. One (1) mooring buoy per littoral owner may be allowed. ()

10. Float Homes. ()

a. Applications for permits to construct new float homes, or to expand the total square footage of the existing footprint, will not be accepted. ()

b. Applications for relocation of float homes within a lake or from one (1) lake to another are subject to the following requirements: ()

i. Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the Department. ()

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 in accordance with IDAPA 24.39.20, “Rules Governing Plumbing,” as incorporated by reference in Section 003 of these rules, installed properly, and has been pressure tested. ()

c. Encroachment applications and approved local permits are required for replacement of, or adding another story to, a float home. ()

d. All plumbing work on float homes must be done in accordance with IDAPA 24.29.20, “Rules Governing Plumbing” and IDAPA 29.39.10, “Rules of the Idaho Electrical Board,” as incorporated by reference in Section 003 of these rules. ()

e. All float homes in Idaho that connect with upland sewer or septic systems must implement the following standards by December 31, 2012: ()

i. The holding tank with pump or grinder unit must be adequately sealed to prevent material from escaping and to prevent lake water from entering. The tank lid must have a gasket or seal, and the lid must be securely fastened at all times unless the system is being repaired or maintained. An audible overflow alarm must also be installed. ()

ii. Grinders or solids handling pumps must be used to move sewage from the float home to the upland system. ()

iii. If solids handling pumps are used, they must have a minimum two (2) inch interior diameter discharge, and the pipe to the shoreline must also have a minimum two (2) inch interior diameter. Connectors used on

either end of this pipe may not significantly reduce the interior diameter. ()

iv. The pipeline from the float home to the shoreline must be a continuous line with no mechanical connections. Check valves and manual shutoff valves must be installed at each end of the line. Butt fused HDPE, two hundred (200) psi black polyethylene pipe, or materials with similar properties must be used. The pipeline must contain sufficient slack to account for the maximum expected rise and fall of the lake or river level. The pipeline must 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 must be appropriately located and anchored so they will not unduly interfere with navigation or other lake related uses. ()

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. ()

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. ()

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. ()

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. ()

11. Excavated or Dredged Channel. ()

a. Excavating, dredging, or redredging channels require an encroachment permit and are processed in accordance with Section 030 of these rules. ()

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 must not result in any appreciable environmental degradation. A channel or basin will not be approved if the cumulative effects of these features in the same navigable lake would be adverse to fisheries or water quality. ()

c. Whenever practical, such channels or basins must 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. ()

12. ATONs. Aids to Navigation will conform to the requirements established by the United States Aid to Navigation system. ()

13. General Encroachment Standards. ()

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: ()

i. Boat lifts as allowed pursuant to Paragraph 015.13.b. ()

ii. Jet ski ramp, port, or lift as allowed pursuant to Paragraph 015.13.b. ()

iii. Slip covers. ()

- iv. Undecked portions of breakwaters. ()
- b. Boat Lifts and Jet Ski Lifts. ()
 - 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. ()
 - 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. ()
 - 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 must send a revised permit drawing with the lift location as an application to the Department. If the lift meets the above conditions, the application will be approved as submitted. Future applications must include the lifts. ()
 - iv. Community docks are allowed one (1) boat lift or two (2) jet ski lifts per moorage. Boat lifts placed outside of a slip must 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. ()
- c. Angle from Shoreline. ()
 - i. Where feasible, all docks, piers, or similar structures must 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. ()
 - ii. Where it is not feasible to place docks at right angles to the general shoreline, the Department will 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. ()
- 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. ()
- 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 are subject to the above presumptions of adverse affects. ()
- f. Weather Conditions. Encroachments and their building materials must be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures must be adequately secured to pilings or anchors to prevent displacement due to ice, wind, and waves. Flotation devices for docks, float homes, etc. must be reasonably resistant to puncture and other damage. ()

g. Markers. If the Department determines that an encroachment is not of sufficient size to be readily seen or poses a hazard to navigation, the permit will specify that aids to navigation be used to clearly identify the potential hazard. ()

h. Overhead Clearance. ()

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 that 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 will specify in the permit the amount of overhead clearance and markings required. ()

ii. When the permit provides for overhead clearance or safety markings under Paragraph 015.13.h., the Department will 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. ()

i. Beaded Foam Flotation. Beaded foam flotation must be completely encased in a manner that will maintain the structural integrity of the foam. The encasement must be resistant to the entry of rodents. ()

14. Floating Toys. ()

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. ()

b. A floating toy becomes a nonnavigational encroachment, and an encroachment permit is required, when one (1) of the following occurs: ()

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; ()

ii. It is located waterward of the line of navigability for more than twenty-four (24) consecutive hours. ()

15. Lake Specific Encroachment Permit Terms. ()

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. ()

b. Lake specific encroachment permit conditions may supplement, negate, or alter encroachment standards established in Section 015 of these rules. ()

c. Lake specific encroachment permit conditions will 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. ()

d. Lake specific encroachment permit terms may be read at the Idaho Department of Lands website: <http://www.idl.idaho.gov/>. ()

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. ()

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. ()

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. ()

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. ()

05. Dock Reconfiguration. ()

a. Rearrangement of single-family and two-family docks will require a new application for an encroachment permit. ()

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: ()

i. Overall footprint does not change in dimension or orientation; ()

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; ()

iii. The entrances and exits of the facility do not change. ()

06. Redredging. Redredging a channel or basin shall be considered a new encroachment and a permit is required unless redredging is specifically authorized by the outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how redredging is addressed in any existing or future permit. ()

07. Forms, Filing. Applications and plans shall be filed 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. ()

a. Plans shall include the following information at a scale sufficient to show the information requested: ()

i. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the

- summer and winter water levels. ()
- ii. Copy of most recent survey or county plat showing the full extent of the applicant’s lot and the adjacent littoral lots. ()
 - iii. Proof of current ownership or control of littoral property or littoral rights. ()
 - iv. A general vicinity map. ()
 - 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. ()
 - vi. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. ()
 - vii. Names and current mailing addresses of adjacent littoral landowners. ()
- 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. ()
- 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. ()
- 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. ()
- 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: ()
- 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). ()
 - 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; ()
 - iii. Community navigational encroachments require a fee of two thousand dollars (\$2,000); and ()
 - iv. Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars (\$1,000). ()
- 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. ()
- 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 four hundred twenty-five dollars (\$425). ()

h. 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. ()

i. Applications and plans shall be stamped with the date of filing. ()

j. 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. ()

021. -- 024. (RESERVED)

025. PROCESSING OF APPLICATIONS FOR SINGLE-FAMILY AND TWO-FAMILY NAVIGATIONAL ENCROACHMENTS WITHIN LINE OF NAVIGABILITY.

01. Single-Family and Two-Family Navigational Encroachments. Applications for single-family and two-family navigational encroachments not extending beyond the line of navigability will be processed with a minimum of procedural requirements and shall not be denied except in the most unusual of circumstances. No newspaper publication, formal appearance by the applicant, or hearing is contemplated. ()

02. Notification of Adjacent Littoral Owners. The department will provide a copy of the application to the littoral owners immediately adjacent to the applicant's property. If the applicant owns one (1) or more adjacent lots, the department shall notify the owner of the next adjacent lot. If the proposed encroachment may infringe upon the littoral rights of an adjacent owner, the department will provide notice of the application by certified mail, return receipt requested; otherwise, the notice will be sent by regular mail. Notification will be mailed to the adjacent littoral owners' usual place of address, which, if not known, will be the address shown on the records of the county treasurer or assessor. The applicant may submit the adjacent littoral owners' signatures, consenting to the proposed encroachment, in lieu of the department's notification. ()

03. Written Objections. ()

a. If an adjacent littoral owner files written objections to the application with the department within ten (10) days from the date of service or receipt of notice of the completed application, the department shall fix a time and a place for a hearing. In computing the time to object, the day of service or receipt of notice of the application shall not be counted. Objections must be received within the ten (10) day period by mail or hand delivery in the local department office or the director's office in Boise. If the last day of the period is Saturday, Sunday or a legal holiday, the time within which to object shall run until the end of the first business day thereafter. ()

b. The applicant and any objectors may agree to changes in the permit that result in the objections being withdrawn. Department employees may facilitate any such agreement. Participation by department personnel in this informal mediation shall not constitute a conflict of interest for participation in the hearing process. A withdrawal of objections must be in writing, completed prior to a scheduled hearing, and contain: ()

i. Signatures of the applicant and the objecting party; ()

ii. A description of the changes or clarifications to the permit that are acceptable to the applicant, the objecting party, and the department. ()

04. Unusual Circumstances. Even though no objection is filed by an adjacent littoral owner to a noncommercial navigational encroachment, if the director deems it advisable because of the existence of unusual circumstances, he may require a hearing. ()

05. Hearings. Hearings fixed by the director following an objection pursuant to Subsection 025.03 or the Director's own determination pursuant to Subsection 025.04 shall be fixed as to time and place, but no later than sixty (60) days from date of acceptance for filing of the application. At the hearing the applicant and any adjacent riparian owner filing timely objections may appear personally or through an authorized representative and present evidence. The department may also appear and present evidence at the hearing. In such hearings the hearing coordinator shall act as a fact finder and not a party. The Director, at his discretion, will designate a Department representative to sit as the hearing coordinator. Provided, however, that the parties may agree to informal disposition of an application by stipulation, agreed settlement, consent order, or other informal means. ()

06. Decision Following a Hearing. The director shall, within forty-five (45) days after close of the hearing provided for in Subsections 025.03 or 025.04 render a final decision and give notice thereof to the parties appearing before him either personally or by certified or registered mail. The final decision shall be in writing. ()

07. Disposition Without Hearing. If a hearing is not held under Subsection 025.03 or Subsection 025.04, then the department shall act upon a complete application filed under Subsection 025.01 as expeditiously as possible but no later than sixty (60) days from acceptance of the application. Failure to act within this sixty (60) day timeframe shall constitute approval of the application. Applications determined to be incomplete under Subsection 020.07 are not subject to the sixty (60) day timeframe until the information requested by the department and required by the rules has been submitted. ()

08. Judicial Review. Any applicant aggrieved by the Director's final decision, or an aggrieved party appearing at a hearing, shall have a right to have the proceedings and final decision reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. An adjacent littoral owner shall be required to deposit an appeal bond with the court, in an amount to be determined by the court but not less than five hundred dollars (\$500) insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director. The applicant need post no bond with the court to prosecute an appeal. ()

026. -- 029. (RESERVED)

030. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.

01. Nonnavigational, Community, and Commercial Navigational Encroachments. Within ten (10) days of receiving a complete application for a nonnavigational encroachment, a community dock, a commercial navigational encroachment, or a navigational encroachment extending beyond the line of navigability, the Department will cause to be published a notice of application once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed. If, however, the Director orders a hearing on the application within the time for publication of the above notice, the Department will dispense with publication of the notice of the application and proceed instead to publish a notice of the public hearing as provided in Subsection 030.05. Applications for installation of buried or submerged water intake lines and utility lines are exempt from the newspaper publication process. ()

02. Encroachments Not in Aid of Navigation. Encroachments not in aid of navigation in navigable lakes will normally not be approved by the Department and will be considered only in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is no other feasible alternative with less impact on public trust values. ()

03. Notifications. Upon request or when the Department deems it appropriate, the Department may furnish copies of the application and plans to federal, state and local agencies and to adjacent littoral owners, requesting comment on the likely effect of the proposed encroachment upon adjacent littoral property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc. ()

04. Written Comments or Objections. Within thirty (30) days of the first date of publication, an

agency, adjacent littoral owner or lessee, or any resident of the state of Idaho may do one (1) of the following: ()

a. Notify the Department of their opinions and recommendation, if any, for alternate plans they believe will be economically feasible and will accomplish the purpose of the proposed encroachment without unreasonably adversely affecting adjacent littoral property or public trust values; or ()

b. File with the Department written objections to the proposed encroachment and request a public hearing on the application. The hearing must be specifically requested in writing. Any person or agency requesting a hearing on the application must deposit and pay to the Department an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection 030.05. ()

05. Hearing. Notice of the time and place of public hearing on the application will be published by the Director once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is proposed, which hearing will be held within ninety (90) days from the date the application is accepted for filing. ()

06. Hearing Participants. Any person may appear at the public hearing and present oral testimony. Written comments will also be received by the Department. ()

07. Decision After Hearing. The Director will render a final decision within thirty (30) days after close of the public hearing. A copy of his final decision will be mailed to the applicant and to each person or agency appearing at the hearing and giving oral or written testimony in support of or in opposition to the proposed encroachment. ()

08. Decision Where No Hearing. ()

a. In the event no objection to the proposed encroachment is filed with the Department and no public hearing is requested under Subsection 030.04, or ordered by the Director under Subsection 030.01, the Department, based upon its investigation and considering the economics of the navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc. will prepare and forward to the applicant its decision. ()

b. The applicant, if dissatisfied with the Director's decision, has twenty (20) days from the date of the Director's decision to request reconsideration thereof. If reconsideration is required, the Director will set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the Director will, by personal service or by registered or certified mail, notify the applicant of his final decision. ()

09. Judicial Review. Any applicant aggrieved by the Director's final decision, or an aggrieved party who appeared at a hearing, has the right to have the proceedings and final decision of the Director reviewed by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. The applicant need post no bond with the court to prosecute an appeal. Any other aggrieved party is required to deposit an appeal bond with the court, in an amount to be determined by the court but not less than five hundred dollars (\$500), insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the Director. ()

10. Factors in Decision. In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, if present, the Department will consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for either a nonnavigational encroachment or a commercial navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application and no public hearing has been requested or ordered by the Director, or, if upon reconsideration of a decision disallowing a permit, or following a public hearing, the Department determines

that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, the permit will be granted. ()

031. -- 034. (RESERVED)

035. TEMPORARY PERMITS.

01. Applicability. Temporary permits are used for construction, temporary activities related to permitted encroachments, or other activities approved by the Department. ()

02. Permit Term. These permits are generally issued for less than one (1) year, but longer terms may be approved by the Department and permits may be extended with Department approval. ()

03. Bonding. The Department may require bonds for temporary permits. ()

04. Fee. The board sets fees for temporary permits, but the fees will not be greater than the amounts listed for the respective permit types in Subsection 020.07. Fee information is available on the Internet at www.idl.idaho.gov. ()

05. Processing. These permits may be advertised if the Department deems it appropriate, with the applicant paying the advertising fee as per Subsection 020.07. ()

036. -- 049. (RESERVED)

050. RECORDATION.

Recordation of an issued permit in the records of the county in which an encroachment is located is a condition of issuance of a permit and proof of recordation must be furnished to the Department by the permittee before a permit becomes valid. Such recordation is at the expense of the permittee. Recordation of an issued permit serves only to provide constructive notice of the permit to the public and subsequent purchasers and mortgagees, but conveys no other right, title, or interest on the permittee other than validation of said permit. ()

051. -- 054. (RESERVED)

055. LEASES AND EASEMENTS.

01. Lease or Easement Required. As a condition of the encroachment permit, the Department may require a submerged land lease or easement for use of any part of the state-owned bed of the lake where such lease or easement is required in accordance with “Rules Governing Leases on State-owned Submerged Lands and Formerly Submerged Lands,” IDAPA 20.03.17, or “Rules For Easements On State-owned Submerged Lands And Formerly Submerged Lands,” IDAPA 20.03.09. A lease or easement may be required for uses including, but not limited to, commercial uses. Construction of an encroachment authorized by permit without first obtaining the required lease or easement constitutes a trespass upon state-owned public trust lands. This rule is intended to grant the state recompense for the use of the state-owned bed of a navigable lake where reasonable and it is not intended that the Department withhold or refuse to grant such lease or easement if in all other respects the proposed encroachment would be permitted. ()

02. Seawalls, Breakwaters, Quays. Seawalls, breakwaters, and quays on or over state-owned beds, designed primarily to create additional land surface, will be authorized, if at all, by an encroachment permit and submerged land lease or easement, upon determination by the Department to be an appropriate use of submerged lands. ()

056. -- 059. (RESERVED)

060. INSTALLATION.

01. Installation Only After Permit Issued. Installation or on site construction of an encroachment may commence only when the permit is issued or when the department notifies the applicant in writing that

installation may be commenced or when the department has failed to act in accordance with Subsection 025.07.

()

02. Removal of Construction Waste.

()

a. Pilings, anchors, old docks, and other structures or waste at the site of the installation or reinstallation and not used as a part of the encroachment shall be removed from the water and lakebed at the time of the installation or reinstallation to a point above normal flood water levels; provided, however, that this shall not be construed to prevent the use of trash booms for the temporary control of floatable piling ends and other floatable materials in a securely maintained trash boom, but approval for a trash boom shall be required as part of a permit.

()

b. Demolition of encroachments shall be done in a manner that does not unnecessarily damage the lakebed or shoreline. Demolition work must comply with water quality standards administered by the Department of Environmental Quality.

()

03. Compliance with Permit. All work shall be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit.

()

04. Sunset Clause. All activities authorized within the scope of the encroachment permit must be completed within three (3) years of issuance date. If the activities are not completed within three (3) years, the permit shall automatically expire unless it was previously revoked or extended by the department. The department may issue a permit with an initial sunset clause that exceeds three (3) years, if the need is demonstrated by the applicant.

()

061. -- 064. (RESERVED)

065. ASSIGNMENTS.

01. Assignment of Encroachment Permit. Encroachment permits may be assigned upon approval of the department provided that the encroachment conforms with the approved permit. The assignor and assignee must complete a department assignment form and forward it to the appropriate area office.

()

02. Assignment Fee. The assignment fee is three hundred dollars (\$300) and is due at the time the assignment is submitted to the department.

()

03. Approval Required for Assignment. An assignment is not valid until it has been approved by the department.

()

04. Assignment With New Permit. Encroachments not in compliance with the approved permit may be assigned only if:

()

a. An application for a new permit to correct the noncompliance is submitted at the same time.

()

b. The assignee submits written consent to bring the encroachment permit into compliance.

()

066. -- 069. (RESERVED)

070. MISCELLANEOUS.

01. Water Resources Permit. A permit to alter a navigable stream issued by the Department of Water Resources pursuant to Title 42, Chapter 38, Idaho Code, may, in appropriate circumstances, contain language stating the approval of the Department of Lands to occupy the state-owned bed of the navigable stream.

()

02. Dredge and Placer Mining. Department authorization is required for dredge and placer mining in the lands, lakes and rivers within the state, whether or not the state owns the beds, pursuant to Title 47, Chapter 13,

Idaho Code. ()

03. Mineral Leases. Littoral rights do not include any right to remove bed materials from state-owned lakebeds. Applications to lease minerals, oil, gas and hydrocarbons, and geothermal resources within the state-owned beds of navigable lakes will be processed by the Department pursuant to Title 47, Chapters 7, 8 and 16, Idaho Code, and rules promulgated thereunder. ()

04. Other Laws and Rules. The permittee must comply with all other applicable state, federal and local rules and laws insofar as they affect the use of public trust resources. ()

071. -- 079. (RESERVED)

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 consists 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 is used to maintain the status quo pending formal proceedings by the Department to rectify the violation. ()

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 will provide the permittee or offending person with a notice of noncompliance/proposed permit revocation that consists of a short and plain statement of the violation including any pertinent legal authority. This notice also informs the permittee or offending person of what steps are needed to either bring the encroachment into compliance, if possible, or avoid revocation, or both. ()

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 is binding. If the Department is unsuccessful in resolving the violations, then the Department may pursue other remedies under Section 080 of these rules. ()

04. Violations. The following acts or omissions subject a person to a civil penalty as allowed by Title 58, Chapter 13, Section 58-1308, Idaho Code: ()

a. A violation of the provisions of Title 58, Chapter 13, Idaho Code, or of the rules and general orders adopted and applicable to navigable lakes; ()

b. A violation of any special order of the Director applicable to a navigable lake; or ()

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. ()

d. Willfully and knowingly falsifying any records, plans, information, or other data required by these rules. ()

e. Violating the terms of an encroachment permit. ()

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. ()

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. ()

07. Revocation of Lake Encroachment Permits. ()

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 will 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.” ()

b. A hearing officer appointed to conduct the revocation hearing prepares recommended findings of fact and conclusions of law and forward them to the Director for final adoption or rejection. ()

c. An aggrieved party who appeared and testified at a hearing has 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. ()

081. -- 999. (RESERVED)

20.03.05 – RIVERBED MINERAL LEASING IN IDAHO

000. AUTHORITY.

01. Statutory Authority. These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to Title 47 and 58, Chapters 7 and 1, Sections 47-710, 47-714 and 58-104, Idaho Code. ()

02. Discretionary Powers. The Board of Land Commissioners is delegated discretionary power to regulate and control the use or disposition of lands in the beds of navigable lakes, rivers, and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided that the Board will take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands. (Section 58-104(9), Idaho Code). ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.05, “Riverbed Mineral Leasing in Idaho.” ()

02. Where Applicable. These rules apply to the exploration and extraction of precious metals, minerals, and construction materials from a placer deposit situated in state-owned submerged lands. ()

03. Where Not Applicable. These rules do not apply to the application and leasing of geothermal resources by title 47, Chapter 16, Idaho Code, or to the application and leasing of oil and gas resources covered by Title 47, Chapter 8, Idaho Code. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Available State Lands. All lands between the ordinary high water marks of a navigable river which have not been located, leased, or withdrawn. ()

02. Board. The State Board of Land Commissioners or its authorized representative. ()

03. Casual Exploration. Entry and/or exploration which does not appreciably disturb or damage the land or resources thereon. Casual exploration includes, but is not limited to, geochemical and/or geophysical exploration techniques, sampling with hand tools, and entry using wheeled vehicles for transportation to conduct such exploration. Exploration using suction dredges having an intake diameter of two inches (2”) or less are considered casual exploration when operated in a perennial stream and authorized under the stream protection act, Title 42, Chapter 38, Idaho Code. Refer to Section 015 for further clarification regarding casual exploration and recreational mining. ()

04. Commercial. The type of operation that engages in the removal of construction materials or uses suction dredges with an intake diameter larger than five inches (5”) or attendant power sources rated at greater than fifteen (15) horsepower and/or other motorized equipment. ()

05. Construction Materials. Sand, gravel, cobble, boulders, and other similar materials. ()

06. Director. The Director of the Idaho Department of Lands or his authorized representative. ()

07. Motorized Exploration. Exploration that may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques that employ the use of earth moving or other motorized equipment, seismic operations using explosives, and sampling with suction dredges having an intake diameter greater than two inches (2”) when operated in a perennial stream. When operated in an intermittent stream, suction dredges are considered motorized exploration regardless of the intake size. ()

08. Natural or Ordinary High Water Mark. The line that the water impresses upon the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. ()

09. Person. ()

- a. An individual of legal age; ()
- b. Any firm, association or corporation qualified to do business in the state of Idaho; or ()
- c. Any public agency or government unit, including without limitation, municipalities. ()

10. Recreational Mining. Mining with a suction dredge having an intake diameter of five inches (5") or less, and attendant power sources, rated at fifteen (15) horsepower or less, pans, rockers, hand tools, hand operated sluices and other similar equipment. ()

11. River Mile. Five thousand two hundred eighty (5,280) feet of contiguous riverbed as measured along the approximate center of the river. ()

12. Navigable River. A natural water course of perceptible extent, with definite bed and banks, which confine and conducts continuously flowing water, and the bed of which is owned by the state of Idaho in trust. ()

13. Submerged Lands. All state-owned beds of navigable lakes, rivers, and streams between the natural or ordinary high water marks. ()

011. -- 014. (RESERVED)

015. CASUAL EXPLORATION AND RECREATIONAL MINING.

01. Lands Open. All beds of navigable rivers that have not been located, leased or withdrawn in accordance with statute or the terms of these rules, are free and open to casual exploration and recreational mining on a nonexclusive and first come basis. ()

02. Equipment Limitations. Mining equipment for casual exploration that may occur prior to the filing of a location or lease application is limited to suction dredges with a two (2") inch intake or less, pans, rockers, hand tools, hand operated sluices and other similar equipment. ()

03. No Approval for Casual Exploration Required. No written approval is required from the Director for casual exploration. ()

04. Recreational Mining Equipment. Mining equipment for recreational mining is limited to suction dredges with an intake diameter of five (5") inches or less with attendant power sources rated at fifteen (15) horse power or less, pans, rockers, hand tools, hand operated sluices and other similar equipment. ()

05. Department of Water Resources Permits. Possession of a valid Stream Protection Act Permit issued by the Idaho Department of Water Resources and a Recreational Mining Permit issued by the Idaho Department of Lands constitutes the Board's waiver of bond, waiver of royalty, and written approval to engage in recreational mining under Section 47-704(6), Idaho Code, and Title 47, Chapter 13, Idaho Code. ()

016. EXPLORATION LOCATIONS.

01. Lands Open. The beds of navigable rivers that have not been located or withdrawn, or are not under application to lease, in accordance with statute or the terms of these rules, are available for exploration location; provided that salable minerals are not subject to exploration location. Details of exploration locations on state lands can be found in Title 47, Chapter 7, Idaho Code. ()

02. Size of Location. Each exploration location is limited to one-half (1/2) mile in length. ()

03. Record Keeping Requirement. A locator must keep a record of all minerals recovered during exploration operations and must pay to the state a royalty of five percent (5%) of the gross value of the minerals recovered. Payment must be made each year with the filing of the assessment work report. ()

04. When No Written Approval Required. No written approval is required from the Director for exploratory activity on an exploration location when such exploration is limited to mining equipment such as suction dredges with a five (5") inch intake diameter or less and attendant power sources rated at fifteen (15) horsepower or less, pans, rockers, hand operated sluices, and other similar equipment; provided however, that recreational mining activity performed under a Recreational Mining Permit as authorized under Section 015 does not serve to establish any basis for an exploration location. ()

05. When Written Approval Required. Written approval is required from the Director prior to entry for operators conducting motorized exploration except as allowed in Subsection 016.04. Approved operations must be bonded as outlined in Subsection 040.03. ()

017. -- 019. (RESERVED)

020. RIVERBED MINERAL LEASE.

01. Limitations on Suction Dredges. Operators may not use suction dredges with an intake diameter larger than five inches (5") or attendant power sources rated greater than fifteen (15) horsepower, except under lease. ()

02. Approval Required Before Operations. Prior to entry upon navigable rivers, operators are required to have written approval from the Director. ()

03. Bonding. Approved operations must be bonded as outlined in Subsection 040.01. ()

04. Simultaneous Filings. Two (2) or more lease applications received on the same date and hour, covering the same lands, are considered simultaneous filings. Simultaneous filings will be resolved by competitive bidding. ()

021. -- 024. (RESERVED)

025. PUBLIC NOTICE AND HEARING.

01. Publication of Notice. Upon receipt by the Board of an application to lease any lands that may belong to the state of Idaho by reason of being situated between the high water marks of navigable rivers of the state, the Board will cause at the expense of the applicant, a notice of such application to be published once a week for two (2) issues in a newspaper of general circulation in the county or counties in which said lands described in said application are situated. ()

02. Public Hearing. The Board may order a public hearing on an application if it deems this action is in the best interest of the public. ()

03. Petition for Hearing. The Board or its authorized representative will hold a public hearing on the application, if requested in writing no later than thirty (30) days after the last published notice by ten (10) person whose lawful rights to use the waters applied for may be injured thereby, or by an association presenting a petition with signatures of not less than ten (10) such aggrieved parties; provided that the Board may order a public hearing in the first instance. The Board will consider fully all written and oral submissions respecting the application. ()

026. -- 029. (RESERVED)

030. RENTAL AND ROYALTY AND LATE PAYMENTS.

01. Minimum Annual Rental. The minimum annual rental is one hundred sixty dollars (\$160) for any area up to one hundred sixty (160) acres, and one dollar (\$1) for each additional acre. ()

02. Minimum Annual Royalty. In addition to the annual rental, the commercial lessee pays an annual minimum royalty of five hundred dollars (\$500) per year and all other lessees pay an annual minimum royalty of three hundred forty dollars (\$340) per year. ()

03. Deduction of Royalty. The annual minimum royalty and the annual rental for any year is deducted from the actual production royalty as it accrues for that year. ()

04. Royalty Schedule. The appropriate Board approved royalty schedule for the commodity mined must be attached and made a part of the mineral lease. ()

05. Late Payments. Rental or royalty not paid by the due date is considered late. A twenty-five dollars (\$25) late payment charge or penalty interest from the due date, whichever is greater, will be added to the rental or royalty amount. The penalty interest is one percent (1%) for each calendar month or fraction thereof. ()

031. SIZE AND COMPOSITION OF LEASABLE TRACT.

01. One Mile Limitation. A riverbed lease may not exceed one (1) contiguous river mile in length or all the riverbed within one (1) section should all the available state lands within the section exceed one (1) river mile. ()

02. Construction Materials. Leases for construction materials may be limited to a smaller size tract at the Board's discretion. ()

032. -- 034. (RESERVED)

035. ASSIGNMENTS.

01. Prior Written Approval. No location or lease assignment is be valid until approved in writing by the Director, and no assignment takes effect until after the first day of the month following its approval. ()

02. Partition. A location or lease may be assigned to any person qualified to hold a state location or lease, provided that in the event an assignment partitions leased lands between two (2) or more persons, both the assigned and the retained part created by the assignment contain not less than one-half (1/2) mile length of river bed land. ()

03. Segregation of Lease. If an assignment partitions leased lands between two (2) or more persons, it must clearly segregate the assigned and retained portions of the leasehold. Resulting segregated leases continue in full force and effect for the balance of the term of the original lease or as further extended pursuant to statute and these rules. ()

036. -- 039. (RESERVED)

040. BOND.

01. Minimum Bond. Concurrent with the execution of the lease by the lessee, lessee must furnish to the Director a good and sufficient bond or undertaking on a Department form in the amount of five thousand dollars (\$5,000) for commercial operations and one thousand dollars (\$1,000) for all other operations, in favor of the state of Idaho, conditioned on the payment of all damages to the land and all improvements thereon which result from the lessee's operation and conditioned on complying with statute, these rules and the lease terms. This bond is in addition to the bonds required by the Idaho Dredge and Placer Mining Protection Act (Title 47, Chapter 13, Idaho Code). ()

02. Statewide Bond. In lieu of the above bond, the lessee may furnish a good and sufficient "statewide" bond conditioned as above in the amount of fifty thousand dollars (\$50,000) in favor of the state of Idaho, to cover all lessee's leases and operations carried on under statute and these rules. ()

03. Motorized Exploration. Motorized exploration on a site under location is subject to a minimum bond in the amount of seven hundred fifty dollars (\$750). A larger bond not exceeding seven hundred fifty dollars (\$750) per acre may be required by the Department depending on the size and scope of the operation. ()

041. -- 044. (RESERVED)

045. FEES.

The following fees apply:

- ()
- 01. Nonrefundable Application Fee for Lease.** Fifty dollars (\$50) per application. ()
- 02. Nonrefundable Fee for Advertising Application.** Forty-five dollars (\$45) per application. ()
- 03. Exploration Location Fee.** Two hundred fifty dollars (\$250) per location. ()
- 04. Application Fee for Approval of Assignment.** Fifty dollars (\$50) per lease or location involved in the assignment. ()

046. -- 999. (RESERVED)

20.03.08 – EASEMENTS ON STATE-OWNED LANDS

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to and are to be construed in a manner consistent with the duties and responsibilities of the Idaho State Board of Land Commissioners as set forth in Idaho Code Title 58, Chapters 1 and 6, and Article IX, Sections 7 and 8 of the Idaho Constitution. ()

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 20.03.08, “Easements on State-Owned Lands.” ()

02. **Scope.** These rules set forth procedures concerning the issuance of easements on all lands within the jurisdiction of the Idaho State Board of Land Commissioners except for state-owned submerged lands and formerly submerged lands. Further, these rules do not apply to easements for hydroelectric projects. ()

03. **Valid Existing Rights.** These rules are not be construed as affecting any valid existing rights. ()

002. ADMINISTRATIVE APPEALS.

An applicant aggrieved by a decision of the Director under these rules may request a hearing before the Board, but must do so within thirty (30) days after receipt of written notice of the Director’s decision. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Board.** The Idaho State Board of Land Commissioners or such representative as may be designated by the Board. ()

02. **Damage or Impairment of Rights to the Remainder of the Property.** The diminution of the market value of the remainder area, in the case of a partial taking. ()

03. **Department.** The Idaho Department of Lands. ()

04. **Director.** The Director of the Department of Lands or such representative as may be designated by the Director. ()

05. **Easement.** A non-possessory interest in land for a specific purpose. Such interest may be limited to a specified term. ()

06. **Endowment Lands.** Land grants made to the state of Idaho by the Congress of the United States, or real property subsequently acquired through land exchange or purchase, for the sole use and benefit of the public schools and certain other institutions of the state, comprising nine (9) grants altogether. ()

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

08. **State-Owned Lands.** All lands within the jurisdiction of the Idaho State Board of Land Commissioners except for state-owned submerged lands or formerly submerged lands. ()

09. **Temporary Permit.** An instrument authorizing a specific use on state land usually issued for five (5) years or less, but that may be issued for up to ten (10) years. ()

011. -- 019. (RESERVED)

020. POLICY.

01. **Easements Required.** Easements are required for all rights-of-way of a permanent nature over state-owned land. Easements will not be granted when temporary permits will serve the required purpose or when a lease is appropriate. ()

02. Prior Grants. The Director will recognize easements on state endowment lands by grant of the federal government, or subsequent landowners, prior to title vesting with the State or by eminent domain. ()

03. Existing Easements. These rules do not apply to any use, facility or structure described in an existing easement. For amendment of an existing easement, see Section 025. ()

04. Director's Discretion. The Director may grant an easement over state-owned land for any legitimate public or private purpose upon payment of appropriate compensation. ()

05. Reciprocal Easements. The Director may seek reciprocal easements for access to state-owned lands from applicants for easements over state-owned lands. The value of the easement acquired by the state may be applied towards the cost of the easement acquired from the state. ()

06. Interest Granted. An easement grants only such interest to the grantee as is specified in the instrument, including the right to use the property for the specified purpose without interference by the grantor. The right to use the property for all other purposes not inconsistent with the grantee's interest remains with the grantor. ()

07. Limit of Director's Discretion. The Director may grant and renew easements in all cases except when the compensation will exceed twenty-five thousand dollars (\$25,000) exclusive of the value of timber and payment for any damage or impairment of rights to the remainder of the property. ()

08. Width of Easement. The width of any easement granted may not be less than eight (8) feet. ()

09. Recordation. The Department will record the easement, or easement release, with the appropriate county recorder's office. ()

10. Term Easement. The Director may grant an easement that is issued for a specific time period of ten (10) to fifty-five (55) years. ()

021. FEES AND COMPENSATION.

01. Application Fee. The application fee for new, renewed, or amended easements is one hundred dollars (\$100) and is collected from all applicants. This application fee is in addition to the easement compensation and appraisal costs, and is non-refundable unless the Director determines that the land applied for is not under the jurisdiction of the Board. ()

02. Easement Fee. The compensation for permanent easements over state-owned lands covered by these rules is as follows:

| | COMPENSATION |
|---|--|
| Highways, roads, railroads, reservoirs, trails, canals, ditches, or any other improvements that require long term, exclusive or near exclusive use and occupation of the right of way | Up to 100% of land value plus payment for any damage or impairment of rights to the remainder of the property as determined by the Director and supported by specific data such as an appraisal |
| Overhead transmission and power lines | Up to 100% of land value depending on the exclusivity of use as determined by the Director and supported by specific data such as an appraisal plus payment for any damage or impairment of rights to the remainder of the property as determined by the Director and supported by data such as an appraisal |

| | COMPENSATION |
|--|--|
| Buried installations - cables, pipelines, sewerlines, waterlines | Up to 100% of land value, depending on the exclusivity use as determined by the Director and supported by specific data such as an appraisal plus payment for any damage or impairment of rights to the remainder of the property, as determined by the Director and supported by specific data such as an appraisal |

()

03. Appraisal Required. An appraisal of an easement may be required where, in the opinion of the Director, the easement value will exceed the minimum compensation fee of five hundred dollars (\$500). ()

04. Performance of Appraisal. The appraisal of the easement will normally be performed by qualified department staff. If so desired by the applicant, and agreed to by the Director, the applicant may provide the appraisal that is acceptable to and meets the specifications set by the Director. ()

05. Appraisal Costs. Where the appraisal is performed by department staff, the appraisal is two hundred fifty dollars (\$250) for a market analysis, five hundred dollars (\$500) for a short form appraisal, and one thousand dollars (\$1,000) for appraisals of easements requiring Board approval. The appraisal cost is in addition to those costs outlined in Subsections 021.01 and 021.02. In no case will an applicant be charged more than one thousand dollars (\$1000) for an appraisal of an easement conducted by departmental staff. ()

06. Term Easements. Compensation for term easements will be established by appraisal. ()

07. Minimum Compensation. The minimum compensation for any easement is five hundred dollars (\$500), not including the application fee and appraisal costs. ()

022. -- 024. (RESERVED)

025. EASEMENT AMENDMENT.

Amendment of an existing easement must be processed in the same manner as a new application. Amendment includes change of use, widening the easement area, or changing the location of the easement area. Amendment does not include ordinary maintenance, repair, or replacement of existing structures such as poles, wires, cables, and culverts. ()

026. -- 029. (RESERVED)

030. EMERGENCY WORK.

The grantee is authorized to enter upon endowment lands and other lands managed by the Department for the purpose of performing emergency repairs on an easement for damage due to floods, high winds and other acts of God, provided that the grantee provides written notice to the Director within forty-eight (48) hours of the time work commences. Thereupon, the Director is authorized to assess any damages to the state lands and seek reimbursement. ()

031. -- 034. (RESERVED)

035. COOPERATIVE USE AND RECIPROCAL USE AGREEMENTS.

01. Joint Agreements. The Director may, subject to the approval of the Board, enter into joint ownership and use agreements with persons for roads providing access to state endowment lands and other lands managed by the Department. Such agreements must provide that all landowners share proportionately in the cost of building and maintaining the shared road. The proportionate shares are calculated on timber volume, acreage or other unit of value. ()

02. Reciprocal Use Agreements. The Director may enter into reciprocal use agreements with persons

for existing roads where such agreements will enhance the management of state endowment lands or other lands managed by the Department. ()

03. Applicability. Where the Director has entered into such agreements mentioned in Subsections 035.01 and 035.02 above, Sections 021, 040, and 046 do not apply. ()

036. -- 039. (RESERVED)

040. ASSIGNMENTS.

01. Fee. Easements issued by the Director or by the Board are assignable provided that the assignor and assignee complete the Department's standard assignment form and forward it and the non-refundable assignment fee of fifty dollars (\$50) to any department office. ()

02. Prior Written Consent. An assignment is not valid without the prior written consent of the Director. Such consent will not be unreasonably withheld. ()

03. Multiple Assignments. If all state easements held by a grantee are assigned at one time, only one (1) assignment fee is required. ()

041. ABANDONMENT, RELINQUISHMENT, AND TERMINATION.

01. Section 58-603, Idaho Code. The provisions of Idaho Code Section 58-603 apply to all easements over state-owned lands. ()

02. Non-Use. An easement not used for the purpose for which it was granted, for five (5) consecutive years, is presumed abandoned and automatically terminates. The Director will notify the grantee in writing of the termination. The grantee has thirty (30) days from the date of notification to reply in writing to the Director to show cause why the easement should be reinstated. Within sixty (60) days of receipt of the statement to show cause, the Director will notify the grantee in writing as to the Director's decision concerning reinstatement. The grantee has thirty (30) days of receipt of the Director's decision to appeal an adverse decision to the Board. ()

03. Removal of Improvements. Upon termination, the grantee has twelve (12) months from the date of final notice to remove any facilities and improvements. ()

04. Voluntary Relinquishment. The grantee may voluntarily relinquish the easement at any time by completing an easement relinquishment form. The Department will pay the grantee one dollar (\$1) for the relinquishment. ()

042. -- 045. (RESERVED)

046. PROCEDURE.

01. Contents of Application. An easement application contains. ()

a. A letter of request stating the purpose of the easement; ()

b. A map of right-of-way in triplicate; and ()

c. One (1) copy of an acceptable written description based on a centerline survey or a metes and bounds survey of the perimeter of the easement tract. The applicant may also describe the area occupied by existing uses, facilities or structures by platting the state-owned land affected by the use and showing surveyed or scaled ties (to a legal corner) at the points where the use enters and leaves the parcel. ()

02. Engineer Certification. As required in Section 58-601, Idaho Code, for any application for a ditch, canal or reservoir, the plats and field notes must be certified by the engineer under whose direction such surveys or plans were made and four (4) copies filed with the Department and one (1) copy with the Director, Department of

Water Resources. ()

03. Where to Submit Application. An easement application may be submitted to any office of the Department. ()

04. Notification of Approval. If approved, the applicant will be notified of the amount due to the Department. ()

05. Notification of Denial. If the application is denied, the applicant will be notified in writing of such decision. ()

047. EASEMENTS ON STATE LAND UNDER LAND SALE CONTRACT.

01. Approval of Contract Purchaser. The Director will not approve an easement on lands under contract of sale (land sale certificate) without the approval of the contract sale purchaser or without reviewing the consideration received to insure that the state's interests are protected. ()

02. Compensation. The compensation for easements on lands under land sale contract will be as set out in Section 021 except that "land value" may be the sale value. These moneys will be applied to the principal balance on the land sale contract. Additionally, the Department will collect the one hundred dollar (\$100) application fee. ()

03. Co-Signature of Contract Purchaser. The contract sale purchaser must co-sign the easement to validate the document. ()

048. -- 999. (RESERVED)

**20.03.09 – EASEMENTS ON STATE-OWNED SUBMERGED LANDS
AND FORMERLY SUBMERGED LANDS**

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to, and are to be construed in a manner consistent with, the duties and responsibilities of the Idaho State Board of Land Commissioners as set forth in Title 58, Chapters 1, 6, and 13, Idaho Code, and the Equal Footing Doctrine (Idaho Admission Act of July 3, 1890, 26 Stat. 215, Chapter 656). ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.09, “Easements on State-Owned Submerged Lands and Formerly Submerged Lands.” ()

02. Purpose. These rules set forth procedures concerning the issuance of easements on state-owned submerged and formerly submerged lands. ()

03. Scope. These rules apply to the issuance of easements for all uses, other than irrigation facilities, diversion facilities, temporary irrigation berms, headgates, turnouts, and domestic water supply intake lines capable of drawing less than five (5) cubic feet per second of water; except that dams that span the entire width of a navigable stream channel regardless of their purpose are subject to these rules. ()

04. Exceptions; Permits Required. Easements will not be granted where temporary permits will serve the required purpose or when a lease is more usual and customary, such as for marinas, docks, float homes, and similar facilities. (see IDAPA 20.03.17, “Rules Governing Leases on State-owned Submerged Lands and Formerly Submerged Lands.”) ()

05. Exceptions; Temporary Structures. These rules do not apply to uses, facilities, and structures considered to be temporary in nature; more specifically, those uses that will be in effect for a period of ten (10) years or less or those facilities or structures with a lifespan of ten (10) years or less. Such uses, facilities, and structures may be authorized by revocable temporary permits. ()

002. (RESERVED)

003. ADMINISTRATIVE APPEALS.

An applicant aggrieved by a decision of the Director under these rules may request a hearing before the board, but must do so within thirty (30) calendar days after receipt of written notice of the Director’s decision. Failure to make said request within the thirty (30) day period constitutes a waiver of the applicant’s right to a hearing before the board. Pursuant to Title 67, Chapter 52, Idaho Code, the applicant may appeal an adverse decision of the Board. ()

004. -- 009. (RESERVED)

010. DEFINITIONS.

01. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line (Section 58-1302(d), Idaho Code). ()

02. Board. The Idaho State Board of Land Commissioners or such representative as may be designated by the board. ()

03. Dam. Any artificial barrier, placed across a navigable stream channel or watercourse. ()

04. Department. The Idaho Department of Lands. ()

05. Director. The Director of the Idaho Department of Lands or such representative as may be designated by the Director. ()

06. Easement. A nonpossessory interest held by one person in land of another person whereby the first person is accorded use for a portion of such land for a specific purpose. ()

07. Formerly Submerged Lands. Formerly submerged beds of state-owned navigable lakes, rivers, and streams which have either been filled or have subsequently become uplands because of human activities, i.e.,

dikes, berms, seawalls, etc. Included are islands that have been created on submerged lands by natural processes or human activities since the date of statehood (July 3, 1890). ()

08. Grantee. The party to whom the easement is granted and their assigns and successors in interest. ()

09. Grantor. The State of Idaho and its assigns and successors in interest ()

10. Hydroelectric Facilities. The dam, diversion, penstock, transmission lines, water storage area, powerhouse and other facilities related to generating electric energy from water power. ()

11. Market Value. The amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy. ()

12. Natural or Ordinary High Water Mark. The line which the water impresses upon the soil covering it for a sufficient period of time to deprive the soil of its vegetation and destroy its value for agricultural purposes (Section 58-104(9), Idaho Code). When the soil, configuration of the surface, or vegetation has been altered by man's activity, the natural or ordinary high water mark shall be located where it would have been if this alteration had not occurred. ()

13. Person. A partnership, an association, a joint venture or a corporation qualified to do business in the State of Idaho, any federal, state, county or local unit of government, or an individual. ()

14. Right-of-Way. The privilege that one (1) person, or persons particularly described, may have of passing over the land of another in some particular line. Usually an easement over the land of another. ()

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

16. Uplands. The land bordering on navigable lakes, rivers, and streams. ()

011. POLICY.

01. Regulation of the Beds of Navigable Waters. It is the policy of the State of Idaho to regulate and control the use or disposition of lands in the beds of navigable lakes, rivers, and streams to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided, that the board shall take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands (Section 58-104, Idaho Code). ()

a. These rules shall not be construed as adversely affecting any valid existing rights. ()

b. The board or Director shall not grant an easement for any use, facility, or structure that would impair those uses of submerged and formerly submerged lands protected under the public trust doctrine. ()

02. Exercise of State Title. The state exercises its title over the beds of all lakes, rivers, and streams that are navigable in fact. The department will respond to requests or inquiries as to which lakes, rivers, and streams are deemed navigable in fact. Additional information about streams deemed navigable by the state of Idaho is available from the Department. ()

03. Stream Channel and Encroachment Permits. Issuance of an easement shall be contingent upon the applicant first obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Title 42, Chapter 38, Idaho Code, or a lake encroachment permit if required by the Department, pursuant to the Lake Protection Act, Section 58-1301, Idaho Code. ()

04. Other Permits. Issuance of an easement shall not relieve an applicant of acquiring other permits and licenses that are required by law. ()

05. Existing Easements. These rules apply to existing easements on submerged or formerly submerged lands. However, it shall not be necessary for a person possessing a valid easement on the effective date of these rules to file a new application pursuant to these rules. ()

06. Existing Permits. Any person holding a permit, issued after May 23, 1984 during the pendency of the promulgation of these rules, for right-of-way on submerged or formerly submerged lands shall convert the permit to an easement upon payment of fees and compensation in the amount provided for by these rules. ()

07. Limitation on Easement Grant. An easement grants only such interest to the grantee as is specified within the document, including the legal right to occupy and use the submerged or formerly submerged lands for the specified purpose in the easement without interference by the grantor, except as otherwise provided by law. The legal right to use the submerged or formerly submerged lands for all other purposes not inconsistent with the grantee's interest remains with the grantor. ()

08. Minimum Width. The minimum width of any easement granted shall be eight (8) feet. ()

012. -- 019. (RESERVED)

020. FEES AND COMPENSATION.

01. Administrative Fee. There shall be a one-time nonrefundable administrative fee of three hundred dollars (\$300) for any use, facility, or structure requiring an easement under these rules. No supplemental compensation, in excess of the one-time administrative fee, shall be required for: ()

a. An easement for a use, facility, or structure for which the navigable lake, river, or stream poses an obstacle or barrier for construction or operation of the use, facility, or structure, or where the applicant demonstrates, and the Director or Board concurs, that the impact of the use, facility, or structure on the submerged lands is less than the impact on the other values associated with the adjacent upland such as conservation of resources, significant cost savings to the public, or accessibility. ()

b. An easement for a dam that does not produce hydroelectric power and is less than ten (10) feet in height (as measured from the natural stream bed at the downstream side). ()

02. Supplemental Compensation. In addition to the one-time nonrefundable administrative fee of three hundred dollars (\$300), supplemental compensation will be required for: ()

a. New and renewed easements for all dams of any size that produce hydroelectric power and all dams that are ten (10) feet and higher (as measured from the natural stream bed at the downstream side). Supplemental compensation for such easements shall be one thousand dollars (\$1,000), and for a dam including associated hydroelectric facilities, there shall be an additional one-time payment of five dollars (\$5) per megawatt of installed capacity per the nameplate rating of said facility. If the facility is situated on a Snake River segment that is a common border with the state of Oregon or the state of Washington, the installed capacity shall be prorated based on the location of the common border for the purpose of calculating the compensation. Total compensation for a new or renewed easement issued for a dam including associated hydroelectric facilities shall not exceed twenty thousand dollars (\$20,000). If an easement for a hydroelectric facility has been issued prior to relicensing, the fee will be prorated based on a fifty (50) year use period. The fee for annual extensions that are frequently issued by FERC because of permitting delays prior to issuance of the major FERC license will be prorated based on a fifty (50) year use period. ()

b. An easement over submerged and formerly submerged lands, for any use, facility, or structure, that is not a dam or hydroelectric facility, which would use submerged or formerly submerged lands as a substitute for or to reduce or eliminate the use of uplands. Supplemental compensation for such easements shall be a one-time payment based on the market value of the submerged or formerly submerged lands. The compensation shall be determined by appraisal. For purposes of this subsection, the per acre value of the submerged or formerly submerged lands shall be the same as the per acre value of the adjacent uplands for which the submerged or formerly submerged lands shall serve as a substitute or in the case of filled lands, the per acre value shall be based on its highest and best

use. Adjacent uplands are uplands bordered on one (1) side by the water body and extending landward at least one (1) lot in depth or three hundred (300) feet, whichever is greater. ()

03. Appraisal. The appraisal of the easement normally will be performed by qualified Department staff. If so desired by the applicant and agreed to by the Director, the applicant may provide the appraisal, which must be acceptable to and meet the specifications set by the Director. ()

04. Cost of Appraisal. Where the appraisal is performed by department staff, the appraisal costs shall be the actual cost and shall be charged to the applicant in addition to those costs outlined in Subsections 020.01 and 020.02. These costs shall include transportation, personnel costs (including per diem), and administrative overhead. An itemized statement of these costs shall be provided to the applicant. The appraisal fee shall be billed separately from the nonrefundable administrative fee established in Subsection 020.01. ()

021. -- 029. (RESERVED)

030. TERM OF EASEMENT.

01. Permanent Uses. A permanent easement will be issued for uses, facilities, and structures that are normally considered permanent in nature, such as bridges, utility crossings, highway fills, and dams. ()

02. Term Easements. A term easement will be issued for a specific time period of ten (10) to fifty-five (55) years and will be issued for those uses, facilities, and structures not normally considered permanent in nature. ()

03. Federally Licensed Facilities. The term of an easement for all federally licensed hydroelectric facilities on submerged or formerly submerged lands shall be run concurrently with the term of such license issued by the United States Federal Energy Regulatory Commission (FERC), or its successor, authorizing the facility. Easements for hydroelectric facilities for which FERC has issued a conduit exemption shall not exceed fifty-five (55) years. ()

031. -- 039. (RESERVED)

040. USE, FACILITY, OR STRUCTURE MODIFICATION.

Modification of an existing use, facility, or structure shall require an easement or an amendment to an existing easement and shall be processed in the same manner as a new application. Modification includes expanding the use or easement area, or changing the location of the use or easement area. Modification does not include ordinary maintenance, repair, or replacement of existing structures such as poles, wires, and cables. ()

041. -- 049. (RESERVED)

050. ASSIGNMENTS.

01. Assignment Fee. Easements may be assigned upon approval of the Director. The assignor and assignee must complete the department's standard assignment form and forward it and the nonrefundable assignment fee of fifty dollars (\$50) to any department office. ()

02. Prior Written Consent. An assignment is not valid without the written consent of the Director which shall not be unreasonably withheld. The Department shall work diligently to complete assignments within sixty (60) days after receipt of the standard assignment forms and all associated information. ()

03. Multiple Assignments. If all state easements held by a grantee are assigned at one time, only one (1) assignment fee shall be required. ()

051. -- 059. (RESERVED)

060. ABANDONMENT, RELINQUISHMENT, AND TERMINATION.

01. Section 58-603, Idaho Code. The provisions of Section 58-603, Idaho Code relating to rights-of-way apply to all easements over state-owned submerged and formerly submerged lands. ()

02. Non-Use. Upon termination of an easement for any cause, the Director shall provide the grantee with a specific, but reasonable, period of time (up to twelve (12) months) to remove all facilities or structures. Failure to remove all facilities or structures within such time period established by the Director shall be deemed a trespass on submerged or formerly submerged lands. ()

03. Voluntary Relinquishment. The grantee may voluntarily relinquish the easement at any time by submitting a letter or relinquishment form in recordable format to the state of Idaho. Voluntary relinquishment of an easement does not waive or forgive the obligation of the easement holder to remove facilities as required in Subsection 060.02. ()

061. -- 069. (RESERVED)

070. PROCEDURE.

01. Contents of Application. An easement application shall contain: ()

a. A letter of request stating the purpose of the easement; ()

b. A plat of right-of-way in triplicate; and ()

c. One (1) copy of an acceptable written description based on a survey of the centerline or a metes and bounds survey of the easement tract. The applicant may also describe the area occupied by existing uses, facilities or structures by platting the state-owned submerged or formerly submerged lands affected by the use and showing surveyed or scaled ties (to a legal corner) at the points where the use enters and/or leaves the parcel. ()

02. Engineer Certification. All maps, plans, and field notes attached to an application for rights-of-way for ditches and reservoirs governed by Section 58-601, Idaho Code, shall be certified by the engineer under whose direction such surveys or plans were made and four (4) copies filed with the Department and one (1) copy filed with the Idaho Department of Water Resources. ()

03. Decision on Application. Upon proper application and payment of the nonrefundable administrative fees, appraisal costs, and supplemental compensation required pursuant to these rules, the Director may, after appropriate review and consideration of the facts and the law, grant an easement on and over submerged or formerly submerged lands for any public or private purpose. The Director may deny an application for easement upon a finding that issuance would not be consistent with law or these rules. Such denial or approval shall be in writing within six (6) months of the receipt of the application. ()

04. Director's Decision. The Director may grant and renew easements in all cases except when the compensation will exceed ten thousand dollars (\$10,000), exclusive of the payment for any damage or impairment of rights to the remainder of the property. ()

05. Board Decision. Easement applications where compensation exceeds ten thousand dollars (\$10,000), or that are of a complex and unusual nature as determined by the Director, shall be presented to the Board for appropriate action. ()

06. Where to Submit. An easement application may be submitted to any office of the Department. ()

07. Notification of Approval. If the application is approved, the applicant shall be notified in writing of the amount due to the Department. ()

08. Denial of Application. If the application is denied, the applicant shall be notified in writing of the reasons for the denial. ()

071. -- 079. (RESERVED)

080. EASEMENT ACCESS AND EMERGENCY WORK.

01. Use of Land. The grantee has the right to use such portion of the lands adjacent to and along said easement as may be reasonably necessary in connection with the installation, repair, and replacement of the use, facility, or structure authorized by the easement. If such activities cause soil disturbance, the destruction of vegetation, and/or entering the navigable stream bed below the natural or ordinary high water mark, the grantee will obtain written authorization from the grantor. ()

02. Emergency Work. The grantee is authorized to enter upon lands lying outside the easement area, including submerged or formerly submerged lands and other lands managed by the Department, for the purpose of performing emergency repairs on an easement for damage due to floods, high winds, and other acts of God, provided that the grantee provides written notice to the Director within forty-eight (48) hours of the time work commences. The grantee shall be responsible for any damage to lands or other resources outside the easement area. ()

081. -- 999. (RESERVED)

20.03.13 – ADMINISTRATION OF COTTAGE SITE LEASES ON STATE LANDS

000. LEGAL AUTHORITY.

The State Board of Land Commissioners has adopted these rules in accordance with Article IX, Section 8 of the Idaho Constitution and Sections 58-104(1) and 58-304, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.13, “Administration of Cottage Site Leases on State Lands.” ()

02. Scope. It is the intent and express policy of the Board in administration of cottage site leases located on state-owned lands administered by the Board, to provide for a reasonable rental income from those lands in accordance with the requirements of the Constitution of the State of Idaho. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

For the purposes of these rules, unless otherwise indicated by express term or by context, the term: ()

01. Annual Rental. The rental paid on or before January 1, in advance, for the following year. ()

02. Board. The State Board of Land Commissioners. ()

03. Cottage Site. Any state-owned lot that is leased for recreational residential purposes. ()

04. Department. The Idaho Department of Lands. ()

05. Lessee. A tenant of a cottage site. ()

011. -- 019. (RESERVED)

020. SALE AND ASSIGNMENT - REQUIRED DOCUMENTATION.

01. Documentation of Sale. The lessee must provide the Department, at their expense, the following documents concerning a cottage site sale prior to assignment of the cottage site lease. ()

a. The original of the current lease; or ()

b. A signed and notarized Affidavit of Loss if the current lease has been lost. ()

02. Assignments. A lease may only be assigned to an individual or to a husband or wife. The Board will not recognize assignments to corporations, partnerships, or companies. Leases may be assigned to and held by an estate only if one (1) individual or husband or wife are designated as the sole contact for all billing and correspondence. A lessee may only hold one (1) cottage site lease at a time. ()

021. -- 024. (RESERVED)

025. LEASE RATE DETERMINATION -- ANNUAL RENTAL.

Annual rental is set by the Board from time to time as deemed necessary. It is the intent of the State Board of Land Commissioners that those rental rates be determined through market indicators of comparable land values. ()

026. -- 999. (RESERVED)

**20.03.14 – RULES GOVERNING GRAZING, FARMING, CONSERVATION, NONCOMMERCIAL
RECREATION, AND COMMUNICATION SITE LEASES**

000. LEGAL AUTHORITY.

These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to Section 58-104, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.14, “Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases.” ()

02. Scope. These rules constitute the Department’s administrative procedures for leasing of state endowment trust land for grazing, farming, conservation, noncommercial recreation, communication sites and other uses that are treated similarly under the provisions of Section 58-307, Idaho Code, regarding a lease term for no longer than twenty (20) years, and under the provisions of Section 58-310, Idaho Code regarding lease auctions. These rules are to be construed in a manner consistent with the duties and responsibilities of the Idaho State Board of Land Commissioners as set forth in Title 58, Chapter 3, Idaho Code; Article 9, Sections 3, 7 and 8, of the Idaho Constitution; and Section 5 of the Idaho Admission Bill. ()

002. ADMINISTRATIVE APPEALS.

01. Board Appeal. All decisions of the Director are appealable to the Board. An aggrieved party desiring to make such an appeal must, within twenty (20) days after receiving notice of the final decision being appealed or in case of a conflict auction within twenty (20) days after the auction is held, file with the Director a written notice of appeal setting forth the basis for the appeal. The Board has the discretion to accept or reject any timely appeal. In the event that the Board rejects hearing the appeal, the decision of the Director will be deemed final. ()

02. Board Decision. In the event the Board hears an appeal, it will do so at the earliest practical time or, in its discretion, appoint a Board sub-committee or a hearing officer to hear the appeal. The Board sub-committee or hearing officer will make findings and conclusions which the Board accepts, rejects or modifies. The decision of the Board after a hearing, or upon a ruling concerning the Board sub-committee or hearing officer’s findings and conclusions, are final. ()

03. Judicial Review. Judicial review of the final decision of the Board is in accord with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Amortization. The purchase of Department authorized, lessee installed, lease improvements by the Department through allowance of credit to the lessee’s annual lease payments. ()

02. Animal Unit Month (AUM). The amount of forage necessary to feed one (1) cow or one (1) cow with one (1) calf under six (6) months of age or one (1) bull for one (1) month. One (1) yearling is considered seven tenths (.7) of an AUM. Five (5) head of sheep, or five (5) ewes with lambs are considered one (1) AUM. One (1) horse is considered one and one-half (1 1/2) AUM. ()

03. Assignment. The Department approved transfer of all, or a portion of, a lessee’s right to another person wherein the second person assumes the lease contract with the Department. ()

04. Board. The Idaho State Board of Land Commissioners or such representatives as may be designated. ()

05. Conflict Application. An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation or communication site use when one (1) or more applications have been submitted for the same parcel of state endowment trust land and for the same or an incompatible use. ()

06. Department. The Idaho Department of Lands. ()

07. Director. The Director of the Department of Lands, or such representative as may be designated by ()

the Director. ()

08. Extension. An approved delay in the due date of the rental owed on a farming lease without risk of loss of the lease. ()

09. Improvement Valuation. The process or processes of estimating the value of Department authorized improvements associated with a lease, as defined in Section 102. ()

10. Lease. A written agreement between the Department and a person containing the terms and conditions upon which the person will be authorized to use state endowment trust land. ()

11. Herd Stock. Livestock leased or managed, but not owned, by the lessee. ()

12. Lease Application. An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation, or communication site purposes. ()

13. Manageable Unit. A unit of state endowment trust land designated by the Department, geographically configured and sufficiently large to achieve the proposed use. ()

14. Management Plan. The signed state endowment trust land lease for grazing, farming and conservation, and any referenced attachments such as annual operating plans or federal allotment management plans, is considered the management plan. ()

15. Mortgage Agreement. Department authorization for the lessee to obtain a mortgage on a state endowment trust land lease. ()

16. Person. An individual, partnership, association, corporation or any other entity qualified to do business in the state of Idaho and any federal, state, county, or local unit of government. ()

17. Proposed Management Plan. A document written and submitted by the lease applicant detailing the management objectives and strategies associated with their proposed activity. ()

18. Sublease. An agreement in which the state endowment trust land lease holder conveys the right of use and occupancy of the property to another party on a temporary basis. ()

011. -- 018. (RESERVED)

019. LESSEE MAILING ADDRESS.

Unless otherwise notified by the lessee, all lease correspondence from the Department will be sent to the name and address as it appears on the lease application. It is the lessee's duty to notify the Department, in writing, of any change in mailing address. ()

020. APPLICATIONS AND PROCESSING.

01. Eligible Applicant. Any person legally competent to contract may submit an application to lease state endowment trust land provided such person is not then in default of any contract with the Department of Lands; provided further, that the Department may, in its discretion, exclude any person in breach of any contract with the state of Idaho or any department or agency thereof. ()

02. Application Process. All lease applications must be submitted to the Department on the appropriate Department form. The applications must be signed by the applicant, must be submitted in such manner as determined by the Department, and must meet the following criteria: ()

a. Non-refundable Fee. Each application for a lease must be accompanied by a non-refundable application fee in the amount specified by the Board. ()

b. Application Deadline. The deadline to apply to lease a parcel of state endowment trust land already

covered by a lease is as established by the Department for the year the existing lease expires. Applications to lease unleased state endowment trust land may be submitted at any time, or at such time as designated by the Department. ()

c. Proposed Management Plan. All applicants for state grazing, farming and conservation leases must submit a proposed management plan with their application. Where current lessee is an applicant, the Department will recognize the existing management plan, as described by the existing lease provisions, as the proposed management plan required to complete the lease application. The Department may require amendments to the proposed management plan in accordance with Subsections 020.02.e. and 020.02.f. ()

d. Legal Description on Application. All applications must include a legal description of the state endowment trust land applied on. The Department reserves the right to require an amendment of the legal description of state endowment trust lands identified in a lease application to ensure the parcel is a manageable unit or for any other reason deemed appropriate by the Department. If the applicant fails to provide an amended application, referencing a manageable unit as designated by the Department, the application is considered invalid. ()

e. Nonconflicted Applications. ()

i. If the current lessee is the only applicant and the Department does not have concerns with the lessee's current management of the leased state endowment trust land, a new lease will be issued. ()

ii. If the current lessee is the only applicant and the Department has concerns with the lessee's current management of the state endowment trust lands, the Department will request in writing a new proposed management plan and meet with the current lessee to develop terms and conditions of a proposed lease. ()

f. Conflicted Applications. ()

i. All applicants submitting conflict applications must meet with the Department to develop the terms and conditions of a proposed lease specific to each applicant's proposed management plan. ()

ii. The Department will provide all applicants for conflicted leases with the list of criteria that will be used to develop lease provisions. Among the factors to be addressed in the criteria are the following: ()

(1) The applicant's proposed use and the compatibility of that use of the state endowment trust land with preserving its long-term leasing viability for purposes of generating maximum return to trust beneficiaries; i.e., the impact of the proposed use and any anticipated improvements on the parcel's future utility and leasing income potential. ()

(2) The applicant's legal access to and/or control of land or other resources that will facilitate the proposed use and is relevant to generating maximum return to trust beneficiaries. ()

(3) The applicant's previous management of land leases, land management plans, or other experience relevant to the proposed use or ability/willingness to retain individuals with relevant experience. ()

(4) Potential environmental and land management constraints that may affect or be relevant to assessing the efficacy or viability of the proposed use. ()

(5) Mitigation measures designed to address trust management concerns such as: ()

(a) Construction of improvements at lessee's expense. ()

(b) Payment by lessee of additional or non-standard administrative costs where the nature of the proposed use and/or the applicant's experience raises a reasonable possibility that greater monitoring or oversight by the Department than historically provided will be necessary to ensure lease-term compliance. ()

(c) Bonding to ensure removal of any improvements installed for the lessee's benefit only and which would impair the future utility and leasing income potential of the state endowment trust land. ()

(d) Bonding to ensure future rental payments due under the lease in cases where the lessee is determined by the Department to pose a significant financial risk because of lack of experience or uncertain financial resources. ()

(6) Any other factors the Department deems relevant to the management of the state endowment trust land for the proposed use. ()

g. Proposed Lease. Within ten (10) days of the final meeting with the applicant to discuss lease provisions, the Department will provide the applicant with a proposed lease containing those terms and conditions upon which it will lease the state endowment trust land. If the applicant does not accept in writing the lease as proposed by the Department within seven (7) days of receipt, the application will be rejected in writing by the Department. Within twenty (20) days of the date of mailing of the rejection notice, the applicant may appeal the Department's determination as to the lease's terms and conditions to the Land Board. If the appeal is denied, the applicant may continue with the auction process by accepting the lease terms and conditions initially offered by the Department. No auction may be held until the Land Board resolves any such appeal. ()

03. Expiring Leases. Lease applications will be mailed by the Department to all holders of expiring leases no less than thirty (30) days prior to the application deadline. Signed applications and the application fee must be returned to the Department by the established deadline or postmarked no later than midnight of that date. It is the lessee's responsibility to ensure applications are delivered or postmarked by the deadline. ()

04. Rental Deposit. ()

a. Existing Lessee. If the existing lessee is the sole applicant, the lessee may submit the rental deposit at the normal due date. If a conflict application is also filed on the expiring lease and the existing lessee is awarded the lease by the Land Board, the lessee must deposit, with the Department, the estimated first year's rental for the lease at the time the lease is submitted to the Department with lessee's signature. ()

b. New Applicants. ()

i. Expiring Lease. New applicants for expiring leases must submit the estimated first year's rental to the Department at the time of the application's submission. ()

ii. Unleased State Endowment Trust Land. All applicants for unleased state endowment trust land are deemed new applicants. If an applicant for unleased state endowment trust land is the sole applicant, the applicant may submit the rental deposit at the normal billing cycle, unless the time of application and desired time of use do not coincide with the normal billing cycle, in which case payment must be rendered at the direction of the Department. ()

021. LENGTH OF LEASE.
The Department may issue a lease for any period of time up to the maximum term provided by law. ()

022. -- 029. (RESERVED)

030. CHANGE IN LAND USE.
The Director may change the use of any state endowment trust land, in whole or in part, for other uses that will better achieve the objectives of the Board. ()

031. -- 039. (RESERVED)

040. RENTAL.

01. Rental Rates. The methodology used to calculate rental rates is determined by the Board. ()

02. Special Uses. Fees for special uses requested by the lessee and approved by the Department are

determined by the Department. ()

03. Rental Due Date. Lease rentals are due in accordance with the terms of the lease. ()

041. CHANGE OF RENTAL.

The Department reserves the right to increase the annual lease rental. Notice of any increase will be provided in writing to the lessee at least one hundred eighty (180) days prior to the lease rental due date. ()

042. LATE PAYMENTS.

Rental not paid by the due date is considered late. Late payment charges from the due date forward are specified in the lease. ()

043. -- 048. (RESERVED)

049. BREACH.

01. Non-Compliance. A lessee is in breach if the lessee's use is not in compliance with the provisions of the lease. ()

02. Damages for Breach. A lessee is responsible for all damages resulting from breach and other damages as provided by law. ()

050. LEASE CANCELLATION.

Leases may be canceled by the Director for the following reasons: ()

01. Non-Compliance. If the lessee is not complying with the lease provisions or if resource damage attributable to the lessee's management is occurring to state endowment trust land within a lease, the lessee will be provided written notification of the violation by regular and certified mail. The letter will set forth the reasons for the Department's cancellation of the lease and provide the lessee thirty (30) days' notice of the cancellation. ()

02. Change in Land Use. A lease may be canceled in whole or in part upon one hundred eighty (180) days written notice by the Department if the state endowment trust lands are to be leased for any other use as designated by the Board or the Department and the new use is incompatible with the existing lease. In the event of early cancellation due to a change in land use, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. ()

03. Land Sale. The Department reserves the right to sell state endowment trust lands covered under the lease. The lessee will be notified that the state endowment trust lands are being considered for sale prior to submitting the sales plan to the Board for approval. The lessee will also be notified of a scheduled sale at least thirty (30) days prior to sale. In the event of early cancellation due to land sale, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. ()

04. Mutual Agreement. Leases may be canceled by mutual agreement between the Department and the lessee. ()

051. LEASE ADJUSTMENTS.

01. Department Required. The Department may make adjustments to the lease for resource protection or resource improvement. ()

02. Lessee Requested. Lessee requested changes in lease conditions must be submitted in writing and must receive written approval from the Department before implementation. ()

052. EXTENSIONS OF ANNUAL FARMING LEASE PAYMENT.

01. Farming Lease Extensions. An extension of the annual lease payment may be approved for farming leases only. Each lease is limited to no more than two (2) successive or five (5) total extensions during any

ten (10) year lease period. Requests for extensions must be submitted in writing and must include the extension fee determined by the Board. The lessee must provide a written statement from a financial institution verifying that money is not available for the current year's farming operations. ()

02. Liens. When an extension is approved, the Department will file a lien on the lessee's pertinent crop in a manner provided by Idaho Code. ()

03. Due Date. Rental plus interest at a rate established by the Board will be due not later than November 1 of the year the extension is granted. ()

053. -- 059. (RESERVED)

060. FEES.

Fees for lease administration will be periodically set by the Board and must be paid in full before a transaction can occur. All lease administration fees are non refundable. The Board has the authority to set fees related to administration of the leasing process including, but not limited to the following: lease applications; full lease assignment; partial lease assignment; mortgage agreement; subleases; late rental payment; minimum lease fee; and lease payment extension request. ()

061. -- 069. (RESERVED)

070. SUBLEASING.

A lessee may not authorize another person to use state endowment trust land without prior written approval from the Department. The lessee must provide the name and address of sublessee, purpose of sublease, and a copy of the proposed sublease agreement. Lessee controlled herd stock does not require sublease approval. ()

071. ASSIGNMENTS.

The lessee may not assign a lease, or any part thereof, without prior written approval of the Department. ()

072. MORTGAGE AGREEMENTS.

The lessee may not enter into a mortgage agreement that involves state endowment trust land lease without prior written approval of the Department. The lessee must submit the required filing fee. The term of a mortgage agreement may not exceed the lease term. ()

073. -- 079. (RESERVED)

080. MANAGEMENT PLANS.

01. Federal Plan. When state endowment trust land is managed in conjunction with federal land, the management plan prepared for the federal land may be deemed by the Department, at its discretion, the management plan. ()

02. Modification of Plan. The Department may review and modify any grazing management plan upon changes in conditions, laws, or regulations, provided that the Department will give the lessee thirty (30) days notice of any such modifications prior to the effective date thereof. Modifications mutually agreeable to both the Department and lessee may be made at any time and may be initiated by lessee's request. ()

081. -- 089. (RESERVED)

090. TRESPASS.

01. Loss or Waste. The lessee must use the property within the lease in such manner as will best protect the state of Idaho against loss or waste. Unauthorized activities occurring on state endowment trust land are considered trespass; these include dumping of garbage, constructing improvements without a permit, and other unauthorized actions. ()

02. Civil Action by Lessee. The lessee is encouraged to take civil action against owners of trespass

livestock on state endowment trust lands to recover damages to the lessee for lost forage or other values incurred by the lessee. ()

03. Continuing Trespass. When continued trespass causes resource damage, the Department will initiate proceedings to restrict further trespass and recover damages as necessary. ()

04. Trespass Claims. Trespass claims initiated by the Department will be assessed as triple the current State AUM rate for forage taken. ()

091. -- 099. (RESERVED)

100. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS.

01. Prior Written Approval. The lessee must secure the written approval of the Department prior to constructing any improvements or buildings, or clearing any state endowment trust land. Failure to secure such approval eliminates any right to an improvement credit and may, at the Department’s discretion, be deemed a material breach of the lease and cause for cancellation. Any arrangement for cost sharing or improvement crediting will be identified in the improvement permit. Routine farming practices identified in a farm plan will not require prior approval. ()

02. Maintenance. All authorized improvements must be maintained in functional condition by the lessee. The lessee may be required to remove or reconstruct improvements in poor or non-serviceable condition. Existing maintenance agreements on lands acquired from the federal government remain in effect until amended by the parties involved. If maintenance is not being accomplished, the Department will provide a certified letter to the lessee informing the lessee of the rule violation. If work is not begun within thirty (30) days, the Department may contract repairs and add the amount to the annual rental. ()

03. Bond. The Department may require the lessee to furnish a bond prior to constructing improvements as deemed necessary to protect endowment assets or to ensure performance under the lease. ()

101. IMPROVEMENT CREDIT.

01. Sale or Auction. In the event of sale of the state endowment trust land covered under the lease or if the existing lessee is not the successful bidder at the auction of the lease, the creditable value of the authorized improvements, as determined by the Department, will be paid to the former lessee by the Department or the purchaser where a sale occurs or by the successful bidder where a new lease is issued. ()

02. Exchange. In the event of exchange of the state endowment trust land covered under the lease, the creditable value of authorized improvements, as determined by the Department, will be paid to the former lessee by the acquiring party, if other than the existing lessee. ()

03. Crediting. Improvement credit may be allowed when the Department determines that such credit would further the objective of maximizing long-term financial return to trust beneficiaries if the improvements are: ()

a. Authorized in writing by the Department or lacking written authorization, but in existence prior to 1970; ()

b. Not expressly permitted “for lessee’s benefit only”; and ()

c. Maintained during the lease term. ()

04. Value Only to Lessee. Where improvements are approved, but due to their nature, are not acceptable to receive improvement credit because no value exists for a future lessee, a notation will be made in the permit, “For lessee’s benefit only.” If the succeeding lessee or assignee chooses not to purchase the non-creditable improvements, the former lessee will be required to remove them. ()

05. Maintenance Costs. Maintenance of improvements will be considered a normal cost of doing business and no improvement credit will be allowed, except that, with prior written approval from the Department, improvement crediting may be allowed for materials used for the maintenance of Department-funded improvements. ()

06. Unauthorized Improvements. No credit will be allowed for unauthorized improvements. At the discretion of the Department, the lessee may be required to remove unauthorized improvements. ()

07. Cost Sharing. Federal or state cost-share amounts are not included in the allowable improvement credit. ()

102. VALUATION OF IMPROVEMENTS.

Credited improvements will be valued on the basis of replacement cost, including lessee provided labor, equipment and materials, less depreciation based on loss of utility. Improvements cannot be appraised higher than current market value, regardless of lessee's cost. Any improvement amortization or cost limitations identified by the Department will be considered in determining a final value. ()

01. Applicant Review of Department Improvement Credit Valuation. All applicants for a conflicted lease will be provided a copy of the Department's improvement credit valuation for review and a notice of objection form. Any applicant objecting to the appraisal will have twenty-one (21) days from the date of the valuation mailing to submit the notice of objection form to the Department. If no objections are received during the twenty-one (21) day review period, the lease auction will be scheduled and will proceed using the Department's improvement credit valuation. ()

02. Failure to File a Timely Notice of Objection. Failure to submit a notice of objection within the specified twenty-one (21) day period will preclude any applicant from further administrative remedies and the auction will proceed using the Department's improvement credit valuation. ()

03. Notice of Objection. Any applicant objecting to the Department improvement credit valuation must submit a complete and timely notice of objection form, and payment of two thousand five hundred dollars (\$2,500) or ten percent (10%) of the total Department improvement credit valuation whichever is greater, to pay for the services of an independent third party. Within five (5) days of receipt of the notice of objection, the Department will notify all applicants in writing that an objection has been received and provide them with a list of certified appraisers. ()

04. Selection of an Independent Third Party. The applicants will have twenty-one (21) days from the date of the Department's notification of an objection to select by mutual agreement, one individual from the list of certified appraisers to serve as an independent third party. If the applicants cannot agree on an independent third party within the twenty-one (21) day time period, the Department will randomly select one individual from the list to serve as the independent third party. ()

05. Duties of the Independent Third Party. The independent third party will review the Department improvement credit valuation and alternate valuations provided by the applicants. Following this review, the independent third party will select from among the Department valuation and alternate valuations, the one value that (s)he determines is the most accurate value of the improvements. The independent third party will notify the Department of this value in writing. ()

06. Notification of Final Improvement Value. Within five (5) days of receiving the independent third party's final determination of improvement credit value, the Department will mail to each applicant an auction notice that will reference the independent third party's determined value of improvements. The determination by the independent third party of the improvement value will be deemed final, and the appraised value of improvements will not be allowed as a basis for appeal of the auction. ()

103. -- 104. (RESERVED)

105. CONFLICT AUCTIONS.

01. Two or More Applicants. When two (2) or more eligible applicants apply to lease the same state endowment trust land for grazing, farming conservation, noncommercial recreation, or communication site purposes and the Department determines the proposed uses are not compatible, the Department will hold an auction. ()

02. Minimum Bid. Bidding begins at two hundred fifty dollars (\$250) or the cost of preparing any required improvement valuation in connection with the expiring lease, whichever is greater. ()

03. Auction Bidding. Each applicant who appears in person or by proxy at the time and place so designated in said notice and bids for the lease is deemed to have participated in the auction. A proxy must be authorized by the lease applicant in writing prior to the start of the auction. ()

04. Withdrawal Prior to or Failure to Participate in an Auction. Applicants who either withdraw their applications after accepting the Department offered lease per Subsection 020.02 of this rule and prior to the auction that results in no need to schedule an auction or cancellation of a scheduled auction; or applicants who fail to participate at the auction by not submitting a bid which results in only one (1) participant at the scheduled auction, forfeit an amount equal to the lesser of the following: ()

- a. The Department’s cost of making any required improvement credit valuation; ()
- b. For existing lessee applicants, any improvement credit payment that would otherwise be due if not awarded the lease; or ()
- c. For conflict applicants, the rental deposit made. ()

05. High Bid Deposit. The high bidder is required to submit payment in the amount of the high bid at the conclusion of the auction. ()

06. Auction Procedures. The Department will prescribe the procedures for conducting conflicted lease auctions. ()

07. Withdrawal After Auction. ()

- a. If the high bidder withdraws or refuses to accept the lease, the high bid payment will be retained by the Department. ()
 - i. If the auction involved only two (2) participants, the second high bidder will be awarded the lease. ()
 - ii. If the auction involved more than two (2) participants, the lease will be reaucted. ()
- b. If an auction bidder other than the high bidder withdraws a bid before Land Board review and action on the auction results, no adjustment will be made in the payment deposited by the high bidder. ()

106. BOARD REVIEW OF AUCTION.
The Board will review the proposed leases and auction results and make the determination required under Section 58-310, Idaho Code, consistent with its obligations under Article IX, Section 8 of the Idaho Constitution and all relevant statutory provisions. ()

107. -- 110. (RESERVED)

111. NOXIOUS WEED CONTROL.

01. Weed Control. The lessee must cooperate with the Department, or any other authorized agency, to undertake programs for control or eradication of noxious weeds on state endowment trust land. The lessee will take measures to control noxious weeds on the leased state endowment trust land in accordance with Title 22, Chapter 24, Idaho Code. ()

02. Responsibility. The lessee will not be held responsible for the control of noxious weeds resulting from other land management activities such as temporary permits, easements, special leases and timber sales. Control of noxious weeds on state grazing lands will be shared by the lessee and Department, with the Department's share subject to funds appropriated for that purpose. ()

112. LIVESTOCK QUARANTINE.

01. Cooperation. The lessee must cooperate with the state/ federal agency responsible for the control of livestock diseases. ()

02. Non-Compliance. Non-compliance with state/federal regulations will be considered a lease violation and may result in cancellation of the lease. ()

113. ANIMAL DAMAGE CONTROL.

The lessee may request the services of USDA Animal and Plant and Health Inspection Service-Wildlife Services to remove animals causing crop damage or harassing/killing the lessee's livestock. The Department is liable for any consequence from any animal control actions. ()

114. LIABILITY (INDEMNITY).

The lessee must indemnify and hold harmless the state of Idaho, its departments, agencies and employees for any and all claims, actions, damages, costs and expenses which may arise by reason of lessee's occupation of the leased state endowment trust land, or the occupation of the leased parcel by any of the lessee's agents or by any person occupying the same with the lessee's permission. ()

115. RULES AND LAWS OF THE STATE.

The lessee must comply with all applicable rules, regulations and laws of the state of Idaho and the United States insofar as they affect the use of the state endowment trust lands described in the lease. ()

116. -- 999. (RESERVED)

20.03.15 – RULES GOVERNING GEOTHERMAL LEASING ON IDAHO STATE LANDS

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Sections 58-104(1), 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code; Section 58-307, Idaho Code; Title 47, Chapter 7, Idaho Code; Title 47, Chapter 16, Idaho Code; and Title 67, Chapter 52, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.15, “Rules Governing Geothermal Leasing on Idaho State Lands.” ()

02. Scope. These rules apply to the exploration and extraction of any and all geothermal resources situated in state-owned mineral lands. ()

03. Other Laws. In addition to these rules, the Lessee must comply with all applicable federal, state and local laws, rules and regulations. The violation of any applicable law, rule or regulation constitutes a breach of any lease issued in accordance with these rules. ()

002. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final agency action will be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, IDAPA 20.01.01, and Title 47, Chapter 16, Idaho Code. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Associated By-Products or By-Product: ()

a. Any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) that are found in solution or developed in association with geothermal resources; or ()

b. Demineralized or mineralized water. ()

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

03. Casual Exploration. Casual exploration means entry and/or exploration that does not appreciably disturb or damage the land or resources thereon. Casual exploration includes, but is not limited to, geochemical and/or geophysical exploration techniques, sampling with hand tools, and entry using wheeled vehicles for transportation to conduct such exploration. ()

04. Completion. A well is considered to be completed thirty (30) days after drilling operations have ceased and the drill rig is removed from the premises or thirty (30) days after the initial production or injection test has been completed, whichever occurs last. ()

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

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

07. Direct Use. The use of geothermal resources for direct applications, including, but not limited to, road surface heating, resorts, hot spring bathing and spas, space heating of buildings, recreation, greenhouse warming, aquaculture, or industrial applications where geothermal heat is used in place of other energy inputs. ()

08. Electrical Generation. The use of geothermal resources to either directly generate electricity or to heat a secondary fluid and use it to generate electricity. ()

09. Field. A geographic area overlying a geothermal system with one (1) or more geothermal reservoirs or pool, including any porous, permeable geologic layer, that may be formed along one (1) fault or fracture, or a series of connected faults or fractures. ()

10. Geothermal Resources. The natural heat energy of the earth, the energy, in whatever form, that may be found in any position and at any depth below the surface of the earth present in, resulting from, or created by,

or that may be extracted from such natural heat, and all minerals in solution or other products obtained from the material medium of any geothermal resource. When used without restriction, it includes associated by-products. ()

11. Lease. A lease covering the geothermal resources and associated by-products in state lands. ()

12. Lessee. The person to whom a geothermal lease has been issued and his successor in interest or assignee. It also means any agent of the Lessee or an operator holding authority by or through the Lessee. ()

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

14. Motorized Earth-Moving Equipment. Backhoes, bulldozers, front-loaders, trenchers, core drills, drill rigs, power augers, and other similar equipment. ()

15. Navigable Water Courses. The state owned beds of active lakes, rivers and streams that do not include formerly submerged lands where the state retains ownership. ()

16. Operator. The person having control or management of operations on the leased lands or a portion thereof. The operator may be the Lessee, designated operator, or agent of the Lessee, or holder of rights under an approved operating agreement. ()

17. Overriding Royalty. An interest in the geothermal resource produced at the surface free of any cost of production. It is a royalty in addition to the royalty reserved to the state. ()

18. Person. Any natural person, corporation, association, partnership, or other entity recognized and authorized to do business in Idaho, receiver, trustee, executor, administrator, guardian, fiduciary, or other representatives of any kind, and includes any government or any political subdivision of any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter genders. ()

19. Record Title. The publicly recorded lease that is the evidence of right that a person has to the possession of the leased property. ()

20. Reservoir or Pool. A porous, permeable geologic layer containing geothermal resources. ()

21. Shut In. To close the valves at the wellhead so that the well stops flowing or producing. Also describes a well on which the valves have been closed. ()

22. State Lands. Without limitation, lands in which the title to the mineral rights are owned by the state of Idaho and are under the jurisdiction and control of the Board or under the jurisdiction and control of any other state body or agency, having been obtained from any source and by any means whatsoever, including the beds of navigable waters of the state of Idaho. ()

23. Waste. Any physical loss of geothermal resources including, but not limited to: ()

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

b. The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well.

()

011. ABBREVIATIONS.

01. IDWR. Idaho Department of Water Resources. ()

012. -- 019. (RESERVED)

020. QUALIFIED APPLICANTS AND LESSEES.

Any person legally competent to contract may submit an application to lease state land provided such person is not then in default of any contract with the state of Idaho or any department or agency thereof. ()

021. LEASE AWARD THROUGH AUCTION.

If more than one (1) application is received for geothermal development on the same parcel of land, a lease auction will be held. ()

022. -- 029. (RESERVED)

030. TERM.

01. Lease Term. All leases may be for a term of up to forty-nine (49) years from the effective date of the lease. ()

02. Diligence in Utilization. Lessee will use due diligence to market or utilize geothermal resources in paying quantities. If leased land is capable of producing geothermal resources in paying quantities, but production is shut-in, the lease will continue in force upon payment of rentals for the duration of the lease term or two (2) years after shut-in, whichever is shorter. If the Department determines that the Lessee is proceeding diligently to acquire a contract to sell or to utilize the production or is progressing with installations needed for production, the lease may continue in force for one (1) additional year if rental payments are kept current. The Department will continue to review a shut-in lease every year until production and payment of royalties takes place, or the lease is terminated for Lessee's lack of due diligence or surrendered by the Lessee. ()

03. Yearly Reporting. A report of all exploration, development, and production activities must be submitted to the Department at the close of each lease year. ()

031. -- 034. (RESERVED)

035. RENTALS.

01. Advance Annual Rental. Lessee will pay to the Department in advance each year an annual rental. The annual rental for the first year of the term will be due and payable and will be received by the Department, together with a lease agreement executed by Lessee within thirty (30) days of the date of notice of approval or award. Second year and subsequent rental payments must be received by the Department on or before the anniversary date of the lease. ()

02. Amount. Annual rentals will be set by the Board through competitive bidding, negotiation, fixed amounts, formulas, or some other method of valuation that a prudent investor might reasonably apply to establish such rental amounts. ()

036. ROYALTIES.

01. Royalty Payments. The Lessee will cause to be paid to the Department royalties on the value of geothermal production from the leased premises. The royalty rate will be established by the Board based on the market value of the geothermal resources produced from the lands under lease. The royalties specified in geothermal leases will be fixed in any manner by the Board, including but not limited to competitive bidding, negotiation, fixed amounts, or formulas. Royalty rates may be adjusted through the term of the lease in order to keep pace with market values. When leases are issued, the following guidelines will be used for royalty rates not subject to competitive

bidding: ()

a. A royalty of between five percent (5%) and twenty percent (20%) of the amount or value of geothermal resources, or any other form of heat or energy excluding electrical power generation, derived from production under the lease and sold or utilized by the Lessee or reasonably susceptible to sale or utilization by the Lessee; ()

b. A royalty of between two percent (2%) and fifteen percent (15%) of the amount or value of any associated by-product derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the Lessee, including commercially demineralized water. ()

c. A royalty of between two percent (2%) and five percent (5%) of gross receipts for sale of electrical power. ()

02. Calculation of Value. The value of geothermal production from the leased premises for the purpose of computing royalties is based on a total of the following: ()

a. The total consideration accruing to the Lessee from the sale of geothermal resources to another party in an arms-length transaction; and ()

b. The value of the end product attributable to the geothermal resource produced from a particular lease where geothermal resources are not sold by the Lessee before being utilized, but are instead directly used in manufacturing power production, or other industrial activity; and ()

c. The value of all renewable energy credits or similar incentives based on a proportionate share of the leased lands in the entire project area qualifying for the credits. ()

03. Due Date. Royalties will be due and payable monthly to the Department on or before the last day of the calendar month following the month in which the geothermal resources and/or their associated by-products are produced and utilized or sold. ()

04. Utilization of Geothermal Resources. The Lessee must file with the Department within thirty (30) days after execution a copy of any contract for the utilization of geothermal resources from the lease. Reports of sales or utilization by Lessee and royalty for each productive lease must be filed each month once production begins, even though production may be intermittent, unless otherwise authorized by the Department. Total volumes of geothermal resources produced and utilized or sold, including associated by-products, the value of production, and the royalty due the state of Idaho must be shown. This report is due on or before the last day of the month following the month in which production was obtained and sold or utilized, together with the royalties due the state of Idaho. ()

05. Measurement. The Lessee will measure or gauge all production in accordance with methods approved by the Department. The quantity and quality of all production will be determined in accordance with the standard practices, procedures and specifications generally used in industry. All measuring equipment must be tested consistent with industry practice and, if found defective, the Department will determine the quantity and quality of production from the best evidence available. ()

06. By-Product Testing. The Lessee will periodically furnish the Department the results of periodic tests showing the content of by-products in the produced geothermal resources. Such tests will be taken as specified by the Department and by the method of testing approved by him, except that tests not consistent with industry practices will be conducted at the expense of the Department. ()

07. Commingling. The Department may authorize a Lessee to commingle production from wells on his State lease(s) with production from non-state lands. Department approval of commingling will not be unreasonably withheld, and will consider the following: ()

a. The operator's economic necessity of commingling; ()

b. The type of geothermal use proposed for the commingled waters; and ()

c. Sufficient measurement and accounting of all the commingled waters to ensure that the Department is appropriately compensated by royalties. ()

037. -- 039. (RESERVED)

040. SIZE OF A LEASABLE TRACT.

01. Surface Area. Geothermal leases are not limited in surface area. The Board will determine the surface area of a lease after consultation with other state agencies and prospective Lessees. The probable extent of a geothermal reservoir, the surface area needed for a viable project, and other relevant factors will be used to help determine lease surface area. ()

02. Navigable Water Courses. Geothermal resources leases may be issued for state lands underlying navigable water courses in Idaho. Such lands are considered “state lands” and will be leased in accordance with these rules. Operations in the beds of navigable water courses will not be authorized except in necessary circumstances and then only with express written approval of the Board upon such conditions and security as the Department deems appropriate. ()

041. -- 049. (RESERVED)

050. LAND SURFACE USE RIGHTS AND OBLIGATIONS.

01. Use and Occupancy. ()

a. Lessee will be entitled to use and occupy only so much of the surface of the leased lands as may be required for all purposes reasonably incident to exploration for, drilling for, production and marketing or geothermal resources and associated by-products produced from the leased lands, including the right to construct and maintain thereon all works, buildings, plants, waterway, roads, communication lines, pipelines, reservoirs, tanks, pumping stations or other structures necessary to the full enjoyment and development thereof, consistent with a plan of operations and amendments thereto, as approved by the Department. ()

b. Uses occurring on the leased area related to exploration, development, production, or marketing of geothermal resources and associated by-products produced from off-lease lands may require the Lessee to pay additional rent. ()

02. Supervision. Uses of state lands within the jurisdiction and control of the Board are subject to the supervision of the Department. Other state lands are subject to the supervision of the appropriate state agency consistent with these rules. ()

03. Distance from Residence. No well may be drilled within two hundred (200) feet of any house or barn on the premises, without the written consent of the Department and its surface Lessees, grantees or contract purchasers. ()

04. Disposal of Leased Land. The Board reserves the right to sell or otherwise dispose of the surface of the lands embraced with a lease, insofar as said surface is not necessary for the use of the Lessee in the exploration, development and production of the geothermal resources and associated by-products, but any sale of surface rights made subsequent to execution of a lease will be subject to all the terms and provisions of that lease during the life thereof. ()

05. Damage. Lessee must pay to the Board, its surface Lessees or grantees or contract purchasers, for any damage done to the surface of said lands and improvements thereon, including without limitation growing crops, by reason of Lessee’s operations. ()

051. -- 053. (RESERVED)

054. EXPLORATION UNDER THE LEASE.

01. Diligent Exploration. Lessees must perform diligent exploration and development activities in the first five (5) years of the initial lease term or as otherwise extended by lease provision. Diligent exploration includes seismic, gravity, and other geophysical surveys, geothermometry studies, drilling temperature gradient wells, or similar activities that seek to determine the presence or extent of geothermal resources. This exploration may occur off-lease if it is being done on the same geothermal field. Failure to perform diligent exploration as described may result in lease cancellation. ()

02. Casual Exploration. At any time after formal approval by the Board of a lease application, Lessee may enter upon the leased lands for casual exploration or inspection without notice to the department. As an express condition of an application to lease and of the right of casual inspection without notice, Lessee agrees to the indemnity conditions provided in Section 102 of these rules without a formally executed lease. ()

03. Plan Required. Lessee must submit a Research and Analysis Plan to the Department before any exploration using motorized equipment or before otherwise engaging in operations that may lead to an appreciable disturbance or damage to lands, timber, other resources, or improvements on or adjacent to the leased lands. The proposed activities may not start until the Department approves the plan and the applicable preconditions in Sections 100 and 101 of these rules have been satisfied. The plan of operations may be amended as needed with Department approval. The plan includes all items that the Department deems necessary or useful in managing the geothermal resources including, but not limited to, the following: ()

a. A narrative statement describing the proposed measures to be taken for protection of the environment, including, but not limited to the prevention or control of: ()

i. Fires; ()

ii. Soil loss and erosion; ()

iii. Pollution of surface and ground waters; ()

iv. Damage to fish and wildlife or other natural resources; ()

v. Air and noise pollution; and ()

vi. Hazards to public health and safety during lease activities. ()

b. All pertinent information or data that the department may require to support the plan of operations for the utilization of geothermal resources and the protection of the environment; ()

055. DEVELOPMENT AND PRODUCTION UNDER THE LEASE.

01. Diligent Development of Lease and Production. Lessee must develop the geothermal resources on their lease area and start production within the first ten (10) years of the initial lease term or as otherwise extended by lease provision. Development of the lease area requires wells to be drilled and other necessary infrastructure to be built. Production on the lease area means that geothermal fluids are being used and royalties are being paid to the state. Failure to develop the lease and start production as described may result in lease cancellation unless the Lessee applies to the Department for an extension and the extension is granted. ()

02. Best Practices. All operations will conform to the best practice and engineering principles in use in the industry. Operations must be conducted in such a manner as to protect the natural resources on the leased lands, including without limitation geothermal resources, and to result in the maximum ultimate recovery of geothermal resources with a minimum of waste, and be consistent with the principles of the use of the land for other purposes and of the protection of the environment. Lessee must promptly remove from the leased lands or store, in an orderly manner, all scraps or other materials not in use and not reasonably incident to the operation. ()

03. Plans Required. Prior to development, Lessee must submit a Development Plan, Operating Plan, and Decommissioning and Reclamation Plan for the leased lands. All plans must be approved by the Department, in

writing, prior to Lessee beginning a phase of the lease in which those plans are performed or as otherwise required by the lease. All required plans must include all items that the Department deems necessary or useful in managing the geothermal resources, including, but not limited to, those items referred to in Paragraphs 054.03.a. and 054.03.b. of these rules. ()

04. Waste and Damage. ()

a. Lessee must take all reasonable precautions to prevent the following: ()

i. Waste; ()

ii. Damage to other natural resources; ()

iii. Injury or damage to persons, real or personal property; and ()

iv. Any environmental pollution or damages that may constitute a violation of state or federal laws. ()

b. The Department may inspect Lessee's operations and issue such orders as are necessary to accomplish the purposes in Paragraph 055.04.a. Any significant effect on the environment created by the Lessee's operations or failure to comply with environmental standards must be reported to the Department by Lessee within twenty-four (24) hours and confirmed in writing within thirty (30) days. ()

05. Notice of Production. Lessee must notify the department within sixty (60) days before any geothermal resources are used or removed for commercial purposes. ()

06. Amendments. The plan of operations must be amended by the Lessee for the Department's approval to reflect changes in operations on the leased lands, including the installation of works, buildings, plants or structures for the production, marketing or utilization of geothermal resources. ()

056. WASTE PREVENTION, DRILLING AND PRODUCTION OBLIGATIONS.

01. Waste. All leases are subject to the condition that the Lessee will, in conducting his exploration, development and producing operations, use all reasonable precautions to prevent waste of geothermal resources and other natural resources found or developed in the leased lands. ()

02. Diligence. The Lessee must, subject to the right to surrender the lease, diligently drill and produce, or unitize such wells as are necessary to protect the Board from loss by reason of production on other properties. ()

03. Prevention of Waste Through Reinjection. Geothermal Lessees must return geothermal waters to the geothermal aquifer in a manner that supports geothermal development. ()

04. Additional Requirements. The selection of the types and weights of drilling fluids and provisions for controlling fluid temperatures, blowout preventers and other surface control equipment and materials, casing and cementing programs, etc., to be used must be based on sound engineering principles and must take into account apparent geothermal gradients, depths and pressures of the various formations to be penetrated and other pertinent geologic and engineering data and information about the area. In addition, the Lessee must do the following: ()

a. Take all necessary precautions to keep all wells under control at all times; ()

b. Utilize trained and competent personnel; ()

c. Utilize properly maintained equipment and materials; and ()

d. Use operating practices that ensure the safety of life and property. ()

05. Unused Wells. Except as provided in Subsection 070.02 of these rules, the Lessee must promptly plug and abandon any well on the leased land that is not used or useful in conformity with regulations promulgated by the IDWR or its successor agency. No production well will be abandoned until its lack of capacity for further profitable production of geothermal resources has been demonstrated to the satisfaction of the Department and the Department has been given an opportunity to either acquire the well permit or assign it to another party. A producible well may be abandoned only after receipt of written approval by the Department. Equipment will be removed, and premises at the well site will be restored as near as reasonably possible to its original condition immediately after plugging operations are completed on any well except as otherwise authorized by the Department. Drilling equipment must not be removed from any suspended drilling well without taking adequate measures to close the well and protect subsurface resources. Upon failure of Lessee to comply with any requirements under this rule, the Department is authorized to cause the work to be performed at the expense of the Lessee and the surety. ()

057. -- 059. (RESERVED)

060. EXPLORATION AND OPERATION RECORDS, CONFIDENTIALITY.

01. Drilling Records. Lessee must keep or cause to be kept and filed with the IDWR such careful and accurate well drilling records as are now or may hereafter be required by that Department. Lessee must file with the Department such production records and exploration evidence as required by Sections 030, 036, and 055 of these rules, which records will be subject to inspection by the public at the offices of the Department during regular business hours under such conditions as the Department deems appropriate, subject, however, to exemptions from disclosure as set forth in Section 74107, Idaho Code. As an express condition of the lease, the Department may inspect and copy well drilling records filed with the IDWR at any time after the records are filed. ()

02. Continuing Obligations. Unless Lessee is specifically released in writing by the Department of all or any portion of its obligations under the lease upon the assignment, surrender, termination or expiration of the lease, Lessee's obligations under this rule will continue beyond assignment, surrender, termination or expiration of the lease. Lessee must, within thirty (30) days after assignment, surrender, termination or expiration or such additional time as the Department may grant, file all outstanding data and records required by this rule with the Department. ()

03. Well Logs. The confidentiality of well logs is limited to one year from well completion as stated in Section 42-4010(b), Idaho Code. ()

061. -- 064. (RESERVED)

065. LESSEE'S RECORDS, RIGHT OF INSPECTION BY DEPARTMENT.

Lessee will permit the Department to examine during reasonable business hours all books, records and other documents and matters pertaining to operations under a lease, in Lessee's custody or control, and to make copies of and extracts therefrom. ()

066. -- 069. (RESERVED)

070. WATER RIGHTS.

01. Water Rights. Lessee must comply with all applicable federal and state laws, rules and regulations regarding the appropriation of public waters of Idaho to beneficial uses. The establishment of any new water rights on state lands must be by and for the Lessor and no claim thereto may be made by the Lessee. Such water rights will attach to and become appurtenant to the state lands, and the Lessor will be the owner thereof. ()

02. Potable Water Discovery. All leases issued under these rules will be subject to the condition that, where the Lessee finds only potable water of no commercial value as a geothermal resource in any well drilled for exploration or production of geothermal resources, and when the water is of such quality and quantity as to be valuable and usable for agricultural, domestic, or other purpose, the Board, or where appropriate, the surface Lessee, grantee or contract purchaser, will have the right to acquire the well with whatever casing is installed in the well at the fair market value of the casing, and upon the assumption of all future liabilities and responsibilities for the well, with the approval of the director of the IDWR. ()

071. -- 074. (RESERVED)

075. ASSIGNMENTS.

01. Prior Written Approval. In order for Lessee to effect an assignment, Lessee must, prior to the consummation of an effective sale, transfer or assignment of the lease between Lessee and its proposed assignee, provide to the Department certain information about the proposed assignment, including identification of the proposed assignee and general terms of the proposed assignment on assignment application forms provided by the Department. Any proposed total or partial assignment of a lease must be preapproved in writing by the Department prior to any proposed sale, transfer or assignment of the lease is consummated between Lessee and the proposed assignee. Approval will not be unreasonably withheld. Following the Department's written preapproval of the proposed assignee and general terms of the proposed assignment, Lessee and assignee may consummate any such sale, transfer or assignment of Lessee's leasehold interest in the lease. The consummation of any assignment agreement by the Lessee without the Department's prior written preapproval constitutes a default of the lease, and such sale, transfer or assignment may be rejected in the Department's sole discretion; and, such assignment will only be effective if the default is expressly waived in writing by the Department. In order for an assignment of Lessee's interest in the lease to be acceptable for approval by the Department, the consummated sale, transfer or assignment must include provisions wherein Lessee has sold, transferred or assigned to the assignee any and all interest that Lessee has in the lease together with any and all interest Lessee has in any and all improvements located upon the leased premises, and assignee must assume all liabilities of Lessee under the lease together with ownership of all improvements owned by Lessee. An assignment between Lessee and its assignee will only take effect following the Department's final written approval of the assignment following receipt of copies of the final, consummated sale, transfer or assignment agreement between Lessee and assignee. ()

02. Full or Partial. A lease may be assigned as to all or part of the acreage included therein to any person qualified to hold a state lease, provided that neither the assigned nor the retained part created by the assignment contains less than forty (40) acres. No undivided interest in a lease of less than ten percent (10%) may be created by assignment. ()

03. Overriding Royalty Disclosure. Overriding royalty interests created by an assignment are subject to the requirements in Section 080 of these rules. ()

04. Responsibility. In an assignment of a partial or complete interest in all of the lands in a lease, the assignor and its surety continue to be responsible for performance of any and all obligations under the lease until such time as the Department, in writing, releases Lessee and its surety from obligations arising under the lease after the Department accepts any such assignment and provides a release of any or all obligations in writing. After the effective date of any assignment, the assignee and its surety will be bound by the terms of the lease to the same extent as if the assignee were the original Lessee, any conditions in the assignment to the contrary notwithstanding. ()

05. Segregation of Assignment. An assignment of all or any portion of Lessee's record title of the complete interest in a portion of the lands in a lease must clearly identify and segregate the assigned and retained portions. After the effective date, the assignor will be released and discharged from any obligations thereafter accruing with respect to the assigned portion of the leased lands. Such segregated leases continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of these rules. ()

06. Joint Principal. Where an assignment does not segregate the record title to the lease, the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. The application must also be accompanied by a consent of assignor's surety to remain bound under the bond of record, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a statewide bond, no additional showing by such party is necessary as to the bond requirement. ()

07. Application. The application for approval of an assignment must be on forms approved by the Department. ()

08. Denial. If the Lessee is in default of the lease at the time of a request for assignment approval, the

Department may, at its sole discretion, reject any proposed assignment until the lease is brought into full compliance. The approval of an assignment of lease in good standing will not be unreasonably withheld provided such consent of the Department is requested and obtained prior to any assignment. ()

076. -- 079. (RESERVED)

080. OVERRIDING ROYALTY INTERESTS.

01. Statements. An overriding royalty interest, or any similar interest whereby an agreement is made to pay a percentage based on production, must be disclosed at the time of assignment or transfer by filing a statement of such interest with the Department. Assignees must meet the requirements of Section 021 of these rules. All assignments of overriding royalty interests without a working interest and otherwise not contemplated by Section 075 of these rules, must be filed with the Department within ninety (90) days from the date of execution. ()

02. Maximum Amount. No overriding royalty on the production of geothermal resources created by an assignment contemplated by Section 075 of these rules or otherwise will exceed five percent (5%) nor will an overriding royalty, when added to overriding royalties previously created, exceed five percent (5%). ()

03. Conformance with Rules. The creation of an overriding royalty interest that does not conform to the requirements of this rule is be deemed a violation of the lease terms, unless the agreement creating overriding royalties provides for a prorated reduction of all overriding royalties so that the aggregate rate of overriding royalties does not exceed five percent (5%). ()

04. Director's Authority. In addition to the foregoing limitations, any agreement to create or any assignment creating royalties or payments out of production from the leased lands is subject to the authority of the Director, after notice and hearing, to require the proper parties thereto to suspend or modify such royalties or payments out of production in such manner as may be reasonable when and during such periods of time as they may constitute an undue economic burden upon the reasonable operations of such lease. ()

081. -- 084. (RESERVED)

085. UNIT OR COOPERATIVE PLANS OF DEVELOPMENT OR OPERATION.

01. IDWR Approval. Nothing in this rule will excuse the parties to a unit agreement from procuring the approval of the IDWR pursuant to Section 42-4013, Idaho Code, if approval is required. ()

02. Unit Plan. For the purpose of conserving the natural resources of any geothermal pool, field or like area, Lessees under lease issued by the Board are authorized, with the written consent of the Department, to commit the state lands to unit, cooperative or other plans of development or operation with other state lands, federal lands, privately-owned lands or Indian lands. Departmental consent will not be unreasonably withheld. Applications to unitize, or a copy of the application filed with IDWR, will be filed with the Department who will certify whether such plan is necessary or advisable in the public interest. The Department may require whatever documents or data that the Department deems necessary in its reasonable discretion. To implement such unitization, the Board may with the consent of its Lessees modify and change any and all terms of leases issued by it that are committed to such unit, cooperative or other plans of development or operations. ()

03. Contents. The agreement must describe the separate tracts comprising the unit, disclose the apportionment of the production of royalties and costs to the several parties, and the name of the operator, and must contain adequate provisions for the protection of the interests of all parties, including the state of Idaho. The agreement should be signed by or in behalf of all interested necessary parties before being submitted to the Department. It will be effective only after approval by the Department. The unit operator must be a person as defined by these rules and must be approved by the Department. ()

04. Lease Modification. Any modification of an approved agreement will require approval of the Department under procedures similar to those cited in Subsection 085.02 of these rules. ()

05. Term. At the sole discretion of the Department, the term of any leases included in any cooperative

or unit plan of development or operation may be extended for the term of such unit or cooperative agreement, but in no event beyond that time provided in Subsection 030.01 of these rules. Rentals or royalties on leases so extended may be reassessed for such extended term of the lease. ()

06. Continuation of Lease. Any lease that will be eliminated from any such cooperative or unit plan of development or operation, or any lease that will be in effect at the termination of any such cooperative or unit plan of development or operation, unless relinquished, will continue in effect for the term of the lease. ()

07. Evidence of Agreement. Before issuance of a lease for lands within an approved unit agreement, the lease applicant or successful bidder will be required to file evidence that they have entered into an agreement with the unit operator for the development and operation of the lands in a lease if issued to him under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, the lease applicant or successful bidder will be permitted to operate independently, but will be required to perform his operations in a manner that the Department deems to be consistent with the unit operations. ()

086. -- 094. (RESERVED)

095. SURRENDER, TERMINATION, EXPIRATION OF LEASE.

01. Procedure. A lease, or any surveyed subdivision of the area covered by such lease, may be surrendered by the record title holder by filing a written relinquishment in the office of the Department, on a form furnished by the Department, provided that a partial relinquishment does not reduce the remaining acreage in the lease to less than forty (40) acres. The minimum acreage provision of this section may be waived by the Department where the Department finds such exception is justified on the basis of exploratory and development data derived from activity on the leasehold. The relinquishment must: ()

- a. Describe the lands to be relinquished; ()
- b. Include a statement as to whether the relinquished lands had been disturbed and, if so, whether they were restored as prescribed by the terms of the lease; and ()
- c. State whether wells had been drilled on the lands and, if so, whether they have been plugged and abandoned pursuant to the rules of the IDWR. ()

02. Continuing Obligations. A relinquishment takes effect on the date it is filed, subject to the continued obligation of the Lessee and his surety: ()

- a. To make payments of all accrued rentals and royalties; ()
- b. To place all wells on the land to be relinquished in condition for suspension of operations or abandonment; ()
- c. To restore the surface resources in accordance with these rules and the terms of the lease; and ()
- d. To comply with all other environmental stipulations provided for by these rules or lease. ()

03. Failure to Pay Rental or Royalty. The Director may terminate a lease for failure to pay rentals or royalties thirty (30) days after mailing a notice of delinquent payment. However, if the time for payment falls upon any day in which the office of the Department is not open, payment received on the next official working day will be deemed to be timely. The termination of the lease for failure to pay the rental will be noted on the official records of the Department. Upon termination the lands included in such lease may become subject to leasing as provided by these rules. ()

04. Termination for Cause. A lease may be terminated by the Department for any violation of these rules, or the lease terms, sixty (60) days after notice of the violation has been given to Lessee by personal service or

certified mail, return receipt requested, to the address of record last appearing in the files of the Department, unless:
()

- a. The violation has been corrected; or ()
- b. The violation is one that cannot be corrected within the notice period and the Lessee has in good faith commenced within the notice period to correct the violation and thereafter proceeds diligently to complete the correction. ()

05. Equipment Removal. Prior to the expiration of the lease, or the earlier termination or surrender thereof pursuant to this rule, and provided the Lessee is not in default, the Lessee will have the privilege at any time during the term of the lease to remove from the leased premises any materials, tools, appliances, machinery, structures, and equipment other than improvements needed for producing wells. Any materials, tools, appliances, machinery, structures and equipment subject to removal, but not removed prior to any termination of the lease or any extension thereof that may be granted because of adverse climatic conditions during that period, will, at the option of the Department, become property of the state of Idaho, but the Lessee must remove any or all such property where so directed by the Department. ()

06. Surrender After Termination. Upon the expiration or termination of a lease, the Lessee will quietly and peaceably surrender possession of the premises to the state, and if the Lessee is surrendering the leased premises or any portion thereof, the Lessee must deliver to the state a good and sufficient release on a form furnished by the Department. ()

096. -- 099. (RESERVED)

100. BOND REQUIREMENTS.

01. Minimum Bond. Prior to initiation of operations using motorized earth-moving equipment Lessee must furnish a bond. This bond will be in favor of the state of Idaho, conditioned on the payment of all damages to the land surface and all improvements thereon, including without limitation crops on the lands, whether or not the lands under this lease have been sold or leased by the Board for any other purpose; conditioned also upon compliance by Lessee of his obligations under this lease and these rules. The Department may require a new bond in a greater amount at any time after operations have begun, upon a finding that such action is reasonably necessary to protect state resources. ()

02. Statewide Bond. In lieu of the aforementioned bonds, Lessee may furnish a good and sufficient "statewide" bond conditioned as in Subsection 100.01. This bond will cover all Lessee's leases and operations carried on under all geothermal resource leases issued and outstanding to Lessee by the Board at any given time during the period when the "statewide" bond is in effect. The amount of such bond will be equal to the total of the requirements of the separate bonds being combined into a single bond. ()

03. Period of Liability. The period of liability of any bond will not be terminated until all lease terms and conditions have been fulfilled and the bond is released in writing by the Department. ()

04. Operator Bond. In the event suit is filed to enforce the terms of any bond furnished by an operator in which the Lessee (if a different person) is not a named party, the Department may, in its sole discretion, join the Lessee as a party to such suit. ()

101. LIABILITY INSURANCE.

01. Liability Insurance Required. The Department will require the Lessee to purchase and maintain suitable insurance for the duration of the lease prior to entry upon the leased lands for other than casual exploration or inspection as contemplated by Subsection 054.02 of these rules. ()

02. Insurance Certificate Required. No work under this lease will commence prior to the Department's receipt of a certificate, signed by a licensed insurance agent, evidencing existence of insurance as required above. Further, such certificate must reflect that no change or cancellation in such coverage will become

effective until after the Department receives written notice of such change or cancellation. ()

102. -- 104. (RESERVED)

105. TITLE.

The state of Idaho does not warrant title to the leased lands or the geothermal resources and associated by-products that may be discovered thereon; the lease is issued only under such title as the state of Idaho may have as of the effective date of the lease or thereafter acquire. If the interest owned by the state in the leased lands includes less than the entire interest in the geothermal resources and associated by-products for which royalty is payable, then the royalties provided for in the lease will be paid to the state only in the proportion that its interest bears to said whole and undivided interest in said geothermal resources and associated by-products for which royalty is payable; provided, however, that the state is not liable for any damages sustained by the Lessee, nor is the Lessee entitled to or may claim any refund of rentals or royalties therefore paid to the state in the event that the state does not own title to said geothermal resources and associated by-products, or if its title thereto is less than whole and entire. ()

106. -- 110. (RESERVED)

111. TAXES.

Lessee must pay, when due, all taxes and assessments of any kind lawfully assessed and levied against Lessee's interests or operations under the laws of the state of Idaho. ()

112. RENTAL NOTICES.

Advance notice of rental due is usually sent to the Lessee by the Department, but failure to receive such notices does not act to relieve the Lessee from the payment of the rental and the lease will be in default if such payment is not made as provided in these rules. ()

113. OUTSTANDING LEASES.

No right to seek, obtain or use geothermal resources has passed or will pass with any existing or future license, permit or lease of state lands, including without limitation, mineral leases and oil and gas development leases, except upon the issuance of a geothermal resources lease. ()

114. -- 119. (RESERVED)

120. FEES.

The following fees apply: ()

01. Non-Refundable Application Fee for Lease. Two hundred fifty dollars (\$250) per application. ()

02. Application Fee for Approval of Assignment. One hundred fifty dollars (\$150) per lease involved in the assignment. ()

03. Late Payment Fee. The greater of the following: ()

a. Twenty-five dollars (\$25); or ()

b. One percent (1%) per month (or portion thereof) on the unpaid balance. ()

121. -- 999. (RESERVED)

20.03.16 – RULES GOVERNING OIL AND GAS LEASING ON IDAHO STATE LANDS

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Sections 58-104(1), 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code; Section 58-307, Idaho Code; Title 47, Chapter 7, Idaho Code; Title 47, Chapter 8, Idaho Code; and Title 67, Chapter 52, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.16, “Rules Governing Oil and Gas Leasing on Idaho State Lands.” ()

02. Scope. These rules apply to the exploration and extraction of oil and gas resources situated in state-owned mineral lands. ()

03. Other Laws. In addition to these rules, the lessee must comply with all applicable federal, state and local laws, rules and regulations. The violation of any applicable law, rule or regulation constitutes a breach of any lease issued in accordance with these rules. ()

002. ADMINISTRATIVE APPEALS.

01. Appeal to Board. All decisions of the Director are appealable to the Board. An aggrieved party desiring to take such an appeal must, within thirty (30) days after notice of the Director’s decision, file with the Director a written notice of appeal setting forth the basis for the appeal. ()

02. Hearing. The Board will hear the appeal at the earliest practical time or in its discretion appoint a hearing officer to hear the appeal, within sixty (60) days after filing of the notice of appeal. The hearing officer will make findings and conclusions that the Board may accept, reject or modify. The decision of the Board after hearing or upon a ruling concerning the hearing officer’s findings and conclusions is final. ()

03. Judicial Review. Judicial review of the final decision of the Board will be in accord with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, by filing a petition in the district court in Ada County, or the county where the Board heard the appeal and made its final decision, within thirty (30) days after notice of the Board’s decision. Service of the Board’s decision may be by personal service or by certified mail to the lessee. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners or its authorized representative, or where appropriate, the state of Idaho. ()

02. Commission. The Idaho Oil and Gas Conservation Commission. ()

03. Collateral Surety Bond and Corporate Surety Bond. See Subsections 080.04.a. and 080.04.b. ()

04. Department. The Idaho Department of Lands. ()

05. Director. The Director of the Idaho Department of Lands or his authorized representative. ()

06. Discretion. Exercising authority to make a decision, choice or judgment without being arbitrary, capricious or illegal. ()

07. Exploration. Activities related to the various geological and geophysical methods used to detect and determine the existence and extent of hydrocarbon deposits. ()

08. Final Board Approval. Approval of a lease occurs after the lease is signed by the Governor, the Secretary of State and the Director on behalf of the Board after approval of the lease by a majority of the Board. All approved leases must first be signed by the Lessee and then by the above-entitled state officials. ()

- 09. Lease.** A written agreement between the Department and a person containing the terms and conditions upon which the Person will be authorized to use state lands. ()
- 10. Legal Subdivision.** See Subsection 071.04. ()
- 11. Lessee.** The person to whom a lease has been issued and his successor in interest or assignee(s). More than one (1) person may be entered as an applicant on the application form but only one (1) person shall be designated in the application for lease or assignment as the lessee of record with sole responsibility for the lease under these rules. ()
- 12. Lessor.** The Board on behalf of the state of Idaho. ()
- 13. Motorized Exploration Equipment.** The equipment used in exploration that may appreciably disturb or damage the land or resources thereon as defined in Section 47-703(a), Idaho Code. ()
- 14. Natural Gas Plant Liquids.** Hydrocarbon compounds in raw gas that are separated as liquids at gas processing plants, fractionating plants, and cycling plants. Includes ethane, liquefied petroleum gases (propane and the butanes), and pentanes plus any heavier hydrocarbon compounds. Component products may be fractionated or mixed. ()
- 15. Oil and Gas.** Oil and gas means oil or gas, or both. ()
- 16. Person.** ()
- a.** An individual of legal age; ()
- b.** Any firm, association or corporation that is qualified to do business in the state of Idaho; ()
- c.** Or any public agency or governmental unit, including without limitation, municipalities. ()
- 17. Production in Paying Quantities.** That gross income from oil and/or gas produced and saved (after deduction of taxes and royalty) that exceeds the cost of operation. ()
- 18. State Lands.** Lands, including the beds of navigable waters within Idaho in which the title to mineral rights is owned by the state of Idaho, that are under the jurisdiction and control of the Board or any other state agency. ()
- 19. Tract.** An expanse of land representing the surface expression of the underlying mineral estate, which includes oil and gas rights owned by the State, that: ()
- a.** May be identified by its public land survey system of rectangular surveys that subdivides and describes land in the United States in the public domain and is regulated by the U.S. Department of the Interior, Bureau of Land Management; ()
- b.** Is of no particular size; ()
- c.** Is a maximum size of six hundred forty (640) acres or one section, unless otherwise determined by the Director; ()
- d.** May be irregular in form; ()
- e.** Is contiguous; ()
- f.** May lie in more than one township or one section; ()
- g.** May have a boundary defined entirely or in part by natural monuments such as streams, divides, or straight lines connecting prominent features of topography; ()

- h. May include the mineral estate beneath navigable waters of the State; and ()
- i. May be combined with other tracts to form a lease. ()

011. -- 014. (RESERVED)

015. CONTROL OF STATE LANDS.

The Director will regulate and supervise pursuant to law and these rules all state lands within the custody and control of the Board. State lands subject to the custody and control of other state agencies will be regulated and supervised by the respective agency in accord with state laws and rules; provided that any lease for oil and gas thereon complies with these rules. ()

016. WITHDRAWAL OF LANDS.

At any time prior to final Board approval of a lease, the Board reserves the right to withdraw state lands entirely from oil and gas leasing if consistent with its constitutional and statutory duties and in the state's best interests. ()

017. -- 019. (RESERVED)

020. QUALIFIED APPLICANTS AND LESSEES.

Any person who is not then in default of any contract with the state of Idaho or any department or agency thereof is a qualified applicant and lessee. No member of the Board or employee of the Department may take or hold such lease. ()

021. EXPLORATION.

01. Written Permit Required. Any appreciable surface disturbing activity, including, but not limited to, motorized exploration on state lands is prohibited except by written permit for exploration for a period of time as determined by the Director. This permit is in addition to any permit required by the Commission. ()

02. Permit Conditions. The permit will contain such conditions as the Director determines will protect the existing surface uses and resources of the state. The permit applicant must pay in advance the fee required by Section 120. ()

022. LEASE ACQUISITION PROCESS.

01. Acquiring a Lease. A lease may be acquired for the exclusive right and privilege to explore for and produce oil and gas by oral auction, online auction, or such other method of competitive bidding authorized by the Board, in its discretion, determined to be in the best interest of the state, and will be awarded to the winning bidder at close of auction. The winning bidder at auction will be issued the lease by the Department on the first day of the month following Final Board Approval. The Board and Department reserve the right to reject any or all nominations or bids, and expressly disclaim any liability for inconvenience or loss caused by errors that may occur concerning lease offerings. ()

02. Lease Provisions. ()

a. Advance Annual Rental. The Lessee must pay to the state of Idaho an advance annual rental for each lease of three dollars (\$3) per acre with a minimum of two hundred fifty dollars (\$250) per lease. ()

b. Diligent Drilling. Diligent and continuous drilling operations means no delay or cessation of drilling for a period greater than one hundred twenty (120) days, unless extended in writing by the Director. The Director must receive a written request for an extension at least ten (10) days prior to the expiration of the one hundred twenty (120) day period. ()

c. Notification at End of Lease Period. The Lessee must notify the Director in writing prior to the expiration of the final year of his lease that drilling or reworking operations has commenced and will extend beyond the expiration date of the lease. Advance Annual Rental, in the amount required by Section 022 for any additional and

each succeeding year, must be received by the Department prior to the expiration date and entitles the Lessee to hold the lease only as long as drilling or rework operations are pursued in accord with these rules. There will be no refund of unused rental. ()

d. Abandonment. During any additional or succeeding year of any lease, cessation of production for a period of six (6) months is considered as abandonment. The lease will then automatically terminate at its next anniversary date unless the Director determines that such cessation of production is justified or the well meets the requirements of a shut in well under Subsection 022.02.e. ()

e. Suspension of Production. The Director may grant a suspension of production not to exceed one (1) year upon a written application showing that the lessee is unable to market oil or gas from a well located on the leased premises capable of oil and gas production in paying quantities due to a lack of suitable production facilities or a suitable market for the oil or gas and such conditions are outside the reasonable control of lessee and the lease is not being otherwise maintained in force and effect. If such well is shut in and the Director approves the application for suspension of production requirements prior to the expiration or termination of the lease, then the lease will be extended in accordance with the terms of Section 47-801, Idaho Code, for a period of one (1) year if the lessee timely submits an application in a form approved by the Director and, upon approval of said application, pays a shut-in royalty in the amount equal to double the annual rental provided for by these rules for each well capable of producing oil or gas in paying quantities. The lessee must remit the shut-in royalty payment while the lease is otherwise maintained in force and effect. Payment of shut-in royalty after the expiration or other termination of the lease will not revive or extend the lease. The Lessee may request continuation of this suspension of production, provided such request is received in writing by the Director at least thirty (30) days prior to the expiration date of the period of suspension. ()

03. Nominating a Tract for Auction. A tract may be nominated for auction either by application to the Department at least ninety (90) days prior to a Department-defined close of auction date, or by Department nomination at least ninety (90) days prior to a Department- defined close of auction date. Any qualified person may nominate a tract for lease auction by submitting a nomination to the Department, and paying the nomination fee in an amount determined by the Board, during regular business hours on the Department nomination form. Each nominated tract must be a maximum size of six hundred forty (640) acres or one section. The nominating person may propose that multiple tracts be included in a single lease. Each nomination for a tract for auction is deemed an offer by the nominating person to lease the tract for the advance annual rental amount as defined in Subsection 022.02 above. ()

04. Withdrawing a Tract for Auction. Any person nominating a tract for auction may withdraw their nomination if a request for such withdrawal is received by the Department at least ten (10) business days prior to the opening date of auction. The nomination fee will not be refunded. ()

05. Auction Conditions. The Department will determine the conditions associated with the auction including, but not limited to, the following: when or if a tract will be offered for auction; whether the tract is to be removed from the auction; whether multiple tracts will be combined in a single lease at the discretion of the Department; and any disclaimers, additional information, and any other such terms and conditions associated with the auction of the tracts. Any such terms and conditions, disclaimers, and additional information will be posted on the Department's website. ()

06. Lease Information for Auction. For each lease to be auctioned, the Department will provide on the website the following: a lease number designated by the Department; the legal description; the lease length; the number of acres; a minimum bid per acre; a lease template; any lease stipulations; any other lease information; a specific date designated for the beginning and ending dates that a bidder may conduct due diligence; a specific date designated for the opening of auction; and a close of auction date. A notice of lease auction will be published at least once per week for the four (4) consecutive weeks prior to the date of auction in a newspaper in general circulation in the county in which the nominated lease is located and in a newspaper in general circulation in Ada County. ()

07. Auction Procedure. The Department will determine the procedures associated with the auction, including, but not limited to place of auction, time of auction, and bidder registration procedure. Additional auction procedures are as follows. ()

- a.** Bid Increments. The minimum bid increment is one dollar (\$1). ()
- b.** Winning Bid. At close of auction, the winning bid for a Lessee is the number of dollars bid multiplied by the number of acres in the lease, with fractions of an acre rounded up to the next whole acre. If, at close of auction, a bid for a lease has not been submitted by a bidder, then the lease will be awarded to the nominating applicant. The entry of a bid constitutes an enforceable contractual obligation. ()
- c.** Amount Due. The amount due for a lease is the winning bid, plus the first year's annual rental amount as per Subsection 022.02, plus the nomination fee. If the winning bid was submitted by the nominator of the tract(s), then the nomination fee will already have been submitted to the Department and will not be included in the amount due. The nominator will be refunded the nomination fee if they are not the winning bidder. ()
- d.** Transfer of Funds. Unless otherwise required in the notice of auction, the winning bidder for each lease has five (5) full business days after close of auction to complete the transfer of funds to the Department. Failure of the winning bidder to transfer funds within the period specified constitutes a breach of contract, and the state may pursue any action or remedy at law or in equity against the winning bidder. ()
- 08. Execution of Lease.** The completed lease will be executed by the winning bidder within thirty (30) days from the date of mailing after close of auction, or if personally delivered to the applicant or his agent by the Department, within thirty (30) days from the date of receipt. An individual who executes a lease on behalf of another Person must submit a power of attorney outlining such delegated authority. ()

023. -- 044. (RESERVED)

045. ROYALTIES.

- 01. Royalty Payments.** Unless otherwise specified by the Board, the lessee will pay to the state of Idaho in money or in kind to the state at its option a royalty of no less than twelve and one-half percent (12.5%) of the oil and/or gas or natural gas plant liquids produced and saved. The lessee will make payments in cash unless written instructions for payment in kind are received from the state. Royalty is due on all production from the leased premises except that consumed for the direct operation of the producing wells and that lost through no fault of the lessee. ()
- 02. Royalty Not Reduced.** Where royalties are paid in cash, costs of marketing, transporting and processing oil and/or gas or natural gas plant liquids or all of them produced are borne entirely by the lessee, and such cost will not reduce the lessor's royalty directly or indirectly. If the Director elects to take royalty in kind, the state will reimburse the lessee for reasonable additional storage and transportation costs. ()
- 03. Oil, Gas, and Natural Gas Plant Liquids Royalty Calculation and Reporting.** All royalty owed to the lessor hereunder and not paid in kind at the election of the lessor will be paid to the lessor in the following manner: ()
- a.** Payment of royalty on production of oil is due and must be received by the lessor on or before the 65th day after the month of production; ()
- b.** Payment of royalty on production of gas and natural gas plant liquids is due and must be received by the lessor on or before the 95th day after the month of production; ()
- c.** All royalty payments must be completed in the form and manner approved by the Department including, but not limited to, the gross amount and disposition of all oil, gas, and natural gas plant liquids produced and the market value of the oil, gas, and natural gas plant liquids; ()
- d.** Lessee must maintain, and make available to the lessor upon request, copies of all documents, records or reports confirming the gross production, disposition and market value, including gas meter readings, pipeline receipts, gas line receipts and other checks or memoranda of the amount produced and put into pipelines, tanks, or pools and gas lines or gas storage, and any other reports or records that the lessor may require to verify the

gross production, disposition and market value; and ()

e. Each royalty payment must be accompanied by a check stub, schedule, summary or other remittance advice showing, by the assigned lessor lease number, the amount of royalty being paid on each lease. ()

04. Overriding Royalty. All assignments of overriding royalty without a working interest made directly by the lessee and not included with an assignment of lease must be filed with the Department with the processing fee within ninety (90) days from the date of execution; provided that it is the lessee's responsibility, and not the Department's, to process such assignments by third parties. Any assignment that creates an overriding royalty exceeds the royalty previously payable to the state by greater than five percent (5%), is deemed a violation of the terms of the lease unless such an assignment expressly provides that the obligation to pay such excess overriding royalty is suspended when the average production of oil per well per day, averaged on a monthly basis, is fifteen (15) barrels or less. ()

046. -- 049. (RESERVED)

050. LAND USE, SURFACE RIGHTS AND OBLIGATIONS.

01. Use and Occupancy. Notwithstanding other leases for other uses of state lands, the lessee is entitled to use and occupy as much of the surface of the leased lands as may be required for all purposes reasonably incident to exploration, drilling and production and marketing of oil and gas produced from the leased land, including the right to construct and maintain all works, buildings, plants, waterways, roads, communication lines, pipelines, reservoirs, tanks pumping stations or other structures necessary to full enjoyment and development; provided that lessee's operation does not unreasonably interfere with or endanger operations under any lease, license, claim, permit or other authorized, lawful use. ()

02. Prevention of Injury or Damage. The lessee, its assignees, agents, and/or contractors must take all reasonable precautions to prevent injury or damage to persons, real and personal property and to prevent waste or damage to the oil, gas and other surface and subsurface natural resources and the surrounding environment including but not limited to, vegetation, livestock, fish and wildlife and their natural habitat, streams, rivers, lakes, timber, forest and agricultural resources. The Lessee, his assignees, agents and/or contractors will compensate the Board, his surface lessees, grantees or contract purchasers for any damage resulting by reason of their operations or any damage resulting from their failure to take all reasonable precautions to prevent injury or damage to persons, real and personal property and to prevent waste or damage to the oil, gas and other surface and subsurface natural resources and surrounding environment as set forth above. The lessee, its assignees, agents and/or contractors must comply with all environmental laws, rules and regulations as they pertain to its operation. ()

03. Blowout or Spill. The lessee must report to the Director any blowout, fire, uncontrolled venting, or oil spill on the leased land within twenty-four (24) hours and confirm this report in writing within ten (10) days. ()

04. Fences. The lessee may not at any time fence any watering place upon leased lands where it is the only accessible and feasible watering place upon the lands within a radius of one (1) mile, without first having secured the written consent of the Director. ()

05. Timber Removal. The lessee may not unreasonably interfere with the removal of timber purchased prior or subsequent to the issuance of an oil and gas lease. The lessee may remove any timber required for ingress or egress or necessary for operations. The lessee must pay for any timber cut or removed on a current stumpage price basis as determined by the Director, and proceeds therefrom accrue to the state agency that has custody and control over the leased lands. ()

06. Potable Water Discovery. If the lessee finds only potable water in any well drilled for exploration or production of oil and gas, and the water is of such quality and quantity as to be valuable and usable for agricultural, domestic, or other purposes, the Board may acquire the well with whatever casing is installed in the well at the fair market value of the casing upon the assumption by its surface lessee, grantee, or contract purchaser of all future liabilities and responsibilities for the well, with the approval of the commission and in compliance with Section 058;

provided that the surface lessee, grantee, or contract purchaser also complies with applicable laws and rules of the Department of Water Resources. ()

07. Reclamation. The lessee must reclaim all state lands disturbed by its exploration and operations at least consistent with previous use by the surface owner, including segregating and protecting topsoil and regrading to approximate previous contour. If substantial removal of topsoil has occurred as determined by the Director, the lessee will replace the topsoil and revegetate to the extent necessary to minimize erosion. ()

08. Entry by Director. The Director is permitted at all reasonable times to go in and upon the leased lands and premises to inspect the operations and the products obtained and to post any lawful notice. The Director may at any time require that reasonable tests, surveys, samples, etc., be taken in accord with his instruction, without cost to the state of Idaho, to assure compliance with these rules. The Director may at any reasonable time inspect and copy at his own expense all of lessee's books and records pertaining to a lease under these rules. Upon failure of lessee to take timely, corrective measures ordered by the Director or the Board or the commission, the Director may shut down lessee's operations if he determines they are unsafe or are causing or may cause waste or pollution to oil, gas or other resources; or the Director may terminate the lease and cause damage or unsafe conditions to be repaired or corrected at the expense of the lessee and forfeiture of bond in accordance with these rules. ()

09. Other Uses. Subject to Subsection 050.01, the Director may issue leases for other uses of state lands leased under these rules. All lessees have the right of reasonable ingress and egress at all times during the term of the lease. ()

10. Disposal of Leased Lands. The Board reserves the right to sell or otherwise dispose of the surface of the leased lands; provided that any sale of surface rights made subsequent to execution of the lease is subject to all terms and provisions of the oil and gas lease during its life including extensions and continuations under Section 040. ()

051. DILIGENT EXPLORATION REQUIRED.

The lessee must perform diligent exploration during the entire term of a lease. Diligent exploration means that the lessee provides continuing efforts as a reasonably prudent operator toward achieving production, including, without limitation, performing geological and geophysical surveys and/or the drilling of a test well. ()

052. -- 054. (RESERVED)

055. OPERATIONS UNDER THE LEASE.

01. Best Practices. The lessee will at all times conduct exploration, development, drilling and all operations as a reasonably prudent operator and conform to the best practice and engineering principles in use in the oil and gas industry. ()

02. Compliance with Rules. The lessee will comply with all rules of the oil and gas commission, including amendments promulgated pursuant to Title 67, Chapter 52, Idaho Code, and any violations of the commission's rules or other applicable state laws and rules may constitute a violation of the lease under these rules. ()

03. Designation of Operator. In all cases where operations are not conducted by the lessee but are to be conducted under authority of an approved operating agreement, assignment or other arrangement, a designation of operator must be submitted to the Director prior to commencement of operations. Such a designation authorizes the operator or his local representative to act for the lessee and to sign any papers or reports required under these rules. The lessee must immediately report to the Director all changes of address and termination of the authority of the operator. ()

04. Legal Representative. When required by the Director, the lessee must designate a local representative empowered to receive service of civil or criminal process and notices and orders of the Director issued pursuant to these rules. ()

05. Diligence. The lessee will, subject to the right to surrender the lease, diligently drill and produce

such wells as are necessary to protect the Board from loss by reason of production on other properties, or with the consent of the Director, compensate the Board for failure to drill and produce any such well. All wells under lease must be drilled, maintained and operated to produce the maximum amount of oil and/or gas that can be secured without injury to the well. ()

06. Loss Through Waste or Failure to Produce. The Director will determine the value of production accruing to the Board where there is loss through waste or failure to drill and produce protection wells on the leased lands and the compensation due to the Board as reimbursement for such loss. Payment for such losses must be made within sixty (60) days after the date of billing. The value of production resulting from a loss through waste or failure to take corrective measures to protect a well is calculated at ninety percent (90%) of the last year's actual production royalty or a minimum royalty of five dollars (\$5) per acre or fraction thereof, whichever is greater. ()

07. By-Products. Where production, use or conversion of oil and gas under a lease, is susceptible of producing a valuable by-product or by-products, including, without limitation, commercially demineralized water, carbon dioxide or helium, the lessee must submit to the Director all available information concerning the potential by-product. The Department may conduct tests or studies at its expense and may issue reasonable orders to produce and preserve such by-product. ()

08. Geothermal Information. Prior to abandoning any well, the lessee must submit to the Director all available information concerning geothermal resource potential. The Department may conduct tests or studies at its expense prior to the abandoning of any well to determine geothermal resource potential. Except as provided in Subsection 040.05, the lessee must promptly plug and abandon any well on the leased land that is not used or useful, in accord with these rules and the rules of the commission, and any applicable rules and regulations of the Department of Water Resources. When drilling in a known geothermal resources area, the applicant may need a geothermal resource well permit from the Department of Water Resources. ()

056. WATER RIGHTS.

The lessee will comply with all state laws and rules regulating the appropriation of water rights. No water rights developed or obtained by the lessee in conjunction with operations under a lease may be sold, assigned or otherwise transferred without written approval of the Director. Upon surrender, termination or expiration of the lease, the lessee must take all actions required by the Director to assign to the Board all water rights, including applications and permits, subject to applicable laws regarding the transfer or assignment of permits to appropriate water. ()

057. -- 059. (RESERVED)

060. ASSIGNMENTS.

01. Prior Written Approval. No lease assignment is valid until approved in writing by the Director, and no assignment takes effect until the first day of the month following its approval. ()

02. Qualified Assignee. A lease may be assigned to any person qualified to hold a state lease, provided that in the event an assignment partitions leased lands between two (2) or more persons, neither the assigned nor the retained part created by the assignment may contain less than forty (40) acres or a government lot, whichever is less. ()

03. Responsibilities. In an assignment of the complete interest of the leasehold, the assignor and his surety continue to comply with the lease and these rules until the effective date of the assignment. After the effective date of any assignment, the assignee and his surety are bound by the lease and these rules to the same extent as if the assignee were the original lessee, notwithstanding any conditions in the assignment to the contrary; however, the assignor-lessee remains liable for rentals and royalties due and damages accruing prior to the effective date of the assignment. ()

04. Segregation of Assignment. If an assignment partitions leased lands between two (2) or more persons, it must clearly segregate the assigned and retained portions of the leasehold. Resulting segregated leases continue in full force and effect for the balance of the ten-year term of the original lease or as further extended pursuant to these rules. ()

05. Joint Principal. Where an assignment does not segregate the record title to the lease, the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. The application must be accompanied by a consent of assignor's surety to remain bound under the bond of record, if the bond by its terms does not contain such consent. If a party to the assignment has previously furnished a statewide bond, no additional showing by such party is necessary as to the bond requirement. ()

06. Form of Assignment. An assignment is a valid legal instrument, properly executed and acknowledged, setting forth the number of the lease, a legal description of the land involved, the name and address of the assignee, the interest transferred and the consideration. A fully executed copy of the instrument of assignment must be filed with the application for approval pursuant to Subsection 060.07. An assignment may affect or concern more than one (1) lease. ()

07. Application. The application for approval of an assignment must be submitted in duplicate on forms of the Department or exact copies of such forms. The "lessee/assignee of record" must be designated in accordance with Subsection 010.11. If payments out of production are reserved, a statement must be submitted stating the amount, method of payment, and other pertinent items. The statement must be filed with the Department no later than fifteen (15) days after the filing of the application for approval. ()

08. Denial. The Director may deny an application for assignment if the lessee or the assignee is delinquent in payment of rentals or royalties or otherwise has violated these rules. ()

09. Fee. All applications for approval of assignment must be accompanied by the fee required by Section 120. ()

061. -- 069. (RESERVED)

070. SURRENDER - RELINQUISHMENT.

01. Procedure. The lessee may surrender its lease or any surveyed subdivision of the area covered by such lease, by filing a written relinquishment with the Department, provided that a partial relinquishment does not reduce the remaining acreage in the lease to less than forty (40) acres or a government lot, whichever is less. The Director may waive the minimum acreage provision of this rule if he finds it is justified on the basis of exploratory and development data derived from activity on the leasehold. ()

02. Effective Date. A relinquishment takes effect thirty (30) days after it is received by the Department. Thereafter the lessee is relieved of liability under these rules except for the continued obligation of the lessee and his surety to: ()

- a.** Make payments of all accrued rentals and royalties; ()
- b.** Place all wells on the land to be relinquished in condition for suspension of operations or abandonment; ()
- c.** Comply with all rules of the commission for plugging of abandoned wells; ()
- d.** Comply with applicable laws and rules of the Department of Water Resources; and ()
- e.** Reclaim the surface and natural resources in accord with these rules. ()

03. Partial Surrender. In the event of a partial surrender of the land covered by such lease, the annual rental thereafter payable will be reduced proportionately. ()

071. TERMINATION - CANCELLATION OF LEASE.

01. Cause. Except as otherwise provided in these rules, the Director may terminate the lease for any substantial violation of these rules, the lease, or the rules of the commission, ninety (90) days after notice of the violation has been given to lessee by personal service or by certified mail to the lessee, unless: ()

a. The violation has been corrected; or ()

b. The violation is one that cannot be corrected within the notice period and the lessee has in good faith commenced within the notice period to correct the violation and proceeds diligently to complete corrective action within a time period set by the Director. If sent by certified mail, such notice will be deemed served upon mailing. ()

02. Surrender After Termination. Upon the expiration or termination of the lease, the lessee will quietly and peaceably surrender possession of the premises to the state. Thereafter, lessee's obligations under these rules that have accrued prior to the date of expiration or termination continue in full force and effect. ()

03. Other Wells. Default by the lessee in the performance of any of the conditions or provisions of the lease concerning a well or wells on any legal subdivision of the leasehold do not affect the right of the lessee to continue the possession or operation of any other well or wells, situated upon any other legal subdivision of the leasehold. The term "legal subdivision" as herein used means a subdivision as established by the United States land survey that most nearly approximates in size the area allocated to one well under any approved well spacing program; provided that if no special program has been approved, "legal subdivision" means the parcel upon which such well is located, but in any event not less than forty (40) acres surrounding such well. Where such a default involving one (1) or more wells results in cancellation, and the lessee has other wells on the lease not in default, such cancellation will result in the division of the defaulting acreage from the lease and resultant reduction in the size of the lease held by the lessee. ()

04. Equipment Removal. Upon the expiration of the lease, or its earlier termination or surrender pursuant to these rules, the lessee must, within a period of ninety (90) days, remove from the premises all materials, tools, appliances, machinery, structures. Equipment subject to removal but not removed within the ninety (90) day period or any extension that may be granted because of adverse climatic conditions during that period, may, at the option of the Director, become property of the state of Idaho, or the Director may cause the property to be removed at the lessee's expense. ()

072. -- 079. (RESERVED)

080. BOND REQUIREMENTS.

01. Minimum Bond. Prior to entry with motorized exploration equipment upon leased lands, the surface of which has been sold or leased, the lessee must submit to the Director a corporate surety bond or collateral bond in the amount of one thousand dollars (\$1,000) in favor of the state of Idaho conditioned upon the payment of all damages to the surface that result from the lessee's operation. Prior to entry upon the leased land with drilling equipment or prior to commencing any construction in preparation for drilling upon leased lands, the lessee must submit to the Director a corporate security bond or collateral bond in the amount of six thousand dollars (\$6,000) in favor of the state of Idaho bond will be conditioned upon compliance with the lease, these rules, the removal of all materials, etc. per Subsection 071.04, and the payment of all damages to the land surface and all improvements thereon, including crops, which result from the lessee's operation, regardless of whether the lands under this lease have been sold or leased by the Board for any other purpose. This bond is in addition to the drilling bond pursuant to commission rules. This rule notwithstanding, the oil and gas lessee may be required on a case-by-case basis to post a bond in excess of six thousand dollars (\$6,000) to protect a surface lessee's or surface owner's interests pursuant to Section 47-708, Idaho Code. ()

02. Statewide Bond. In lieu of the aforementioned bonds, the lessee may furnish a good and sufficient "statewide" bond conditioned as above in the amount of fifty thousand dollars (\$50,000) in favor of the state of Idaho to cover all lessee's leases and operations carried on under these rules. ()

03. Period of Liability. The period of liability of any bond is not be terminated until all obligations under the lease and these rules have been fulfilled and the bond is released in writing by the Director. ()

04. Form of Performance Bond. ()

a. Corporate surety bond means an indemnity agreement executed by or for the lessee and a corporate surety licensed to do business in the state of Idaho on an oil and gas lease bond form supplied by the Department conditioned in accord with Subsection 080.01, and payable to the state of Idaho. ()

b. Collateral bond means an indemnity agreement executed by or for the lessee and payable to the state of Idaho, pledging cash deposits, negotiable bonds of the United States, state or municipalities, or negotiable certificates of deposit of any bank doing business in the United States. Collateral bonds are subject to the following conditions: The Department obtains possession and deposits such with the state treasurer. The Department will value collateral at its current market value, not face value. Certificates of deposit are made payable to the "State of Idaho or the lessee." Amount of an individual certificate may not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors. Banks issuing such certificates waive all rights of set-off or liens that they have of may have against such certificates. Any such certificates are automatically renewable. The certificate of deposit must be of sufficient amount to ensure that the Department would be able to liquidate such certificates prior to maturity, upon forfeiture, for the amount of the required bond including any penalty for early withdrawal. ()

05. Bond Cancellation. Any surety company or indemnitor canceling a bond must give the Department at least sixty-days' (60) notice prior to cancellation. The Department will not release a surety or indemnitor from liability under existing bonds until the lessee has submitted to the Department an acceptable replacement bond. Such replacement bond must cover any liability accrued against the bonded principal on the lease covered by the previous bond. ()

06. Surety License. If the license to do business in Idaho of any surety is suspended or revoked, the lessee must find a substitute for such surety within thirty (30) days after notice by the Department. If the lessee fails to secure a substitute surety, he must cease operation upon the lease. The substitute surety must be licensed to do business in Idaho. ()

07. Form. All bonds furnished must be on the Department bond form or exact copy of it. ()

081. -- 089. (RESERVED)

090. UNIT OR COOPERATIVE PLANS OF DEVELOPMENT OR OPERATION.

01. Unit Plan. For the purpose of properly conserving the natural resources of any oil and gas pool, field or like area, the lessee may, with the written consent of the Director, commit the leased lands to a unit, cooperative or other plan of development or operation with other state, federal, Indian, or privately-owned lands. ()

02. Contents. An agreement to unitize must: describe the separate tracts comprising the unit; disclose the apportionment of the production of royalties and costs to the several parties; the name of the operation; and contain adequate provisions for the protection of the interests of all parties, including the state. The agreement must: be signed by or in behalf of those persons or entities having effective control of the geologic structure; submitted to the Director with the application to unitize; and effective only after approval by the Director. ()

03. Interested Parties. The owners of any right, title or interest in the oil and gas resources to be developed or operated under an agreement may be regarded as interested parties to a proposed unitization agreement. Signature of a party with only an overriding royalty interest in unnecessary. ()

04. Collective Bond. In lieu of separate bonds for each lease committed to a unit agreement, the unit operator may furnish and maintain a collective corporate surety bond or a collateral bond conditioned upon faithful performance of the duties and obligations of the agreement, the lease subject to the agreement and these rules. The liability under the bond will be for such amount the Director determines to be adequate to protect the interests of the state. If the unit operator is changed, a new bond or consent of surety to the change in principal under the existing bond must be filed within thirty (30) days of assignment. ()

05. Lease Modification. The terms of any lease included in any cooperative or unit plan of development or operation may be modified by the Director with approval of the lessee, except that a unit agreement

must have final approval by the Director for a state cooperative plan or the final approval by the secretary of interior for a federal cooperative plan prior to extending any lease into its eleventh year and each year thereafter. A lease so extended expires two (2) years after the unit plan expires provided the lessee continues to pay the annual rental as outlined in Subsection 041.03. ()

06. Rentals. Rentals and royalties on leases so extended are at the rates specified in these rules. Advanced rental must be paid on or before the extended lease's anniversary date. Any unused portion of annual rental will not be refunded. ()

07. Evidence of Agreement. Before issuance of a lease for lands within an approved unit agreement, the lease applicant must file with the Department evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in a lease, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, the applicant will be permitted to operate independently but be required to perform its operations in a manner that the Director deems to be consistent with the unit operations. ()

08. Segregation Prohibited. A lease may not be segregated if any part thereof is included in a cooperative plan until the pool or field has been defined. Once defined, those areas outside the unit area or pool boundary can be surrendered as provided in Section 070. ()

091. -- 094. (RESERVED)

095. LIABILITY INSURANCE; SPECIAL ENDORSEMENTS.

01. Liability Insurance Required. Prior to entry upon the leased lands for any reason other than casual exploration or inspection pursuant to Section 021, the lessee must secure and maintain during the term of this lease, public liability, property damage, and products liability insurance in the sum of four hundred thousand dollars (\$400,000) for injury or death for each occurrence; in the aggregate sum of two million dollars (\$2,000,000) for injury or death; and in the sum of four hundred thousand dollars (\$400,000) for damages to property and products damages caused by any occupancy, use, operations of any other activity on leased lands carried on by the lessee, its assigns, agents, operators or contractors. The lessee must insure against explosion, blow out, collapse, fire, oil spill and underground hazards and submit evidence of such insurance to the Director. If the land surface and improvements thereon covered by the lease have been sold or leased by the state of Idaho, the owner or lessee of the surface rights and improvements will be an additional named insured. The state of Idaho is a named insured in all instances. This policy or policies of liability insurance must contain the following special endorsement:

“The state of Idaho, the Idaho State Board of Land Commissioners, the Director of the Department of Lands, the Department of Lands, (or other state agency exercising custody and control over the lands), and (herein insert name of owner or lessee of surface rights, if applicable) and the officers, employees and agents of each and every of the foregoing are additional insureds under the terms of this policy: Provided, however, these additional insureds shall not be insured hereunder for any primary negligence or misconduct on their part, but such additional insureds shall be insured hereunder for secondary negligence or misconduct, which shall be limited to failure to discover and cause to be corrected the negligence or misconduct of the lessee, its agents, operators or contractors. This insurance policy shall not be canceled without thirty (30) days prior written notice to the Idaho Department of Lands. None of the foregoing additional insureds is liable for the payment of premiums or assessments of this policy.”

No cancellation provision in any insurance policy is in derogation of the continuous duty of the lessee to furnish insurance during the term of this lease. Such policy or policies must be underwritten to the satisfaction of the Director. A signed complete certificate of insurance, with the endorsement required by this paragraph, must be submitted to the Director prior to entry upon the leased land with motorized exploration equipment after award of a lease and may be required prior to such entry under Rule 021. ()

02. Certificate of Insurance. At least thirty (30) days prior to the expiration of any such policy, a signed complete certificate of insurance, with the endorsement required by Subsection 095.01, showing that such insurance coverage has been renewed or extended, must be filed with the Director. ()

096. HOLD HARMLESS.

The state of Idaho, the Board, the Director, the Department, and any other state agency that may have custody or control of the leased lands, and the owner of the surface rights and improvements, if not the state of Idaho, or state lessee of surface rights, if there be one, the officers, agents and employees of each of the foregoing, are free from any and all liabilities and claims for damages and/or suits for or by reason of death or injury to any person or damage of property of any kind whatsoever, caused by a negligent or otherwise wrongful act or omission of the lessee, its assigns, agents, operators, employees or contractors; and lessee covenants and agrees to indemnify and to save harmless the state of Idaho, the Board, the Director, the Department, or other state agency, or the lessee of surface rights if there be one, and their officers, agents, and employees from all liabilities, charges, expense, including attorney fees, claims, suits or losses caused by a negligent or otherwise wrongful act or omission of the lessee, its assigns, agents, operators, employees or contractors. The lessee's signature to a lease under these rules constitutes express agreement to this rule. ()

097. -- 099. (RESERVED)

100. TITLE.

The state of Idaho does not warrant title to the leased lands or the oil and gas resources that may be discovered thereon; the lease is issued only under such title as the state of Idaho may have as of the effective date of the lease or thereafter acquires. ()

101. IMPOSSIBILITY OF PERFORMANCE.

Whenever, as a result of any act of God, or law, order or regulation of any governmental agency, it becomes impossible for the lessee to perform or to comply with any obligation under the lease or these rules, other than payment of rentals or royalties, the Director in his discretion, may by written order excuse lessee from damages or forfeiture of the lease, and the lessee's obligations may be suspended and the term of the lease may be extended provided that the Director finds that good cause exists. ()

102. TAXES.

The lessee pays, when due, all taxes and assessments of any kind lawfully assessed and levied against the lessee's interest or operations under the laws of the state of Idaho. ()

103. -- 119. (RESERVED)

120. FEES.

01. Exploration Permit. One hundred dollars (\$100) per linear mile or a minimum of one hundred dollars (\$100) per section. ()

02. Nonrefundable Nomination Fee. The nomination fee is set by the Board at a minimum of two hundred fifty dollars (\$250) per tract. ()

03. Processing Fee. The processing fee is set by the Board at a minimum of one hundred dollars (\$100) per each document. ()

04. Fee Adjustment. The Board may annually adjust these fees without formal rulemaking procedures. ()

121. -- 999. (RESERVED)

**20.03.17 – RULES GOVERNING LEASES ON STATE-OWNED SUBMERGED
LANDS AND FORMERLY SUBMERGED LANDS**

000. LEGAL AUTHORITY.

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

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.17, “Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands.” ()

02. Scope. These rules govern the issuance of leases on state-owned submerged lands. ()

a. These rules also apply to state-owned islands raised from submerged lands, or filled submerged lands, or other formerly submerged lands that are no longer covered by water at any time during an ordinary year. ()

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

002. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the Board is entitled to judicial review pursuant 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.” ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. ()

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

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

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

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

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

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

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

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

10. Encroachments Not in Aid of Navigation. Includes all other encroachments on, in, or above the beds or waters of a navigable lake, river or stream, including landfills, bridges, utility and power lines, or other

structures not constructed primarily for use in aid of navigation. It also includes float homes and floating toys. The term “encroachments not in aid of navigation” may be used interchangeably herein with the term “non-navigational encroachments.” ()

11. Formerly Submerged Lands. The beds of navigable lakes, rivers, and streams that have either been filled or subsequently became uplands because of human activities including construction of dikes, berms, and seawalls. Also included are islands that have been created on submerged lands through natural processes or human activities since statehood, July 3, 1890. ()

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

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

14. Person. A partnership, association, corporation, natural person, or entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. ()

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

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

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

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

19. Upland. The land bordering on navigable lakes, rivers, and streams. ()

011. -- 019. (RESERVED)

020. APPLICABILITY.

Leases are required for all encroachments on, in, or over state-owned submerged land except: ()

01. Single -Family or Two-Family Docks. Single-family or two-family docks that were constructed on or before July 1, 1993, that occupy less than eleven hundred (1,100) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. ()

02. Single-Family Docks. Single-family docks that were constructed after July 1, 1993, that occupy less than seven hundred (700) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. ()

03. Two-Family Docks. Two-family docks that were constructed after July 1, 1993, that occupy less than eleven hundred (1,100) square feet of dock surface area lakeward of the ordinary high water mark, and for which all required permits and approvals have been obtained. ()

04. Encroachments Free to the Public. Encroachments in aid of navigation for which the complete

use is offered free to the public. ()

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

021. -- 024. (RESERVED)

025. POLICY.

01. Policy of the State of Idaho. It is the policy of the state of Idaho to regulate and control the use and disposition of lands in the beds of navigable lakes, rivers and streams to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided that the Board will take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands. ()

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

03. Requests or Inquiries Regarding Navigability. The State owns the beds of all lakes, rivers, and streams that were navigable in fact at statehood. The Department will respond to requests or inquiries as to which lakes, rivers, and streams are deemed navigable in fact. Additional information about streams deemed navigable by the State of Idaho is available from the Department. ()

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

05. Other Permits and Licenses. Issuance of a lease does not relieve an applicant from acquiring other permits and licenses that are required by law. ()

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

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

08. Director’s Authorization to Issue and Renew Leases. The Director is authorized to issue and renew leases for the use of submerged lands in accordance with these rules. ()

09. Rights Granted. The lease grants only such rights as are specified in the lease. The right to use the submerged or formerly submerged lands for all other purposes that do not interfere with the rights authorized in the lease remains with the state. ()

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

11. Waiver of Lease Requirements. The Director may, in his discretion, waive lease requirements for single-family or two-family dock encroachments whose dock surface areas exceed square footages described in Subsections 020.01 through 020.03 of these rules when the additional dock surface area square footage is necessary to gain or maintain access to water of sufficient depth to sustain dock use for water craft customarily in use on that particular lake. ()

12. Private Moorage at Commercial Marinas. ()

a. This Subsection (025.12) does not apply to community docks. ()

b. Private moorage at commercial marinas is allowed as long as the requirements of IDAPA 20.03.04, “Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho,” Subsection 015.03 are met. ()

c. The sale, lease, or rental of private moorage is in no way an encumbrance on any underlying public trust land. All transactions related to private moorage are subject to the limitations of the associated submerged lands lease. ()

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

e. The Department will make no policy regarding the cost of private moorage and the resolution of disputes between the involved parties. ()

026. -- 029. (RESERVED)

030. LEASE APPLICATION, FEE, AND PROCEDURE.

01. Fee. The lease application fee is one hundred fifty dollars (\$150). ()

02. Fee Is Required. A lease application and nonrefundable fee is required for new and existing encroachments. A lease application fee is required for leases that are renewed upon expiration. ()

03. Application to Lease and Fee. The lease application and fee must be submitted with the information from Subsections 030.03.a. through 030.03.c., in sufficient detail for the Department to determine an appropriate lease rate based on numbers of slips, square footage, or other permit information: ()

a. A letter of request stating the purpose of the lease. ()

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

c. The permit number of each existing applicable encroachment permit. ()

04. Submittal of Application to Lease and Fee. The lease application and fee must be filed in the local office of the Department or the Director’s office. ()

05. Notification of Approval or Denial. The applicant will be notified in writing if the lease application is approved or denied. The applicant will also be notified of any additional requirements. ()

06. Request for Reconsideration. Any applicant aggrieved with the Director’s determination of rent or denial of a lease application may request reconsideration by the Director. ()

031. -- 034. (RESERVED)

035. RENTAL.

The rental rate policy for submerged land leases is set by the Board. This policy is available on the Department website at <http://www.idl.idaho.gov/>. ()

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

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

036. YEARLY REPORTING.

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

- a. A schedule of moorage rental rates, including moorage sizes and types. ()
- b. The number and size of all public boat and float home moorages. ()
- c. The number and size of all private boat and float home moorages. ()
- d. Current proof of insurance that is required by the lease. ()

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

037. -- 039. (RESERVED)

040. LATE PAYMENT, EXTENSIONS OF PAYMENT.

01. Penalty for Late Payment of Rent. Rent not paid by the due date is considered late. A penalty, calculated from the day after which payment was due, will be added to the rent. The penalty will be determined by the Board for the first month or any portion thereof and one percent (1%) of the rent due, including penalty, per month thereafter. ()

02. Extension in Time for Payment of Rent. An extension in time in which to submit payment of rent may be granted for commercial submerged lands leases only. Such extensions may not exceed two (2) successive years, as required by Title 58, Chapter 3, Idaho Code, Section 58-305. ()

03. Request for Extension in Time for Payment of Rent. Lessees must request extensions on forms supplied by the lessor and pay an extension fee to be determined by the Board. The lessee must also provide a statement from his banker or accountant verifying that money is not available for the payment of rent. ()

04. Interest Rate for Extension in Time for Payment of Rent. If an extension is granted, rent plus interest at a rate established by the Board will be due no later than October 1 of the rent year. Specifically, interest will be the average monthly rate for conventional mortgages as quoted in the Federal Reserve Statistical Report; the rate to be rounded downward to the nearest one quarter percent (1/4%) on the tenth of each month following the release of data. ()

041. -- 044. (RESERVED)

045. APPRAISAL PROCEDURES.

Appraisals may be used to determine the market value of adjacent uplands for calculating submerged lease rental rates. ()

01. Appraisal. An appraisal will either be performed by qualified Department staff or an independent

contract appraisal. Any appraisal must be under the control of the Department. ()

02. Cost of Appraisal. The appraisal costs are the actual cost for Department personnel plus transportation, including per diem and administrative overhead, or the bid amount for the contract appraiser. An itemized statement of these costs will be provided to the applicant. The cost of the appraisal is in addition to those costs outlined in Section 035 of these rules and is billed separately from the application fee and rent. ()

046. -- 049. (RESERVED)

050. LEASE MODIFICATION OR AMENDMENT.

01. Encroachment Amendment. A lease modification or amendment must first be permitted through an amendment to the lake encroachment permit or stream alteration permit, if needed. ()

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

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

051. -- 054. (RESERVED)

055. ASSIGNMENTS, ASSIGNMENT FEE.

01. Assignment of Lease. Leases may be assigned upon approval of the Director provided that the lease conforms with Subsection 025.02 and all other provisions of these rules. The assignor and assignee must complete the Department's standard assignment form and forward it to any Department office. ()

02. Assignment Fee. The assignment fee is one hundred fifty dollars (\$150). ()

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

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

056. -- 059. (RESERVED)

060. CANCELLATION AND ADDITIONAL REMEDIES.

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

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

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

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

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

- a. Civil penalties as determined by the Board and to be collected as additional rent; ()
- b. The reasonable costs of remedial action undertaken by the Department as a result of the lessee's failure to perform a requirement of the lease. These costs will be collected as additional rent; and ()
- c. Such other remedies as the Board deems appropriate. ()

061. -- 064. (RESERVED)

065. BOND.

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

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

066. -- 069. (RESERVED)

070. LIABILITY AND INDEMNITY.

A lessee will indemnify and hold harmless the lessors, its departments, agencies and employees for any and all claims, actions, damages, costs, and expenses that may arise by reason of lessee's occupation of the leased premises, or the occupation of the leased premises by any of the lessee's agents, or by any person occupying the same with the lessee's permission. ()

071. -- 074. (RESERVED)

075. OTHER RULES AND LAWS.

The lessee will comply with all applicable state, federal, and local rules and laws insofar as they affect the use of the lands described in the lease. ()

076. -- 079. (RESERVED)

080. BINDING ON HEIRS.

All of the terms, covenants, and conditions in a state lease are binding upon the heirs, executors, and assigns of the lessee. ()

081. -- 084. (RESERVED)

085. CIVIL RIGHTS.

The lessee may not discriminate against any person on the basis of such person's race, creed, color, sex, national origin or handicap. ()

086. -- 999. (RESERVED)

**20.04.02 – RULES PERTAINING TO THE IDAHO FORESTRY ACT
AND FIRE HAZARD REDUCTION LAWS**

000. LEGAL AUTHORITY.

These rules are adopted pursuant to the rulemaking authority granted in Sections 38-132 and 38-402, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.04.02, “Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws.” ()

02. Scope. These rules implement the provisions of the Idaho Forestry Act and Fire Hazard Reduction Laws. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

Unless otherwise required by context, as used in these rules: ()

01. Agreement. The Certificate of Compliance-Fire Hazard Management Agreement (Department of Lands Form 715) required by Section 38-122, Idaho Code. ()

02. Contract Area. The legal description of the land given on the agreement. ()

03. Contractor. The person who enters into the Certificate of Compliance-Fire Hazard Management Agreement. ()

04. Department. The Idaho Department of Lands. ()

05. Director. The Director of the Idaho Department of Lands or his authorized representative. ()

06. District. A designated forest protective district. ()

07. Fire Line. A line dug to mineral soil which is intended to control a fire. ()

08. Fire Warden. A duly appointed fire warden or deputy. ()

09. Fuel. Any slash or woody debris that will contribute to the spread or intensity of a wildfire. ()

10. Fuel Break. An area in which all slash and dead woody debris have been removed or piled and burned. ()

11. Hazard Reduction. The burning or physical reduction of fire hazards by treatment in a manner that will reduce the intensity and/or spread of a wildfire after treatment is completed. ()

12. Initial Purchaser or Purchaser. The first person, company, partnership, corporation or association of whatever nature who purchases a forest product after it is harvested. ()

13. Operational Period. A standard twelve (12) hour fire control shift. ()

14. Slash or Slashing. Brush, severed limbs, poles, tops and/or other waste material incident to such cutting or to the clearing of land, which are four (4) inches and under in diameter. However, for the purpose of these rules and to correspond with standard fire classifications, slash will only include material less than or equal to three (3) inches in diameter. ()

15. Slash Load. Slash resulting from timber harvesting that has occurred under a current agreement, exclusive of natural mortality. ()

16. State. The state of Idaho. ()

011. -- 029. (RESERVED)

030. CERTIFICATE OF COMPLIANCE-FIRE HAZARD MANAGEMENT AGREEMENT.

01. Contents. A Certificate of Compliance-Fire Hazard Management Agreement must be obtained by anyone who conducts an operation involving the harvesting of forest products or potential forest products. Such Agreement provides the option of entering into a contract as provided in Section 38-404, Idaho Code or posting of a cash or surety bond to the State. The Certificate of Compliance required by Section 38-122, Idaho Code, must be in substantially the same form as Department of Lands Form No. 715 -- "Certificate of Compliance-Fire Hazard Management Agreement." ()

02. Period of Time. The period set forth within the Agreement is based upon such considerations as the size of the contract area, the volume of the timber to be harvested or the silvicultural objectives of the landowner. However, in no case may a single Agreement exceed a period of twenty four (24) months unless the contractor and the fire warden mutually agree upon a plan for the timely abatement of the hazard during a period that may exceed twenty four (24) months. ()

03. Extensions. If the contractor cannot meet the standard required to obtain a clearance within the period specified above, the contractor may apply to the fire warden for an extension. The application must be in writing, received at the district office thirty (30) working days before the Agreement expires, and show good reason other than financial hardship, why an extension should be given. The fire warden will acknowledge receipt of the request prior to the expiration of the Agreement. ()

04. Responsibility. The contractor named in the Agreement will be responsible for managing the fire hazard created by the harvesting and will receive the clearance if the slash treatment meets standards, or will carry the liability for suppressing wildfire for five (5) full years following the expiration of the Agreement. ()

031. -- 039. (RESERVED)

040. ADDENDUM TO CERTIFICATE OF COMPLIANCE-FIRE HAZARD MANAGEMENT AGREEMENT.

In those instances where a contractor indicates an intent to accomplish only the piling portion of the total slash hazard reduction job, an addendum to the Agreement must be executed specifying precisely the portion of slash withholding money that will be refunded. The addendum must be in substantially the same form as Department of Lands Form No. 715.1 -- "Addendum to Certificate of Compliance-Fire Hazard Management Agreement." ()

041. -- 049. (RESERVED)

050. BOND.

01. Amount of Bond. The bond specified in Section 38-122 and Section 38-404, Idaho Code, must be in the amount of four dollars (\$4) per thousand board feet (MBF), or equivalent measure as shown in Table I below, of forest products harvested, and may take the form of cash, surety bond or irrevocable letter of credit. Surety bonds must be in substantially the same form as Department of Lands Form No. 707 - "Bond." ()

02. Rates. Rates and amounts listed in Table I will be used as a minimum in calculating hazard reduction bonds for products cut from all state and private lands in Idaho.

| TABLE I | |
|-----------------------|------------|
| PRODUCT | BOND RATE |
| (1) MBF Measurement | |
| All Products | \$4.00 MBF |
| OR | |
| (2) Other Measurement | |

| TABLE I | |
|---|------------------|
| PRODUCT | BOND RATE |
| Green pulp, stud timber, etc. | \$2.00 Cord |
| Lineal Foot Measure | |
| Utility poles and pilings, all species | \$.014 LF |
| Stulls, corral poles, cellar timbers, fence rails, round posts | \$.01 LF |
| Piece Measure | |
| 100 inch bolt material | \$.08 ea. |
| Split posts | \$.02 ea. |
| Tree stakes | \$.02 ea. |
| Shake boards | \$.02 ea. |
| Ton Measurement | |
| Green or Dead Pulp, Chips, etc. | \$.70 Ton |

()

03. Exceeding Minimum Bond. The minimum bond rate will only be exceeded when the landowner or operator requests that higher rate to accomplish additional hazard reduction. ()

051. -- 059. (RESERVED)

060. CONTRACTS WITH FOREST LANDOWNERS OR OPERATORS.

Forest landowners and operators who engage in timber harvesting operations may enter into an optional Agreement with the Director as provided in Section 38-404, Idaho Code. Under the terms of such an optional Agreement, the Director may assume all responsibility for the management and reduction of fire hazards to be created in return for a stipulated amount to be paid to the Director by the landowner or operator. Such optional Agreement must be in substantially the same form as Department of Lands Form No. 720 -- "Contract for Management, Reduction and/or Removal of Fire Hazards Created by the Harvesting of Timber Within the State of Idaho," or Department of Lands Form No 725 - "Contract for Management of Fire Hazards Created By the Harvesting of Timber Within the State of Idaho." ()

061. -- 069. (RESERVED)

070. CASH BOND RELEASE.

Contractors who elect under Section 38-122, Idaho Code, to have hazard reduction money withheld, but who do not intend to dispose of the hazard themselves, must release the withheld monies to the Director of the Department of Lands. Such release must be in substantially the same form as Department of Lands Form No. 761 -- "Release of Cash Bond Withheld to Assure Slash Disposal." ()

071. -- 079. (RESERVED)

080. ADDED PROTECTION IN LIEU OF HAZARD REDUCTION.

As provided in Section 38-401, Idaho Code, fire hazard management methods may include or be limited to the taking of additional protective measures in lieu of actual disposal of the slash hazard. Any funds coming into district hazard management accounts through contract, cash bond release or forfeiture, may be used for added protection provided that the expenditure meets specifications outlined in Section 38-401, Idaho Code. ()

081. -- 089. (RESERVED)

090. PURCHASER REQUIREMENTS.

01. Initial Purchaser. Initial purchasers of forest products, in accordance with Section 38-122, Idaho Code, must withhold and remit to the State slash management monies as appropriate for the slash management option chosen by the contractor. Such option must be clearly identified on the purchaser's copy of the Agreement. Slash monies withheld in any one (1) calendar month must be remitted to the Director on or before the end of the next calendar month. Such remittance must be in substantially the same form as Department of Lands Form No. 740 -- "Hazard Reduction Payment Record." ()

02. Duty of Initial Purchaser. Initial purchasers of forest products must make certain that all contractors from whom they purchase forest products have obtained a proper Agreement. ()

091. -- 099. (RESERVED)

100. INJUNCTION AGAINST FURTHER CUTTING.

Any person who cuts timber or other forest products of any kind, without having first secured an Agreement in accordance with Section 38-122, Idaho Code, may be enjoined from continuing such cutting and will be required to immediately dispose of all slash created. If the person responsible fails to properly dispose of the slash within thirty (30) days after being notified to do so, the State may dispose of the slash and such costs of disposal, plus twenty percent (20%) as a penalty, may be collected as a prior lien against the products harvested. ()

101. -- 109. (RESERVED)

110. BURNING OF SLASH.

01. Permits. Any burning operation conducted for the purpose of hazard reduction must be in accordance with the law requiring burning permits during the closed fire season. Persons conducting burning operations must have sufficient men, tools and equipment on hand to immediately stop the uncontrolled spread of any fire. Burning operations must be planned, prepared and executed in such a manner that forest resources are not damaged and air quality standards are met. ()

02. Burn Plan. Burning of specifically designated blocks or areas of forest land for any purpose must be conducted in accordance with a prescribed burn plan approved by the fire warden in whose area of responsibility the burn occurs. ()

111. -- 119. (RESERVED)

120. STANDARDS -- TREATMENT OF HAZARDS.

01. Purpose. To provide standards for hazard reduction and the release of liability for the contractor who is working under a valid Agreement with the State. ()

02. Reduction of Total Hazard Points. The contractor must reduce the total hazard points charged against the contract area to five (5) points or less (see Table II) on or before the expiration date on the Agreement in order to receive a refund of slash monies withheld (less three (3) percent for the fire suppression fund, ref. Rule150) or, to clear any demands that might be made against the surety bond and to receive a release of liability against any fires that start on or pass through the contract area.

| TABLE II - HAZARD CHARACTERISTICS AND OFFSET SLASH LOAD MAXIMUM 20 POINTS | |
|---|--|
| RATING (POINTS) | ADJECTIVE DESCRIPTION |
| LOW (0-5) | Associated with low harvest volumes per acre such as; selection cutting, light commercial thinning, sanitation/salvage operations, tree length skidding with tops and limbs and little or no breakage. Slash is broken up; slash is in many islands over the operating area. |

| TABLE II - HAZARD CHARACTERISTICS AND OFFSET SLASH LOAD MAXIMUM 20 POINTS | |
|--|---|
| RATING (POINTS) | ADJECTIVE DESCRIPTION |
| MODERATE (6-10) | Operation types similar to those listed above except that harvest volume per acre is higher or utilization standards are lower, or timber has higher proportion of unusable top and crown (commonly associated with partial cutting in second growth stands of mixed timber). Most diameter limit cutting falls in this category. Slash is distributed with some clear or very light areas intermingled with heavy islands of slash over the operating area, slash is not continuous. |
| HIGH (11-15) | Usually associated with regeneration harvest methods such as shelterwood, seed tree and most clearcuts, or any partial cut with a high harvest volume per acre. Slash is nearly continuous through the operating area frequently with heavier islands intermingled with light continuous slash. |
| EXTREME (16-20) | Any operation with very high cut volume, and/or low utilization standards, and/or many slashed or broken stems. Slash is continuous over the operating area with few light areas. |
| TECHNICAL SPECIFICATIONS | |
| LOW (0-5) | Slash load less than or equal to 3 inch diameter materials not to exceed 3.0 tons/acre. |
| MODERATE (6-10) | Slash load less than or equal to 3 inch diameter materials greater than 3.0 tons/acre but less than 6.0 tons/acre. |
| HIGH (11-15) | Slash load less than or equal to 3 inch diameter materials greater than 6.0 tons/acre but less than 12.0 tons/acre. |
| EXTREME (16-20) | Slash load less than or equal to 3 inch diameter materials exceeds 12.0 tons/acre. |

Slash loads can be determined by using any standard photo series appropriate for the habitat type represented by the contract area, or by using USDA Forest Service General Technical Report INT-16, 1974 (HANDBOOK FOR INVENTORYING DOWNED WOODY MATERIAL). If the contractor insists upon the latter, sampling intensity will be one (1) point per two (2) acres through the area in question. The inventory cost is paid by the contractor. All slash made available as a result of the current harvest will be included in the inventory except that slash that has been piled and will be burned by the contractor before the expiration date on the Agreement or such extensions granted by the fire warden.

| SITE FACTORS - MAXIMUM 10 POINTS | | | | | | |
|---|----------------------|--------------|--------------|--------------|--------------|---------------|
| ASPECT | PERCENT SLOPE | | | | | |
| | 0-10 | 11-20 | 21-30 | 31-40 | 41-50 | >50 |
| N-NE | 0 | 0 | 1 | 2 | 4 | 5 |
| E,NW | 0 | 0 | 1 | 3 | 6 | 7 |
| W,SE | 0 | 1 | 2 | 5 | 8 | 9 |
| S-SW | 1 | 2 | 4 | 7 | 9 | 10 |

| UNIT SIZE - MAXIMUM 5 POINTS | | | | | | |
|-------------------------------------|---------------|---------------|----------------|----------------|----------------|----------------|
| ACRES | <40 | 40-160 | 161-320 | 321-480 | 481-640 | >640 |
| PT VALUE | 0 | 1 | 2 | 3 | 4 | 5 |

| OTHER FACTORS - MAXIMUM 7 POINTS | |
|---|------------|
| Pre-existing slash from operations in the past five years | 0-2 |
| Proximity to structures, highways and recreational areas (e.g., parks, established campgrounds, etc). | Add Points |
| 330 feet | 5 |
| 660 feet | 4 |
| 990 feet | 3 |
| 1320 feet | 2 |
| 2640 feet | 1 |

In applying offset points to large, complex contract areas, or contract areas with highly variable hazard characteristics, hazard offset techniques must first be applied toward that portion of the contract area which will do the most to reduce the hazard by optimizing fire control effects.

| HAZARD OFFSETS | | |
|---|---|------|
| ALL POINTS ARE DEDUCTIONS | | |
| DISPOSAL | Piling and Burning, Broadcast Burning, etc. | 0-42 |
| <p>If disposal reduces slash load in the contract area to <3 tons, deduct hazard points to five (5) or less. If disposal does not reduce slash load to that level, points should be assigned as a proportion of the area treated. For example, if twenty-five percent (25%) of the area is dozer piled and the piles burned, but the slash load in the contract area still exceeds three (3) tons, twenty-five percent (25%) of the total points charged against the job should be deducted. However, if the disposal effectively isolates the untreated portion of the slash, or is otherwise placed to optimize fire control effects the proportion of points deducted may be increased to an amount to be determined by the district fire warden.</p> | | |
| MODIFICATION: | Chipping | 0-42 |
| | Crushing | 0-20 |
| | Lopping | 0-10 |
| <p>Lopping standards: All material less than three (3) inches in diameter will be cut so that it does not extend more than twenty (20) inches of the mean height above the ground. In addition, all boles greater than three (3) inches in diameter intersecting another bole will be completely severed.</p> <p>Assign points as a proportion of the contract area treated.</p> | | |
| ISOLATION | Fuel Breaks | 0-20 |

| HAZARD OFFSETS | |
|---|-----|
| ALL POINTS ARE DEDUCTIONS | |
| <p>To qualify as a fuel break, all slash and available fuels (Ref. Subsection 010.10) must be removed, or piled and burned, or treated sufficiently to prevent a fire from carrying through the area, for a minimum width of one chain (66 feet). In addition, the breaks must be placed to take advantage of terrain, manmade or natural barriers and to provide for optimum fire control effect.</p> | |
| Fire Lines | 0-5 |
| <p>All vegetative material must be removed to expose mineral soil. Minimum width of dozer line must be the width of the dozer blade with all dirt pushed in one direction and all vegetative debris to the other. Handlines must be eighteen (18) inches wide; additionally all fuels must be cleared for eight (8) feet. Lines must be tied to an anchor point except that they are not required to be built through a riparian management zone. In addition, the lines must be placed to take advantage of terrain, manmade or natural barriers, and to provide for optimum fire control effect. Maximum points allowed only if combined with an approved fuel break.</p> | |

| ASSIGNING POINTS FOR ISOLATION | | | |
|--|------------------------|-----------------------|-------------|
| Isolation techniques will usually be used to break the area into subunits or isolate the area from adjacent stands. Hazard offsets can be deducted for both if, in the opinion of the fire warden, both objectives are met and the total isolation points do not exceed 25 offset points. | | | |
| ACTIVITY | FUEL BREAK ONLY | FIRE LINE ONLY | BOTH |
| Isolates contract area into subunits: | | | |
| A. Partial isolation or incomplete units | 1-5 | 1 | 1-6 |
| B. Complete isolation of area into 1 to 2 subunits | 6-10 | 2 | 6-12 |
| C. Complete isolation of area into 3 to 5 subunits | 11-15 | 3 | 11-18 |
| D. Complete isolation of area into 6 or more subunits | 16-20 | 4 | 16-25 |
| OR | | | |
| Isolates contract area from adjacent stands: | | | |
| A. One third of the contract area boundary isolated | 1-5 | 1 | 1-6 |
| B. Two thirds of the contract area boundary isolated | 6-10 | 2 | 6-12 |
| C. Entire contract area boundary isolated | 11-15 | 3 | 11-18 |
| ACCESS CONTROL | 0-2 | | |
| Locked gate system controls access on all secondary roads with slash treated on main road | | | 1 |
| Locked gate system controls all road access into unit | | | 2 |
| AVAILABILITY OF WATER | | | 0-3 |
| The water supply must provide water availability for engines within one road mile of operating area or within three air miles for helicopter bucket use. The water supply must be sufficient to supply 10,000 gallons in an operational period during the fire season. | | | |
| Water supply for engine only or helicopter only (capacity 10,000 gallons during fire season). | | | 1 |

| ASSIGNING POINTS FOR ISOLATION | | | |
|---|-----------------|----------------|------|
| Isolation techniques will usually be used to break the area into subunits or isolate the area from adjacent stands. Hazard offsets can be deducted for both if, in the opinion of the fire warden, both objectives are met and the total isolation points do not exceed 25 offset points. | | | |
| ACTIVITY | FUEL BREAK ONLY | FIRE LINE ONLY | BOTH |
| Water supply for engine and helicopter (capacity 10,000 gallons) or; for engine or helicopter and which replenishes itself every operational period. | | | 2 |
| Water supply for engine and helicopter which replenishes itself every operational period. | | | 3 |

()

121. -- 129. (RESERVED)

130. LIABILITY.

01. **State Liability.** With the exception of cases of negligence on the part of the landowner, operator or their agents, liability for the cost of suppressing fires that originate on or pass through a slashing area remains with the State if one of the following alternatives is executed by the contractor: ()

a. The contract area is covered by a Certificate of Compliance-Fire Hazard Management Agreement and all hazard money payments are current or a proper bond is in place. ()

b. The contractor treats the slash in accordance with the standards outlined in the Section 120, Table II within the time period specified on the Agreement or approved extensions. ()

c. The landowner or operator elects to enter into a contract with the State for management of the slash and liability of fire suppression costs in accordance with Section 38-404, Idaho Code. ()

02. **Contractor Liability.** Should the contractor choose not to treat the slash or not enter into a contract with the State in accordance with Subsection 130.01, the contractor, in addition to forfeiting any applicable bond, is liable for fire suppression costs for all fires that originate on or pass through the contractor's slashing area. The contractor retains the full liability for five (5) years from the time the Agreement or any extension thereof expires, unless a clearance has been issued. ()

03. **Failure to Treat.** Any contractor who fails to treat the fire hazard as outlined in Subsection 130.02, is liable for the actual costs of suppressing any wildfire that may occur on or pass through the area covered by the Agreement for an amount up to two hundred fifty thousand dollars (\$250,000). If the same wildfire occurs on or passes through several areas covered by separate agreements or if several Agreements cover the same area, the contractor is liable for the actual cost of suppression up to one million dollars (\$1,000,000). If a wildfire occurs on or passes through an area covered by separate Agreements with different contractors, the actual cost of suppression up to one million dollars (\$1,000,000) will be shared by the contractors prorated on acreage included in their Agreements. ()

04. **Fees.** Upon payment of the fees set forth in Table III, the State will assume liability for the cost of suppressing fires that originate on or pass through the contract area.

| TABLE III - ADDITIONAL FEE TO TRANSFER LIABILITY BY HAZARD POINTS | |
|---|------------|
| POINTS | RATE |
| 6-10 | \$1.00/MBF |
| 11-20 | \$2.00/MBF |
| 21-30 | \$3.00/MBF |
| >30 | \$4.00/MBF |

Additional fee rates for measurement other than board foot measurement are available upon request from any Department of Lands office. ()

05. Additional Fee. If the contractor is unable to reduce the hazard points on a contract area to the standards required for a clearance, but has completed some hazard reduction work, that contractor can discharge the remainder of his hazard obligation by returning a portion of his bond to the district and paying an additional fee to transfer liability. Use the following formula: [One minus (the acceptable hazard point or five, divided by the residual, or untreated hazard points)] multiply that ratio times the slash rate. This dollar amount should be multiplied by the total volume removed from the contract area. Add to that the additional fee to transfer liability (for the untreated hazard points, from Table III) times the total volume. When this amount is paid to the State the contract area can be cleared. Which can also be expressed as:

$$(1-(5/U)) * B * V + (A*V) = \text{Formula to transfer liability for a partially completed job.}$$

Where:

U = Untreated or residual hazard points

B = Bond rate (usually \$4.00 MBF) Ref. Section 050, Table I

A = Additional fee to transfer liability, Table III

V = Total volume removed from the contract areas ()

131. -- 139. (RESERVED)

140. CERTIFICATE OF CLEARANCE.

The Certificate of Clearance is the instrument used to certify that hazard reduction has been accomplished, a contract entered into with the Director to ensure hazard management, or an additional fee has been paid. Anyone who has been issued an Agreement for the cutting of any forest product or potential forest product and who has met standards outlined in Section 120, or has made payment for hazard reduction under a contract with the Director, as provided in Section 38-404, Idaho Code, or has paid an additional fee in accordance with Section 38-122, Idaho Code, must apply in writing to the Director for a Certificate of Clearance. Within thirty (30) days after receipt of such written request for a Certificate of Clearance, the Director will cause the area covered by the request to be inspected. If it is found that the fire hazard has been properly disposed of, the Director will issue a Certificate of Clearance. The Certificate of Clearance must be substantially the same form as Department of Lands Form No. 760 - "Certificate of Clearance." ()

141. -- 149. (RESERVED)

150. FIRE SUPPRESSION AND FOREST PRACTICES ASSESSMENT.

01. Withholding. An amount of three percent (3%) of the slash management rate (twelve cents (\$.12)/MBF) will be withheld from all slash management monies received and dedicated to suppression of wildfires on forest lands. For harvest from private land, an additional amount not to exceed three percent (3%) of the slash

management rate (twelve cents (\$.12)/MBF) can be withheld from slash management monies received and will be dedicated to Forest Practices support on forest lands. ()

02. Assessment Costs. Fire suppression assessment costs on operations covered by surety bond or irrevocable letter of credit or other form of bond is paid at the rate specified in Subsection 150.01. ()

151. -- 159. (RESERVED)

160. PRELOGGING CONFERENCE AND AGREEMENT.

Prelogging conferences and hazard reduction agreements are encouraged, however, the hazard reduction agreement will be canceled or modified if significant operational changes occur during the harvesting of forest products or potential forest products. ()

161. -- 999. (RESERVED)

20.06.01 – RULES OF THE IDAHO BOARD OF SCALING PRACTICES

000. LEGAL AUTHORITY.

In accordance with Section 38-1208, Idaho Code, the Board has the power to adopt and amend rules. ()

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 20.06.01, “Rules of the Idaho Board of Scaling Practices.” ()

02. **Scope.** These rules constitute the levy of assessment, payment for logging and hauling, licensing standards and renewals, method of scaling forest products for commercial purposes, check scaling operations, and informal hearings. ()

002. INCORPORATION BY REFERENCE.

01. **Incorporated Document.** The “Idaho Log Scaling Manual,” 2008 Edition, published by the Idaho Board of Scaling Practices is herein incorporated by reference. ()

02. **Availability of Referenced Documents.** The “Idaho Log Scaling Manual,” 2008 Edition, is available on the Board’s website at <http://www.ibsp.idaho.gov/>. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Board.** The Idaho Board of Scaling Practices. ()

02. **Check Scaling.** The comparison of scaling practices between a Board-appointed check scaler and any other scaler. ()

03. **Combination Log.** Any multiple-segment log involving more than one (1) product classification. ()

04. **Complaint.** A written statement alleging a violation of the Idaho Scaling Law, Title 38, Chapter 12, Idaho Code. ()

05. **Complainant.** A person or entity who submits a complaint to the Board. ()

06. **Cubic Volume.** A log rule that uses cubic feet as its basic unit of measure, determined on the basis of a mathematical formula. ()

07. **Decimal “C.”** A log rule that uses tens of board feet as its basic unit of measure; one (1) decimal “C” equals ten (10) board feet. The Idaho Scribner decimal “C” volumes as listed in the Appendix of the “Idaho Log Scaling Manual.” ()

08. **Gross Scale.** The log rule volume of timber products before deductions are made for defects. ()

09. **Informal Hearing.** Any hearing before the Board of Scaling Practices, as opposed to a formal hearing before a hearing officer designated by the Board. ()

10. **Log Brands.** A unique symbol or mark placed on or in forest products for the purpose of identifying ownership. ()

11. **Net Scale.** The remaining log rule volume of timber products after deductions are made for defects, based on the product classification that is used. ()

12. **Official Seal.** An official seal of the Idaho Board of Scaling Practices is hereby adopted. The seal must be round, of a diameter of at least one and one-half inches (1-1/2”), and so constructed that it may readily be imprinted on paper. ()

13. **Prize Logs.** As described in Section 38-809, Idaho Code. ()

14. Product Classification. Classification as sawlog, pulp log, or cedar products log for purposes of net scale determination or check scaling. ()

15. Purchaser. The principal individual, partnership, or corporation entitled to ownership at the first determination of scale for forest products harvested in Idaho. Purchaser also includes the owner of the timber as provided in Section 38-1209(b), Idaho Code. ()

16. Requested Check Scale. A check scale performed pursuant to Section 820 of these rules. ()

17. Relicense Check Scale. A check scale requested and scheduled in advance, by a licensed scaler, for purposes of license renewal. ()

18. Routine Check Scale. A check scale that is not a relicense, temporary permit, or requested check scale. ()

19. Respondent. The person or entity accused of violating the Idaho Scaling Law, Title 38, Chapter 12, Idaho Code. ()

20. Temporary Permit Check Scale. A check scale performed pursuant to provisions of Section 240 of these rules. ()

21. Written Scaling Specifications. A written document provided to the scaler that states the information necessary to scale logs in accordance with a contractual scaling agreement. ()

011. -- 049. (RESERVED)

050. ASSESSMENT.

In accordance with provisions of Section 38-1209, Idaho Code, the Board is authorized and directed to levy an assessment. ()

01. Purchaser. The purchaser, as defined in Subsection 010.15, pays the assessment levied by the Board. ()

02. Assessment. The assessment must be transmitted to the Board on or before the twentieth (20th) day of each month for all timber harvested during the previous month. Forms provided by the Board must be completed and submitted with the assessment. ()

03. Weight. On forest products harvested and purchased solely on the basis of weight, no levy of assessment is applicable. ()

051. -- 059. (RESERVED)

060. LOG BRANDS.

In accordance with the provisions of Section 38-808, Idaho Code, the Board is responsible for approval and registration of all log brands. ()

01. Applications. All applications for log brands or renewals must be submitted and approved prior to use. ()

02. Fees. Log brand registration, renewal, and transfer of ownership fees are twenty-five dollars (\$25) for each log brand. ()

061. -- 069. (RESERVED)

070. PRIZE LOGS.

In accordance with provisions of Section 38-809, Idaho Code, the Board is responsible for the disposition of prize

logs. ()

071. -- 099. (RESERVED)

100. PAYMENT FOR LOGGING OR HAULING.

Provisions of Section 38-1220(b), Idaho Code, govern payment for logging or hauling. ()

01. Gross Scale Determination. Gross scale is determined by the methodology stated in Chapter Two (2) of the "Idaho Log Scaling Manual." ()

02. Compliance with Gross Scale Determination. Notwithstanding the methodology criteria contained in the "Idaho Log Scaling Manual," compliance will be determined to have been met when check scale results on gross scale comparisons are within allowable standards of variation as provided in these rules. ()

101. -- 199. (RESERVED)

200. LICENSES.

01. Application Form. Application for a scaling license is made on a form prescribed and furnished by the Board. ()

02. Revocation or Suspension for Incompetency. If check scale results on three (3) occasions in any twelve (12) month period are found unacceptable based on standards of variation established under Section 810, the scaler's license may be revoked or suspended as provided in Section 38-1218, Idaho Code. ()

201. -- 219. (RESERVED)

220. APPRENTICESHIP CERTIFICATE.

01. General. Is issued at no charge to those individuals with no previous scaling experience who wish to practice scaling techniques in view of becoming a licensed scaler. ()

02. Procedure to Obtain Certificate. After submitting the application form, a candidate will be required to take the written examination. Upon passing the written examination, the Apprenticeship Certificate will then be issued. ()

03. Regulations Governing Use of Certificate. The apprentice is authorized to scale only under the direct supervision of a licensed scaler. The scale determined by the apprentice will, under no circumstances, be used as the sole basis for payment. ()

221. -- 239. (RESERVED)

240. TEMPORARY PERMIT.

01. General. Is issued for a period of time, not to exceed three (3) months, to individuals with previous scaling experience who need to scale for commercial purposes. ()

02. Procedure to Obtain. Submit the application form; remit the required twenty-five dollar (\$25) fee; submit a letter from the employer requesting the temporary permit and identifying where the permittee would be scaling; take and pass the written portion of the scaler's examination, and demonstrate practical scaling abilities in the form of an acceptable check scale. ()

03. Regulations Governing Use of Temporary Permit. ()

a. Permits expire the date of the next practical examination in the area or three (3) months from the date of issuance, whichever comes first. The scale determined by the holder of a temporary permit may be used as a basis for payment. ()

b. Should the holder of a temporary permit fail to appear to take the practical portion of the scaler's examination after being notified in writing of the time and place of said examination, the temporary permit will be canceled. ()

c. Temporary permits will not be issued to applicants or relicensees who have failed the practical examination two (2) or more times until thirty (30) days following the individual's last exam failure. ()

241. -- 259. (RESERVED)

260. SPECIALTY LICENSE.

01. General. Is issued to handle situations where the applicant would not be required to possess the exacting skills needed to scale sawlogs. ()

02. Procedure to Obtain. Submit the application form, remit the required twenty-five dollar (\$25) fee, submit a letter from the employer describing scaling that would justify the issuance of a specialty license. and successfully complete the examination as may be devised by the Board. ()

03. Regulations Governing Use of Specialty License. The holder is only allowed to scale the products specified on the individual's license. ()

261. -- 279. (RESERVED)

280. STANDARD LICENSE.

01. General. Is issued to individuals who demonstrate competency in scaling principles and techniques. ()

02. Procedure to Obtain. Submit the application form, remit the required twenty-five dollar (\$25) fee, and take and pass the examination as described under Section 300. ()

03. Regulations Governing Use of Standard License. The holder is qualified to scale all species and products. ()

281. -- 299. (RESERVED)

300. STANDARD LICENSE EXAMINATION.
To be taken by all persons applying for the standard license. ()

01. Written Examination. ()

a. Will be based upon Chapters 1, 2, and 3 of the "Idaho Log Scaling Manual." ()

b. Any score of seventy percent (70%) or better is a passing grade. ()

c. The written test must be taken and passed before the practical examination can be attempted. ()

02. Practical Examination. ()

a. The practical examination for a scaler's license will consist of scaling a minimum of not less than two hundred (200) logs with a net decimal "C" scale determination for sawlogs of not less than twenty thousand (20,000) board feet, or not less than fifteen thousand (15,000) board feet in the southeast Idaho area. ()

b. The logs will first be scaled by three (3) qualified check scalers, except the southeast Idaho area will be two (2) or more qualified check scalers, and the agreed-upon results will be the basis for grading the

examination. ()

c. To obtain a passing grade, a scaler must be within allowable limits of variation in the following categories:

| CATEGORY | | ALLOWABLE VARIATION |
|-------------------------------|---|-------------------------------------|
| Gross Volume | For logs in round form | +/- 2.0% |
| | For logs in fractional or slab form | +/- 5.0% |
| Net Volume | Check scale percent of defect on logs checked | |
| | Up to 10 | +/- 2.0% |
| | 10.1 to 15 | +/- 3.0% |
| | 15.1 to 20 | +/- 0.2% for each percent of defect |
| | Over 20 | +/- 5.0% |
| Species identification errors | | 3.0% |

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301. -- 399. (RESERVED)

400. RENEWAL OF STANDARD AND SPECIALTY LICENSES.

For scalers who hold "Standard" and "Specialty" licenses, the process for renewal will consist of the following. ()

01. To Renew a License by the Expiration Date. Receive an acceptable check scale performed by a Board check scaler and pay renewal fee of twenty-five dollars (\$25). ()

02. To Renew a License Within Two Years After The Expiration Date: ()

a. Request and receive an acceptable check scale performed by a Board check scaler. When the check scale is unacceptable, the individual is required to reapply for the standard license. ()

b. Pay renewal fee of twenty-five dollars (\$25). ()

03. To Renew a License More Than Two Years After The Expiration Date. An individual is required to reapply for the standard license. ()

04. Option to a Check Scale for Standard License Renewal. A practical examination successfully completed may be used in-lieu-of a check scale for renewal. ()

05. Option to a Check Scale for Specialty License Renewal. An examination as may be devised by the Board may be used in-lieu-of a check scale for renewal of specialty licenses. ()

401. -- 499. (RESERVED)

500. METHOD OF SCALING FOREST PRODUCTS FOR COMMERCIAL PURPOSES.

01. Scribner Decimal "C". Log scaling by the Scribner decimal "C" method must be made according to scaling practices and procedures described in the "Idaho Log Scaling Manual" and Sections 501 through 504 of these rules. ()

02. Cubic Volume. Log scaling by a cubic volume method must be made according to scaling practices and procedures agreed upon in writing between parties to a scaling agreement. ()

03. Other Scaling Methods. Log scaling by any method other than Scribner decimal “C” or cubic volume will be considered and determined by the Board upon written request. ()

501. GROSS VOLUME CONVERSIONS.

01. Conversion to Gross Decimal “C” or Gross Cubic Volume. Gross volume measurement determined in a manner other than decimal “C” or cubic volume will be converted to an equivalent decimal “C” or cubic volume gross scale. ()

02. Conversion Factors. Measurement procedures and converting factors described in the Special Situations Measurement section, Chapter Two (2) of the “Idaho Log Scaling Manual,” may be used to express decimal “C” board foot equivalents. ()

03. Other Conversion Factors. Measurement procedures and converting factors not listed in the “Idaho Log Scaling Manual” will be considered and determined by the Board upon written request. ()

502. GENERAL SCALING REQUIREMENTS.

01. Written Scaling Specifications. At any scaling site, licensed scalers will be provided with a written document that states the information necessary to scale logs in accordance with a contractual scaling agreement. ()

02. Recording Measurements on Scale Tickets. For each log scaled, scalers must record a combination of data from which both gross and net volume can be derived. This data includes scaling length and scaling diameter(s). ()

03. Load Identification. Scalers must ensure that all loads are readily identifiable upon completion of scaling. ()

503. GROSS DECIMAL “C” SCALE DETERMINATION.

Contractual scaling agreements relating to determination of Scribner decimal “C” gross scale may not establish any scaling requirement that differs from those stated in the “Idaho Log Scaling Manual” except for a minimum top diameter that may be smaller than five and fifty-one hundredths inches (5.51”) actual measure. Licensed scalers will be provided with written scaling specifications that denote any minimum top diameter that is smaller than five and fifty-one hundredths inches (5.51”) actual measure. ()

504. NET DECIMAL “C” SCALE DETERMINATION.

Contractual scaling agreements relating to determination of Scribner decimal “C” net scale may establish scaling requirements that differ from those stated in the “Idaho Log Scaling Manual.” Licensed scalers will be provided with written scaling specifications that clearly describe any changes in net scale scaling practices. ()

505. -- 799. (RESERVED)

800. CHECK SCALING PROCEDURES.

01. Valid Check Scale. ()

a. Check scaling requires a minimum of fifty (50) logs containing a decimal “C” gross scale of at least ten thousand (10,000) board feet. When other methods of measurement are used, the check scaler will investigate the situation and determine the most logical method of check scaling. ()

b. Check scaling will be performed without scaler’s knowledge, when possible. ()

c. Check scales are performed only on logs that are in the same position as presented to the scaler. ()

d. Check scales will not be performed if the logs are not spread adequately enough, in the check ()

scaler’s discretion, to allow for accurate scaling. If these conditions arise, the check scaler makes a written report describing the conditions and surrounding circumstances. The Board will make a decision as to the disposition of these conditions and direct the check scaler accordingly. ()

e. The check scaler must use the written scaling specifications that have been provided to the scaler. In the absence or omission of written scaling specifications, logs will be check scaled according to scaling methodology stated within the “Idaho Log Scaling Manual.” ()

02. Cooperative Scaling. Cooperative scaling involves two (2) scalers, using different scaling specifications, working together to determine the log scale volume. In these instances, each scaler is individually responsible for the scale recorded. ()

03. Team Scaling. Team scaling is two (2) scalers, using the same scaling specifications, working together to determine the log scale volume. In these instances, both scalers are responsible for the scale recorded, except that if one (1) of the individuals is an apprentice scaler, the licensed scaler is responsible for the scale recorded. ()

04. Holding Check Scale Log Loads. All log loads involved in an unacceptable check scale will be held at the point of the check scale until such time as the logs have been reviewed with the scaler, or for a period up to forty-eight (48) hours. ()

a. During this period the load(s) may not be moved or tampered with in any way. ()

b. The Board’s check scaler will mark all loads that must be held, and notify the scaler and landing supervisors respectively. ()

801. -- 809. (RESERVED)

810. CHECK SCALING STANDARDS OF VARIATION.

01. Allowable Limits of Variation. To determine a check scale as acceptable or unacceptable for Board consideration, and when the method of measurement is the Coconino Scribner decimal C log rule, a scaler must be within allowable limits of variation in the following categories:

| CATEGORY | | ALLOWABLE VARIATION | |
|-------------------------------|---|---------------------|--|
| Gross Volume | For logs in round form | +/- 2.0 percent | |
| | For logs in fractional or slab form | +/- 5.0 percent | |
| Net Volume | Check scale percent of defect on logs checked | | |
| | Sawlogs | Up to 10 | +/- 2.0 percent |
| | | 10.1 to 15 | +/- 3.0 percent |
| | | 15.1 to 20 | +/- 0.2 percent for each percent of defect |
| | | Over 20 | +/- 5.0 percent |
| Pulp Logs | +/- 5.0 percent | | |
| Cedar Product Logs | +/- 8.0 percent | | |
| Species Identification Errors | | 3.0 percent | |
| Product Classification Errors | | 3.0 percent | |

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02. Combination Logs. For purposes of determining product classification errors, combination logs

are counted as one-half (1/2), one-third (1/3), one-fourth (1/4) -- depending on the number of scaling segments -- to arrive at a piece or log count variation. Combination logs will be considered only when provided for in a contractual scaling agreement or written scaling specifications. ()

03. Check Scales Involving Multiple Variations. Some check scales will involve more than one (1) parameter of variation. The overall allowable limit of variation to determine acceptability or unacceptability of the total gross or net scales is determined by the following formula:

| |
|--|
| $OAV = \frac{(a \times E) + (b \times E) + (c \times F)}{(D + E + F)}$ |
| OAV = overall allowable percentage variation |
| A = allowable percentage variation for gross/net sawlog scale |
| B = allowable percentage variation for gross/net pulp log scale |
| C = allowable percentage variation for gross/net cedar products scale |
| D = check scaler's gross/net sawlog scale |
| E = check scaler's gross/net pulp log scale |
| F = check scaler's gross/net cedar products log scale |

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811. -- 819. (RESERVED)

820. REQUESTED CHECK SCALE.

A check scale may be performed upon request of any individual, company, or corporation. ()

01. Submission of Request. ()

a. The request must be in writing and approved by the Board's executive director. ()

b. The request must be made by a party directly affected and involve disputes on scaling. ()

02. Cost of a Requested Check Scale. The fee is two hundred dollars (\$200) for each day, or part of a day, that the check scaler is scaling the logs. ()

821. -- 829. (RESERVED)

830. CHECK SCALE REPORT.

01. Check Scale Results. The check scaler will make a report of his findings to the Board. ()

02. Persons Entitled to a Copy of the Check Scale Report. ()

a. Persons directly affected and entitled to a copy of the check scale report on temporary permits and relicensure check scales are the scaler and the scaler's employer(s). ()

b. Persons directly affected and entitled to a copy of the check scale report on routine and requested check scales include the scaler, the scaler's employer(s), the scaler's supervisor(s), the logging contractor(s), or other persons directly affected by the check scale report as determined by the Board's executive director. ()

831. -- 909. (RESERVED)

910. INFORMAL HEARINGS -- SCOPE AND AUTHORITY.

Sections 910 through 980 apply to all informal hearings before the Board. These rules are adopted pursuant to

Sections 38-1208 and 67-5201, et seq., Idaho Code, and are intended to facilitate the Board in executing its duties and responsibilities under Title 38, Chapter 12, Idaho Code. These rules are construed to effectuate the intent of the legislature in adopting the Idaho Scaling Law in a reasonable, fair and expeditious manner. ()

911. -- 919. (RESERVED)

920. COMPLAINTS.

- 01. Submittal of Complaint.** Is submitted in writing in the name of the primary complainant. ()
- 02. Contents of Complaint.** Must state: ()
 - a.** The name and address of the person or entity actually aggrieved; ()
 - b.** A short and plain statement of the nature of the complaint, including the location and date of the alleged violation; ()
 - c.** The complainant's notarized signature; ()
 - d.** The complainant must submit written or documentary evidence in support of the alleged violation; and ()
 - e.** In the case of a gross scale complaint, which alleges violations of Section 38-1220(b), Idaho Code, the complainant must also provide a readable copy of the contract, payment slips, and scale tickets for each transaction involved in the alleged complaint. ()

921. -- 929. (RESERVED).

930. RESPONSE TO COMPLAINT.

- 01. Response.** The respondent must submit to the Board a written response to the allegations of the complaint, with supporting evidence, within thirty (30) days after receiving a copy of the same from the Board. The Board will presume that the respondent received such complaint and evidence within three (3) days after mailing by the Board, unless the respondent submits evidence to the contrary to the Board. ()
- 02. Consideration of Complaint.** The Board will consider a complaint in its next meeting following the timely response of the respondent or the respondent's failure to respond within the time limit of Subsection 930.01. ()

931. ACCESS TO RECORDS.

The Board will provide to the respondent or his counsel a copy of the complaint and any supporting evidence to which the respondent does not have access, at the earliest date after the Board has received the same. The Board will provide the complainant or his counsel a copy of any answer or response and supporting evidence thereof to which the complainant does not have access, at the earliest date after the Board has received the same. ()

932. -- 939. (RESERVED).

940. CONDUCT OF INFORMAL HEARINGS.

- 01. Hearing Procedure.** The chairman of the Board will minimize, where possible, the use or application of formal court rules of procedure and evidence in the spirit of an informal hearing consistent with the intent of these rules, fairness to the parties, and the interests of justice. ()
- 02. Statements.** The complainant and the respondent may make a brief statement concerning the allegation(s) and may introduce new evidence in support of or in opposition to the allegation(s). Statements must be concise, specific, relevant to the allegation(s), and limited to ten (10) minutes per party, unless the specific

allegation(s) as determined by the chairman clearly requires greater time to address the same. ()

03. Questions Directed to the Board. All questions at the hearing are directed to the Board. The Board will consider written or oral questions from the complainant or respondent at the hearing or take such questions under advisement. ()

04. Questions Asked by the Board. Only the Board may ask questions of the complainant or respondent and may call witnesses. ()

05. Representation by Counsel. The complainant and the respondent may be represented by counsel. ()

941. -- 949. (RESERVED)

950. TIME FOR BOARD DETERMINATION.

After submission of the complaint and supporting documentation for evidence in accord with Section 930, and after an informal hearing on a complaint wherein the parties have had opportunity to respond to these allegations and to present testimony, documentation, or other evidence thereon in accord with Section 940, the Board may thereafter make its determination or take the matter under advisement and reach its determination within thirty (30) days. ()

951. -- 959. (RESERVED).

960. FINAL DETERMINATION.

The Board's determination is final, subject to appeal pursuant to Title 67, Chapter 52, Idaho Code. ()

961. -- 969. (RESERVED).

970. BOARD ACTION UPON DETERMINATION OF PROBABLE VIOLATION.

In the event that the Board determines that the complaint and supporting evidence indicate a probable violation of the Idaho Scaling Law, the Board will, within thirty (30) days after that determination, transmit the complaint and supporting documentation to the prosecutor of the county where the violation occurred. ()

971. -- 999. (RESERVED).

**20.07.02 – RULES GOVERNING CONSERVATION OF OIL AND NATURAL GAS
IN THE STATE OF IDAHO**

SUBCHAPTER A – GENERAL PROVISIONS

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Title 47, Chapter 3, Idaho Code; and Title 67, Chapter 52, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.07.02, “Rules Governing Conservation of Oil and Natural Gas in the State of Idaho.” ()

02. Scope. These rules apply to the exploration and extraction of any and all crude oil and natural gas resources in the state of Idaho, not including biogas, manufactured gas, or landfill gas, regardless of ownership. ()

03. Other Laws. Owners or operators engaged in the exploration and extraction of crude oil and natural gas resources will comply with all applicable laws and rules of the state of Idaho including, but not limited to the following: ()

a. Idaho water quality standards and waste water treatment requirements established in Title 39, Chapter 1, Idaho Code; IDAPA 58.01.02, “Water Quality Standards”; IDAPA 58.01.16, “Wastewater Rules”; and IDAPA 58.01.11, “Ground Water Quality Rule,” administered by the IDEQ. ()

b. Idaho air quality standards established in Title 39, Chapter 1, Idaho Code and IDAPA 58.01.01 “Rules for the Control of Air Pollution in Idaho,” administered by the IDEQ. ()

c. Requirements and procedures for hazardous and solid waste management, as established in Title 39, Chapter 44, Idaho Code, and rules promulgated thereunder including IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”; IDAPA 58.01.06, “Solid Waste Management Rules”; and IDAPA 58.01.10, “Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended,” administered by the IDEQ. ()

d. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and rules promulgated thereunder including IDAPA 37.03.07, “Stream Channel Alteration Rules,” administered by the IDWR. ()

e. Injection Well Act, Title 42, Chapter 39, Idaho Code and rules promulgated thereunder including IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells,” administered by the IDWR. ()

f. Department of Water Resources – Water Resource Board Act, Title 42, Chapter 17, Idaho Code and rules promulgated thereunder including IDAPA 37.03.06, “Safety of Dams Rules,” administered by the IDWR. ()

002. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the Commission shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, Title 47, Chapter 3, Idaho Code, and IDAPA 20.07.01, “Rules of Practice and Procedure before the Idaho Oil and Gas Conservation Commission.” ()

003. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: ()

01. API Bulletin E3, Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations, Environmental Guidance Document. 1st Edition, January 1993 and Reaffirmed June 2000 available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

02. API SPEC 5CT, Specifications for Casing and Tubing. The 8th edition dated July, 1, 2005 and the amendments dated March, 31, 2006 and April, 7, 2006 are available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

03. API SPEC 10a, Specification for Cements and Materials for Well Cementing. The 24th Edition

dated December, 2010 is available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

04. ASTM D698-07e1, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft³ (600 kN-m/m³)). 2007 revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

05. ASTM D1250-08, Standard Guide for Use of the Petroleum Measurement Tables. 2008 revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

06. ASTM D1557-09, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft³ (2,700 kN-m/m³)). 2009 revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

07. EPA SW-846 Method 9090A, Compatibility Test for Wastes and Membrane Liners. Revision 1, July 1992. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103 and this website: <http://www.epa.gov/osw/hazard/testmethods/sw846/pdfs/9090a.pdf>. ()

08. OSHA Standard 1910.1200 (Hazard Communication). Last revised 1996. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103 and this website: http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=10099. ()

004. -- 009. (RESERVED)

010. DEFINITIONS.

01. Act. The Idaho Oil and Gas Conservation Act, Title 47, Chapter 3, Idaho Code. ()

02. Active Well. A permitted well used for production, disposal, or injection that is not idled for more than twenty-four (24) continuous months. ()

03. Barrel. Forty-two (42) U. S. gallons at sixty (60) Degrees F at atmospheric pressure. ()

04. Blowout. An unplanned sudden or violent escape of fluids from a well. ()

05. Blowout Preventer. A casinghead control equipped with special gates or rams that can be closed and sealed around the drill pipe, or that otherwise completely closes the top of the casing. ()

06. Bonus Payment. Monetary consideration that is paid by the lessee to the lessor for the execution of an oil and gas lease. ()

07. Casing Pressure. The pressure within the casing or between the casing, tubing, or drill pipe. ()

08. Casinghead. A metal flange attached to the top of the conductor pipe that is the primary interface for the diverter system during drilling out for surface casing. ()

09. Casinghead Gas. Any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil. ()

10. Common Source of Supply. The geographical area or horizon definitely separated from any other such area or horizon and which contains, or from competent evidence appears to contain, a common accumulation of oil or gas or both. Any oil or gas field or part thereof which comprises and includes any area which is underlaid, or which from geological or other scientific data or experiments or from drilling operations or other evidence appears to be underlaid by a common pool or accumulation of oil or gas or both oil and gas. ()

11. Completion. An oil well is considered completed when the first new oil is produced through

wellhead equipment into lease tanks from the ultimate producing interval after the production casing has been run. A gas well is considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production casing has been run. ()

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

13. Cubic Foot of Gas. The volume of gas contained in one (1) cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be fourteen and seventy-three hundredths (14.73) pounds per square inch absolute and the standard temperature base shall be sixty (60) Degrees F. ()

14. Day. A period of twenty-four (24) consecutive hours from 8 a.m. one day to 8 a.m. the following day. ()

15. Development. Any work that actively promotes bringing in production. ()

16. Director. The head of the Idaho Department of Lands and secretary to the Oil and Gas Conservation Commission, or his designee. ()

17. Drilling Logs. The recorded description of the lithologic sequence encountered in drilling a well, and any electric, gamma ray, geophysical, or other logging done in the hole. ()

18. Fresh Water. All surface waters and those ground waters that are used, or may be used in the future, for drinking water, agriculture, aquaculture, or industrial purposes other than oil and gas development. The possibility of future use is based on hydrogeologic conditions, water quality, future land use activities, and social/economic considerations. ()

19. Gas-Oil Ratio. The volume of gas produced in standard cubic feet to each barrel of oil or condensate produced concurrently during any stated period. ()

20. Gas Processing Facility. A facility that conditions liquids or gas by compression, dehydration, refrigeration, or by other means. ()

21. Gas Well. ()

a. A well that produces primarily natural gas; ()

b. Any well capable of producing gas in commercial quantities and also producing oil from the same common source of supply but not in commercial quantities; or ()

c. Any well classed as a gas well by the Commission for any reason. ()

22. Geophysical or Seismic Operations. Any geophysical method performed on the surface of the land utilizing certain instruments operating under the laws of physics respecting vibration or sound to determine conditions below the surface of the earth that may contain oil or gas and is inclusive of, but not limited to, the preliminary line survey, the acquisition of necessary permits, the selection and marking of shot-hole locations, necessary clearing of vegetation, shot-hole drilling, implantation of charge, placement of geophones, detonation and backfill of shot-holes, and vibroseis. ()

23. Hydraulic Fracturing, or Fracing. A method of stimulating or increasing the recovery of hydrocarbons by perforating the production casing and injecting fluids or gels into the potential target reservoir at pressures greater than the existing fracture gradient in the target reservoir. ()

24. Inactive Well. An unplugged well that has no reported production, disposal, injection, or other permitted activity for a period of greater than twenty-four (24) continuous months, and for which no extension has been granted. ()

25. **Intermediate Casing.** The casing installed within the well to seal intermediate zones above the anticipated bottom hole depth. The casing is generally set in place after the surface casing and before the production casing. ()
26. **Junk.** Debris in a hole that impedes drilling or completion. ()
27. **Lease.** A tract(s) of land that by virtue of an oil and gas lease, fee or mineral ownership, a drilling, pooling or other agreement, a rule, regulation or order of a governmental authority, or otherwise constitutes a single tract or leasehold estate for the purpose of the development or operation thereof for oil or gas or both. ()
28. **Mechanical Integrity Test.** A test designed to determine if there is a significant leak in the casing, tubing, or packer of a well. ()
29. **Oil Well.** Any well capable of primarily producing oil in paying quantities, but not a gas well. ()
30. **Pit.** Any excavated or constructed depression or reservoir used to contain reserve, drilling, well treatment, produced water, or other fluids at the drill site. This does not include enclosed, mobile, or portable tanks used to contain fluids. ()
31. **Pollution.** Constituents of oil, gas, salt water, or other materials used in oil and gas extraction, occurring in fresh water supplies at levels that exceed the standards in IDAPA 58.01.02, "Water Quality Standards," and IDAPA 58.01.11, "Ground Water Quality Rules," as the result of the drilling, casing, treating, operation or plugging of wells. ()
32. **Pressure Maintenance.** The injection of gas, water, or other fluids into oil or gas reservoirs to maintain pressure or retard pressure decline in the reservoir for the purpose of increasing the recovery of oil or other hydrocarbons therefrom. ()
33. **Produced Water.** Water that is produced along with oil or gas. ()
34. **Production Casing.** The casing set across the reservoir interval and within which the primary completion components are installed. ()
35. **Proppant.** Sand or other materials used in hydraulic fracturing to prop open fractures. ()
36. **Release.** Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. ()
37. **Spud.** To start the drilling process by removing rock, dirt, and other sedimentary material with the drill bit. ()
38. **Surface Casing.** The first casing that is run after the conductor pipe to anchor blow out prevention equipment and seals out fresh water zones. ()
39. **Surface Water.** Rivers, streams, lakes, and springs when flowing in their natural channels. ()
40. **Systems Approach.** The disclosure of chemical information by chemical abstract service name only, without disclosing component percentages or chemical relationships. ()
41. **Tank.** A concrete, metal, or plastic stationary vessel used to contain fluids. ()
42. **Tank Battery.** One (1) or more tanks that are connected to receive crude oil, condensate, or produced waters from a well(s) and that serves as the point of collection and disbursement of oil or gas from a well(s). ()

43. **Tank Dike.** An impermeable man-made structure constructed around a tank to contain leakage from the tank. ()
44. **Tubing.** Pipe used inside the production casing to convey oil or gas from the producing interval to the surface. ()
45. **Volatile Organic Compound.** Organic chemical compounds whose composition makes it possible for them to evaporate under normal indoor atmospheric conditions of sixty-eight (68) degrees F and an absolute pressure of fourteen point seven (14.7) psi atmospheric. ()
46. **Waterflooding.** The injection into a reservoir through one (1) or more wells with volumes of water for the purpose of increasing the recovery of oil therefrom. ()
47. **Well Report.** The written record progressively describing the strata, water, oil, or gas encountered in drilling a well with such additional information as to give volumes, pressures, rate of fill-up, water depths, casing strata, casing record, etc., as is usually recorded in normal procedure of drilling; also, it includes electrical radioactivity, or other similar logs run, lithologic description of all cores, and all drill-stem tests, including depth-tested, cushion-used, time tool open, flowing and shut-in pressures and recoveries. ()
48. **Well Site.** The areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well, or injection well, and its associated well pad. ()
49. **Well Treatment.** Actions performed on a well to acidize, fracture, or stimulate the target reservoir. ()
50. **Wildcat Well.** An exploratory well drilled in an area of unknown subsurface conditions. ()
- 011. ABBREVIATIONS.**
01. **API.** American Petroleum Institute. ()
02. **ASTM.** American Society for Testing and Materials. ()
03. **BBL.** Oilfield Barrel. ()
04. **BOP.** Blowout Preventer. ()
05. **CAS.** Chemical Abstracts Service. ()
06. **EPA.** United States Environmental Protection Agency. ()
07. **F.** Fahrenheit. ()
08. **GPS.** Global Positioning System. ()
09. **HDPE.** High Density Polyethylene. ()
10. **IDAPA.** Idaho Administrative Procedure Act. ()
11. **IDEQ.** Idaho Department of Environmental Quality. ()
12. **IDWR.** Idaho Department of Water Resources. ()
13. **MCF.** One thousand cubic foot. ()

- 14. **MSDS.** Material Safety Data Sheet. ()
- 15. **OSHA.** Occupational Safety & Health Administration. ()
- 16. **PSI.** Pounds per Square Inch. ()
- 17. **PVC.** Polyvinyl Chloride. ()

012. -- 014. (RESERVED)

015. PROTECTION OF CORRELATIVE RIGHTS.

The Commission and the Department should afford a reasonable opportunity to each person entitled thereto to recover or receive the oil or gas in such person's tract(s) or the equivalent thereof, without being required to drill unnecessary wells or to incur other unnecessary expense to recover or receive such oil or gas or its equivalent. ()

016. -- 019. (RESERVED)

020. APPLICABILITY.

01. Oil and Gas Development. These rules apply to oil and gas development and carry out the Commission's duty to prevent waste, protect correlative rights, and prevent pollution of fresh water supplies through activities authorized by these rules. ()

02. Exclusions. These rules do not apply to the exploration and development of other mineral resources covered by Title 47, Chapter 13, Idaho Code; Title 47, Chapter 15, Idaho Code; or Title 42, Chapter 40, Idaho Code. ()

021. CLASS II INJECTION WELLS.

Class II injection wells, as described in IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells," are currently not authorized under this rule. Permits for Class II injection wells must be obtained through IDAPA 37.03.03. ()

022. -- 029. (RESERVED)

030. NOTICES - GENERAL.

01. Written Authorization Required. Any written notice of intention to do work or to change plans previously approved must be filed with the Department, unless otherwise directed, and must be approved before the work is begun. Such approval may be given orally and, if so given, shall thereafter be confirmed by the Department in writing. Written notices may be submitted to the Department by e-mail or facsimile. ()

02. Emergency Authorization. In case of emergency, or a situation where operations might be unduly delayed, any written notice required by these rules and regulations to be given the Department may be given orally or by wire and if approval is obtained, the transaction shall be confirmed in writing, as a matter of record. ()

03. Publication of Legal Notices. Whenever these rules require a legal notice to be published in a newspaper, the notice must be published once a week for two (2) consecutive weeks. ()

031. FORMS.

The Department will adopt such forms of notices, requests, permits, and reports as it may deem advisable or necessary in carrying out the provisions of law and its rules. ()

032. ORGANIZATION REPORTS.

01. Required Content. Before any person engages in any activity covered by the statutes and rules of the Commission, that person must file an organization report with the Department. The organization report must

- include the following information: ()
- a. The person’s name and the type of the business being operated or conducted; ()
 - b. The mailing address to which all correspondence from the Department is to be sent; ()
 - c. The telephone number(s), facsimile number(s), and e-mail address(es) for which contact by the Department may be made; ()
 - d. The names of persons authorized to submit required forms, reports, and other documents to the Department; and ()
 - e. If a legal entity, proof the person is authorized to transact business within the state. ()
- 02. Updates.** A supplementary report must be filed with the Department within thirty (30) days of any change to facts stated in a previously-filed organization report. ()

033. DESIGNATION OF AGENT.

A “Designation of Agent” must be submitted to the Department in a manner and form approved by the Department prior to the commencement of operations. A Designation of Agent(s) will be accepted as authority of agent to fulfill the obligations of the owner and to sign any papers or reports required under these oil and gas operating regulations, and all authorized orders or notices given by the Department when given in the manner hereinafter provided will be deemed service of such orders or notices upon the owner and the lessee. All changes of address and any termination of the agent’s authority must be immediately reported in writing to the Department and, in the latter case, the designation of a new agent(s) must be immediately made. If the designated agent(s) is at any time incapacitated for duty or absent from the address provided, the owner must designate in writing a substitute to serve in his or their stead, and in the absence of such owner or of notice of appointment of a substitute then, in such case, notices may be given by the Department by delivering a registered letter to the United States Post Office at Boise, Idaho, directed to the agent(s) at the address shown on the current Designation of Agent on file in the Department’s office, and such notice will be deemed service upon the owner and lessee. ()

034. -- 039. (RESERVED)

040. PUBLIC COMMENT.

Applications submitted under Sections 100, 200, 210, 230 and 330 of these rules will be posted on the Department’s website for a fifteen-day (15) written comment period. The Department will also send an electronic copy of the application to the respective county, and city if applicable, where the proposed operation is located. The purpose of the comment period is to receive written comments on whether a proposed application complies with these rules. These comments will be considered by the Department prior to permit approval or denial. Relevant comments will be posted on the Department’s website following the comment period. ()

041. -- 049. (RESERVED)

050. ENFORCEMENT.

The Department enforces these rules pursuant to Section 47-325, Idaho Code. ()

051. -- 099. (RESERVED)

SUBCHAPTER B – EXPLORATION AND DEVELOPMENT

100. GEOPHYSICAL OPERATIONS.

01. Permit Required. Before beginning seismic operations in the state of Idaho, a representative of the client company and the seismic contractor will meet with the staff of the Department, file an application for a permit to conduct seismic operations, and pay an application fee. No seismic operation may be conducted without such a permit. The Department has discretion to waive the requirement of the pre-permit meeting for the client company. The permit for seismic operations may be revoked or suspended or the application for the permit denied by the

Department for failure to comply with the Commission's rules, statutes, and orders. The Department may revoke, suspend, or deny the application for a seismic permit without a hearing; provided that the seismic contractor will be given an opportunity for a hearing at the next regularly scheduled Commission meeting. The fact that a permit is revoked or suspended does not excuse the seismic contractor or client company from properly plugging existing seismic holes but does prohibit the person(s) from drilling any more. The application for a permit for seismic operations must include: ()

a. The proposed route of the seismic line on a topographic or recent air photo base map at a sufficient scale to show roads, buildings, surface waters, and Section, Township, and Range lines. The map must also show additional area as needed for any alternative routing. The alternative routing must be within at least one-half (1/2) mile of the proposed route. Reapplication must be made if the final route strays from the proposed route and outside the designated alternative routing areas; and ()

b. The energy sources proposed to be used for the seismic operation, such as vibroseis, shot holes, surface shot, or others. ()

c. The approximate number, depth, and location of the seismic holes and the size of the explosive charges. The application must be accompanied by a map with a scale of one inch equaling two (2) miles that shows the depth and location of the shotholes. ()

d. The name and permanent address of the client company the Department may contact about the seismic operation. ()

e. The name, permanent address, and phone number of the seismic contractor and his local representative whom the Department may contact about the seismic activity. ()

f. The name, phone number, and permanent address of the hole plugging contractor, if different from the seismic contractor. ()

g. A detailed description of the hole plugging procedures, and a description of the surface reclamation procedures, if such reclamation is needed. ()

h. The anticipated starting date of seismic operations. ()

i. The anticipated completion date of seismic operations, and the anticipated date of any required reclamation or hole plugging. ()

j. A description of the identifying mark that will be on the hat or nonmetallic plug to be used in the plugging of the seismic hole. ()

02. Operating Requirements. All geophysical operations must comply with the following requirements: ()

a. All vehicles utilized by the permit holder, or its agents or contractors, shall be clearly identified by signs or markings utilizing letters or numbers, or a combination thereof, a minimum of three (3) inches in height and one-half (1/2) inch wide, indicating the name of such agent. ()

b. No seismic source generation from vibroseis, shot holes, surface shot, or other method shall be conducted within two hundred (200) feet of any residence, water well, oil well, gas well, injection well or other structure without having first secured the express written authority of the owner(s) thereof and the permit holder shall be responsible for any resulting damages. ()

c. Written authority from the owner of a residence, water well, oil well, gas well, injection well or other structure must also be obtained from the owner(s) if any explosive charge exceeds the maximum allowable charge within the scaled distance below:

| DISTANCE TO STRUCTURE (Feet)* | MAXIMUM ALLOWABLE CHARGE WEIGHTS (Pounds)* |
|--|---|
| 50 | 0.5 |
| 100 | 2.0 |
| 150 | 4.5 |
| 200 | 8.0 |
| 250 | 12.0 |
| 300 | 18.0 |
| 350 | 25.0 |
| * Based upon a charge weight of seventy (70) Foot/Pound ^{1/2} | |

()

d. The maximum allowable charge weight is twenty-five (25) pounds, unless the permit holder requests and secures the prior written authorization from the Department. ()

e. All seismic sources placed for detonation shall contain additives to accelerate the biodegradation thereof and shall be handled with due care in accordance with industry standards. The cap leads for any seismic sources that fail to detonate shall be buried at least three (3) feet deep. ()

f. All vegetation cleared to the ground shall be cleared in a competent and workmanlike manner in the exercise of due care. ()

g. Unless otherwise consented to by the surface owner in writing, permit holder shall not cut down any tree measuring six (6) inches or more in diameter, as measured at a height of three (3) feet from the ground surface, unless there are no reasonable alternatives to the removal of such tree(s) available to permit holder. Permit holder shall compensate surface owner the value of all such trees. ()

h. All excessive rutting or soil disturbances shall be repaired or restored to the original condition and contour to the extent reasonable, unless otherwise agreed to by the permit holder and the surface owner in writing. ()

i. All fences removed shall be replaced, unless otherwise agreed to by the permit holder and the surface owner in writing. ()

j. All debris associated with the seismic activity shall be removed and properly disposed. ()

03. Bond Required. ()

a. Before beginning geophysical operations, the geophysical contractor must file and have approved by the Department a bond in the amount of at least ten thousand dollars (\$10,000). The Department may increase this bonding requirement for geophysical contractors based on the amount of potential damage from the contemplated operation. The condition of such bond shall comply with the Act, the rules and orders of the Commission, and orders of the Department. The obligation of the bond shall not be discharged until one (1) year from completion of the survey or until the geophysical contractor has complied with the Oil and Gas Conservation Law, the Commission's rules, and the orders of the Commission and the Department. ()

b. Persons or other entities who engage in the plugging of seismic holes and are not a regular full-time employee of the seismic company, owner, or operator shall have posted with the director a surety bond in favor of the Department. Said bond shall be on a form prescribed by the Department and in the amount of five thousand dollars (\$5,000). The condition of the bond shall comply with the Oil and Gas Conservation Law and the regulations and

orders of the Commission and the Department. ()

04. Newspaper Notice. Before a geophysical contractor conducts the geophysical operation, the contractor shall publish a legal notice in a newspaper of general circulation in the county where the survey will be conducted. The notice shall state the nature and approximate time period of the seismic operations. These requirements do not apply to operations conducted within a well or conducted by aerial surveys. ()

05. Owner and Occupant Notification. No entry shall be made by any person to conduct seismic operations, upon the lands where such seismic operations are to be conducted, without the permit holder having first given notice at least thirty (30) calendar days prior to commencement of field seismic operations. ()

a. The notice shall be in writing and given either personally or by certified United States mail to the following persons: ()

i. Surface owners reflected in the tax records of the counties where the lands are located, at the mailing addresses identified for such surface owners in such records; ()

ii. Occupants residing on the lands who are not the surface owners, if it can be reasonably ascertained that there are such occupants; and ()

iii. Owners or operators of oil and gas wells within the seismic survey area, as reflected in Department records. ()

b. The notice shall contain the following: ()

i. Name of the person or entity that is conducting the seismic operations; ()

ii. Proposed location of the seismic operations; and ()

iii. Approximate date the person or entity proposes to commence seismic operations. ()

06. Department Notifications. ()

a. The permit holder shall also notify the Department within five (5) business days of the commencement and completion of each seismic operation. ()

b. Before beginning geophysical operations other than seismic operations, the geophysical contractor shall file a notice of intention to do so with the Department. Said notice shall describe the geophysical method to be used and be accompanied by a map of a scale of one (1) inch equals two (2) miles showing the location of the project. ()

07. Reports and Notices Required. ()

a. Activity Report. Upon completion of the seismic activity or at thirty (30) day intervals after the work has commenced, whichever occurs first, the seismic contractor shall file with the Department a report of the completion or progress of the seismic project. The final completion report shall be in affidavit form and shall include a seven and one-half (7.5) - or fifteen (15) minute United States Geological Survey topographic quadrangle map (at a scale of one (1) inch equals two thousand (2,000) feet or one (1) inch equals four thousand (4,000) feet that shows section, township, and range) and the location of each survey so that the shotholes and other potential impacts can be easily located. The final completion report shall also include a statement that all work has been performed in compliance with the application for a permit to perform seismic activity, Section 100 of these rules, and permit provisions. Said maps, applications, and reports shall be kept confidential by the Department for a period of one (1) year from the date of receipt, subject to the needs of the Department to use them to enforce these regulations, the Act, and the orders of the Commission or the Department. Also, the owner of the surface of the land may be advised of the location of seismic lines or seismic holes on his land and of the exploration method used. ()

b. Plugging Notice. Seismic contractors shall give the Department at least twenty-four (24) hours

advance notice of shothole plugging operations, provided that notice of plugging operations planned for Sunday or Monday may be given on the previous Friday. ()

08. Client-Contractor Responsibility. The client company may be held responsible along with the seismic contractor for conducting the operation in compliance with the Commission's rules and orders, the Department's orders, and the Act for the seismic contractor's failure to comply with such rules, statutes, and orders. The hats used in the plugging of seismic holes shall be imprinted with the name of the contractor responsible for the plugging of the hole. ()

09. Plugging. Unless the seismic contractor can prove to the satisfaction of the Department that another method will provide better protection to ground water and long-term land stability, seismic shothole operations shall be conducted in the following manner: ()

a. When water is used in conjunction with the drilling of seismic shotholes and artesian flow is not encountered at the surface, seismic holes are to be filled with a high grade bentonite/water slurry mixture. Said slurry shall have a density that is at least four percent (4%) greater than the density of fresh water; said slurry shall also have a Marsh funnel viscosity of at least sixty (60) seconds per quart. Density and viscosity are to be measured prior to adding cuttings to the slurry. Cuttings not added to the slurry are to be disposed of in accordance with Paragraph 100.09.f. of this rule. Any other suitable plugging material commonly used in the industry may be substituted for the bentonite/water slurry as long as the physical characteristics of said substitute are at least comparable to those of the bentonite/water slurry. Between November 1 and May 1, coarse ground bentonite approved by the Department shall be used as a plugging material. ()

b. The hole will be filled with the slurry from the bottom up to a depth of three (3) feet (three (3) feet below ground level). A nonmetallic plug will be set at this depth of three (3) feet, and the remaining hole will be filled and tamped to the surface with cuttings and native soil. ()

c. When drilling with air and nonartesian water is encountered, the hole shall be plugged with the slurry mixture, or coarse ground bentonite, as specified in Paragraph 100.09.a., supra. ()

d. When drilling with air only and in completely dry holes, plugging may be accomplished by returning the cuttings to the hole, tamping the returned cuttings to the above-referenced depth of three (3) feet, and setting the permaplug topped with more cuttings and soil as per Paragraph 100.09.b. above. A small mound will be left over the hole for settling allowance. Auger holes twenty (20) feet or less in depth may be plugged in this same manner. ()

e. The foregoing seismic holes shall be properly plugged and abandoned as soon as practical after the shot has been fired; however, a shot hole shall not be left unplugged for more than thirty (30) days without approval of the Department. ()

f. Any slurry, drilling fluid, or cuttings which are deposited on the surface around the seismic hole will be raked or otherwise spread out to at least within one (1) inch of the surface, so that the growth of the natural grasses or foliage will not be impaired. ()

g. The requirements of Paragraphs 100.09.a. through 100.09.f. of this rule may be modified by any reasonable written agreement between the seismic company and the surface owner. ()

h. If artesian flow (water flowing at the surface) is encountered in the drilling of any seismic hole, cement will be used to seal off the water flow thereby preventing cross-flow, erosion, and/or contamination of freshwater supplies. Said holes shall be cemented immediately. ()

i. After completing the plugging of seismic shot holes and spreading the cuttings as required by this rule, the seismic contractor shall record the GPS location of the seismic hole, and the contractor shall provide the location data to the Department. ()

10. Forfeiture of Geophysical Exploration Bond. The Department may forfeit the bond submitted under Subsection 100.03 of this rule upon failure of the owner or operator to conduct the seismic survey and complete

reclamation in conformance with Section 100 of this rule. The owner or operator will be given an opportunity to address compliance issues prior to the Department taking action against the bond. ()

101. -- 199. (RESERVED)

SUBCHAPTER C – DRILLING, WELL TREATMENT, AND PIT PERMITS

200. PERMIT TO DRILL, DEEPEN, OR PLUG BACK.

01. Permits Required. Prior to the commencement of operations to drill, deepen, or plug back to any source of supply other than the existing producing horizon, application shall be delivered to the Department of intention to drill, deepen, or plug back any well for oil or gas, and approval obtained. ()

02. Fees. An application fee must accompany each application for permit to drill, deepen, or plug back. No service fee is required for a permit to deepen or plug back in a well for which the fee has been paid for permit to drill unless the drilling permit has expired. ()

03. Time Required to Commence Operations; Term of Permit. On the first anniversary of the date of issuance of a permit to drill, deepen, or plug back, said permit will expire and be of no further force or effect, unless the work for which the permit was issued has been started. Prior to the anniversary date, the owner or operator may apply for a one-time, six-month extension if work has not started. If conditions have not changed and no changes to the permit are requested, the extension may be approved by the Department. If a permit expires due to the failure to commence operations, then reapplication is required prior to commencing operations. ()

04. Application. The Application for Permit to Drill shall include a Department approved form and the following: ()

a. An accurate plat showing the location of the proposed well with reference to the nearest lines of an established public survey. ()

b. The location of the nearest structure with a water supply, or the nearest water well as shown on the IDWR registry of water rights or well log database. ()

c. Information on the type of tools to be used and the proposed logging program. ()

d. Proposed total depth to which the well will be drilled, estimated depth to the top of the important geologic markers, and the estimated depth to the top of the target formations. ()

e. The proposed casing program, including size and weight thereof, the depth at which each casing type is to be set. ()

f. The type and amount of cement to be used, and the intervals cemented. ()

g. Information on the drilling plan. ()

h. Best management practices to be used for erosion and sediment control. ()

i. Plan for interim reclamation of the drill site after the well is completed, and a plan for final reclamation of the drill site following plugging and abandonment of the well. These plans must contain the information needed to implement reclamation as described in Subsection 310.16 and Section 510 of these rules. ()

j. Applications that include the following actions must also provide the information from the respective Section of these rules: ()

i. Well treatments require the submittal of the information in Section 210. ()

- ii. Pit construction and use requires the submittal of the information in Section 230. ()
- iii. Directional or horizontal drilling requires the submittal of the information in Section 330. ()
- k. Any other information which may be required by the Department based on site specific reasons. ()
- 05. Permit Denial.** Applications may be denied for the following reasons: ()
 - a. Application fee was not submitted. ()
 - b. Application is incomplete. ()
 - c. Failure to post required bonds. ()
 - d. Proposed well will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. ()

201. MULTIPLE ZONE COMPLETIONS.

01. Requirements of the Owner or Operator; Request for Approval. A multiple zone completion may be approved by the Department upon application by the owner or operator and payment of an application fee, as herein provided. The application shall be accompanied by an exhibit showing the location of wells on applicant's lease and all offset wells on leases, and shall set forth all material facts involved and the manner and method of completion proposed, including a diagrammatic sketch of the mechanical installation of the proposed well. The application fee may not exceed that required by Subsection 200.02 of these rules. Notice of the filing of such application shall be given by the applicant by mailing to each offset operator a notice containing a full description of the proposed completion for which approval is requested, and proof of mailing such notice shall be made by affidavit, which shall be attached to the application showing names and addresses of those to whom notice was mailed. ()

02. Conditions for Approval; Cause for Hearing. In the event the Department is in agreement with the application and that no offset operator files a written objection to the application with the Department within fifteen (15) days of the date of the offset operator's receipt of application, the application shall be approved as an amendment to the drilling permit. If any offset operator shall file in writing with the Department an objection to such multiple completion, or if the Department is not in agreement with the application, the matter shall be immediately set for hearing and Notice of Hearing duly given by the Department. ()

03. Zone Effectiveness; Requirement for Production Testing. The Department may require such tests as necessary to determine the effectiveness of the segregation of the different productive zones. ()

04. Commingling Production. The Department may require that oil or gas from multiple zones be produced through different sets of tubing, if needed to protect correlative rights or to prevent waste. ()

202. -- 209. (RESERVED)

210. WELL TREATMENTS.

01. Application Required. An Application for Permit to Drill required by Section 200 must include any plans for well treatment if they are known before the well is drilled. If well treatments are not covered in the original drilling permit, then an application to amend the permit must be made to the Department with an application fee. Approval by the Department is required prior to the well treatments being implemented. Actions to clean the casing or perforations not in excess of pressures sufficient to overcome the fracture gradient in the surrounding formation are not considered to be well treatments, but operators must notify the Department when such actions occur. Applications for well treatments must include the permit number, well name, well location, as-built description if drilling has been completed, and the following: ()

- a. Depth to perforations or the openhole interval; ()
- b. The source of water or type of base fluid; ()
- c. Additives, meaning any substance or any combination of substances including proppant, having a specified purpose that is combined with base treatment fluid by trade name, if available, and MSDS for each additive; ()
- d. Type of proppant(s); ()
- e. Anticipated percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s); ()
- f. Estimated pump pressures; ()
- g. Method and timeline for the management, storage, and disposal of well treatment fluids, including anticipated disposal site of treatment fluids or plans for reuse; ()
- h. Size and design of storage pits, if proposed, in conformance with Section 230 of these rules; ()
- i. Information specific to hydraulic fracturing as described in Section 211 of these rules; ()
- j. Summary identifying all water bearing zones from the surface down to the bottom of the well; ()
- k. Fresh water protection plan that describes the proposed site specific measures to protect water quality from activities associated with well treatments. The Department will review this plan in consultation with the IDEQ. The Fresh Water Protection Plan shall include the following information: ()
 - i. Ground water and storm water best management practices; ()
 - ii. Statement certifying that the owner or operator is complying with Spill Prevention, Control, and Countermeasures (SPCC) requirements administered by the EPA; ()
 - iii. A preconstruction topographic site map or aerial photos identifying all habitable structures, wells, perennial and intermittent springs, surface waters, and irrigation ditches within one-quarter (1/4) mile of the oil or gas well. The distance or location may be changed based on site specific factors such as horizontal drilling, the expected length of fractures, or lack of suitable water sample locations within one-quarter (1/4) mile; ()
 - iv. A brief description of the structural geology that may influence ground water flow and direction; and ()
 - v. The general hydrogeological characteristics of the treatment area and surrounding land. ()
- l. Certification by the owner or operator that all aspects of the well construction, including the suitability and integrity of the cement used to seal the well, are designed to meet the requirements of proposed well treatments; ()
- m. Affidavit signed by the owner or operator stating that all home owners and water well owners within one-quarter (1/4) mile of the oil or gas well, and all owners of a public drinking water system that have a IDEQ recognized source water assessment or protection area within one-quarter (1/4) mile of the oil or gas well, have been notified of the proposed treatment. If a well deviates from the vertical, these surface distances will be from the entire length of the wellbore from the surface to total depth. The notification will also offer an opportunity to have the owner or operator sample and test the water, at the owner or operator's cost, prior to and after the oil or gas well being treated. Notification shall be by certified mail to the surface owner as identified by the county assessor's records, or to the well owner as identified on the IDWR registry of water rights or well log database; ()

n. Proof of publication in a newspaper of general circulation in the county where the well is located of a legal notice briefly describing the well treatment to be performed. Notice shall also advise all water well or public drinking water system owners, as described in Paragraph 210.01.m. of these rules, of the opportunity to have their water tested at the owner's or operator's cost before and after the well treatment; and ()

o. Additional information as required by the Department. ()

02. Master Drilling/Treatment Plans. Where multiple stimulation activities will be undertaken for several wells proposed to be drilled in the same field within an area of geologic similarity, approval may be sought from the Department for a comprehensive master drilling/treatment plan containing the information required. The approved master drilling/treatment plan must then be referenced on each individual well's Application for Permit to Drill. ()

03. Application Denial. The Department may deny well treatment applications for one (1) or more of the following reasons: ()

a. Application does not contain the information in Subsection 210.01 of these rules; ()

b. Application fee was not submitted. ()

c. Proposed treatment will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. ()

04. Time Limit. If a treatment approved in a drilling permit or amended drilling permit is not started within one (1) year of the approval of the well treatment, the well treatment permit will expire and reapplication will be required prior to conducting the well treatment. Prior to the anniversary date, the owner or operator may apply for a six-month (6) extension. If conditions have not changed, and no changes to the permit are requested, the extension may be approved by the Department. ()

05. Inspections. The Department may conduct inspections prior, during, and after well treatments. ()

06. Reporting Requirements. A report on the well treatment must be submitted within thirty (30) days of the treatment. The report shall present a detailed account of the work done and the manner in which such work was performed, including: ()

a. The daily production of oil, gas, and water both prior to and after the operation. ()

b. The size and depth of perforations. ()

c. Percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s). This requirement can be met by the submittal of well completion field tickets if they contain this information. ()

d. Documentation demonstrating the chemicals used in the well treatment have been reported to the website www.fracfocus.org, its successor website, or another publicly accessible database approved by the Department. The chemical information must be reported in a systems approach. ()

e. Information specific to hydraulic fracturing, as described in Section 211 of these rules. ()

f. Static pressure testing results before and after the well treatment. ()

g. The amounts, handling, and if necessary, disposal at an identified appropriate disposal facility, or reuse of the well stimulation fluid load recovered during flow back, swabbing, and/or recovery from production facility vessels. Reporting of recovered fluids shall be included with other monthly production reports required by the Department. Storage of such fluid shall be protective of ground water as demonstrated by the use of either tanks or

authorized lined pits as described in Section 230 of these rules. ()

h. Any other information related to operations which alter the performance or characteristics of the well. ()

07. Fresh Water Protections for Well Treatments. ()

a. The Department will not authorize pits, lagoons, ponds, or other methods of subsurface storage for treatment fluids within IDEQ recognized source water assessment or protection areas for public drinking water systems. Owners or operators must store and transport treatment fluids using above ground storage facilities and tanker trucks for well treatments in these locations. ()

b. The Department will not authorize well treatments to create fractures within five hundred (500) vertical feet above or below fresh water aquifers. ()

c. The Department shall require the owner or operator to complete fresh water monitoring at the owner's or operator's cost before and after a well treatment unless the Department, in consultation with the IDEQ, determines that the proposed treatment does not pose a threat of pollution to fresh waters. The Department will review and approve all monitoring proposals with the IDEQ. The monitoring will be done using representative existing water wells or surface waters within one-quarter (1/4) horizontal mile of the treated well. For wells that deviate from the vertical, sampling may be required within one-quarter (1/4) horizontal mile of the wellbore's projected location on the surface. If no water wells or surface waters are present in this area, the sampling area may be enlarged as needed with approval by the Department. If the Department determines that existing water wells are not representative of the ground waters that could be impacted, then the Department may require the owner or operator to install one (1) or more ground water monitoring wells at the owner's or operator's cost. The owner or operator must obtain consent from appropriate property owners to gain access prior to any sampling or well construction. When monitoring is required by the Department, the operator will prepare a monitoring plan that includes the following: ()

i. Location of proposed monitoring sites; ()

ii. Construction details of any sampled or constructed wells including total well depth, depth of screened interval(s), screen size, and drilling log. For existing wells, the operator must make every reasonable attempt to locate this information; ()

iii. When possible, data from the existing wells collected within the last five (5) years and analyzed in a state or EPA certified drinking water lab; ()

iv. List of proposed analytes, testing methods, and their detection limits; ()

v. Additional tests such as stable isotopic analysis; and ()

vi. Pre-treatment sampling and analysis when no relevant data exists, and a schedule for post-treatment sampling and analysis. ()

d. The owner or operator will provide the Department with copies of any analysis or reports within thirty (30) days of samples being taken. All samples must be analyzed in a state or EPA certified drinking water lab. ()

e. Pollution of fresh water supplies due to a well treatment is a violation of these rules and Title 47, Chapter 3, Idaho Code. ()

211. HYDRAULIC FRACTURING.

01. Application Requirements. In addition to the information required by Subsection 210.01 of this rule, the owner or operator shall provide the following application information regarding hydraulic fracturing: ()

a. The geological names and descriptions of the formation into which well stimulation fluids are to be injected; ()

b. Detailed information on the base stimulation fluid source. For each stage of the well stimulation program, provide the chemical additives and proppants and concentrations or rates proposed to be mixed and injected, including: ()

i. Stimulation fluid identified by additive type (such as but not limited to acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, surfactant); ()

ii. The chemical compound name and Chemical Abstracts Service (CAS) number as found on the previously submitted MSDS shall be identified (such as the additive biocide is glutaraldehyde, or the additive breaker is ammonium persulfate, or the proppant is silica or quartz sand, and so on for each additive used); ()

iii. The proposed rate or concentration for each additive and the total volume of each shall be provided (such as gel as pounds per thousand gallons, or biocide at gallons per thousand gallons, or proppant at pounds per gallon, or expressed as percent by weight or percent by volume, or parts per million, or parts per billion); and ()

iv. The formulary disclosure of the chemical compounds used in the well stimulation(s) for the purpose of protecting public health and safety. ()

c. A detailed description of the proposed well stimulation design that shall include: ()

i. The anticipated surface treating pressure range; ()

ii. The maximum injection treating pressure, which shall be within accepted safety limits. Accepted safety limits are generally eighty percent (80%) of the maximum pressure rating of the pressurized system; ()

iii. The estimated or calculated fracture height in both the horizontal and vertical directions. ()

02. Volatile Organic Compounds and Petroleum Distillates. The injection of volatile organic compounds, such as benzene, toluene, ethyl benzene and xylene, also known as BTEX compounds, or any petroleum distillates into ground water in excess of the applicable ground water quality standards is prohibited. Volatile organic compounds or petroleum distillates may be appropriate as additives, but they are not appropriate for use as the base fluids. The proposed use of volatile organic compounds or any petroleum distillates for well stimulation into hydrocarbon bearing zones may be authorized with prior approval of the director. Water that is produced with oil and gas, and which may contain small amounts of naturally occurring volatile organic compounds or petroleum distillates, may be used as well stimulation fluid in hydrocarbon bearing zones. ()

03. Well Integrity. Prior to the well stimulation, the owner or operator will perform a suitable mechanical integrity test of the casing or of the casing-tubing annulus or other mechanical integrity test methods and submit an affidavit certifying that the well was tested in anticipation of proposed treatment pressures. The owner or operator will notify the Department of this test twelve (12) to twenty-four (24) hours in advance. ()

04. Pressure Monitoring. During the well stimulation operation, the owner or operator shall monitor and record the annulus pressure at the casinghead. If intermediate casing has been set on the well being stimulated, the pressure in the annulus between the intermediate casing and the production casing shall also be monitored and recorded. If the annulus pressure increases by more than five hundred (500) psi gauge as compared to the pressure immediately preceding the stimulation, the owner or operator shall verbally notify the Department as soon as practicable but no later than twenty-four (24) hours following the incident. ()

05. Post Treatment Report. In addition to the information required by Subsection 210.06 of this rule, the owner or operator shall provide the following post-treatment reporting: ()

a. The actual total well stimulation treatment volume pumped; ()

- b.** The actual surface pressure and rate at the end of each fluid stage and the actual flush volume, rate and final pump pressure; ()
- c.** The instantaneous shut-in pressure, and the actual fifteen (15) minute and thirty (30) minute shut-in pressures when these pressure measurements are available; ()
- d.** A continuous record of the annulus pressure during the well stimulation; ()
- e.** A copy of the well stimulation service contractor's job log, without any cost/pricing data from the field ticket, in lieu of paragraphs (a) through (d) above. If the job log does not contain all the needed information, it must be supplemented with additional information needed to satisfy Paragraphs 211.05.a. through 211.05.d. of this rule. ()
- f.** A report containing all details pertaining to any annulus pressure increases of more than five hundred (500) psi gauge as described in Subsection 211.04 of this rule. The report shall include corrective actions taken, if necessary. ()
- g.** Results of post treatment fluid analysis used to help determine where the fluid can be disposed. ()

212. -- 219. (RESERVED)

220. BONDING.

01. Individual Bond. The Department shall, except as hereinafter provided, require from the owner or operator a good and sufficient bond in the sum of not less than ten thousand dollars (\$10,000) plus one dollar (\$1) for each foot of planned well length in favor of the Department. The bond shall be conditioned upon the performance of the owner's or operator's duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas and the reclamation of surface disturbance associated with these activities. Said bond shall remain in force and effect until the plugging of said well is approved by the Department and the well site is reclaimed as described in Section 510 of these rules, or the bond is released by the Department. ()

02. Blanket Bond. In lieu of the bond in Subsection 220.01 of this rule, any owner or operator may file with the Department a good and sufficient blanket bond covering all active wells drilled or to be drilled in the state of Idaho. The amount of the blanket bond will be as follows according to the number of active wells covered by the bond: ()

- a.** Up to ten (10) wells, fifty thousand dollars (\$50,000); ()
- b.** Eleven (11) to thirty (30) wells, one hundred thousand dollars (\$100,000); or ()
- c.** More than thirty (30) wells, one hundred fifty thousand dollars (\$150,000). ()

03. Inactive Well Bond. An owner or operator must provide the Department with a bond of at least ten thousand dollars (\$10,000) plus eight dollars (\$8) for each foot of planned well length for each inactive well conditioned upon the performance of the duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas. Said bond shall remain in force and effect until the plugging of said well is approved by the Department, or the bond is released by the Department. Inactive wells may not be covered by a blanket bond as provided in Subsection 220.02 of this rule. ()

04. Additional Bonding. The Department may impose additional bonding on an owner or operator given sufficient reason, such as non-compliance, unusual conditions, horizontal drilling, or other circumstances that suggest a particular well or group of wells has potential risk or liability in excess of that normally expected. The owner or operator may request a hearing to appeal either the decision to impose an additional bond or the proposed amount of the bond. ()

05. Authorized Bonds. The bond(s) referred to in Section 220 must be by a corporate surety authorized to do business in the state of Idaho or in cash. If cash is used to satisfy the bonding requirements in these rules, interest on the cash will be allocated to the general fund. ()

221. TRANSFER OF DRILLING PERMITS.

No person to whom a permit has been issued shall transfer the permit to any other location or to any other person until the following requirements have been complied with: ()

01. Prior to Drilling Well. If, prior to the drilling of a well, the person to whom the permit was originally issued desires to change the location, he shall submit a letter so stating and another application properly filled out showing the new location. Drilling shall not be started until the transfer has been approved and the new permit posted at the new location. ()

02. During Drilling or After Completion. If, while a well is being drilled or after it has been completed, the person to whom the permit was originally issued disposes of his interest in the well, he shall submit a written statement to the Department setting forth the facts and requesting that the permit be transferred to the person who has acquired the well. ()

03. Terms for Acceptance of Transfer. Before the transfer of a drilling permit shall be recognized, the person who has acquired the well must submit a written statement setting forth that he has acquired such well and assumes full responsibility for its operation and abandonment in conformity with the law, rules, regulations, and orders issued by the Commission. If bond is required to guarantee compliance with the rules and regulations of the Commission, the person acquiring such well shall furnish bond. ()

222. -- 229. (RESERVED)

230. PIT REQUIREMENTS.

01. Plans Required. If pits are proposed to be constructed in connection with another permit application required by these rules, then the owner or operator must include plans for pit construction in the application. If a pit is needed after the other permits have been approved, then an application to amend the permit must be made to the Department with an application fee. Approval by the Department is required prior to the pit being constructed unless the pit is necessary for an emergency action. Pit applications must include the permit number, well name, well location, as-built description if drilling has been completed, proposed pit location, and plans for pit construction, operation, and reclamation. ()

02. Location. ()

a. Pits must be located where they are structurally sound and the liner systems can be adequately protected against factors such as wild fires, floods, landslides, surface and ground water systems, equipment operation, and public access. ()

b. Pits located in a one hundred-year floodplain must be in conformance with any applicable floodplain ordinances pertaining to activities within the one hundred-year floodplain. ()

c. Pits shall not be located within an IDEQ recognized source water assessment or protection areas for public drinking water systems. ()

03. Site Preparation. All sites must be properly prepared prior to pit construction. Vegetation, roots, brush, large woody debris and other deleterious materials, topsoil, historic foundations and plumbing, or other materials that may adversely affect appropriate construction, must be removed from the footprint of the pit unless approved by the Department. ()

04. Pit Sizing Criteria. ()

a. Pits that have constructed berms ten (10) or more feet in height or hold fifty (50) acre-feet or more

of fluid must also comply with the dam safety requirements of IDAPA 37.03.06, "Safety of Dams Rules." ()

b. Pits must be designed to hold the maximum volume of fluids being used for drilling or well treatment and the volume of water associated with a one hundred-year, twenty-four-hour precipitation event. ()

c. Snowmelt events shall be considered in determining the containment capacity. ()

d. Pits that are left over winter must be able to contain one hundred twenty-five percent (125%) of the average annual precipitation that falls from October through May. ()

e. Pits must be designed to maintain a minimum two (2) foot freeboard at all times. Contingency plans for managing excesses of fluids shall be described in the application. At no time shall fluids in a pit be allowed to escape from the impoundment. ()

05. Minimum Plans and Specifications for Reserve, Well Treatment, and Other Short Term Pits.

Pits used for one (1) year or less, not including extensions, are short term pits. Construction plans and specifications for short term pits must include the requirements under Subsections 230.02 through 230.04 of this rule and the following: ()

a. A prepared subbase, which shall be free of plus three (3) inch rocks, roots, brush, trash, debris or other deleterious materials, and compacted to ninety-five percent (95%) of Standard Proctor Test ASTM D698-07e1 or ninety-five percent (95%) of Modified Proctor Test ASTM D1557-09; ()

b. Slopes of two (2) feet horizontal to one (1) foot vertical (2H:1V) or flatter for all interior and exterior pit walls. The top of a bermed pit wall must be a minimum of two (2) feet wide; ()

c. A primary liner system consisting of a synthetic liner of at least twenty (20) mils thickness and constructed according to manufacturers' standards with at least four (4) inches of welded seam overlap and complete coverage on the floor and inside walls of the pit. Seams must run parallel to the line of maximum slope so they do not traverse across the slope. The liner edges shall be anchored in a compacted earth filled trench at least eighteen (18) inches in depth. The liner must be protected against cracking, sun damage, ice, frost penetration or heaving, wildlife and wildfires, and damage that may be caused by personnel or equipment operating in or around these facilities. Liner compatibility shall comply with EPA SW-846 method 9090A. Alternative liner systems with similar standards may be proposed by the owner or operator and approved at the Department's discretion; ()

d. Minimum factors of safety, and the logic behind their selection, for the stability of the earthworks and the lining system of the pit; ()

e. Site-specific methods for excluding people, terrestrial animals, and avian wildlife from the pits; ()

f. Segregation and stockpiling of topsoil in a manner that will support reestablishment of the pre-disturbance land use after pit closure; and ()

g. A closure plan including the following: ()

i. Testing of residual fluids and any accumulated solids, if anything other than water based drilling fluid was placed in the pit; ()

ii. Plans for removal and disposal of residual fluids and accumulated solids, with the liner material, at an appropriate facility; ()

iii. Regrading plan, replacement of topsoil, and erosion control measures; and ()

iv. Reseeding and Revegetation. ()

06. Minimum Plans and Specifications for Long Term Pits. Pits used for more than one (1) year, not including extensions, are long term pits. Construction plans and specifications for long term pits must include the requirements under Subsections 230.02 through 230.05 of this rule and the following: ()

- a. A quality control/quality assurance construction and installation plan; ()
- b. Type of fluids to be contained in the pit; ()
- c. Secondary containment synthetic liners, which shall have a minimum thickness of sixty (60) mils consisting of HDPE and a maximum coefficient of permeability of 10^{-9} cm/sec, or comparable liners approved by the Department; ()
- d. Leak detection and collection systems. The plans and specifications shall: ()
 - i. Provide a material between primary and secondary containment synthetic liners to collect, transport and remove all fluids that pass through the primary containment synthetic liner at such a rate as to prevent hydraulic head from developing on the secondary containment synthetic liner to the level at which it may be reasonably expected to result in discharges through the secondary containment synthetic liner; ()
 - ii. Provide routines and schedules for the evaluation of the efficiency and effectiveness of the removal of fluids from the layer placed between primary and secondary containment synthetic liners. The properly working system shall continually relieve head pressures on the secondary containment synthetic liner; ()
 - iii. Provide specific triggers for maintenance routines, which shall be initiated in response to inadequate performance of primary or secondary containment synthetic liners; and ()
 - iv. Specify operation and maintenance procedures, which shall be initiated in response to inadequate performance of primary and secondary containment or leak detection and collection systems. ()
- e. All piping, including that contained in the leak detection and collection system, shall have a minimum wall thickness of PVC Schedule 80 and be designed to: ()
 - i. Withstand chemical attack from oil field waste or leachate; ()
 - ii. Withstand structural loading from stresses and disturbances from cover materials or equipment operation; and ()
 - iii. Facilitate clean-out and maintenance. ()
- f. Protections for the liner from excessive hydrostatic force or mechanical damage at the point of discharge into, or suction from, the pit. External discharge or suction lines shall not penetrate the liner; ()
- g. Plans for erosion control during and immediately following construction; and ()
- h. Operating and maintenance plans. ()

07. Time Limits for Short Term Pits. Reserve, well treatment, and other short term pits must be closed out and reclaimed within one (1) year of being constructed. The owner or operator may request a one-time extension for up to six (6) months. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for ensuring that the pit is adequately monitored and maintained. ()

a. Fluids may be left in a pit for up to six (6) months after the associated well activities are conducted. The owner or operator may request a one-time extension for up to one (1) year. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for keeping the fluids in a usable state. ()

b. Notwithstanding the above time limits, the owner or operator may request additional time based upon conditions wholly outside of the owner's or operator's control including, but not limited to, governmental lease

requirements and delays related to difficult drilling conditions. The Department may impose additional construction or monitoring requirements prior to granting additional time. ()

08. Emergency Pits. Pits constructed during an emergency situation may be approved by an after-the-fact application submitted to the Department. The requirements in Subsections 230.02 through 230.05 of this rule shall apply, and the pit must be closed out and reclaimed within six (6) months of being constructed. The Department must be notified within twenty-four (24) hours of an emergency situation requiring an emergency pit. ()

09. Operating Requirements. ()

a. Waste oil, hydraulic fluid, transmission fluids, trash, or any other miscellaneous waste products must not be disposed of in a pit. Placement of these materials into a pit may result in the creation of a mixed waste that requires handling and disposal as a hazardous waste. ()

b. If a pit liner's integrity is compromised, or if any penetration of the liner occurs above the liquid's surface, then the owner or operator shall notify the appropriate Department area office within forty-eight (48) hours of the discovery and repair the damage or replace the liner. ()

c. If a pit or closed-loop system develops a leak, or if any penetration of the pit liner occurs below the liquid's surface, then the owner or operator shall remove all liquid above the damage or leak line within forty-eight (48) hours, notify the appropriate Department area office within forty-eight (48) hours of the discovery, and repair the damage or replace the pit liner. ()

d. The owner or operator shall install, or maintain on site, an oil absorbent boom or other device to contain and remove oil from a pit's surface. Visible oil must be removed from short term pits immediately following the cessation of activity for which the pit was constructed. Visible oil must be removed from long term pits as soon as it is discovered. ()

10. Closure of Pits. ()

a. The owner or operator shall remove all liquids from the pit prior to closure and dispose of them at an appropriate facility or reuse them at a different location. If the nature of the fluids has substantially altered during their use, then the fluids must be sampled and tested to determine which disposal facility can accept them. ()

b. Any solids that have been accumulated in the bottom of the pit will be tested to determine which disposal facility can accept the material. The solid material and liner will then be removed and disposed of at an appropriate facility. ()

c. The owner or operator must notify the Department at least forty-eight (48) hours prior to removal of the pit liner so an inspection may be conducted. ()

d. The pit foundation will be inspected for signs of leakage. If evidence of leakage is observed, the owner or operator must contact the Department and the IDEQ within twenty-four (24) hours and report the type of fluids released and the estimated extent of release. The owner or operator must then remediate the site in conformance with the applicable standards administered by IDEQ in IDAPA 58.01.02, "Water Quality Standards," Sections 850 through 852. ()

e. After addressing any pit leakage concerns, the owner or operator shall perform the activities described in Subsections 510.04 through 510.08 of these rules. ()

11. Condemnation Due to Improper Impoundment. The Department shall have authority to condemn any pit that does not properly impound fluids and order the disposal of such fluids in conformance with IDAPA 58.01.16, "Wastewater Rules," and other applicable rules. ()

231. -- 299. (RESERVED)

SUBCHAPTER D – WELL SITES AND DRILLING

300. IDENTIFICATION OF WELLS.

01. **Signs; Lease Access Roads.** To identify all producing leases the owner or operator thereof shall cause a sign to be placed where the principal lease road enters the lease and such sign shall show the name of the lease and the owner or operator thereof and the section, township, and range. ()

02. **Signs; Well Sites.** Prior to spud activity, a legible sign must be placed near the well to identify the operator, permit number, well name, and emergency telephone number. If a multiple completion, each well head connection shall be identified. ()

301. WELL SITE OPERATIONS.

The owner or operator must conduct all operations and maintain the well site at all times in a safe and workmanlike manner. Best management practices and good housekeeping practices must be used at well sites. ()

01. **Fencing.** Within sixty (60) days after completion of the well, the owner or operator must install a fence around the well site to maintain safe working conditions, secure the well site, and prevent access by wildlife and livestock. The fence design must be acceptable to both the landowner and owner or operator. ()

02. **Storage.** All chemicals must be stored and maintained in accordance with the applicable MSDS requirements. Materials related to operations must be palletized where applicable. Vehicles and materials not in use must be removed from the well site. ()

03. **Vegetation.** All well sites must be kept free of excessive vegetation. ()

04. **Trash.** All trash, debris, and scrap metal must be removed from the well site. Pending removal, any trash or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred (100) feet from the well location, tanks, and separator. ()

302. ACCIDENTS AND FIRES.

The owner or operator shall take all reasonable precautions to prevent accidents and fires. An emergency response plan will be prepared and available at the well for use or inspection. Coordination with local emergency responders and the Idaho Bureau of Homeland Security is recommended prior to rig set up. The following actions must be taken in event of a release, industrial accident, or fire of major consequence: ()

01. **Provide Information to Emergency Response.** Emergency workers will be given information on all fluids or chemicals involved in a spill or accident as needed according to OSHA Standard 1910.1200 (Hazard Communication). Nothing in this rule shall authorize any person to withhold information that is required by state or federal law to be provided to a health care professional, a doctor, or a nurse. All information required by a health care professional, a doctor, or a nurse shall be supplied, immediately upon request, by the owner or operator, or their contractors, directly to the requesting health care professional, doctor, or nurse, including the percent by volume of the chemical constituents (and associated CAS numbers) in the fluids and the additives; ()

02. **Initiate Spill Response and Corrective Actions.** Owner or operator must comply with the requirements of IDAPA 58.01.02, "Water Quality Standards," Sections 850 through 852; and ()

03. **Notify the Department.** Notify the Department within twenty-four (24) hours and submit a full report thereon within fifteen (15) days. ()

303. -- 309. (RESERVED)

310. GENERAL DRILLING RULES.

01. **General Design Requirements for Casing and Cementing.** Casing and cementing programs adopted for wells must be so planned as to protect any potential oil- or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to

another. Owners and operators shall follow the standards for casing and tubing in API SPEC 5CT and the standards for cementing in API SPEC 10A. ()

02. Wildcat and High-Pressure Conditions. When drilling wildcat territory or in any field where high pressures are likely to exist, the owner or operator shall take all necessary precautions to keep the well under control at all times and shall use proper high-pressure fittings and equipment at the time the well is started. Under such conditions all strings of casings must be securely anchored. ()

03. High Temperature Conditions. Due to high geothermal gradients in Idaho, the temperature of the return drilling mud shall be monitored daily during the drilling of the surface casing hole and all deeper holes. The owner or operator must use cements appropriate for the temperatures expected or encountered. ()

04. Conductor Pipe or Casing Requirements. A minimum of forty (40) feet of conductor pipe shall be installed. If geologic conditions are such that forty (40) feet is not feasible, the owner or operator may request a variance from the Department. The annular space is to be cemented solid to the surface. A twenty-four (24) hour cure period for the grout must be allowed prior to drilling out the shoe unless sufficient additives, as determined by the Department, are used to obtain early strength. ()

05. Surface Casing Requirements. ()

a. The Department must be notified in writing seventy-two (72) hours in advance of planned spud activity for surface casing. The Department will post the spud activity notice on its website and send an electronic copy of the notice to the county where the well is located. ()

b. Surface casing must be set at a minimum depth equal to ten percent (10%) of the proposed total depth of the well. In areas where pressures and formations are unknown, a minimum of two hundred (200) feet of surface casing shall be set. ()

c. Surface casing shall provide for control of formation fluids, protection of fresh water, and for adequate anchorage of blow out prevention equipment. The casing must be seated through a sufficient series of low permeability, competent lithologic units such as claystone, siltstone, basalt, etc., to insure a solid anchor for blow out prevention equipment and to protect usable ground water from contamination. Additional surface casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent lithologic units, or rapidly increasing thermal gradients or formation pressures are encountered. ()

d. All surface casing shall be cemented solid to the surface by pump and plug, displacement, or other approved method. When surface samples are cured, additional drilling activities may commence. ()

e. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for surface casing. The Department will witness and document all surface casing cementing activities. ()

06. Requirements for BOP Equipment. Unless altered, modified, or changed for a particular pool(s) upon hearing before the Commission, BOP and related equipment shall be installed and maintained during the drilling of all wells in accordance with the following rules: ()

a. BOP equipment installed on wells in which formation pressures to be encountered are abnormal or unknown shall consist of a double-gate, hydraulically operated preventer with pipe and blind rams or two (2) single-ram-type preventers; one (1) equipped with pipe rams, the other with blind rams and an annular type preventer. In addition, upper and lower kelly cocks, pit level indicators with alarms and/or flow sensors with alarms, and surface facilities to handle pressure kicks shall be installed prior to drilling any formation with known abnormal pressure. ()

i. Accumulators shall maintain a pressure capacity reserve at all times to provide for operation of the hydraulic preventers and valves with no outside source. ()

ii. In all other drilling operations, BOP equipment shall consist of at least one (1) double-gate

preventer with pipe and blind rams or two (2) single-ram-type preventers, one (1) equipped with pipe rams, the other with blind rams, and sufficient valving to permit fluid circulation at the surface. ()

b. All BOP equipment, choke lines, and manifolds shall be installed above ground level. Casing heads and optional spools may be installed below ground level provided they are visible and accessible. ()

c. BOP equipment and related casing heads and spools shall have a vertical bore no smaller than the inside diameter of the casing to which they are attached. ()

d. The working pressure rating of all BOP and related equipment shall equal or exceed the maximum anticipated pressure to be contained at the surface. ()

e. All ram-type BOP and related equipment, including casing, shall be tested to the full working pressure rating of said equipment upon installation, provided that components need not be tested to levels higher than the lowest working pressure rated component. Annular type BOP and related equipment must be tested in conformance with the manufacturer's published recommendations. If, for any reason, a pressure seal in the assembly is disassembled, a test to a full working pressure rating of that seal shall be conducted prior to the resumption of any drilling operation. In addition to the initial pressure tests, ram-type BOP shall be checked for physical operation at least once per week and all components, again with exception of the annular-type BOP, tested at least once every twenty-one (21) days to at least fifty percent (50%) of the rated pressure of the BOP equipment and/or to the maximum anticipated pressure to be contained at the surface, whichever is greater. ()

f. The Department will require an affidavit covering the initial pressure tests after installation signed by the owner, operator, or contractor attesting to the satisfactory pressure tests. The Department must be advised at least twenty-four (24) hours in advance of all tests. The Department may inspect and witness all BOP operations and testing. ()

g. A schematic diagram of the BOP and well head assembly shall be submitted to the Department upon application for a permit to drill. The schematic diagram should indicate the minimum size and pressure rating of all components of the well head and BOP assembly. ()

h. Studs on all well head and BOP flanges shall be checked for tightness each week. Hand wheels for locking screws shall be installed and operational, and the entire BOP and well head assembly shall be kept clean of mud and ice. ()

i. A drillstem safety valve shall be available on the rig floor at all times with correct thread for the pipe in use. ()

j. A drillstem float valve shall be installed in bit sub or as close to bit as reasonably possible. ()

07. Intermediate Casing. ()

a. Intermediate casing, if installed, shall be cemented solidly to the surface or to the top of the casing. ()

b. Intermediate casing not run to surface will be lapped into at least one hundred (100) feet of the surface casing, or at least one hundred (100) feet of the next larger casing to provide overlap and secure a seal. ()

c. Such casing shall be cemented and pressure tested before cement plugs are drilled. ()

d. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for intermediate casing. The Department may witness and document all intermediate casing cementing activities. ()

08. Production Casing; Cementing and Testing Requirements. ()

a. If and when it becomes necessary to run a production casing, such casing shall be cemented and pressure tested before cement plugs are drilled. ()

b. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for production casing. The Department may witness and document all production casing cementing activities. ()

c. When not run to the surface, production casing will be cemented from the bottom of the hole up into at least one hundred (100) feet of the next larger casing to provide overlap and secure a seal. ()

d. If the bottom plug will be drilled out, the open hole interval must be completed to protect any potential oil-bearing or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to another. ()

09. Step-off. An owner or operator may submit to the Department a step-off request to complete a new borehole from surface if a borehole without production casing deviates from vertical plumb by more than five (5) degrees. A step-off borehole must be drilled within the existing pad of the permitted well. The incomplete borehole must be plugged and abandoned in accordance with Section 502 of these rules. ()

10. Well Control (Rotary Tools); Reserve Mud Tanks. When drilling with rotary tools, the owner or operator shall provide, as required by the Department, a reserve mud pit or tank of suitable capacity for the anticipated depth of the well and maintain an on-site supply of mud additives that can raise the mud weight by one (1) pound per gallon in case of loss of well control. ()

11. Mud Pits. Before commencing to drill, proper and adequate mud pits shall be constructed for the reception and confinement of mud and cuttings and to facilitate the drilling operation. Special precautions shall be taken, if necessary, to prevent contamination of fresh waters. These pits must conform to the standards in Section 230 of these rules. If tanks will be used, then mud pits may not be required. ()

12. Well Control (Cable Tools); Fluid Containment. Natural gas or oil which may be encountered in a substantial quantity in any section of a cabletool drilled hole above the ultimate objective shall be shut off with reasonable diligence either by mudding or by casing, or other approved method, and confined to its original source to the satisfaction of the Department. The use of cable tools for drilling activities requires written approval by the Department prior to spud activities. A request to use cable tools must include the following: ()

a. Proposed pressure control measures; ()

b. Diversion and disposal methods for stray gas; ()

c. Safety protocols for mud weights and well controls; and ()

d. Annual drill rig safety inspection information, including the date of last replacement of cables, draw works inspection report, and metallurgic report of safety compliance for structural integrity of the drill rig. ()

13. Drilling Mud Disposal. Drilling mud will be disposed of at an appropriate facility in compliance with applicable state and federal requirements. ()

14. Report of Water Encountered; Owner's or Operator's Duties. It shall be the duty of any owner or operator drilling an oil or gas well or drilling a seismic, core or other exploratory hole to report to the Department all potential water bearing zones encountered; such report shall be in writing and give the location of the well or hole, the depth at which the zones were encountered, the thickness of such zones, and the rate of flow of water if known. This requirement can be met by the submittal of the logs required in Section 340 of this rule. ()

15. Spill Prevention, Control, and Countermeasures Plan. The owner or operator must have a Spill Prevention, Control, and Countermeasures Plan in conformance with the requirements of the EPA. This plan must be

updated as needed when facilities or activities change. ()

16. Interim Drill Site Clean Up. If a well is completed for production or other purposes, interim reclamation must be completed within six (6) months of the rig being removed. Interim reclamation includes the following activities: ()

a. Debris and waste materials including, but not limited to, concrete, sack bentonite and other drilling mud additives, sand, plastic, pipe, and cable associated with the drilling, re-entry, or completion operations shall be removed and disposed of properly. ()

b. All disturbed areas affected by drilling or subsequent operations, except areas reasonably needed for production operations or for subsequent drilling operations to be commenced within twelve (12) months, shall be reclaimed and revegetated to approximately the pre-drilling condition or to the condition specified in an agreement with the surface owner. The reclamation standards in Subsections 510.04 through 510.07 of these rules, shall apply. ()

311. LOSS OF TOOL WITH RADIOACTIVE MATERIAL.

01. Recovery or Cementing of Tool. If a gamma ray tool, or some other tool containing radioactive material, becomes lost in a well, the owner or operator shall make every reasonable attempt to retrieve the tool from the well. If the tool cannot be recovered, the owner or operator must immediately cover the tool with cement sufficient to secure it in place and prevent it from contacting any fluids in the well. A whipstock or other approved deflection device shall be placed on top of the cement plug to prevent accidental or intentional mechanical disintegration of the radioactive source. ()

02. Sidetracking. If the hole is later sidetracked above the radioactive material, the sidetracked hole must be at least fifteen (15) feet from the original hole with the lost radioactive material. ()

03. Reporting. A report must be sent to the Department and IDEQ within thirty (30) days of cementing the tool. The report must describe the tool that was lost, the depth it was lost at, the specific type and amount of radioactive material in the tool, and an estimate of the length of cement covering the tool. This report may be included in a plugging report if the well will be plugged. ()

312. CHOKES.

All flowing wells shall be equipped with adequate chokes or beans to properly control the flow thereof. ()

313. USE OF EARTHEN RESERVOIRS.

Oil shall not be produced, stored, or retained in earthen reservoirs or in open receptacles. ()

314. VACUUM PUMPS PROHIBITED.

The use of vacuum pumps or other devices for the purpose of placing a vacuum on any gas- or oil-bearing stratum is prohibited; however, the Department may upon application and hearing and for good cause shown permit the use of vacuum pumps. ()

315. PULLING OUTSIDE STRINGS OF CASING.

Casing shall not be recovered if its recovery will expose any abnormal pressure, lost circulation, oil, gas, or water zone. In pulling outside strings of casing from any oil or gas well, the space outside the casing left in the hole shall be kept and left full of mud-laden fluid of adequate specific gravity to seal off all fresh and saltwater strata and any strata bearing oil or gas which is not producing. Casing may not be pulled without first making application to the Department and receiving approval. The application must describe how fresh waters will be protected. ()

316. -- 319. (RESERVED)

320. MECHANICAL INTEGRITY TESTING.

01. Mechanical Integrity Testing. ()

a. The mechanical integrity test shall include one (1) of the following tests to determine whether leaks are present in the casing, tubing, or packer: ()

i. A pressure test with liquid or gas at a pressure of not less than three hundred (300) psi or the minimum injection pressure, whichever is greater, and not more than the maximum injection pressure; or ()

ii. The monitoring and reporting to the Department, on a monthly basis for sixty (60) consecutive months, of the average casing-tubing annulus pressure, following an initial pressure test; or ()

iii. In lieu of Subparagraphs 320.01.a.i. and 320.01.a.ii. of this rule, any equivalent test or combinations of tests approved by the Department. ()

b. The mechanical integrity test shall include one (1) of the following tests to determine whether there are fluid movements in vertical channels adjacent to the well bore: ()

i. Tracer surveys; ()

ii. Cement bond log or other acceptable cement evaluation log; ()

iii. Temperature surveys; or ()

iv. In lieu of Subparagraphs 320.01.b.i. through 320.01.b.iii. of this rule, any other equivalent test or combination of tests approved by the Department. ()

c. Mechanical integrity tests shall be performed at the rate of not less than one (1) test every five (5) years, regardless of well status. The first five-year period shall commence on the date the initial mechanical integrity test is performed. ()

02. Inactive Wells. If, at any time, surface equipment excluding the wellhead is removed or the well becomes incapable of production, a mechanical integrity test shall be performed within thirty (30) days. The mechanical integrity test for an inactive well shall be isolation of the wellbore with a bridge plug or similar approved isolating device set one hundred (100) feet or less above the highest perforations and a pressure test with liquid or gas at a pressure of not less than three hundred (300) psi surface pressure or any equivalent test or combination of tests approved by the Department. ()

03. Prior Notification. Not less than ten (10) days prior to the performance of any mechanical integrity test required by this rule, any person required to perform the test shall notify the Department, in writing, of the scheduled date on which the test will be performed. ()

04. Reporting Requirements. Mechanical integrity test results shall be submitted to the Department within thirty (30) days of testing. ()

05. Mechanical Integrity Required. All wells shall maintain mechanical integrity. All wells that fail a mechanical integrity test, or that are determined through any other means to lack mechanical integrity, shall immediately be investigated by the owner or operator. The well shall be repaired or immediately shut down following the investigation. Repairs shall be completed within six (6) months, or the well shall be plugged and abandoned. If the repair cannot be completed within six (6) months, the owner or operator may request an extension and provide a plan for the repair. ()

321. -- 329. (RESERVED)

330. WELL DIRECTIONAL CONTROL.

01. General Restrictions; Allowable Deviation. The maximum point at which a well penetrates the producing formation shall not unreasonably vary from the vertical drawn from the center of the hole at the surface. Deviation is permitted without special permission to remedy blowouts and, for short distances, to straighten the hole, sidetrack junk, or correct other mechanical difficulties. ()

02. Controlled Directional Drilling. Except for the purposes recited in Subsection 330.01, no well hereafter drilled may be intentionally directionally deviated from the vertical unless the owner or operator thereof shall first file an application and application fee to amend the drilling permit and receive approval from the Department. Such application shall contain the following information: ()

- a. Name and address of the owner or operator. ()
- b. Lease name, well number, name of field and reservoir and county. ()
- c. Description of surface location and proposed location of the producing interval (footage from lease and section or block and survey lines). ()
- d. Reason for intentional deviation. ()
- e. List of offset operators and statement that each has been furnished a copy of the application by registered mail. ()
- f. Signature of representative of owner or operator. ()
- g. Notification to offset operators that any objection they may have to the proposed intentional deviation of the well must be filed with the Department within fifteen (15) days of receipt of a copy of the application. ()
- h. The application shall be accompanied by a neat, accurate plat or sketch of the lease and all offset leases showing the names of all offset operators and the surface and proposed producing interval locations of the well. Plat shall be drawn to a scale which will permit facile observation of all pertinent data. ()

03. Copy of Application to Offset Operators. At the time the application is filed with the Department, a copy of the application and the plat shall be forwarded by registered mail to all offset operators to the lease on which the well is to be drilled. ()

04. Department Action. Upon receipt, the Department will hold the application for fifteen (15) days. If objection from any offset operator to the proposed intentional deviation is received within fifteen (15) days of receipt of the application by said operator, or if the Department is not in agreement with the proposed deviation, the application shall be set down for public hearing. If no objection from either an offset operator or the Department is interposed within the fifteen (15) day period, the application shall be approved and permit issued by the Department. If written consent of the offset operator(s) is filed concurrently with the application to drill directionally, the Department may immediately approve the application without waiting fifteen (15) days. ()

05. Angular Deviation and Directional Survey. Upon completion, a complete angular deviation and directional survey of the well obtained by an approved well surveying company shall be filed with the Department, together with other regularly required reports. ()

06. Application for Exceptions. In the event the proposed, or final, location of the producing interval of the directionally deviated well is not in agreement with spacing or other rules of the Commission applicable to the reservoir, proper applications shall be made to obtain approval of exceptions to such rules. Such approval shall be granted or denied at the discretion of the Department, and shall be accorded with the same consideration and treatment as if the well had been drilled vertically to the producing interval. ()

331. -- 339. (RESERVED)

340. WELL COMPLETION/RECOMPLETION REPORT AND WELL REPORT.

Within thirty (30) days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different source of supply, or where the producing interval is changed, a completion report shall be filed with the Department, on a form prescribed by the Department. Such report shall include name, number, and exact location of the well; lease name, date of completion and date of first production, if any; name and depth of hydrocarbon

reservoir(s), if a multiple completion, from which well is producing; annulus pressure test; initial production test, including oil, gas, and water, if any; a well report as defined in Section 010; and such other relevant information as the Department may require. ()

341. DRILLING LOGS.

01. Minimum Required Logs. All wells shall have a lithologic log from the bottom of the hole to the top, to the extent practicable. ()

02. Bottom Hole Survey. All wells shall have a bottom hole location survey. ()

03. Cement Bond Log. All wells that are cased and cemented shall have a cement bond log run across the casing. ()

04. Other Logs. If other logs are run, including, but not limited to, resistivity, gamma-neutron log, sonic log, etc., then the owner or operator shall retain a copy regardless of results. ()

05. Log Submittal. The above logs shall be submitted to the Department in paper and digital formats within thirty (30) days of the log being run. If logs were run in color, then the submitted copies shall also be in color. Digital formats must be Tiff and LAS 2.0 or higher. Logs submitted to the Department must have a scale of one (1) inch for correlation logs and five (5) inches for detail logs. ()

342. -- 399. (RESERVED)

SUBCHAPTER E – PRODUCTION

400. PRODUCTION REPORTS.

01. Required Content. An owner or operator must report production on a form created by the Department. Production reports submitted to the Department must include gas quantities sold in thousand cubic feet (mcf), condensate sold in barrel quantities (bbl), oil sold in barrel quantities (bbl), and formational waters produced in barrel quantities (bbl). ()

02. Annual Production Report. By January 31 of each year, an owner or operator must submit to the Department an aggregated report of all hydrocarbons and formational waters produced and sold or disposed of for each well during the previous calendar year. ()

401. MEASUREMENT OF OIL.

The volume of production of oil shall be computed in terms of barrels of clean oil on the basis of meter measurements or tank measurements of oil-level difference made and recorded to the nearest quarter-inch (1/4") of one hundred percent (100%) capacity tables, subject to the following corrections: ()

01. Correction for Impurities. The percentage of impurities (water, sand, and other foreign substances, not constituting a natural component part of the oil) shall be determined to the satisfaction of the Department, and the observed gross volume of oil shall be corrected to exclude the entire volume of such impurities. ()

02. Temperature Correction. The observed volume of oil corrected for impurities shall be further corrected to the standard volume at sixty (60) Degrees F in accordance with ASTM D-1250-08, Table 7, or any revisions thereof and any supplements thereto, or any close approximation thereof approved by the Department. ()

03. Gravity Determination. The gravity of oil at sixty (60) degrees F shall be determined in accordance with ASTM D-1250-08, Table 5, or any revisions thereof and any supplements thereto approved by the Department. ()

402. MEASUREMENT OF GAS.

Gas Measurement. For computing volume of gas to be reported to the Department, the standard of pressure shall be fourteen point seventy-three (14.73) psi atmospheric, and the standard of temperature shall be sixty (60) Degrees F. All volumes of gas to be reported to the Department shall be adjusted by computation to these standards, unless otherwise authorized by the Department. ()

403. GAS-OIL RATIO FOR WELL CLASSIFICATIONS.

In the absence of an order by the Commission setting a field-specific oil-gas ratio, a well that produces gas of five thousand (5,000) cubic feet or greater to one (1) bbl of oil at standard temperature and pressure will be classified as a gas well. ()

404. GAS-OIL RATIO LIMITATION.

01. Waste Prevention; Conditions for Emergency Order. To further prevent waste resulting from the production of wells with inefficient gas-oil ratios, the Department may enter an emergency order temporarily prohibiting the production of oil or gas from all wells in a pool producing both oil and gas when the Department believes that waste may be occurring or is imminent in said pool by reason of the operation of wells with inefficient gas-oil ratios. The order shall specify a date for the hearing described in Subsection 404.02 of these rules. The Department may use information provided by an offset operator or an owner or operator in a common source of supply to determine if waste is occurring. ()

02. Notice and Cause for Hearing. The Department will notify all offset operators and owners or operators in the common source of supply of the hearing date. A hearing regarding waste due to inefficient gas-oil ratios will held for any of the following reasons: ()

i. If an emergency order is issued as described in Subsection 404.01 of these rules. The hearing will be scheduled between five (5) and fifteen (15) days after the effective date of the order. ()

ii. Upon application to the Department from any person with an ownership interest in the common source of supply who believes that waste is occurring due to inefficient oil and gas ratios. The application must include credible evidence of such waste. The hearing shall be held within thirty (30) days of the Department receiving the application. ()

iii. Prior to an emergency situation and upon its own motion with reasonable cause, the Department may schedule a hearing regarding potential waste due to inefficient gas-oil ratios. ()

03. Determination of Inefficient Ratios; Power to Limit Production. If the Department after notice and hearing, whether held upon its own motion, upon the application of an interested party, or pursuant to an emergency order entered as hereinafter provided for, shall find that a well(s) in the pool are operating with inefficient gas-oil ratios, and that waste is occurring or is imminent as a result thereof, it shall enter an order limiting the production of oil and gas from said pool to that amount which the pool can produce without waste and in accordance with sound engineering practice. The order shall also limit the amount of oil or gas, or both, that may be produced from any well in the pool, so that each owner or operator is given an opportunity to produce his just and equitable share in the pool in accordance with sound engineering practice. ()

405. GAS-OIL RATIO SURVEYS AND REPORTS.

Within thirty (30) days following the completion or recompletion of each well producing oil and gas and thereafter as the Department may require, the owner or operator of such well shall make a gas-oil ratio test of such well and the results of such test shall be reported to the Department within twenty (20) days after the test is made. Certain wells may be excepted from this rule by the Department upon written request. Entire fields may be excepted from this rule after notice and hearing. ()

406. -- 409. (RESERVED)

410. METERS.

01. General Requirements. Meter fittings of adequate size to measure the gas efficiently for the purpose of obtaining gas-oil ratios shall be installed on the gas vent line of every separator or proper connections

made for orifice well tester. Well-head equipment shall be installed and maintained in excellent condition. Valves shall be installed so that pressures can be readily obtained on both casing and tubing. ()

02. Visibility. All required meters shall be accessible and viewable by the Department for the purpose of monitoring daily, monthly and/or cumulative production volumes from individual wells. ()

411. SEPARATORS.

All flowing oil wells must be produced through an adequate oil and gas separator or emulsion treater, provided, however, the director may approve producing wells without a separator or emulsion treater. ()

412. PRODUCING FROM DIFFERENT POOLS THROUGH THE SAME CASING STRING.

No well shall be permitted to produce either oil or gas from different pools through the same string of casing without first receiving written permission from the Department. ()

413. GAS UTILIZATION.

After a well is completed and while it is being tested, the owner or operator may flare gas for no more than fourteen (14) days without paying royalties and severance taxes on the flared gas. Under no conditions may gas be flared for more than sixty (60) days after a well is completed or recompleted. Prior to flaring gas, owners or operators must notify the county in which the well is located and all owners of occupied structures within one-quarter (1/4) mile radius of the well. After the owner or operator has tested a well, no gas from such well shall be permitted to escape into the air, and all gas produced therefrom shall be utilized without waste. ()

414. -- 419. (RESERVED)

420. TANK BATTERIES.

Tank batteries must meet the following requirements. ()

01. Containment Requirements. All tank batteries consisting of tanks containing produced fluids or crude oil storage tanks or containing tanks equipped to receive produced fluids must be surrounded by tank dikes that meet the following requirements: ()

a. Tank dikes must be designed to have a capacity of at least one and one-half (1½) times the volume of the largest tank which the dike surrounds. ()

b. The material used to construct a tank dike and the material used to line the bottom and sides of the containment reservoir must have a maximum coefficient of permeability of 10⁻⁹ cm/sec so as to contain fluids and resist erosion. An operator must submit proof of compliance for tank dike liner construction to the Department in the form of a manufacturer's statement of design or a nuclear density test performed by a third party trained to perform the test. ()

c. All piping and manmade improvements that perforate the tank dike wall or tank battery floor must be sealed to a minimum radius of twelve (12) inches from the outside edge of the piping or improvement. ()

d. Valves and quick-connect couplers on tank batteries must be at least eighteen (18) inches from the inside wall of the tank dike. ()

e. Vegetation on the top and outside surface of tank dike must be properly maintained so as to not pose a fire hazard. ()

f. A ladder or other permanent device must be installed over the tank dike to access the containment reservoir. ()

g. The containment reservoir must be kept free of vegetation, stormwater, produced fluids, other oil and gas field related debris, general trash, or any flammable material. Drain lines installed through the tank dike for the purpose of draining storm water from the containment reservoir must have a valve installed which must remain closed and capped when not in use. Any fluids collected, spilled or discharged within the containment reservoirs must be removed as soon as practical, characterized, treated if necessary, and disposed in conformance with IDAPA

58.01.16, “Wastewater Rules,” and other applicable rules. ()

421. -- 429. (RESERVED)

430. GAS PROCESSING FACILITIES.

Gas processing facilities must meet the following requirements. ()

01. Operations. Operators of gas processing facilities must notify the Department which wells, by API number, are served by a gas processing facility. All gas processing facilities not constructed on a well site must comply with the requirements in Sections 301 and 302 of these rules. ()

02. Meters and Facility Plans. Gas processing facilities must account for all liquids and gas entering and leaving the facility with accurate meters. A supervisory control and data acquisition systems or other data recording system must be used to monitor the liquids and gas in the facility. Operators of gas processing facilities must submit an as-built facility design plan to the Department upon completion of the facility, a facility design plan must contain at the minimum: ()

- a. Site layout; ()
- b. Piping and instrumentation diagram; ()
- c. Process Flow schematics; ()
- d. Electronic controls and sensing schematic; ()
- e. Equipment operations and maintenance manuals for, pumps, meters, heat exchangers and any other operationally critical equipment that requires periodic maintenance and calibration; ()
- f. Periodic maintenance schedule for critical equipment; ()
- g. Troubleshooting metric; and ()
- h. Other information or documentation necessary for the safe and continued operation of a gas processing facility. ()

03. Flaring. Flaring at gas processing facilities must be in conformance with IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, and any permit issued by the IDEQ. ()

04. Inspections. Gas processing facilities must have site specific facility design plans and a log book of gas metered in and out of the facility available for review by Department staff during the inspections of gas processing facilities. During inspections, gas process facility staff must demonstrate knowledge of all operations and the location of all emergency shut off equipment, direction of flow lines, and heat exchangers. The Department will conduct quarterly inspections of facilities. ()

431. -- 499. (RESERVED)

SUBCHAPTER F – WELL ACTIVITY AND RECLAMATION

500. ACTIVE WELLS.

01. Gas Storage Wells. Gas storage wells are to be considered active at all times unless physically plugged. ()

02. Extension of Active Status. An owner or operator may request an extension of active well status for wells that are idled for more than twenty-four (24) continuous months. The owner or operator shall provide a written request to the Department stating the reason for the extension, the length of extension, the method used to close the well to the atmosphere, and the plans for future operation. The Department shall review the request for

approval, modification, or denial, and shall set the duration of the extension if approved. An extension shall not exceed five (5) years and may be renewed upon request. ()

03. Annual Reports for Active Wells. The owner or operator shall submit an annual report to the Department describing the current status of the well and the plans for future well operation by January 31 of each year. Failure to submit the annual report may result in the Department declaring the well inactive. ()

501. INACTIVE WELLS.

01. Determination of Inactive Status. The Department shall declare a well inactive after twenty-four (24) continuous months of inactivity if the owner or operator has not received approval for an extension of active status, or after an owner or operator fails to submit an annual report for an active well. The Department will immediately notify an owner or operator of this determination by certified mail, and the owner or operator may appeal this determination to the Commission. ()

02. Owner's or Operator's Responsibility for Inactive Wells. The owner or operator must plug and abandon an inactive well in accordance with Section 502 of these rules within six (6) months of being notified by the Department unless the owner or operator supplies the following information within the six-month time period: ()

- a.** A written request to extend inactive status; ()
- b.** An individual bond, as provided for in Subsection 220.03 of these rules, if the well was covered by a blanket bond; and ()
- c.** A description of how the well is closed to the atmosphere with a swedge and valve, packer, or other approved method, and how the well is to be maintained. ()

03. Inactive Review and Decision. The Department shall review the request for approval, modification, or denial, and shall set the duration of the extension if approved. An extension shall not exceed three (3) years and may be renewed upon request. ()

04. Testing of Inactive Wells. In addition to the requirements of Section 320 of these rules, inactive wells shall have a mechanical integrity test performed within two (2) years after the date of last use in order to retain inactive status. ()

05. Converting Inactive Wells to Active Wells. The owner or operator must apply to the Department to change the status of a well from inactive to active. The Department shall review the request for approval, modification, or denial. A mechanical integrity test may be required by the Department if the well has been worked over or if a test has not been conducted for five (5) years or longer. If approved, the well may again be covered by a blanket bond. ()

502. WELL PLUGGING.

01. Plugging Required. The operator or owner shall not permit any well drilled for oil, gas, saltwater disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted. ()

02. Notice of Intention to Abandon Well. Before beginning abandonment work on an oil or gas well, a Notice of Intention to Abandon shall be filed with the Department and approval obtained as to the method of abandonment before the work is started. The notice must show the reason for abandonment and must give a detailed statement of the proposed work, including such information as kind, location, and length of plugs (by depths), and plans for mudding, cementing, shooting, testing, and removing casing as well as any other pertinent information. ()

03. Plugging Dry Holes. If a nonproductive well, or dry hole, is drilled and not needed for any specific purpose, it must be plugged and abandoned prior to removal of the drill rig. A verbal notification and approval may be used for dry holes in lieu of the written notification referenced in Subsection 502.02 of these rules. The standards

in Subsections 502.04 through 502.06 of these rules will still apply. ()

04. Plugging of Wells. The owner or operator of any well drilled for oil or gas, or any seismic, core, or other exploratory holes, whether cased or uncased, and regardless of diameter shall be responsible for the plugging of said hole in a manner sufficient to properly protect all freshwater-bearing and possible or probable oil- or gas-bearing formations. The material used in plugging, whether cement, mechanical plug, or some other equivalent method approved in writing by the Director, must be placed in the well in a manner to permanently prevent migration of oil, gas, water, or other substance from the formation or horizon in which it originally occurred. The preferred plugging cement slurry is that recommended in API Bulletin E3. Pozzolan, gel, and other approved extenders may be used if the owner or operator can document to the Department's satisfaction that the slurry design will achieve a minimum compressive strength of three hundred (300) psi after twenty-four (24) hours, and eight hundred (800) psi after seventy-two (72) hours measured at ninety-five (95) degrees F and at eight hundred (800) psi. No substances of any nature or description other than those normally used in plugging operations shall be placed in any well at any time during plugging operations. ()

05. Plugged Intervals. The following plugging standards shall be followed for all wells: ()

a. Cement must be placed for a length of at least one hundred (100) feet on either side of each casing shoe, or casing bottom if no shoe is present. If the bottom of the hole is less than one hundred (100) feet from the bottom of the lowest casing, then the entire length of the uncased hole below the casing will be cemented. ()

b. In the uncased portions of a well, cement plugs must be placed to extend from one hundred (100) feet below the bottom up to one hundred (100) feet above the top of any oil, gas, and abnormally high pressure zones, so as to isolate fluids in the strata in which they are found and to prevent them from escaping into other strata. ()

c. A cement plug shall be placed a minimum of one hundred (100) feet above all producing zones in uncased portions of a well. ()

d. A cement plug shall be placed a minimum of fifty (50) feet above and below the following intervals: ()

i. Where the casing is perforated or ruptured. If no cement is present behind the casing, then cement must also be squeezed out the perforations or ruptures and into the annular space between the casing and the borehole. ()

ii. Top and bottom of fresh water zones. If fresh water zone is less than one hundred (100) feet thick, then continuous cement must be placed from fifty (50) feet below the zone upward to fifty (50) feet above the zone. ()

e. The top of all cement plugs will be tagged to verify their depth. ()

f. The owner or operator shall have the option as to the method of placing cement in the hole by: ()

i. Dump bailer; ()

ii. Pumping a balanced cement plug through tubing or drill pipe; ()

iii. Pump and plug; or ()

iv. Equivalent method approved by the Director prior to plugging. ()

g. Unless prior approval is given, all wellbores shall have water based drilling muds, high viscosity pills, or other approved fluids between all plugs. ()

h. All abandoned wells shall have a plug or seal placed at the surface of the ground or the bottom of ()

the cellar in the hole in such manner as not to interfere with soil cultivation or other surface use. The top of the pipe must be sealed with either a cement plug and a screw cap, or cement plug and a steel plate welded in place or by other approved method, or in the alternative be marked with a permanent monument which shall consist of a piece of pipe not less than four (4) inches in diameter and not less than ten (10) feet in length, of which four (4) feet shall be above the general ground level, the remainder to be embedded in cement or to be welded to the surface casing. ()

06. Subsequent Report of Abandonment. If a well is plugged or abandoned, a subsequent record of work done must be filed with the Department. This report shall be filed separately within thirty (30) days after the work is done. The report shall give a detailed account of the manner in which the abandonment of plugging work was carried out, including the weight of mud, the nature and quantities of materials used in plugging, the location and extent (by depths) of the plugs of different materials, and the records of any tests or measurements made and of the amount, size, and location (by depths) of casing left in the well. If an attempt was made to part any casing, a complete report of the method used and the results obtained must be included. ()

07. Wells Used for Fresh Water (Cold Water < 85 degrees Fahrenheit), Low Temperature Geothermal (85 - 212 Degrees Fahrenheit) or Geothermal Wells (>212 Degrees Fahrenheit). ()

a. Oil and gas wells, seismic, core or other exploratory holes no longer being used for their original purpose may not be converted into fresh water, low temperature geothermal, or geothermal wells unless the following actions occur: ()

i. Owner, operator, or surface owner files an application with the IDWR describing the conversion and the proposed use for the water or geothermal resource and any modifications necessary to meet the applicable well construction standards; ()

ii. The surface owner provides written documentation assuming responsibility for the converted well including, should it become necessary, decommissioning (plugging) of the converted well in accordance with applicable law; ()

iii. IDWR issues a permit for a geothermal resource well, a water right, or recognizes a domestic exemption authorizing the withdrawal of water from the converted well; and ()

iv. A licensed driller in Idaho inspects and certifies that the converted well meets all well construction standards for its intended purpose. ()

b. The Department's bond may not be released, and the oil and gas permit cancelled, until all requirements in Paragraph 502.07.a. of these rules are met. ()

503. -- 509. (RESERVED)

510. SURFACE RECLAMATION.

01. Timing of Reclamation. After the plugging and abandonment of a well or closure of other oil and gas facilities, all reclamation work described in this Section shall be completed within twelve (12) months. The Director may grant an extension where unusual circumstances are encountered, but every reasonable effort shall be made to complete reclamation before the next local growing season. ()

02. General Clean Up. All debris, abandoned gathering line risers and flowline risers, surface equipment, supplies, rubbish, and other waste materials shall be removed within three (3) months of plugging a well. The burning or burial of such material on the premises shall be performed in accordance with applicable local, state, or federal solid waste disposal and air quality regulations. In addition, material may be burned or buried on the premises only with the prior written consent of the surface owner. ()

03. Road Removal. All access roads to plugged and abandoned wells and associated production facilities shall be ripped, regraded, and recontoured unless otherwise specified in a surface use agreement. Culverts and any other obstructions that were part of the access road(s) shall be removed. Roads to be left will be graded to drain and prepared with rolling dips or other best management practices to minimize erosion. ()

04. Regrading. Drill pads, pits, berms, cut and fill slopes, and other disturbed areas will be regraded to approximate the original contour. Where possible, slopes should be reduced to three (3) horizontal feet to one (1) vertical foot (3H:1V) or flatter. ()

05. Compacted Areas. All areas compacted by drilling and subsequent oil and gas operations that are no longer needed following completion of such operations shall be cross-ripped. Ripping shall be undertaken to a depth of eighteen (18) inches or bedrock, whichever is reached first. ()

06. Topsoiling. Stockpiled topsoil shall be replaced in a manner that will support reestablishment of the pre-disturbance land use and contoured to control erosion and provide long-term stability. If necessary, topsoiled areas shall be tilled adequately in order to establish a proper seedbed. ()

07. Revegetation. ()

a. The owner or operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands prior to the oil and gas operations. Certified weed free seed should be used in revegetation. The owner or operator may use available technical data and results of field tests for selecting seeding practices and soil amendments that will result in viable revegetation. ()

b. The disturbed areas shall be reseeded in the first favorable season following rig demobilization, site regrading, and topsoil replacement. ()

c. Unless otherwise specified in the approved permit, the success of revegetation efforts shall be measured against the existing vegetation on site prior to the oil and gas operations, or against an adjacent reference area supporting similar types of vegetation. Reseeding or replanting is required until the following cover standards are met: ()

i. The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on an adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation, if used; ()

ii. Ground cover shall be considered comparable if the planted area has at least seventy percent (70%) of the pre-disturbance, or adjacent reference area, ground cover; ()

iii. For locations with an average annual precipitation of more than twenty-six (26) inches, the Department, in approving a drilling permit or a pit, 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; ()

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; and ()

v. In all cases, vegetative cover shall be established to the extent necessary to control erosion. ()

d. 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-reclamation land use, 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. ()

e. By mutual agreement of the Department, the surface owner, and the owner or operator, a site may be converted to a different, more desirable or more economically suitable habitat. ()

f. 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 revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. ()

g. The owner or operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to oil and gas operations. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the surface owner 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 binders, or other acceptable means during establishment of the shrubs. ()

h. Tree stocking of forestlands should meet the following criteria: ()

i. Trees that are adapted to the site should be planted in a density which can be expected over time to yield a timber stand comparable to pre-disturbance timber stands; ()

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 ()

iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. ()

i. Revegetation is not required on areas that the surface owner wishes to incorporate into an irrigated field and any roads which will be used for other oil and gas operations. ()

j. Mulch should be used on severe sites and may be required by the permit where slopes are steeper than three (3) horizontal feet to one (1) vertical foot (3H:1V) 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. ()

08. Reclamation Under a Surface Use Agreement. Notwithstanding the requirements of Subsections 510.03 through 510.07 of this rule, reclamation may be superseded by the conditions of a surface use agreement as long as the site is left in a stable, non-eroding condition that will not impact fresh waters. ()

511. -- 999. (RESERVED)

IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION

DOCKET NO. 26-0000-2000F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 67-4223, 67-7115, and 67-7116, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 26, rules of the Department of Parks and Recreation:

IDAPA 26

- 26.01.10, *Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation;*
- 26.01.20, *Rules Governing the Administration of Park and Recreation Areas and Facilities;* and
- 26.01.33, *Rules Governing the Administration of the Land and Water Conservation Fund Program.*

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the Sept. 16, 2020, Idaho Administrative Bulletin, [Vol. 20-9SE, pages 1852-1887](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules, with one exception as noted below in IDAPA 26.01.20.

- IDAPA 26.01.10, Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation. Fees related to temporary permit processing, compensation, application and enforcement.
- IDAPA 26.01.20, Rules Governing the Administration of Park and Recreation Areas and Facilities. Fees related to motor vehicle entrance, parking violations, camping, reservations (placing, modifying, and canceling), vessel moorage, overnight use, surcharges, group facility use, winter access, annual and temporary winter recreation parking permit, and returned checks. In anticipation of future changes to Idaho Code raising the fee for the Idaho State Parks Passport, IDPR seeks a corresponding raise on the fee cap for the annual motor vehicle entrance fee.
- IDAPA 26.01.33, Rules Governing the Administration of the Land and Water Conservation Fund Program. Service fee to administer and manage process to convert property from a recreation use.

This fee or charge is being imposed pursuant to Sections 67-4223, 67-7115, and 67-7116, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Anna Canning (208) 514-2252.

Dated this 20th day of October, 2020.

Anna Borchers Canning, AICP
Management Services Administrator
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue, Boise, ID
P.O. Box 83720
Boise, ID 83720-0065
Phone: (208) 514-2252
anna.canning@idpr.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-4223, 67-7115, and 67-7116, Idaho Code.

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

PUBLIC HEARING

Friday, October 9, 2020 - 11:00 a.m. - 11:30 a.m. (MDT)

Dial-in Number:

Toll Free: 1-877-820-7831

Access Code: 145511#

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 the purpose of the proposed rulemaking:

This proposed rulemaking re-publishes the following existing temporary rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 26, rules of the Department of Parks and Recreation:

IDAPA 26

- 26.01.10, *Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation;*
- 26.01.20, *Rules Governing the Administration of Park and Recreation Areas and Facilities;* and
- 26.01.33, *Rules Governing the Administration of the Land and Water Conservation Fund Program.*

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules, with one exception. In anticipation of future changes to Idaho Code raising the fee for the Idaho State Parks Passport, IDPR seeks a corresponding raise on the fee cap in IDAPA 26.01.20 for the annual motor vehicle entrance fee. The fee or charge is being imposed pursuant to Section 67-4223, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Anna Canning (208) 514-2252.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of August, 2020.

THE FOLLOWING IS THE TEXT OF OMNIBUS FEE DOCKET NO. 26-0000-2000F

26.01.10 – RULES GOVERNING THE ADMINISTRATION OF TEMPORARY PERMITS ON LANDS OWNED BY THE IDAHO DEPARTMENT OF PARKS AND RECREATION

000. LEGAL AUTHORITY.

These rules set forth procedures concerning the issuance of temporary permits on all lands owned by the Idaho Department of Parks and Recreation. Requests for permits on lands administered, but not owned by IDPR must be made directly to the land owner. These rules are promulgated pursuant to Idaho Code Section 67-4223(a) and are construed in a manner consistent with the duties and responsibilities of the Idaho Parks and Recreation Board as set forth in Idaho Code Title 67, Chapter 42. These rules are not be construed as affecting any valid existing rights.

()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.10, “Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation.”

()

02. Scope. These rules are intended to set forth the procedures for the administration of temporary permits on lands owned by the department.

()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho Parks and Recreation Board or such representative as may be designated by the board.

()

02. Department and IDPR. The Idaho Department of Parks and Recreation.

()

03. Director. The director of the Idaho Department of Parks and Recreation or such representative as may be designated by the director.

()

04. Grantee. The party to whom a temporary permit is granted and their assigns and successors in interest.

()

05. Grantor. The State of Idaho and its assigns and successors in interest.

()

06. Park Manager. The person responsible for administering and supervising a specific state park area, or department owned land not yet a state park, as designated by the director of the Idaho Department of Parks and Recreation.

()

07. Person. An individual, partnership, association, or corporation qualified to do business in the state of Idaho, and any federal, state, county or local unit of government.

()

08. Temporary Permit. An instrument authorizing a temporary use of IDPR owned land for the construction, operation and maintenance of specific typically linear elements including but not limited to power and telephone lines, roadways, driveways, sewer lines, natural gas lines and water lines.

()

011. -- 049. (RESERVED)

050. POLICY.

01. Issuing Authority. Temporary permits are issued by the director in lieu of easements, and are required for all activities on or over IDPR owned land.

()

02. Discretion. The board retains absolute discretion to grant or withhold a temporary permit on land which it owns.

()

03. Consent Required. Temporary permits, their amendment, renewal and assignment and all subsequent actions are not valid without the written consent of the director.

()

04. Modifications. Temporary permits and subsequent modifications, assignments and renewals require a formal application, and payment of a processing fee to reimburse the agency for staff time devoted to processing the request.

()

05. Purpose Compatible. The purpose for which the temporary permit is sought must not interfere with the existing or anticipated values, objectives, or operation of department owned lands. ()

06. Compensation. An appropriate compensation for use of department-owned lands, as set out in Section 150 of this chapter, must be paid to the IDPR in cash or in the form of offsetting benefits to be determined by the director. ()

07. Control. At all times the control of gates, roads and park lands is retained by the State. The permit granted is for the grantee's use only, is revocable for cause, is issued for a specific period of time, not to exceed ten (10) years, but usually five (5) years or less, and automatically expires if not used for a period of one (1) year. ()

051. -- 099. (RESERVED)

100. PROCESSING FEES.

01. Issuance or Modification. The processing fee for a new temporary permit, or modification of an existing temporary permit, is one-hundred dollars (\$100), which must be received from all applicants before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. ()

02. Assignment or Renewal. The processing fee for assignment or renewal of an existing temporary permit is twenty-five dollars (\$25), and must be received before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. ()

101. -- 149. (RESERVED)

150. COMPENSATION.

01. Payable in Advance. Cash compensation for the entire term of the temporary permit will be collected from the applicant prior to issuance. ()

02. Cost per Acre. Cash compensation for a temporary permit is charged at a rate of fifty dollars (\$50) per acre of IDPR land utilized per year or any portion thereof, and is specified in the temporary permit. Temporary permits of less than one (1) year in duration will not be prorated. ()

03. Noncash Compensation. Offsetting (non-cash) compensation for a temporary permit may be approved on an individual basis by the director, and the terms of the agreement must be outlined in the temporary permit. ()

04. Nonrefundable. Compensation to IDPR for a temporary permit is non-refundable, except as set out in Subsection 200.08 of this chapter. ()

151. -- 199. (RESERVED)

200. STANDARD CONDITIONS.

All temporary permits issued are subject to the following standard conditions: ()

01. Term Limited. The use and term of a temporary permit is limited solely to that specifically stated in the instrument. ()

02. Utilities. Except under special circumstances with approval of the director, all utilities must be installed underground. ()

03. Construction, Operation and Maintenance. The grantee must construct, maintain and operate at grantee's sole expense the facility for which the temporary permit is granted, and maintain the permit site in a condition satisfactory to the Park Manager. ()

04. Compliance with Laws. The grantee will comply with all applicable state and local laws, rules, and ordinances, including but not limited to: state fire laws and all rules of the State Land Board pertaining to forest and watershed protection, and with the Stream Channel Protection Act as designated in Chapter 38, Title 42 of the Idaho Code. ()

05. Wetlands. The grantee will comply with all state and federal statutes, rules, and regulations pertaining to wetlands protection. ()

06. Land and Water Conservation Fund. Temporary permits on land located within Land and Water Conservation Fund 6(f) boundaries, their amendment, renewal, assignment and all subsequent actions must be subject to the terms and the requirements of the Land and Water Conservation Fund Act of 1965 (P.L. 88-578, 16 U.S.C.S. Section 4601-4 et seq.). ()

07. Hold Harmless. The grantee, its agents and contractors must indemnify and hold harmless the department, the state of Idaho and its representatives against and from any and all demands, claims or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with the use authorized under the temporary permit. ()

08. Withdrawal for Park Use. Should the land be needed for park development or recreation use, the director reserves the right to order the change of location or the removal of any structure(s) or facility(ies) authorized by a temporary permit at any time. Any such change or removal will be made at the sole expense of the grantee, its successors or assigns. When a temporary permit is terminated prior to its stated expiration date pursuant to this provision, the grantee will receive a pro-rata refund of compensation paid. ()

09. Permits Not Exclusive. The temporary permit is not exclusive to the grantee, and must not prohibit the department from granting other permits or franchise rights of like or other nature to other public or private entities, nor must it prevent the department from using or constructing roads and structures over or near the lands encompassed by the temporary permit, or affect the department's right to full supervision or control over any or all lands which are part of the temporary permit. ()

10. Cancellation. The director may cancel the temporary permit or amend any of the conditions of the temporary permit if the grantee fails to comply with any or all of the provisions, or requirements set forth or through willful or unreasonable neglect, fails to heed or comply with notices given. ()

11. Removal of Facilities. Upon termination of the temporary permit for any reason including cancellation, expiration, or relinquishment, the grantee must have thirty (30) days from the date of termination to remove any facilities and improvements constructed by the grantee, and must restore the permit site to the satisfaction of the park manager. Upon written request, and for good cause shown, the director may allow a reasonable additional time for the removal of improvements and facilities and the restoration of the site. ()

201. -- 249. (RESERVED)

250. SPECIAL CONDITIONS. Special conditions addressing unique situations may be included in the temporary permit to protect natural or park resources, or to safeguard public health, safety or welfare. ()

251. -- 299. (RESERVED)

300. APPLICATION PROCEDURE.

01. Contents of Application. A temporary permit application must contain: ()

a. A temporary permit application/action form; ()

b. A plat of the proposed permit location; ()

c. The appropriate application fee; ()

d. An acceptable written legal description based on a survey of the centerline, or a metes and bounds survey of the temporary permit tract. The survey must be performed by a registered professional land surveyor as required by Idaho Code Section 54-1229. ()

02. Engineering Certification. As required in Section 58-601, Idaho Code, for any application for a ditch, canal or reservoir, the plats and field notes must be certified by the engineer under whose direction such surveys or plans were made and four (4) copies filed with the department and one (1) copy with the director, Idaho Department of Water Resources. ()

03. Application Submission. Temporary permit applications must be submitted to the Park Manager of the park in which the permit is requested. The park manager will forward it for processing as outlined in Section 800. of this chapter. ()

301. -- 349. (RESERVED)

350. MODIFICATION OF EXISTING TEMPORARY PERMIT.

A modification of an existing temporary permit must be processed in the same manner as a new application. Modification includes change of use, enlarging the permit area, or changing the location of the permit area. Modification does not include ordinary maintenance, repair, or replacement of existing facilities. ()

351. -- 399. (RESERVED)

400. ASSIGNMENT.

temporary permits issued by the director cannot be assigned without the approval of the director. To request approval of an assignment, the assignor and assignee must complete the department's standard temporary permit application/action form and forward it and the assignment fee to the park manager, for processing as outlined in Section 800 of this chapter. ()

401. -- 449. (RESERVED)

450. RENEWAL.

Renewal of temporary permits may be sought by completing a temporary permit application/action form and forwarding it together with the renewal fee to the park manager for processing as outlined in Section 800 of this chapter. Renewal applications must be submitted at least forty-five (45) days prior to the expiration date of the temporary permit. ()

451. -- 499. (RESERVED)

500. ABANDONMENT.

A temporary permit not used for the purpose for which it was granted for a period of one (1) year is presumed abandoned and must automatically terminate. The director must notify the grantee in writing of the termination. The grantee must have thirty (30) days from the date of the written notice to reply in writing to the director to show cause why the temporary permit should be reinstated. Within thirty (30) days of receipt of the statement to show cause, the director must notify the grantee in writing as to the director's decision concerning reinstatement. The grantee must have thirty (30) days after receipt of the director's decision to request to appear before the board as outlined in Section 003 of this chapter. Removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ()

501. -- 549. (RESERVED)

550. RELINQUISHMENT.

The Grantee may voluntarily relinquish a temporary permit any time by submitting a temporary permit application/action Form to the park manager. Upon relinquishment, removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ()

551. -- 599. (RESERVED)

600. EXPIRATION.

Upon expiration, and absent a request for renewal of the temporary permit, removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ()

601. -- 649. (RESERVED)

650. CANCELLATION.

The director may cancel a temporary permit if the grantee fails to comply with any or all of its provisions, terms, conditions, or rules; or through willful or unreasonable neglect, fails to heed or comply with notices given. ()

651. -- 699. (RESERVED)

700. ENFORCEMENT.

Should it become necessary to enforce the terms of a temporary permit in a court of law and the grantor prevails, the grantee must pay all costs and fees. ()

701. -- 749. (RESERVED)

750. ADMINISTRATION.

01. Bureau Responsible. The IDPR Development Bureau must be responsible for uniform statewide administration of all IDPR temporary permits. ()

02. Disposition of Fees. All processing and compensation fees collected from applicants must be sent to the fiscal section for deposit into the appropriate account. ()

03. Status Report. The IDPR Development Bureau must maintain an up-to-date status report on all temporary permits issued. ()

751. -- 799. (RESERVED)

800. PROCESSING.

01. Receipt of Application. Upon receipt of a properly filed temporary permit application/action form and the appropriate application fee, the park manager must review the application and forward it, together with his comments, to the region supervisor. The region supervisor must review the application and forward his comments along with the temporary permit application/action package, to the chief, Development Bureau, IDPR for processing. ()

02. Time. Processing of temporary permit application/action forms must not exceed one hundred twenty (120) days from the date of acceptance of a complete application by the park manager. Applications not acted on within one hundred twenty (120) days are deemed denied. ()

03. Notification. All applicants must be notified in writing, by the development bureau chief, of the approval or denial of their application. ()

801. -- 999. (RESERVED)

**26.01.20 – RULES GOVERNING THE ADMINISTRATION OF PARK
AND RECREATION AREAS AND FACILITIES**

000. LEGAL AUTHORITY.

The Idaho Parks and Recreation Board is authorized under Section 67-4223, Idaho Code, to adopt, amend, or rescind rules as may be necessary for the proper administration of Title 67, Chapter 42, Idaho Code, and the use and protection of lands and facilities subject to its jurisdiction. The board is also authorized to further define and make specific the provisions regarding the winter recreational parking permit program as set forth in Sections 67-7115 through 67-7118, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.20, “Rules Governing the Administration of Park and Recreation Areas and Facilities.” ()

02. Scope. This chapter establishes fees for and rules governing the use of lands and facilities administered by the Department and the winter recreational parking permit; establishes procedures for obtaining individual and group use reservations; sets rules regarding visitor behavior and use of park lands and facilities; and authorizes employees to enforce these rules. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. ADA. Americans with Disabilities Act ()

02. Annual Motor Vehicle Entrance Fee Sticker. A sticker that allows a single motor vehicle to enter Idaho State Parks without being charged a motor vehicle entrance fee. ()

03. Annual Motor Vehicle Entrance Fee Sticker Replacement. Replacement due to a motor vehicle sale or damage to an existing annual motor vehicle entrance fee sticker. ()

04. Board. The Idaho Parks and Recreation Board, a bipartisan, six (6) member board, appointed by the Governor. ()

05. Camping Unit. The combined equipment and people capacity that a campsite or facility will accommodate. ()

06. Camping Day. ()

a. For individual and group campsites the period between 2 p.m. of one (1) calendar day and 1 p.m. of the following calendar day. ()

b. For individual and group facilities, the period between 4 p.m. of one (1) calendar day and 12 noon of the following calendar day. ()

07. Campsite. ()

a. Individual. An area within a department managed campground designated for camping use by an individual camping unit or camping party that includes a defined area for either a tent pad or RV pad/area and may include a table and/or grill. The definition includes companion campsites. ()

b. Group. An area within a department managed campground designated for group camping use or a block of individual campsites designated for group use within a campground primarily managed for individual use. ()

08. Commercial Motor Vehicle. A vehicle that has seating capacity of more than fifteen (15) persons including the driver, or that is maintained for the transportation of persons for hire, compensation or profit. ()

09. Day Use. Use of any non-camping lands and/or facilities between the hours of 7 a.m. and 10 p.m. unless otherwise posted. ()

10. Department. The Idaho Department of Parks and Recreation. ()

11. **Designated Beach.** Waterfront areas designated by the park or program manager for water-based recreation activities. The length and width of each designated beach will be visibly identified with signs. ()
12. **Designated Roads and Trails.** Facilities recognizable by reasonable formal development, signing, or posted rules. ()
13. **Director.** The director and chief administrator of the department, or the designee of the director. ()
14. **Division Administrator.** An employee, or designee, within the department that has supervisory authority over park and program managers. ()
15. **Dock and Boating Facility.** Floats, piers, and mooring buoys owned or operated by the department. ()
16. **Encroachments.** Non-recreational uses of lands under the control of the board including any utilization for personal, commercial, or governmental use by a non-department entity. ()
17. **Extra Vehicle.** An additional motor vehicle without built-in temporary living quarters or sleeping accommodations registered to a camp site. ()
18. **Facilities.** ()
- a. Individual. A camping structure within department managed lands designated for use by an individual camping unit. ()
- b. Group. A camping structure within department managed lands designated for group use. ()
- c. Day Use. A non-camping area or structure within department managed lands designated for group use during day use periods. ()
19. **Group Use.** Twenty-five (25) or more people, or any group needing special considerations or deviations from normal department rules or activities. ()
20. **Idaho State Parks Passport.** A sticker, purchased from any county Department of Motor Vehicles' office in the state of Idaho, that matches a particular motor vehicle license number and expiration date, allowing that vehicle to enter Idaho State Parks without being charged a motor vehicle entrance fee. ()
21. **Idaho State Parks Passport Replacement.** Replacement due to a motor vehicle registration transfer or damage to an existing passport. ()
22. **Motor Vehicle.** Every vehicle that is self-propelled except for vehicles moved solely by human power, electric bikes, and motorized wheelchairs. ()
23. **Motor Vehicle Entrance Fee (MVEF).** A fee charged for entry to or operation of a motor vehicle in an Idaho State Park. ()
24. **Overnight Use.** Use of any non-camping lands for the parking of motor vehicles or trailers not associated with a campsite between the hours of 10 p.m. and 7 a.m. unless otherwise posted. ()
25. **Overnight Use Fee.** A fee charged for overnight use of non-camping lands between the hours of 10 p.m. and 7 a.m. ()
26. **Park or Program Manager.** The person, or the person's designee, responsible for administering and supervising particular lands, facilities, and employees that are under the jurisdiction of the department. ()
27. **Recreational Vehicle (RV).** A vehicular type unit primarily designed as temporary living quarters

for recreational, camping, sleeping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The entities are travel trailer, camping trailer, truck camper, fifth-wheel trailer, and motorhome (all as defined in Section 39-4201, Idaho Code) and including buses or van type vehicles which are converted to recreation, camping, or sleeping use. It does not include pickup hoods, shells, or canopies designed, created, or modified for occupational use. ()

28. Vessel. Every description of watercraft, including a seaplane on the water, used or capable of being used as a means of transportation on water, but not including float houses, diver's aids operated and designed primarily to propel a diver below the surface of the water, and non-motorized devices not designed or modified to be used as a means of transportation on the water such as inflatable air mattresses, single inner tubes, and beach and water toys as defined in Section 67-7003(22), Idaho Code. ()

011. PURCHASE, EXPIRATION, DISPLAY AND PLACEMENT OF MVEF AND PASSPORT STICKERS.

01. Daily MVEF. ()

a. The daily MVEF may be purchased at any Idaho state park or online. ()

b. The daily MVEF expires at 10 p.m. on date of purchase or as posted; MVEF for overnight camping use expires upon checkout which is 1 p.m. for a campsite and 12 noon for a facility. ()

c. The proof of purchase of the MVEF must be visible and properly displayed. ()

02. Annual MVEF. ()

a. The Annual MVEF may be purchased at any Idaho state park, the department's central or regional offices, or online. ()

b. The Annual MVEF expires December 31 of the year issued. ()

c. The Annual MVEF sticker must be visible, legible at all times, and permanently affixed to the vehicle as follows. For vehicles with a windshield, the sticker must be clearly displayed on the lower corner of the driver's side windshield. For vehicles without a windshield, the sticker must be clearly displayed in a similar location. ()

03. Annual MVEF Sticker Replacement. ()

a. The applicant may apply at any Idaho state park or at the department's central or regional offices for a replacement sticker due to damage. ()

b. The applicant must establish proof of purchase of the original Annual MVEF. ()

c. Display and placement of the replacement sticker must comply with Subsection 011.02.c. of this chapter. ()

04. Idaho State Parks Passport. ()

a. The Idaho State Parks Passport may be purchased from any county department of motor vehicles office in the state of Idaho. ()

b. Idaho State Parks Passport expires concurrent with the expiration of that vehicle's registration. ()

c. Display and placement of the Idaho State Parks Passport sticker must comply with Subsection 011.02.c of this chapter. ()

05. Idaho State Parks Passport Sticker Replacement. ()

a. The applicant may apply in person to a county department of motor vehicles office for a replacement sticker. ()

b. Display and placement of the replacement sticker must comply with Subsection 011.02.c. of this chapter. ()

012. -- 074. (RESERVED)

075. AUTHORITY CONFERRABLE ON EMPLOYEES - ENFORCEMENT.

01. Director Authority. The director may, pursuant to Section 67-4239, Idaho Code, authorize any employee of the department to exercise any power granted to, or perform any duty imposed upon the director. ()

02. Park or Program Manager Authority. A park or program manager may establish and enforce all rules, including interim rules. Interim rules apply to the public safety, use, and enjoyment or protection of natural, cultural, or other resources within lands administered by the department. Interim rules will be posted for public view and will be consistent with established state laws and these rules. Interim rules expire in one hundred twenty (120) days from the established effective date unless approved by the board. ()

03. Additional Park or Program Manager Authority. A park or program manager may deny entry to, or reservation of, any department day use area, campsite, or facility, to any individual or group whose prior documented behavior has violated department rules, whose activities are incompatible with operations, or whose activities will violate department rules. ()

076. -- 099. (RESERVED)

100. PENALTIES FOR VIOLATIONS.

Failure of any person, persons, partnership, corporation, concessionaire, association, society, or any fraternal, social or other organized groups to comply with these rules constitutes an infraction. ()

01. Civil Claim. The penalty established in this chapter does not prevent the department from filing a civil claim against a violator to collect damages incurred to lands, resources, or facilities administered by the Department. ()

02. Violators. In addition to the penalty provided in chapter, or any other existing laws of the state of Idaho, any person failing to comply with any section of these rules or federal, state, or local laws, rules, or ordinances applicable under the circumstances, is a trespasser upon state land and subject to expulsion from any department managed lands for a period of time not less than forty-eight (48) hours. ()

101. -- 124. (RESERVED)

125. PRESERVATION OF PUBLIC PROPERTY.

The destruction, injury, defacement, removal, or disturbance in or of any public building, sign, equipment, monument, statue, marker, or any other structures; or of any tree, flower, or other vegetation; or of any cultural artifact or any other public property of any kind, is prohibited unless authorized by the park or program manager of a specific area. ()

126. -- 149. (RESERVED)

150. USE OF MOTOR VEHICLES.

Except where otherwise provided, motor vehicles may enter or be operated in park and recreation areas and facilities only upon payment of the motor vehicle entrance fee or display of a valid Idaho state Parks Passport or Annual Motor Vehicle Entrance Fee sticker. All motor vehicles must stay on authorized established department roadways or parking areas except for trails and areas which are clearly identified by signs for off-road use. Drivers and motor vehicles

operated within lands administered by the department must be licensed or certified as required under state law. The operators of all motor vehicles must comply with the motor vehicle entrance fee requirements, speed and traffic rules of the department, and all other federal, state, local laws, and ordinances governing traffic on public roads. ()

01. Use of Parking Spaces for Persons With a Disability. Special zones and parking spaces within state parks are designated and signed for exclusive use by vehicles displaying a special license plate or card denoting legal handicap status as provided in Section 49-213, Idaho Code. ()

02. Overdriving Road Conditions and Speeding Prohibited. No person may drive a vehicle at a speed greater than the posted speed or a reasonable and prudent speed under the conditions, whichever is less. Every person must drive at a safe and appropriate speed when traveling on park roads, in congested areas, when pedestrians or bicyclists are present, or by reason of weather or hazardous highway conditions as provided in Section 49-654, Idaho Code. ()

03. Safety Helmets. Persons under eighteen (18) years of age must wear a protective safety helmet when riding upon a motorcycle, motorbike, utility type vehicle, or an all-terrain vehicle as operator or passenger as provided in Section 49-666, Idaho Code. ()

04. Snowmobile Operation. No person may operate a snowmobile on any regularly plowed park road unless authorized by park or program manager. Access on non-plowed roads and trails are only permitted when authorized by the park or program manager. ()

05. Compliance with Posted Regulatory Signs. Persons operating vehicles within state parks are required to obey posted regulatory signs as provided in Section 49-807, Idaho Code. ()

06. Obedience to Traffic Direction. No person may willfully fail or refuse to comply with any lawful order or directions of any park employee invested with authority to direct, control, or regulate traffic within a state park. ()

07. Restrictions. The operation of motor vehicles within a designated campground is restricted to ingress and egress to a campsite or other in-park destination by the most direct route. ()

08. Official Use. This rule does not prohibit official use of motor vehicles by department employees anywhere within lands administered by the department. ()

09. Commercial Motor Vehicle. Commercial motor vehicles may only enter or be operated in park and recreation areas and facilities upon payment of the appropriate daily fee. ()

151. PARKING VIOLATIONS.

01. Land or Facilities Administered by the Department. No person may 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. ()

02. Designated Campgrounds. No person may stop, stand, or park a motor vehicle within designated campgrounds unless proof of payment of the applicable campsite fees is plainly visible and properly displayed. ()

03. Designated Overnight Use Area. Except for authorized campers, no person may 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. ()

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 and Section 245 of this chapter. ()

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. ()

152. -- 174. (RESERVED)

175. PUBLIC BEHAVIOR.

01. Resisting and Obstructing a Park Employee. Persons may not willfully resist, delay, obstruct, or interfere with any park employee in his or her duties to protect the state's resources and facilities and to provide a safe place to recreate. ()

02. Day Use. Between the hours of 10 p.m. and 7 a.m., unless otherwise posted, all personal property must be removed from day use areas. ()

03. Quiet Hours. Within lands administered by the department, the hours between 10 p.m. and 7 a.m. are considered quiet hours unless otherwise posted. During that time, users are restricted from the production of noise that may be disturbing to other users. ()

04. Noise. Amplified sound, poorly muffled vehicles, loud conduct, or loud equipment are prohibited within lands administered by the department, except in designated areas or by authority of the park or program manager. ()

05. Alcohol. State laws regulating alcoholic beverages and public drunkenness are enforced within lands administered by the department. ()

06. Littering. Littering is prohibited within lands administered by the department. ()

07. Smoking. Persons may not smoke within park structures or facilities, or at posted "no smoking" outdoor areas. ()

08. Trespass. It is unlawful to enter, use, or occupy land or facilities administered by the department where such lands or facilities are posted against entry, use, or occupancy, except as authorized by the department. ()

09. Pets. Pets are allowed within lands administered by the department only if confined or controlled on a leash not longer than six (6) feet in length. No person may allow their pet to create a disturbance which might be bothersome to other users. Excepting persons with disabilities who are assisted by service animals, no person may permit their pet animals to enter or remain on any swim area or beach. Pet owners are responsible to clean up after their animals. Pet owners may not leave pets unattended. Areas for exercising pets off leash may be designated by the park or program manager. Department employees may impound or remove any stray or unattended animals at the owner's expense. ()

10. Fires. The use of fires is restricted to fire rings, grills or other places otherwise designated by the park or program manager. All fires must be kept under control at all times and must be extinguished before checking out of the campsite or whenever fire is left unattended. Areas may be closed to open fires during extreme fire danger. ()

11. Fireworks. No person may use fireworks of any kind within lands administered by the department, except under special permit issued by the director for exhibition purposes, and then only by persons designated by the director. ()

12. Protection of Wildlife. All molesting, feeding, injuring, or killing of any wild creature is strictly prohibited, except as provided by action of the board and as established in board policy. Persons in possession of wildlife, which may be legally taken within state park boundaries, must comply with Idaho Fish and Game rules. ()

13. Protection of Historical, Cultural and Natural Resources. The digging, destruction or removal of historical, cultural or natural resources is prohibited. Collection for scientific and educational purposes may be

allowed through a permit. ()

14. Personal Safety, Firearms. No person may purposefully or negligently endanger the life of any person or creature within any land administered by the department. No person may discharge firearms or other projectile firing devices within any lands administered by the department, except as follows: in the lawful defense of person, persons, or property; in the course of lawful hunting; for exhibition; or at designated ranges as authorized by the director. ()

15. Non-traditional Recreational Activities. Non-traditional recreational activities such as model airplane and glider operations, geo-caching, gold panning, drone operation, and metal detecting may be authorized by the park or program manager if such activities do not interfere with traditional uses of the park and are consistent with preservation of park resources. ()

176. -- 199. (RESERVED)

200. CAMPING.

01. Occupancy and Capacity. ()

a. Occupancy. Camping is permitted only in designated campsites, areas, or facilities. A campsite or facility will be determined occupied only after all required fees have been paid, registration information completed, and all permits properly displayed. Unique circumstances may arise, and specific sites or facilities by virtue of design may require exceptions to the capacity limits. ()

b. Campsite Capacity. Maximum capacity limits on each campsite are subject to each site's design and size. Unless otherwise specified, and provided the combined equipment and people fit within the designated camping area of the site selected, the maximum capacity will be one (1) family unit or a party of no more than eight (8) persons, two (2) tents and two (2) motor vehicles. No more than one (1) RV may occupy a site. Two (2) motorcycles are the equivalent of one (1) motor vehicle when determining campsite capacity. Each motorcycle will be subject to the MVEF. In general, companion campsites have double the capacity listed above. ()

c. Facility Capacity. Maximum capacity limits on each facility are based on facility design, size, and applicable occupancy code. ()

02. Self Registration. In those areas so posted, campers must register themselves for the use of campsites and facilities, paying all required fees as provided for herein and in accordance with all posted instructions. ()

03. Length of Stay. Except as provided herein, no person, party or organization may be permitted to camp on any lands administered by the department for more than fifteen (15) days in any thirty (30) consecutive day period. This applies to both reservation and "first come first served" customers. The department operations division administrator may authorize shorter or longer periods for any individual area. ()

04. Registration. All required fees must be paid, registration information completed, and all permits properly displayed prior to occupying a campsite or facility. Saving or holding campsites or facilities for individuals not physically present at the time of registration for "first come first served" camping is prohibited. ()

05. Condition of Campsite. Campers must keep their individual or group campsite or facility and other use areas clean. ()

06. Liquid Waste Disposal. All gray water and sewage wastes must be held in self-contained units or collected in water-tight receptacles in compliance with state adopted standards and dumped in sanitary facilities provided for the disposal of such wastes. ()

07. Motorized Equipment. No generators or other motorized equipment emitting sound and exhaust are permitted to be operated during quiet hours. ()

08. Campsite Parking. All motor vehicles and trailers, must fit entirely within the campsite parking pad/area provided with the assigned individual or group campsite or facility. All equipment that does not fit entirely within the designated campsite parking area must be parked at another location within the campground, or outside the campground, as may be designated by the park or program manager. If no outside parking is available, the park or program manager may require the party to register on a second campsite, if available. ()

09. Equipment. All camping equipment and personal belongings of a camper must be maintained within the assigned individual or group campsite or facility perimeter. ()

10. Check Out. Customers are required to clean, vacate, and check out of registered campsites or facilities as follows: ()

a. Individual or group campsite by 1 p.m. of the day following the last paid night of camping. ()

b. Individual or group facility by 12 noon of the day following the last paid night of camping. ()

11. Visitors. Individuals visiting campers must park in designated areas, except with permission of the park or program manager. Visitors must conform to established day use hours and day use fee requirements. ()

12. Responsible Party. The individual reserving or registering to use an individual or group campsite or facility is responsible for ensuring compliance with the rules within this chapter. ()

13. Camping. Camping in individual or group facility sites is prohibited unless in areas specifically designated for camping or by authorization of the park or program manager. ()

14. ADA Designated Campsites. Although the department offers campsites that are designated and built to meet ADA accessibility requirements, these campsites are not managed exclusively for ADA use. ()

15. ADA Accessible Facilities. Although the department offers facilities that provide for ADA accessibility, these facilities are not managed exclusively for ADA use. ()

201. BOATING FACILITIES.

The provisions of this section do not apply to department-operated marinas which provide moorage on a lease or long-term rental basis. ()

01. Moorage and Use of Marine Facilities. No person or persons may moor or berth a vessel of any type in a department-owned or operated park or marine area that is signed for other use. Vessel moorage is limited to no more than fifteen (15) days in any consecutive thirty (30) day period. ()

02. Moorage Fees. Vessels moored between 10 p.m. and 7 a.m. at designated facilities will be charged an overnight moorage fee. ()

03. Use of Onshore Campsites. If any person or persons from a vessel moored at a department boating facility also occupies any designated campsite onshore, all required fees for such campsite(s) must be paid in addition to any moorage fee provided herein. ()

04. Self-Registration. In those areas so posted, boaters must register themselves for the use of marine facilities and onshore campsites, paying all required moorage and campsite fees as provided for herein and in accordance with all posted instructions. ()

202. OVERNIGHT USE.

01. Occupancy. Overnight use is permitted only in designated areas. Overnight use is only allowed after all required fees have been paid, registration information completed, and all permits properly displayed. ()

02. Overnight Use Fees. Motor vehicles or trailers not associated with campers between 10:00 p.m. and 7:00 a.m. at designated facilities will be charged an overnight use fee. ()

03. Self Registration. In those areas so posted, overnight users must register themselves for the use of overnight use areas, paying the appropriate fees as provided for herein and in accordance with all posted instructions. ()

04. Length of Stay. Except as provided herein, no person, party, or organization may be permitted to utilize overnight use areas on any lands administered by the department for more than fifteen (15) days in any thirty (30) consecutive-day period. This applies to both reservation and “first come first served” customers. The director may authorize shorter or longer periods for any individual area. ()

05. Registration. All required fees must be paid, registration information completed, and all permits properly displayed prior to occupying an overnight use area. ()

06. Check Out. Overnight users are required to check out by 1 p.m. of the day following the last paid overnight of use. ()

07. Responsible Party. The individual purchasing an overnight use permit or the registered owner of the motor vehicle or trailer is responsible for ensuring compliance with the rules within this chapter. ()

08. Overnight Use. Overnight use is prohibited except in areas specifically designated for overnight use or by authorization of the park or program manager. ()

203. WATERFRONT AREAS.

01. Swimming. Swimming or water contact is at an individual’s own risk. ()

02. Restrictions on Designated Beaches. No glass containers or pets are allowed on designated beaches or swim areas. ()

03. Restricted Areas. Vessels must remain clear of designated beaches and other areas signed and buoyed for public safety. ()

04. Ramps and Docks. The use of docks located next to boat ramps is limited to the active launching and loading of boats. ()

05. Compliance with Laws. Vessels operating on public waters administered by the department must fully comply with the Idaho Safe Boating Act, Title 67, Chapter 70 and the Marine Sewage Disposal Act, Title 67, Chapter 75, Idaho Code, and the rules promulgated thereunder. The director may establish rules prohibiting the use of boat motors or to limit the horsepower capacity on those vessels operating on waters administered by the department. ()

204. WINTER RECREATION PROGRAMS.

The department manages two winter recreation programs: the winter access program which provides for recreation within state parks and the winter recreational parking pass program which provides for recreation outside of state parks. ()

01. Winter Access Program. The purpose of the winter access program is to fund state park services such as maintaining parking areas, providing warming facilities and winter-accessible restroom facilities, regularly grooming trails, signing ski routes, and having ski patrol services available. Any person using winter access program facilities must purchase and properly display a daily or season pass. Winter access program areas are designated by board policy. ()

02. Winter Recreational Parking Permits. The purpose of the winter recreational parking permit program, known as “Park N Ski”, is to designate winter recreational parking locations and use the funds from permit sales to maintain the designated parking areas. Winter recreational parking areas are designated by board policy. ()

a. Permit. Any person parking a vehicle in a designated winter recreation parking location must purchase and properly display a winter recreation parking permit, except, snowmobilers may park their transportation vehicles in a designated parking area without displaying a parking permit when a current snowmobile validation sticker is affixed to the snowmobile. ()

b. Designation of Primary Use Area. The purchaser of a permit will be allowed to designate on the appropriate form, a primary winter recreational parking use area. The full portion of fees not allocated to the vendor or the department will be apportioned to the designated use area. Should a purchaser fail to designate a primary use area, those fees will be apportioned to a use area determined by the department. ()

c. Parking Restrictions. No person may park a vehicle in a designated winter recreational parking location in such a manner as to deprive other users of reasonable access to all or part of the remainder of that parking area. ()

d. Permit Location. An annual winter recreational parking permit must be permanently affixed on the front window of the vehicle nearest the driver's seat. A temporary three-day permit must be displayed on the vehicle's dashboard with the dated side displayed to the front of the vehicle in such a manner that it is completely visible and kept in legible condition. ()

e. Replacement Permits. No person may file or attempt to file for a duplicate annual winter recreational parking permit unless the original permit was stolen or destroyed. A temporary three (3) day winter recreational parking permit which is lost, stolen, or destroyed will not be reissued. ()

f. Transfer. No person may transfer or attempt to transfer an annual winter recreational parking permit decal or a temporary three-day permit from the vehicle upon which it was legally permitted and placed. ()

g. Permit Expiration. The annual winter recreational parking permit is valid until the expiration date printed on the decal. The temporary winter recreational parking permit is valid for only the three (3) consecutive days written on the permit. ()

205. -- 224. (RESERVED)

225. FEES AND SERVICES.

01. Authority. ()

a. All fees in this chapter are maximum fees unless otherwise stated. The board has the authority to set actual fees by board policy. ()

b. Park and program managers have the authority to set fees for goods available for resale, equipment rentals, and services provided by employees to enhance the users experience unique to the individual park or program. ()

02. Payment. Visitors must pay all required fees. ()

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. ()

04. Group Use. ()

a. Groups of twenty-five (25) persons or more, or any group needing special considerations or deviations from these rules must 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. ()

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. ()

c. Group use fees for day use facilities, general use areas, and events may be negotiated by the park or program manager and will generally not fall below the cost of providing services. MVEF is required unless specifically waived by the park or program manager. ()

05. Fees and Deposits. Fees and deposits, including cleaning fees or damage/cleaning deposits, may be required for certain uses or the reservation of certain facilities unique to an individual park. Where deposits are required, they are to be paid prior to check-in ()

06. Fee Collection Surcharge. A 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 surcharge will be assessed against the registered owner of the motor vehicle or camping unit. ()

07. Admission Fees. An admission fee may be charged for internal park facilities which provide an educational opportunity or require special accommodations. ()

08. Cooperative Fee Programs. The department may collect and disperse fees in cooperation with fee programs of other state and federal agencies. ()

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). ()

10. Sales Tax. Applicable sales tax may be added to all sales. ()

11. Returned Checks. The cost to the agency for returned checks will be passed on to the issuer of the insufficient funds check. ()

226. -- 244. (RESERVED)

245. FEE SCHEDULE: FEE COLLECTION SURCHARGE.

| Category | Fee |
|--------------------------|----------|
| Fee Collection Surcharge | \$25/day |

()

246. (RESERVED)

247. FEE SCHEDULE: ENTRANCE.

| Category | Fee |
|-----------------------------------|-------------------|
| Daily MVEF | \$7/day/vehicle |
| Annual MVEF | \$80/year/vehicle |
| Annual MVEF Replacement | \$5/vehicle |
| Commercial Motor Vehicle Entrance | \$50/day/vehicle |
| Admission | \$20/person |

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248. -- 249. (RESERVED)

250. FEE SCHEDULE: INDIVIDUAL CAMPSITE OR FACILITY.

| Category | Fee |
|--|---|
| Basic Campsite: site may have water | \$34/day |
| Electric Campsite: site has electricity and may have water | \$42/day |
| Full Hook-up Campsite: site has electricity, water, and sewer | \$46/day |
| Companion Campsite: site has electricity and may have water | \$84/day |
| Hike-in/Bike-in Campsite | \$12/person/day |
| Extra Vehicle | \$8/day |
| Overnight Use of Parking Areas | \$20/night/vehicle, trailer, or vehicle with attached trailer |
| Use of Campground Showers by Non-campers | \$3/person/day |
| Camping Cabins and Yurts | \$500/night |
| Each additional person above the base occupancy of camping cabin or yurt | \$12/person/night |
| Pets | \$15/pet/night |
| Cleaning | \$50 |

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251. -- 253. (RESERVED)

254. FEE SCHEDULE: GROUP CAMPSITE OR FACILITY.

Group Facility Fees. Reservation service fee, designated group campground or facility.

()

| Category | Fee |
|---|-------------------|
| Reservation Service Charge (non-transferable, non-refundable) | \$25 |
| Group use of day use facility, overnight facility, or group camp (set by park or program manager) | Varies |
| Each additional person above the base occupancy of the overnight facility | \$12/person/night |

()

255. (RESERVED)

256. FEE SCHEDULE: BOATING FACILITIES.

Boating Facilities:

| Category | Fee |
|---|------------------------|
| Vessel Launching | MVEF or \$7/day/vessel |
| Overnight moorage at dock or buoy, person staying at campsite or facility and not staying on the vessel | \$9/night |

| Category | Fee |
|---|------------|
| Overnight moorage at dock, person staying on vessel | \$10/night |
| Overnight moorage at buoy, person staying on vessel | \$9/night |

()

257. -- 258. (RESERVED)

259. FEE SCHEDULE: WINTER RECREATION PROGRAMS.

| Category | Fee |
|---|---------------------|
| Winter Access Daily Pass, individual | \$6/person/day |
| Winter Access Daily Pass, family | \$100/family/season |
| Winter Access Season Pass, individual | \$50/person/season |
| Winter Access Season Pass, couple | \$75/couple/season |
| Winter Recreation Parking, temporary three-day permit | \$10/three days |
| Winter Recreation Parking, annual permit | \$30/year |

()

260. -- 274. (RESERVED)

275. CRITERIA FOR RESERVATIONS.

01. Responsible Party. ()

a. The person booking reservations for an individual campsite or facility is responsible for ensuring compliance with the rules within this chapter. ()

b. The person booking reservations for multiple individual campsites is designated the group leader and is responsible for ensuring compliance with the rules within this chapter. The group leader may approve another person to register for a campsite as the primary occupant prior to check-in or at the park. Once the primary occupant registers for the campsite, the primary occupant becomes the responsible party. ()

c. The person booking reservations for a group campsite or facility is designated the group leader and is responsible for ensuring compliance with the rules within this chapter. ()

02. Reservation Service Charges, Individual or Group Campsite or Facility. Reservations are non-transferable (from one party to another). Reservation fees are non-refundable. ()

a. A reservation service charge may be assessed for each individual or group campsite or facility reserved. ()

b. The service charge for an individual campsite or facility will be waived for campers with a current Idaho RV registration sticker and reimbursed to the department by the RV Program. ()

03. Cleaning Fee. A cleaning fee or a damage/cleaning deposit may be required by the park or program manager as a condition of reservation. ()

04. Confirmation Requirements. ()

a. Confirmation of an individual campsite or facility reservation. Full payment of all required fees must be made before a reservation is confirmed. ()

b. Confirmation of a designated group campground, group campsite, or group facility reservation. Before a reservation is confirmed, the group leader must: ()

i. Supply primary occupant (point of contact) name, address, and phone number for multiple bookings of individual campsites for a group. ()

ii. Pay all required fees for each campsite or facility reserved. ()

05. Reservation Modifications. A reservation service fee will be assessed for any modification to a previously made reservation that involves reducing the planned length of stay, or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window). Modifications that change the original stay so that no part of the new stay includes part of the original stay are to be considered a cancellation and re-book will be mandatory to keep a reservation. With the exception of the reservation service charge as defined in Section 276, any overpaid fees will be reimbursed at the time the reservation is modified. ()

06. Reservation Cancellations. ()

a. Individual Campsite or Facility. A reservation service fee will be assessed for the cancellation of a reservation. This service fee will be assessed for each campsite or facility involved. If the customer cancels after the scheduled arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day’s usage fees for the campsite or facility. At no time will the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation service provider may cancel a customer’s reservation for insufficient payment of fees due. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. ()

b. Park Board Designated Special Use Campsites and Facilities. A reservation service fee will be assessed for the cancellation of a reservation. If a cancellation for a group facility occurs twenty-one (21) or fewer calendar days prior to arrival, the customer forfeits the first night or daily facility usage fees (base rate). If a cancellation for a group facility occurs more than twenty-one (21) calendar days prior to arrival, a cancellation charge will be assessed. If the customer cancels after the arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day’s usage fees for the campsite or facility. At no time will the customer be charged a cancellation fee that exceeds the amount originally paid. The department or its reservation service provider may cancel a customer’s reservation for insufficient payment of fees due. An individual site cancellation fee applies to each campsite in a group campground. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. ()

07. Insufficient Payment. The department may cancel a customer’s reservation for insufficient payment of fees due. ()

276. FEE SCHEDULE: RESERVATIONS.

| Category | Fee |
|--|---|
| Reservation Service Charge, individual campsite or facility | Current RV sticker or \$10/campsite or facility |
| Reservation Service Charge, group reservation for campsite or facility | \$25 |
| Modification | \$10/campsite or facility |
| Cancellation, individual campsite or facility, prior to check-in time | \$10/campsite or facility |

| Category | Fee |
|--|----------------------------------|
| Cancellation, individual campsite or facility, after check-in time | First night's fee |
| Cancellation, special use campsite or facility, more than 21 days in advance | \$50/facility |
| Cancellation, individual campsite or facility, 21 days or less in advance | First night's or daily usage fee |

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277. -- 399. (RESERVED)

400. PARK CAPACITIES.

Where applicable, park or program managers may limit or deny access to an area whenever it has reached its designated capacity. ()

401. -- 499. (RESERVED)

500. LIVESTOCK.

Grazing of livestock is not permitted within lands administered by the department. Exceptions may be made by the board for grazing permits or otherwise permitting the use of lands administered by the department for livestock. The use of saddle or other recreational livestock is prohibited on trails, roadways, and other areas unless designated through signing for that purpose or with permission of the park or program manager. ()

501. -- 576. (RESERVED)

577. SPREADING OF HUMAN ASHES.

Persons may spread human ashes on lands owned by the Idaho Department of Parks and Recreation. The exact location must be pre-approved by the park or program manager. Persons may not spread ashes in the water within a state park. The department does not assign or convey any rights or restrictions by allowing the placement of ashes on the land, and there are no restrictions in the ability of the landowner to operate, develop, or otherwise use the land at their sole discretion without any obligation associated with the placement of ashes on the land. ()

578. -- 624. (RESERVED)

625. ADVERTISEMENTS/PROMOTIONS/DEMONSTRATIONS.

01. Printed Material. Public notices, public announcements, advertisements, or other printed matter may only be posted or distributed in a special area approved by the park or program manager. ()

02. Political Advertising. Political advertising is strictly prohibited within any lands administered by the Department. ()

03. Demonstrations. Public demonstrations are limited to areas approved by the park or program manager and subject to an approved permit issued after arrangements for sanitation, population density limitations, safety of persons and property, and regulation of traffic are made. ()

626. -- 649. (RESERVED)

650. AUTHORIZED OPERATIONS.

No person, firm, or corporation may operate any concession, business, or enterprise within lands administered by the Department without written permission or permit from the board. No person(s), partnership, corporation, association or other organized groups may: ()

01. Beg or Solicit for Any Purpose. ()

02. Game or Operate a Gaming Device of Any Nature. ()

03. Abandon Any Property. Leave any property on department lands. Leaving property is prohibited unless registered in a campsite or permitted by the park or program manager. Property left on department lands for more than twenty-four (24) hours may be removed at the owner's expense. ()

651. -- 674. (RESERVED)

675. DEPARTMENT RESPONSIBILITY.

The department is not responsible for damage to, or theft of personal property within lands administered by the department. All visitors use facilities and areas at their own risk. ()

676. NONDISCRIMINATION.

No person may discriminate in any manner against any person or persons because of race, color, national origin, religion, gender, age or disability within lands administered by the department. Facilities constructed or maintained with, and programs supported by the cross-country skiing recreation account must be available for public use without discrimination and must comply with requirements as set out in the Americans with Disabilities Act. ()

677. -- 999. (RESERVED)

**26.01.33 – RULES GOVERNING THE ADMINISTRATION OF
THE LAND AND WATER CONSERVATION FUND PROGRAM**

000. LEGAL AUTHORITY.

The Idaho Parks and Recreation Board is authorized under Section 67-4223, Idaho Code, to adopt, amend, or rescind rules as may be necessary for proper administration of the department and its programs. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.33, “Rules Governing the Administration of the Land and Water Conservation Fund Program.” ()

02. Scope. This chapter establishes procedures for the administration of the Land and Water Conservation Fund program, including requirements for project application, eligibility, review, award, and management. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

As used in this chapter: ()

01. Acquisition. The gaining of rights of public use by purchase or donation of fee or less than fee interests in real property. ()

02. Board. The Idaho Parks and Recreation Board, a bipartisan, six (6) member board, appointed by the governor. ()

03. Development. The act of physically improving an area or constructing facilities necessary to increase its ability to serve outdoor recreation purposes. ()

04. Director. The director and chief administrator of IDPR or the designee of the director. Designated by the governor to serve as the State Liaison Officer for the LWCF program. ()

05. Evaluation Committee. Representatives from federal, state and local agencies with expertise in community development or public outdoor recreation needs. The committee determines acceptability of projects based on technical criteria, rates LWCF projects, and assists IDPR staff in making funding priority recommendations to the Idaho Parks and Recreation Board. ()

06. Grants Program. All funding programs administered by IDPR. ()

07. IDPR. The Idaho Department of Parks and Recreation. ()

08. LWCF. The Land and Water Conservation Fund, a federal grant program that provides fifty percent (50%) matching grants to states, and through states to local governments, for the planning, acquisition and development of public outdoor recreation areas and facilities. ()

09. NPS. The National Park Service. ()

10. Open Project Selection Process (OPSP). The overall objective decision making process by which IDPR selects LWCF projects for funding. ()

11. Participation Manual and Internal Procedures Manuals. A compilation of state procedures, rules, and instructions that have been assembled in manual form and that have been approved by the board for dissemination to the public and public agencies that may wish to participate in grant programs of IDPR or that outline operation of the Land and Water Conservation Program by IDPR for staff use. ()

12. Planning. The development of documents and programs to identify and propose actions for managing recreational resources and the preparation and review of designs and specifications for such resources. ()

13. Priority Needs Assessment. Incorporates SCORTP related activities that refined Idaho’s priorities for LWCF obligation. These area are reflected in the OPSP criteria (see Section 440 of this chapter). ()

14. Project. The undertaking that is or may be funded in whole or in part with funds administered by IDPR. ()

15. Retroactive Cost. Costs incurred after receipt of application but prior to the execution of the project contract. ()

16. SCORP/SCORTP. Statewide Comprehensive Outdoor Recreation Plan/Statewide Comprehensive Outdoor Recreation and Tourism Plan. ()

17. Scope Element. A specific item, for example, one (1) facility or amenity, listed on a project application or project agreement that is a part of the whole. ()

18. Sponsor. A state or local government agency that solicits a grant of funds from IDPR for a projector is responsible for administering the grant or funding of an approved application or completed project. ()

19. State Liaison Officer (SLO). The director is designated by the governor to serve as the State Liaison Officer to the National Park Service for the LWCF program. The chief of the Recreation Resources Bureau is designated as the Alternate State Liaison Officer. ()

011. -- 049. (RESERVED)

050. GENERAL PROVISIONS.

Federal Land and Water Conservation Fund (LWCF) grants are available through IDPR for the acquisition or development of land to be used for outdoor recreation or for the combined acquisition and development of land to be used for outdoor recreation. Any land acquired or developed with these funds are held in perpetuity for outdoor recreation or, with approval from IDPR and NPS, be replaced with land of equal or higher fair market value, recreation utility and location. LWCF grants may be used for SCORTP activities. ()

051. -- 064. (RESERVED)

065. COMPLIANCE WITH LAWS.

LWCF administration is subject to all applicable state and federal statutes, rules, regulations, ordinances and requirements. ()

066. -- 079. (RESERVED)

080. FUND ALLOCATION.

01. Eligible Applicants. Governmental agencies that are eligible to receive or apply for the grant funds include incorporated cities, counties, state agencies, recreation districts and other state or local governmental agencies authorized to provide general public recreation facilities. ()

02. Allocation of Funds. Idaho's cost of administering the SCORTP program, the LWCF program and a contingency fund are deducted from the state's annual apportionment. The remaining funds are divided fifty percent (50%) for local governmental agencies and fifty percent (50%) for state agencies. This policy may be altered in any year at the discretion of the board. ()

a. To assure that the needs of rural areas are met, twenty percent (20%) of the amount dedicated for local governmental agencies is dedicated for use by governmental agencies of five thousand (5,000) population or less. If the cumulative request of the governmental agencies of five thousand (5,000) population or less is more than the twenty percent (20%) of the amount dedicated for local governmental agencies, governmental agencies of five thousand (5,000) population or less may compete for the total remaining allocation. ()

b. If the total cost for a single project of a governmental agency with a population of five thousand (5,000) or less requires over one-half (1/2) of the twenty percent (20%) dedicated for use by governmental agencies

of five thousand (5,000) population or less, that project will compete with the large governmental agency projects. ()

03. Exceptions. The board may suspend (through formal action at the board meeting at which LWCF grant requests are considered) any provision of Subsection 080.02 of this chapter if the allocation is too small to warrant viable projects. ()

04. Project Requests Insufficient. The board is not required to distribute all available funds. IDPR staff may recommend, and the board determine, to reject projects with evaluation scores so low as to be noncompetitive. ()

081. -- 094. (RESERVED)

095. CONTINGENCY FUND. Twenty percent (20%) of the total allocation may be held out for needed cost overruns, special projects, and emergency needs. Any unused funds at the end of the funding cycle are obligated through the normal process. ()

096. -- 109. (RESERVED)

110. SPONSOR'S MATCHING SHARE. The sponsor will be reimbursed up to fifty percent (50%) of the approved project cost. The sponsor's share can be either local funds, acceptable state funds, force account, or donation of privately owned lands, goods or services. Reimbursement varies according to the type of project and total project cost (see Section 515 of this chapter). The use of specific types of sponsor's share match may be adjusted in any year at the discretion of the board (see Section 140.04 of this chapter). ()

111. -- 124. (RESERVED)

125. PROJECT TIME LIMITATIONS. The project must be completed by the applicant within twenty-four (24) months of the federal contract signing. ()

126. -- 139. (RESERVED)

140. ELIGIBLE PROJECTS.

01. Generally. LWCF grants are available for up to fifty percent (50%) of the cost to acquire or develop land that is to be used for outdoor recreation purposes and is to be held in perpetuity for public outdoor recreation uses. ()

02. Less Than Fee Acquisition. Acquisition of less than fee interest, such as easements and development right, must be considered in the same manner as simple fee acquisition subject to the following conditions: ()

- a. The interest cannot be revocable; ()
- b. The value can be supported through standard appraisal techniques; and ()
- c. Recreation can be demonstrated as the primary purpose of the acquisition. ()

03. Ineligible Projects. Acquisitions or developments that do not contribute directly to general public outdoor recreation facilities or activities are ineligible for LWCF funding. Acquisition of leases are not eligible. ()

04. SCORTP. LWCF grants are available for up to fifty percent (50%) of the cost of the SCORTP. ()

141. -- 154. (RESERVED)

155. ELIGIBLE PROJECT COSTS.

IDPR may place restrictions on reimbursement of some acquisition and development costs. ()

156. -- 169. (RESERVED)

170. ACQUISITION OF PUBLICLY OWNED LANDS.

The cost to the sponsor of land purchased from another public agency is generally not eligible for matching assistance. ()

171. -- 184. (RESERVED)

185. ACQUISITION OF STRUCTURES.

Structures that are proposed to be retained and are incidental to the land are eligible for LWCF matching funds if they are to be used primarily for support facilities for outdoor recreation activities. The anticipated use must be clearly identified in the project application so that IDPR may exercise reasonable judgment in determining the eligibility of the structure for funding assistance. ()

186. -- 199. (RESERVED)

200. WAIVER OF RETROACTIVELY.

01. Generally. The SLO may grant permission to a sponsor to proceed prior to normal processing of an application through a written waiver of retroactivity. This is not to be construed as a qualitative approval of the proposed project. Should the project subsequently be approved, the costs incurred must be eligible for assistance. ()

02. NPS Waiver Required. The SLO may not grant a waiver of retroactivity until the NPS has issued its waiver of retroactivity. A waiver may be granted only if LWCF moneys are available and only if an emergency situation warrants it. ()

03. Limitations. Retroactive development costs are not eligible for reimbursement, other than expenses necessary for planning a development project and then only if it is specifically requested in the project application. ()

201. -- 214. (RESERVED)

215. ENCUMBRANCES.

Property rights obtained with LWCF assistance must be free of all reservations or encumbrances that would limit the use of the site disproportionate to the public benefit. ()

216. -- 229. (RESERVED)

230. ACQUISITION COSTS EXCEEDING FAIR MARKET VALUE.

An approved appraisal is an acceptable estimate of property value (see Section 350 of this chapter). The negotiation between a willing seller and a willing buyer may set a price that is higher than the appraisal, and this market place value can be considered along with the appraised value in establishing the reasonable limits of assistance. If the sponsor believes that the negotiated price is a better indication of market value, yet it is higher than the appraised value, a detailed and well documented statement of this differences must be submitted, together with a formal request for a cost increase (see Section 620 of this chapter). ()

231. -- 259. (RESERVED)

260. ACQUISITIONS INVOLVING COMPATIBLE MULTIPLE USES.

Nonrecreation uses, such as timber management, grazing, and other natural resource uses, may be carried out on

lands acquired with LWCF assistance if they are clearly compatible with and secondary to recreation use, and are approved by IDPR prior to execution of the project contract. ()

261. -- 274. (RESERVED)

275. ACQUISITIONS INVOLVING NONRECREATION USE.

01. Nonrecreation Use Limited. Lands acquired with LWCF assistance are immediately dedicated to public outdoor recreation and therefore, in the interim period between acquisition and planned development, the public cannot be denied use. In some instances during this period the temporary continuation of nonrecreation uses of LWCF assisted areas may be appropriate if not at the expense of public use. Continuation of existing nonrecreation uses must be approved by IDPR. When approved by IDPR, the used will be phased out within three (3) years from the date of the acquisition. ()

02. Life Estates. Life estates, whereby an owner is allowed to use the property to the end of his life, is an allowable nonrecreation use provided all of the following conditions are met: ()

a. The life estate must not totally limit public use of the site; ()

b. The value of the life estate is not included within the total project cost as established through acceptable appraisal techniques; and ()

c. The life estate provisions are approved by IDPR. ()

276. -- 289. (RESERVED)

290. PUBLIC PARK AND SCHOOL DEVELOPMENT PROJECTS.

Projects clearly designed and located to meet identified needs for general public recreation, as well as to provide school districts with outdoor education, physical education, and recreation facilities may be eligible for funding, provided general public recreation is clearly the primary use. ()

291. -- 304. (RESERVED)

305. DONATED REAL PROPERTY AS MATCHING SHARE.

01. Generally. The value of privately owned donated real property may be used as a portion or as all of the sponsor's matching share of an approved project when the transfer of title to the sponsor has not been accomplished prior to the execution by IDPR of the project contract, unless such action has been previously approved by IDPR under the waiver of retroactivity procedure (see Section 200 of this chapter). ()

02. Limitations. The donation must consist of real property that would normally qualify for LWCF funding. If the donation does not adjoin the tract being acquired or is not being developed as part of the project then it must stand on its own merits as an acceptable public recreation area in order to be considered an eligible donation. It also must be within the jurisdiction of the sponsor. ()

03. Appraisal Required. The value of the donation must be established by an appraisal report prepared under the provision of Section 350 of this chapter. Any portion of the value of the donation not utilized by the sponsor for matching in the project is not available for subsequent projects. The amount of donation that is matchable is the value of the land donation up to the limit of the local agency's share of the project. The maximum reimbursed by IDPR may never exceed the cash expended on the project. ()

306. -- 319. (RESERVED)

320. DONATED GOODS AND SERVICES AS MATCHING SHARE.

01. Generally. Donated services, materials and equipment are eligible for reimbursement. Allowable rates must be agreed upon by IDPR prior to initiation of construction and must be in accordance with current federal

regulations and state rules. Partial reimbursement on projects involving such donations are limited to the amount of actual cash outlay by the grantee. ()

02. Excess Value. Donated services above the needs for a project are not eligible for further funding assistance. ()

03. Requirements. Donated services may be furnished by professional and technical personnel, consultants, and other skilled or unskilled labor. The services must be an integral and necessary part of an approved project. Rates for donated services must be consistent with those paid for similar work in other activities of the state or local government. In those instances in which the required skills are not found in the sponsor's organization, rates must be consistent with those paid for similar work in the labor market in which the sponsor competes for the kind of services involved. ()

321. -- 334. (RESERVED)

335. FORCE ACCOUNT AS MATCHING SHARE.

All or a portion of the sponsor's share can be provided through force account (i.e., use of sponsor's staff and equipment) when such contributions are verifiable from the sponsor's records, are not included as contributions for any other IDPR program, and are necessary and reasonable for proper and efficient accomplishment of the project. ()

336. -- 349. (RESERVED)

350. APPRAISAL REQUIREMENTS.

A real estate appraisal is required for all land to be acquired. The appraisal must be prepared and paid for by the sponsor. The type of appraisal to be used must be determined by the cost of the property, and difficulty of the appraisal assignment. All appraisal must be done according to "Uniform Appraisal Standards for Federal Land Acquisitions." ()

351. -- 364. (RESERVED)

365. APPRAISAL REVIEWS.

IDPR reviews appraisals as necessary. Any appraisal report that does not meet the basic content requirement or use correct analysis procedures must be corrected to the satisfaction of IDPR. All costs are paid by the sponsor. ()

366. -- 379. (RESERVED)

380. REVENUE FEASIBILITY STUDIES.

At the discretion of the SLO, a feasibility report prepared by a fiscal specialist may be required prior to funding consideration by the board. Specifically, it must provide the SLO with detailed financial information and data that is incorporated in staff recommendations to the board. This report is paid for by the sponsor. ()

381. -- 394. (RESERVED)

395. TECHNICAL REVIEW.

At the discretion of the SLO, a technical report prepared by a licensed, certified engineer may be required prior to funding consideration by the board. This report is paid for by the sponsor. ()

396. -- 409. (RESERVED)

410. FUNDING CYCLE.

01. Generally. A funding cycle is held at a minimum of once every two (2) years with the following exception: subject to the level of funding, the board may suspend (through formal action at any regular meeting) a funding cycle. ()

02. Procedure. The funding cycle consists of the following: ()

a. Notification to begin a funding cycle must be made no less than ninety (90) days before applications are due. ()

b. The evaluation committee meeting must be held within one hundred twenty (120) days of the application due date. ()

c. Recommendations must be formulated by IDPR staff within thirty (30) days following the evaluation committee meeting and must be made to the board no later than the next regularly scheduled meeting. ()

d. Subject to the level of funding, the board may suspend (through formal action at any regular meeting) the evaluation committee meeting and may elect to adopt staff recommendations. ()

03. Fees. At the discretion of the SLO, fees may be charged for the various stages of any funding cycle. When charged, fees are assessed equally on all applicants. Fees charge may not exceed fifty dollars (\$50) for all stages combined. ()

411. -- 424. (RESERVED)

425. APPLICATION PROCEDURE.

01. Initial Review. Participation manuals are available to guide sponsors in preparing projects for funding consideration. Materials submitted for consideration are reviewed by IDPR staff for completeness and for project eligibility. Once all application materials are submitted and a project is determined to be potentially eligible under criteria established in the OPSP, IDPR will ask the sponsor to make a presentation to the evaluation committee. ()

02. Eligible Projects. Eligible projects are ranked according to the (OPSP (see Section 440 of this chapter) and approved by the board (see Section 470 of this chapter). Full federal application materials must be submitted to NPS for final funding approval (see Section 485 of this chapter). ()

426. -- 439. (RESERVED)

440. OPEN PROJECT SELECTION PROCESS (OPSP).

01. Generally. The procedures outlined in OPSP through the SCORTP process are for the purpose of defining criteria that a proposed LWCF project must meet in order to be eligible for funding, and to establish priorities on the basis of which competing eligible projects can be rated objectively. The intent is to ensure that available funds are used to fund those projects that most nearly satisfy the intent of the LWCF Act, and the recreational needs of the people of Idaho. ()

02. Requirements. Requirements for the SCORTP and the OPSP can be found in the "LWCF Participation Manual," available from IDPR or NPS. ()

03. Availability. Copies of the SCORTP and the OPSP criteria used in prioritizing those projects submitted for LWCF assistance may be obtained from IDPR or NPS. Typically, this criteria is provided in all LWCF application guidelines. ()

04. Suspension of OPSP. Subject to the level of funding, the board may elect to suspend OPSP (through formal action at any regular meeting). ()

441. -- 454. (RESERVED)

455. EVALUATION COMMITTEE.

01. Composition. The evaluation committee includes representatives with experience in community

development or public outdoor recreation. The committee ranks projects based on its review of the application and a presentation by the sponsor. It rates all projects based on the selected criteria found in OPSP. The evaluation committee includes nine (9) members as follows: ()

- a. Three (3) members are representatives of state and federal agencies with a technical relationship to community development or the outdoor recreation needs in the state. ()
- b. One (1) member represents a community of five thousand (5,000) population or more ()
- c. One (1) members represents a community of five thousand (5,000) population or less. ()
- d. One (1) member represents the interests of ethnic minorities. ()
- e. One (1) member represents the interests of the elderly. ()
- f. One (1) member represents the interests of people with disabilities. ()
- g. One (1) member must be from the board. ()

02. Quorum. A quorum is required to conduct committee business. Five (5) people constitute a quorum. ()

03. Appointment and Term. Members are appointed by and serve at the discretion of the SLO for three (3) funding sessions and may be reappointed, except, the board member must be selected by and serve at the discretion of the board. As necessary, the SLO provides public notice of available seats. Any interested individual or organization may nominate individuals to serve on the committee. ()

456. -- 469. (RESERVED)

470. BOARD REVIEW AND APPROVAL.

The board reviews and approves projects according to the priority list provided by IDPR staff. Applications are submitted to NPS according to priority after LWCF moneys have been appropriated by congress and allocated to the state. ()

471. -- 484. (RESERVED)

485. NPS PROJECT APPROVAL.

When a project is approved by NPS, the announcement is made by one of the state's congressional delegation following notification from IDPR. All appraisals, title and deed work must be finalized prior to submitting a project to NPS. ()

486. -- 499. (RESERVED)

500. PROCEEDING ON THE PROJECT.

After project approval, the IDPR staff assists the sponsor in meeting the requirements of the LWCF including providing information on the steps and required documentation for acquisition and development projects along with financial responsibilities and allowable costs. The sponsor must complete work on the project according to the scope elements in the state/local agreement. ()

501. -- 514. (RESERVED)

515. DISBURSEMENT OF FUNDS.

01. Authorization. Except as otherwise provided herein, the SLO must authorize disbursement of funds allocated to a project through reimbursement basis. The LWCF program is a reimbursement program, which means that the participants initially pay all project costs and then seek reimbursement through IDPR. ()

02. Documentation. Reimbursement not be made by IDPR until deed, title insurance and appraisal requirements are satisfied on all projects. Reimbursement may be made on development or combination acquisition and development projects once construction shows evidence and reasonable progress toward the completion of all scope elements and LWCF requirements. ()

03. Partial Reimbursement. Partial reimbursement is not made for projects where the project sponsor's matching share is less than fifteen thousand dollars (\$15,000). When reimbursement is granted prior to project completion, the sponsor receives a reimbursement for fifty percent (50%) of the eligible costs incurred less a fifteen percent (15%) hold back. When the project has been completed and receives final approval from IDPR, the sponsor is paid the fifteen percent (15%) hold back. If multiple payments are to be incurred as part of the project, the final payment may be used as the fifteen percent (15%) hold back. ()

04. Request for Reimbursement. Reimbursement must be requested by local governmental agencies on voucher forms provided by IDPR and includes all required documentation. The sponsor will receive a reimbursement for fifty percent (50%) of the eligible costs incurred. The amount of reimbursement must never exceed the cash expended on the project. ()

05. Advance Payment. An advance payment is a payment made to a sponsor upon its request before cash outlays are made by the sponsor or payment made through the use of predetermined payment schedules before such payments are due. Advance payment may be made subject to the conditions outlined below: ()

a. IDPR will consider the payment of advances on development projects where the matching share is non-cash, and on acquisition projects where funds must be available up front in order to prevent the loss of an available site to other interested buyers. Such advances must receive prior approval of NPS. A written request must be submitted by the sponsor to IDPR to initiate the process. ()

b. Advances must be timed and procedures observed to assure that cash withdrawals occur only as and when essential to meet the needs of the project sponsors. Advances are limited to the minimum amounts needed and timed to be in accord with the requirements of carrying out the purpose of the approved project. Any moneys advanced to the sponsor are public moneys (owned by the federal government and the State of Idaho) and must be deposited in a bank with FDIC insurance coverage and the balances exceeding the FDIC coverage must be collaterally secure. ()

c. One (1) month after the advance has been received, the sponsor must submit a billing indicating expenditures made from the advanced funds. This will be used by IDPR as a basis for liquidating obligations, reducing the advance account and making charges to the appropriate cost account. ()

d. At least monthly, IDPR reviews the sponsor's disbursements of advanced funds for reasonableness of cash balances on hand. In the event IDPR determines a sponsor is making insufficient progress using advanced funds, IDPR may request an immediate refund. ()

516. -- 529. (RESERVED)

530. PROJECT CONTRACT.

For every funded project, a project contracts must be executed. The project contract must be prepared by the IDPR staff subsequent to approval of the project. Upon execution by the sponsor, the parties are thereafter bound by the project contract terms. The sponsor may not proceed with the project until the project contract has been executed. IDPR may not execute a project contract until federal funding has been authorized by NPS. ()

531. -- 544. (RESERVED)

545. CONTROL AND TENURE.

The sponsor has title to or adequate control and tenure of the area to be developed. The sponsor must list all outstanding rights or interests held by others in the property to be developed. In the event that outstanding rights later prove to be incompatible with public outdoor recreation uses of the site, the sponsor assumes the responsibility for having to replace the facilities developed with state or federal assistance with others of at least equal value and reasonably equivalent usefulness and location at the sole cost of the sponsor. ()

546. -- 559. (RESERVED)

560. APPLICABILITY.

All LWCF requirements apply to each area or facility, regardless of the extent of LWCF assistance. When LWCF development assistance is given to a project limited to less than a complete recreational property, all lands immediately adjacent to that LWCF development that are designated as recreational property must be identified as being within the LWCF project boundary and must be subject to LWCF guidelines. ()

561. -- 574. (RESERVED)

575. SPONSOR COMMITMENT.

A proclamation from the sponsor's governing body committing the project and the sponsor to LWCF requirements must be submitted to IDPR prior to IDPR project approval. ()

576. -- 589. (RESERVED)

590. RESTRICTION ON TITLE.

Land acquired in fee or developed with outdoor recreation funds must be dedicated to outdoor recreation use in perpetuity by a recorded "Deed of Right to Use Land for Public Recreation Purposes" (Deed of Right) that conveys a real property interest to the public. This must be executed and recorded by the sponsor after it has taken title to the property, and before it applies for reimbursement. ()

591. -- 604. (RESERVED)

605. RECORDS.

Project records must be maintained by the state and sponsor for three (3) years after final payment. The material must be maintained beyond the required three (3) year period if audit findings have not been resolved. Property records must be maintained in perpetuity. ()

606. -- 619. (RESERVED)

620. PROJECT AMENDMENTS, COST INCREASES AND TIME EXTENSIONS.

01. Amendments. The project contract may be amended by execution of a project amendment. All amendment requests must be made in writing and must include a detailed justification. Sponsors are expected to complete projects as originally proposed and evaluated. However, amendments for minor changes in scope may be requested. Cost increases of twenty-five percent (25%) or more or changes in project elements that change the total project cost by twenty-five percent (25%) or more require that the project be presented as a totally new proposal and compete through the OPSP (see Sections 440 through 485 of this chapter) during a current funding cycle. Should the revised project not receive enough points to be funded, the sponsor is required to complete the scope of the project as originally proposed at its expense or return any funds reimbursed so that the project may be canceled and the funds reallocated. This does not apply to SCORP projects. ()

02. Cost Increases on Development Projects. For cost increase requests on development projects to be considered, all of the following requirements must be met: ()

a. The increase, or any portion thereof, is to be used only for costs incurred on elements specified in the project agreement; and ()

b. The sponsor has initiated implementation of the project in a timely manner and has had little control over the condition causing the cost overrun. ()

03. Cost Increases on Acquisition Projects. Acquisition project cost increases must meet all of the following conditions: ()

a. The increased market value is supported by an acceptable appraisal; ()

b. The sponsor has diligently pursued the acquisition; and ()

c. If increased relocation costs have caused a cost overrun, an explanation is required. ()

04. Condemnation. Acquisition cost increases based on condemnation awards, if granted, must be based on compensation for the property and direct relocation costs; no court or legal costs are eligible for reimbursement. ()

05. Basis for Cost Increase. Cost increase requests for development projects are based on the total approved costs. Cost increase requests for acquisition projects are based on a parcel by parcel determination. ()

06. Extensions of Time. Extensions of time limitations will be considered if based on unavoidable circumstances such as condemnation of property for acquisition projects and delays due to unusually poor weather or unavailability of supplies for a development project. Extensions are generally granted in six (6) month intervals. Avoidable project delays may result in loss of funding with the sponsor being required to return any funds reimbursed so that the project can be canceled. ()

621. -- 634. (RESERVED)

635. DEVELOPMENT PROJECT CONTRACT REQUIREMENTS.
Development projects require competitive bidding according to state and federal statutes. ()

636. -- 649. (RESERVED)

650. CONVERSION TO OTHER USES.

01. Generally. Property acquired or developed with LWCF assistance is not converted to other than public outdoor recreation uses without prior approval of the SLO and the NPS regional director. The SLO has authority to disapprove conversion requests or to reject proposed property substitutions. ()

02. Prerequisites to Approval of Conversion. IDPR will only consider a conversion request once the following prerequisites have been met: ()

a. All practical alternatives to the conversion have been evaluated and rejected on a sound basis. ()

b. At least thirty (30) days prior to IDPR submitting a request to NPS to convert LWCF properties, the sponsors must hold a public hearing. ()

c. The fair market value of the property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by a state approved appraisal. ()

d. The property proposed for replacement is of reasonably equivalent usefulness and location as that being converted. It must be administered by the same political jurisdiction as the converted property. ()

e. The property proposed for substitution meets the eligibility requirements for LWCF assisted acquisition. The replacement property constitutes or is part of a viable recreation area. ()

f. Public land may not be used for substitution on acquisition projects unless it meets the criteria for an eligible acquisition project. However, in the case of development projects for which the state match was not derived from the cost of the purchase or value of a donation of the land to be converted, public land not currently dedicated to recreation or conservation use may be used as replacement land even if this land is transferred from one public agency to another without cost. ()

g. All necessary coordination with other federal agencies has been satisfactorily accomplished. ()

- h.** The guidelines for environmental evaluation have been satisfactorily completed and considered. ()
- i.** The proposed conversion and substitution are in accord with the SCORTP. ()
- j.** Staff consideration of the above points reveals no reason for disapproval and the project files are so documented. ()
- k.** It should also be noted that the acquisition of one (1) parcel of land may be used in satisfaction of several approved conversions. However, previously acquired property cannot be used to satisfy substitution requirements except in the case of development projects. ()

03. Project Amendments. Approved conversions require amendments in the project contract when the property to be substituted is off site or when replacement of property is deferred. ()

04. Fees. Deposit, cost and fees for the administration and management of the LWCF conversion process must be as follows: ()

a. The sponsor is required to pay a deposit of two and five-tenths percent (2.5%) of the appraised value of the property or the total cost of the project grant, whichever is greater. This deposit may not be less than one thousand dollars (\$1,000). ()

b. IDPR will charge the sponsor for all administrative costs relating to the conversion and a service fee of one percent (1%) of the current appraised value of the converted property. The service fee may not exceed three thousand five hundred dollars (\$3,500) for each converted tract of property. ()

c. The administrative costs and the service fee will be deducted from the deposit. The sponsor will be reimbursed the remaining amount upon the successful completion of the conversion. Any incidental costs exceeding the deposit will be paid by the sponsor. ()

651. -- 664. (RESERVED)

665. USER FEES, CHARGES AND INCOME.

01. User Fees. User or other types of fees may be charged in connection with facilities developed with LWCF grants, provided that the fees and charges are commensurate with the value of recreation services or opportunities furnished and are in the prevailing range of public fees and charges for the particular activity involved. Discrimination on the basis of residence, including preferential reservation or membership systems and annual permit systems, is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence. ()

02. Nonrecreational User Fees. Nonrecreational income that accrues to an outdoor recreation area other than the intended recreational use, including income from land management practices, must derive from use that is consistent with, and complementary to, the intended outdoor recreational use of the area. Gross nonrecreational income that accrues during the project period established in the project contract must be used to reduce the total cost of the project. Gross nonrecreational income that accrues subsequent to the ending date identified in the project contracts must be used only to offset the expense of operation and maintenance of the facility. ()

666. -- 679. (RESERVED)

680. PERMANENT PROJECT SIGNS.

Permanent public acknowledgment of LWCF assistance at project sites is required on at least one (1) prominently placed area identification sign. The LWCF symbol established and provided by IDPR must be used for such acknowledgment at the project site entrance, or other appropriate locations. The sponsor may desire to provide a more detailed identification. IDPR staff must approve the sponsor's park sign prior to its construction to ensure proper

designation is included. ()

681. -- 694. (RESERVED)

695. ARCHITECTURAL BARRIERS.

Sponsors in the LWCF programs must assure that persons with disabilities are not precluded from the use of LWCF assisted recreational facilities. ()

696. -- 709. (RESERVED)

710. UNIFORM RELOCATION COMPLAINT PROCEDURE.

The two (2) appeal procedure recommended by NPS are an appeal to the SLO and then to the board for resolution (see IDAPA 26.01.01, Section 250, "Rules of Administrative Procedure of the Idaho Park and Recreation Board"). ()

711. -- 724. (RESERVED)

725. AVAILABILITY TO USERS.

01. Nondiscrimination. Property must be open to entry and use by all persons regardless of race, color, or national origin. Discrimination is also prohibited on the basis of age, disability, religion or gender. ()

02. Seasons and Hours. Facilities must be kept open for public use at reasonable hours and times of the year based on intended use. ()

726. -- 739. (RESERVED)

740. CIVIL RIGHTS COMPLAINT PROCEDURE.

An opportunity is provided for filing civil rights complaints. A written complaint must be filed with the SLO within one hundred eighty (180) days from the date the alleged discrimination occurred. Within ten (10) working days of IDPR receiving the complaint, the complainant must be notified of action that has been or must be taken to resolve the complaint. An investigation must be conducted by the deputy director or his designee within thirty (30) working days of IDPR's receipt of the complaint. The SLO or SLO's designee must send a written response to the complainant regarding the results of the investigation within thirty (30) working days of the time the investigation began. If dissatisfied with the results of the investigation, the complainant may submit a written request for reconsideration to the SLO within ten (10) days of the receipt of resolution. The complainant may also file a complaint with the Idaho Human Rights Commission and The Office of Equal Opportunity. Addresses are available from IDPR. ()

741. -- 999. (RESERVED)

**IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES
AND IDAHO WATER RESOURCE BOARD**

DOCKET NO. 37-0000-2000F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 42-238(12), 42-603, 42-1414, 42-1701A(1), 42-1714, 42-1709, 42-1721, 42-1734(19), 42-1761, 42-1762, 42-1765, 42-1805(8), 42-3803, 42-3913, 42-3914, 42-3915, 42-4001, 42-4010, 67-2356, and 67-5206(5), Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 37, rules of the Idaho Department of Water Resources (IDWR) and Idaho Water Resource Board (IWRB):

IDAPA 37

- 37.01.01, *Rules of Procedure of the Idaho Department of Water Resources;*
- 37.02.03, *Water Supply Bank Rules;*
- 37.03.01, *Adjudication Rules;*
- 37.03.02, *Beneficial Use Examination Rules;*
- 37.03.03, *Rules and Minimum Standards for the Construction and Use of Injection Wells;*
- 37.03.04, *Drilling for Geothermal Resources Rules;*
- 37.03.05, *Mine Tailings Impoundment Structures Rules;*
- 37.03.06, *Safety of Dams Rules;*
- 37.03.07, *Stream Channel Alteration Rules;*
- 37.03.08, *Water Appropriation Rules;*
- 37.03.09, *Well Construction Standards and Rules;* and
- 37.03.10, *Well Driller Licensing Rules.*

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the Sept. 16, 2020, Idaho Administrative Bulletin, [Vol. 20-9SE, pages 1946-2151](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

IDAPA 37.01.01 establishes the rules of procedure governing contested case proceedings before IDWR and the IWRB. The rule also addresses filing fees associated with such proceedings. This chapter was adopted under the legal authority of Sections 42-1701A(1), 42-1734(19), 42-1805(8), 67-2356 and 67- 5206(5), Idaho Code.

IDAPA 37.02.03 governs IWRB's operation and management of the water supply bank authorized by statute. The purpose of the water supply bank is to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water users; and provide a source of funding for improving water user facilities and efficiencies. The rule also establishes lease and rental fees that are used to carry out the program which are credited to IWRB's revolving development and water management accounts. This chapter was adopted under the legal authority of Section 42-1762, Idaho Code.

IDAPA 37.03.01 implements the filing of notices of claims to water rights claimed under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications. Idaho is currently in the midst of the North Idaho Adjudication (NIA) and IDWR has recently commenced the Palouse Basin Adjudication and anticipates commencing the final phase of the NIA—the Clark Fork-Pend Oreille River Basin adjudication—sometime after 2020. The rule is integral to the processing of these general adjudications. This chapter was adopted under the legal authority of Sections 42-1414, and 42-1805(8), Idaho Code.

IDAPA 37.03.02 governs the examination requirements necessary to consider and determine the extent of application of water to beneficial use accomplished under a water right permit. The rule also establishes that field examinations can be conducted by certified water right examiners appointed by the Director. Finally, the rule governs licensing examination fees which are used to offset costs incurred by IDWR in reviewing and determining the extent of beneficial use. This chapter was adopted under the legal authority of Section 42-1805(8), Idaho Code.

IDAPA 37.03.03 governs injection wells in Idaho. The rule requires all injection wells to be permitted and constructed in accordance with the Well Construction Standards Rules (IDAPA 37.03.09), which protect ground water resources from quality impairment. This rule is also necessary for the IWRB to maintain compliance with federal law, under which authority Idaho regulates the permitting, construction, and operation of certain injection wells within the state. Finally, the rule governs inventory and permit fees which are used to partially fund the operation of the Underground Injection Control program in Idaho. This chapter was adopted under the legal authority of Sections 42-3913, 42-3914, and 42-3915, Idaho Code.

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

IDAPA 37.03.05 establishes acceptable construction standards and governs IDWR’s design and technical review of mine tailing and water impoundment structures. The rule also supports the collection of a fee to review plans, drawings, and specifications pertaining to any mine tailings impoundment structure as set forth in Section 42-1713, Idaho Code. This chapter was adopted under the legal authority of Section 42-1714, Idaho Code.

IDAPA 37.03.06 establishes acceptable standards for construction of dams and establishes guidelines for safety evaluation of new or existing dams. The rule applies to all new dams, existing dams to be enlarged, altered or repaired, and maintenance of certain existing dams, as specifically provided in the rule. This chapter also establishes the collection of a fee to review plans, drawings, and specifications pertaining to the construction, enlargement, alteration, or repair of small high-risk, intermediate, or large dams as set forth in Section 42-1713, Idaho Code. This chapter was adopted pursuant to Section 42-1714, Idaho Code.

IDAPA 37.03.07 governs the permitting of stream channel alterations that are of a common type, which do not propose alterations which will be a hazard to the stream channel and its environment. This chapter also establishes the collection of stream channel alteration statutory filing fees as authorized in Section 42-3803, Idaho Code. This chapter was adopted pursuant to Section 42-3803, Idaho Code.

IDAPA 37.03.08 governs appropriations from all sources of unappropriated public water in the state of Idaho under the authority of Chapter 2, Title 42, Idaho Code. Sources of public water include rivers, streams, springs, lakes and groundwater. The rules are also applicable to the reallocation of hydropower water rights (i.e. Swan Falls Trust Water) held in trust by the state of Idaho. The rule also implements the application, re-advertisement, and mailing fees set forth in Sections 42-221F and 42-203(A)3, Idaho Code.

IDAPA 37.03.09 governs IDWR’s statutory responsibility for the statewide administration of the rules governing well construction. These rules establish minimum standards for the construction of all new wells and the modification and decommissioning (abandonment) of existing wells. The intent of the rule is to protect ground water resources of the state against waste and contamination. The rule also implements the drilling permit fees set forth in Section 42-235, Idaho Code. This chapter was adopted pursuant to Section 42-235, Idaho Code.

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

In summary, the fee categories described in the attached rules include: (1) administrative appeals filing fees; (2) water supply bank lease and rental fees; (3) adjudication application fees; (4) water right licensing examination fees; (5) injection well inventory and permit fees; (6) geothermal well permit fees; (7) design review fees for mine tailings impoundment structure and select dams; (8) stream channel alteration statutory filing fees; (9) water right application, re-advertisement, and mailing fees; (10) well drilling permit fees; and (11) application licensing fees for well drillers.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Mathew Weaver, Deputy Director at (208) 287-4800.

Dated this 18th day of November, 2020.

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

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 42-238(12), 42-603, 42-1414, 42-1701A(1), 42-1714, 42-1709, 42-1721, 42-1734(19), 42-1761, 42-1762, 42-1765, 42-1414, 42-1805(8), 42-3803, 42-3913, 42-3914, 42-3915, 42-4001, 42-4010, 67-2356, and 67-5206(5), Idaho Code.

PUBLIC HEARING SCHEDULE: Opportunity for presentation of oral comments concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: This proposed rulemaking re-publishes the following existing temporary rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 37, rules of the Idaho Department of Water Resources (IDWR) and Idaho Water Resource Board (IWRB):

IDAPA 37

- 37.01.01, *Rules of Procedure of the Idaho Department of Water Resources;*
- 37.02.03, *Water Supply Bank Rules;*
- 37.03.01, *Adjudication Rules;*

- 37.03.02, *Beneficial Use Examination Rules*;
- 37.03.03, *Rules and Minimum Standards for the Construction and Use of Injection Wells*;
- 37.03.04, *Drilling for Geothermal Resources Rules*;
- 37.03.05, *Mine Tailings Impoundment Structures Rules*;
- 37.03.06, *Safety of Dams Rules*;
- 37.03.07, *Stream Channel Alteration Rules*;
- 37.03.08, *Water Appropriation Rules*;
- 37.03.09, *Well Construction Standards and Rules*; and
- 37.03.10, *Well Driller Licensing Rules*.

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules.

IDAPA 37.01.01 establishes the rules of procedure governing contested case proceedings before IDWR and the IWRB. The rule also addresses filing fees associated with such proceedings. This chapter was adopted under the legal authority of Sections 42-1701A(1), 42-1734(19), 42-1805(8), 67-2356 and 67- 5206(5), Idaho Code.

IDAPA 37.02.03 governs IWRB’s operation and management of the water supply bank authorized by statute. The purpose of the water supply bank is to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water users; and provide a source of funding for improving water user facilities and efficiencies. The rule also establishes lease and rental fees that are used to carry out the program which are credited to IWRB’s revolving development and water management accounts. This chapter was adopted under the legal authority of Section 42-1762, Idaho Code.

IDAPA 37.03.01 implements the filing of notices of claims to water rights claimed under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications. Idaho is currently in the midst of the North Idaho Adjudication (NIA) and IDWR has recently commenced the Palouse Basin Adjudication and anticipates commencing the final phase of the NIA—the Clark Fork-Pend Oreille River Basin adjudication—sometime after 2020. The rule is integral to the processing of these general adjudications. This chapter was adopted under the legal authority of Sections 42-1414, and 42-1805(8), Idaho Code.

IDAPA 37.03.02 governs the examination requirements necessary to consider and determine the extent of application of water to beneficial use accomplished under a water right permit. The rule also establishes that field examinations can be conducted by certified water right examiners appointed by the Director. Finally, the rule governs licensing examination fees which are used to offset costs incurred by IDWR in reviewing and determining the extent of beneficial use. This chapter was adopted under the legal authority of Section 42-1805(8), Idaho Code.

IDAPA 37.03.03 governs injection wells in Idaho. The rule requires all injection wells to be permitted and constructed in accordance with the Well Construction Standards Rules (IDAPA 37.03.09), which protect ground water resources from quality impairment. This rule is also necessary for the IWRB to maintain compliance with federal law, under which authority Idaho regulates the permitting, construction, and operation of certain injection wells within the state. Finally, the rule governs inventory and permit fees which are used to partially fund the operation of the Underground Injection Control program in Idaho. This chapter was adopted under the legal authority of Sections 42-3913, 42-3914, and 42-3915, Idaho Code.

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

IDAPA 37.03.05 establishes acceptable construction standards and governs IDWR’s design and technical review of mine tailing and water impoundment structures. The rule also supports the collection of a fee to review plans, drawings, and specifications pertaining to any mine tailings impoundment structure as set forth in Section 42-1713, Idaho Code. This chapter was adopted under the legal authority of Section 42-1714, Idaho Code.

IDAPA 37.03.06 establishes acceptable standards for construction of dams and establishes guidelines for safety evaluation of new or existing dams. The rule applies to all new dams, existing dams to be enlarged, altered or repaired, and maintenance of certain existing dams, as specifically provided in the rule. This chapter also establishes the collection of a fee to review plans, drawings, and specifications pertaining to the construction, enlargement, alteration, or repair of small high-risk, intermediate, or large dams as set forth in Section 42-1713, Idaho Code. This chapter was adopted pursuant to Section 42-1714, Idaho Code.

IDAPA 37.03.07 governs the permitting of stream channel alterations that are of a common type, which do not propose alterations which will be a hazard to the stream channel and its environment. This chapter also establishes the collection of stream channel alteration statutory filing fees as authorized in Section 42-3803, Idaho Code. This chapter was adopted pursuant to Section 42-3803, Idaho Code.

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

In summary, the fee categories described in the attached rules include: (1) administrative appeals filing fees; (2) water supply bank lease and rental fees; (3) adjudication application fees; (4) water right licensing examination fees; (5) injection well inventory and permit fees; (6) geothermal well permit fees; (7) design review fees for mine tailings impoundment structure and select dams; (8) stream channel alteration statutory filing fees; (9) water right application, re-advertisement, and mailing fees; (10) well drilling permit fees; and (11) application licensing fees for well drillers.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mathew Weaver, Deputy Director at (208) 287-4800.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of August, 2020.

THE FOLLOWING IS THE TEXT OF OMNIBUS FEE DOCKET NO. 37-0000-2000F

IDAPA 37 – DEPARTMENT OF WATER RESOURCES

37.01.01 – RULES OF PROCEDURE OF THE IDAHO DEPARTMENT OF WATER RESOURCES

SUBCHAPTER A – GENERAL PROVISIONS (Rules 0 through 99)

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Sections 42-1701A(1), 42-1734(19), 42-1805(8), 67-2356 and 67-5206(5), Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. **Title.** The title of this chapter is “Rules of Procedure of the Idaho Department of Water Resources.” ()

02. **Scope.** This chapter contains the rules of procedure that govern contested case proceedings before the Department of Water Resources and the Water Resource Board of the state of Idaho. ()

002. -- 004. (RESERVED)

005. DEFINITIONS (RULE 5).

As used in this chapter: ()

01. **Administrative Code.** The Idaho administrative code established in Chapter 52, Title 67, Idaho Code. ()

02. **Agency.** The Department of Water Resources or the Water Resource Board acting within their respective authority to make rules or to determine contested cases. ()

03. **Agency Action.** Agency action means: ()

a. The whole or part of a rule or order; ()

b. The failure to issue a rule or order; or ()

c. An agency’s performance of, or failure to perform, any duty placed on it by law. ()

04. **Agency Head.** An individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. ()

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

06. **Bulletin.** The Idaho administrative bulletin established in Chapter 52, Title 67, Idaho Code. ()

07. **Contested Case.** A proceeding which results in the issuance of an order. ()

08. **Coordinator.** The Administrative Rules Coordinator Prescribed in Section 67-5202, Idaho Code. ()

09. **Department.** The Idaho Department of Water Resources. ()

10. **Director.** The agency head of the Idaho Department of Water Resources. ()

11. **Document.** Any proclamation, executive order, notice, rule or statement of policy of an agency. ()

12. **Electronically Signed Communication.** A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message in accordance with Rules 306 through 311 of these rules. ()

13. License. The whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes. ()

14. Official Text. The text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. ()

15. Order. An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. ()

16. Party. Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. ()

17. Person. Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. For purposes of electronic signature rules, a human being or any organization capable of signing a document, either legally or as a matter of fact. ()

18. Provision of Law. The whole or a part of the state or federal constitution, or of any state or federal: ()

a. Statute; or ()

b. Rule or decision of the court. ()

19. Publish. To bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law. ()

20. Rule. The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of Chapter 52, Title 67, Idaho Code, and that implements, interprets, or prescribes: ()

a. Law or policy, or ()

b. The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include: ()

i. Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; ()

ii. Declaratory rulings issued pursuant to Section 67-5232, Idaho Code; ()

iii. Intra-agency memoranda; or ()

iv. Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule. ()

21. Rulemaking. The process for formulation, adoption, amendment or repeal of a rule. ()

22. Signer. A person who signs a communication, including an electronically signed communication with the use of an acceptable technology to uniquely link the message with the person sending it. ()

006. (RESERVED)

007. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS (RULE 7).

01. State Office. The mailing address of the state office of the Idaho Department of Water Resources and the office of the Idaho Water Resource Board is P.O. Box 83720, Boise, Idaho 83720-0098; the street address,

subject to change, is 322 East Front Street, 6th Floor, Boise, Idaho 83702; the telephone number is (208) 287-4800; and the Facsimile Machine number is (208) 287-6700. Documents may be filed at the state office during regular business hours of 8:00 am to 5:00 pm Monday through Friday. ()

008. FILING OF DOCUMENTS -- NUMBER OF COPIES (RULE 8).

In all rulemakings or contested cases, an original of all documents shall be filed with the Director of the Department of Water Resources or the Chairman of the Idaho Water Resource Board, as the case may be, showing service upon all other parties. No copies in addition to the original document need be filed with the agency unless requested by the agency. ()

009. -- 049. (RESERVED)

050. PROCEEDINGS GOVERNED (RULE 50).

Rules 100 through 799 govern procedure before the Department and the Board in contested cases, unless otherwise provided by rule, notice or order of the agency. The Department and the Board through the promulgation of these rules decline in whole to adopt the contested case portion of the "Idaho Rules of Administrative Procedure of the Attorney General," cited as IDAPA 04.11.01.100 through 04.11.01.799. Rulemaking before the Department and the Board shall be governed by Rules 800 through 860 of the "Idaho Rules of Administrative Procedure of the Attorney General," cited as IDAPA 04.11.01.800 through 04.11.01.860. ()

051. REFERENCE TO AGENCY (RULE 51).

Reference to the agency in these rules includes the agency director, the board, hearing officer appointed by the agency or the board, or presiding officer, as context requires. Reference to the agency head means the agency director or the board, as context requires, or such other officer designated by the agency head or the board to review recommended or preliminary orders. ()

052. LIBERAL CONSTRUCTION (RULE 52).

The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. Unless required by statute, or otherwise provided by these rules, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. ()

053. COMMUNICATIONS WITH AGENCY (RULE 53).

All written communications and documents that are intended to be part of an official record for a decision in a contested case must be filed with the officer designated by the agency. Unless otherwise provided by statute, rule, order or notice, documents are considered filed when received by the officer designated to receive them, not when mailed, or otherwise transmitted. ()

054. IDENTIFICATION OF COMMUNICATIONS (RULE 54).

Parties' communications addressing or pertaining to a given proceeding should be written under that proceeding's case caption and case number, if applicable. General communications by other persons should refer to case captions, case numbers, permit or license numbers, or the like, if this information is known. ()

055. SERVICE BY AGENCY (RULE 55).

Unless otherwise provided by statute or these rules, the officer designated by the agency to serve rules, notices, complaints, and orders issued by the agency may serve these documents by regular mail or by certified mail, return receipt requested, to a party's last known mailing address or by personal service. Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail, or the Statehouse mail if the party is a state employee or state agency. The officer designated by the agency to serve documents in a proceeding must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency. ()

056. COMPUTATION OF TIME (RULE 56).

Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count, but the last day of the period so computed is included in the

count. If the day the act must be done is Saturday, Sunday or a legal holiday, the act may be done on the first day following that is not Saturday, Sunday or a legal holiday. ()

057. ADDITIONAL TIME AFTER SERVICE BY MAIL (RULE 57).

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period. This rule, however, shall not extend the time for filing a protest, a petition for reconsideration of a preliminary, recommended or final order before the agency, the time for filing exceptions with the agency head to a preliminary or recommended order, or the time for filing an appeal with the district court from a final decision of the agency. ()

058. FEES AND REMITTANCES (RULE 58).

If submitted by mail, fees and remittances to the agency may be paid by money order, bank draft or check payable to agency. Remittances in currency or coin, submitted by mail, are strongly discouraged and are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss. The agency may, upon the completion of necessary arrangements by the agency, accept the payment of fees and remittances by credit card. Filings required to be accompanied by a fee are not complete until the fee is paid. ()

059. -- 099. (RESERVED)

100. INFORMAL PROCEEDINGS DEFINED (RULE 100).

Informal proceedings are proceedings in contested cases authorized by statute, rule or order of the agency to be conducted using informal procedures, i.e., procedures without a record to be preserved for later agency or judicial review, without the necessity of representation according to Rule 230, without formal designation of parties, without the necessity of hearing examiners or other presiding officers, or without other formal procedures required by these rules for formal proceedings. Unless prohibited by statute, an agency may provide that informal proceedings may precede formal proceedings in the consideration of a rulemaking or a contested case. ()

101. INFORMAL PROCEDURE (RULE 101).

Statute authorizes and these rules encourage the use informal proceedings to settle or determine contested cases. Unless prohibited by statute, the agency may provide for the use of informal procedure at any stage of a contested case. Informal procedure may include individual contacts, consistent with Rule 417, by or with the agency staff asking for information, advice or assistance from the agency staff, or proposing informal resolution of formal disputes under the law administered by the agency. Informal procedures may be conducted in writing, by telephone or television, or in person. ()

102. FURTHER PROCEEDINGS (RULE 102).

If statute provides that informal procedures shall be followed with no opportunity for further formal administrative review, then no opportunity for later formal administrative proceedings must be offered following informal proceedings. Otherwise, except as provided in Rule 103, any person participating in an informal proceeding must be given an opportunity for a later formal administrative proceeding before the agency, at which time the parties may fully develop the record before the agency. ()

103. INFORMAL PROCEEDINGS DO NOT EXHAUST ADMINISTRATIVE REMEDIES (RULE 103).

Unless all parties agree to the contrary in writing, informal proceedings do not substitute for formal proceedings and do not exhaust administrative remedies, and informal proceedings are conducted without prejudice to the right of the parties to present the matter formally to the agency. Settlement offers made in the course of informal proceedings are confidential and shall not be included in the agency record of a subsequent formal proceeding. ()

104. FORMAL PROCEEDINGS (RULE 104).

Formal proceedings, which are governed by rules of procedure other than Rules 100 through 103, must be initiated by a document (generally a notice, order or complaint if initiated by the agency) or another pleading listed in Rules 210 through 280 if initiated by another person. Formal proceedings may be initiated by a document from the agency informing the party(ies) that the agency has reached an informal determination that will become final in the absence of further action by the person to whom the correspondence is addressed, provided that the document complies with the requirements of Rules 210 through 280. Formal proceedings can be initiated by the same document that initiates informal proceedings. ()

105. -- 149. (RESERVED)

150. PARTIES TO CONTESTED CASES LISTED (RULE 150).

Parties to contested cases before the agency are called applicants or claimants or appellants, petitioners, complainants, respondents, protestants, or intervenors. On reconsideration or appeal within the agency parties are called by their original titles listed in the previous sentence. ()

151. APPLICANTS/CLAIMANTS/APPELLANTS (RULE 151).

Persons who seek any right, license, award or authority from the agency are called “applicants” or “claimants” or “appellants.” ()

152. PETITIONERS (RULE 152).

Persons not applicants who seek to modify, amend or stay existing orders or rules of the agency, to clarify their rights or obligations under law administered by the agency, to ask the agency to initiate a contested case (other than an application or complaint), or to otherwise take action that will result in the issuance of an order or rule, are called “petitioners.” ()

153. COMPLAINANTS (RULE 153).

Persons who charge other person(s) with any act or omission are called “complainants.” In any proceeding in which the agency itself charges a person with an act or omission, the agency is called “complainant.” ()

154. RESPONDENTS (RULE 154).

Persons against whom complaints are filed or about whom investigations are initiated are called “respondents.” ()

155. PROTESTANTS (RULE 155).

Persons who oppose an application or claim or appeal and who have a statutory right to contest the right, license, award or authority sought by an applicant or claimant or appellant are called “protestants.” ()

156. INTERVENORS (RULE 156).

Persons, not applicants or claimants or appellants, complainants, respondents, or protestants to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354 are called “intervenors.” ()

157. RIGHTS OF PARTIES AND OF AGENCY STAFF (RULE 157).

Subject to Rules 558, 560, and 600, all parties and agency staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. ()

158. PERSONS NOT PARTIES -- INTERESTED PERSONS (RULE 158).

Persons other than the persons named in Rules 151 through 156 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. Persons not parties who have an interest in a proceeding are called “interested persons.” Interested persons may participate in a proceeding as “public witnesses” in accordance with Rule 355. ()

159. -- 199. (RESERVED)

200. INITIAL PLEADING BY PARTY -- LISTING OF REPRESENTATIVES (RULE 200).

The initial pleading of each party at the formal stage of a contested case (be it an application or claim or appeal, petition, complaint, protest, motion, or answer) must name the party’s representative(s) for service and state the representative’s(s’) address(es) for purposes of receipt of all official documents. No more than two (2) representatives for service of documents may be listed in an initial pleading. Service of documents on the named representative(s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party’s representative, the person signing the pleading will be considered the party’s representative. If an initial pleading is signed by more than one (1) person without identifying the representative(s) for service of documents, the presiding officer may select the person(s) upon whom documents are to be served. If two (2) or more parties or persons file identical or substantially like initial pleadings, the presiding officer may limit the number of parties or persons

required to be served with official documents in order to expedite the proceeding and reasonably manage the burden of service upon the parties and the agency. ()

201. TAKING OF APPEARANCES -- PARTICIPATION BY AGENCY STAFF (RULE 201).

The presiding officer at a formal hearing or prehearing conference will take appearances to identify the representatives of all parties or other persons. In all proceedings in which the agency staff will participate, or any report or recommendation of the agency staff (other than a recommended order or preliminary order prepared by a hearing officer) will be considered or used in reaching a decision, at the timely request of any party the agency staff must appear at any hearing and be made available for cross-examination and otherwise participate in the hearing, at the discretion of the presiding officer, in the same manner as a party. ()

202. REPRESENTATION OF PARTIES AT HEARING (RULE 202).

01. Appearances and Representation. To the extent authorized or required by law, appearances and representation of parties or other persons at formal hearing or prehearing conference must be as follows: ()

a. Natural Person. A natural person may represent himself or herself or be represented by a duly authorized employee, attorney, or family member, or by a next friend if the person lacks full legal capacity to act for himself or herself. ()

b. A partnership may be represented by a partner, duly authorized employee, or attorney. ()

c. A corporation may be represented by an officer, duly authorized employee, or attorney. ()

d. A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. ()

e. A state, federal or tribal governmental entity or agency may be represented by an officer, duly authorized employee, or attorney. ()

02. Representatives. The representatives of parties at hearing, and no other persons or parties appearing before the agency, are entitled to examine witnesses and make or argue motions. ()

203. SERVICE ON REPRESENTATIVES OF PARTIES AND OTHER PERSONS (RULE 203).

From the time a party files its initial pleading in a contested case, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties' representatives designated pursuant to Rule 200, unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The presiding officer may order parties to serve past or future documents filed in the case upon persons not parties to the proceedings before the agency. ()

204. WITHDRAWAL OF PARTIES (RULE 204).

Any party may withdraw from a proceeding in writing or at hearing. ()

205. SUBSTITUTION OF REPRESENTATIVE -- WITHDRAWAL OF REPRESENTATIVE (RULE 205).

A party's representative may be changed and a new representative may be substituted by notice to the agency and to all other parties so long as the proceedings are not unreasonably delayed. The presiding officer at hearing may permit substitution of representatives at hearing in the presiding officer's discretion. Persons representing a party who wish to withdraw their representation of a party in a proceeding before the agency must immediately file in writing a notice of withdrawal of representation and serve that notice on the party represented and all other parties. ()

206. CONDUCT REQUIRED (RULE 206).

Representatives of parties and parties appearing in a proceeding must conduct themselves in an ethical and courteous manner. Smoking is not permitted at hearings. ()

207. -- 209. (RESERVED)

210. PLEADINGS LISTED -- MISCELLANEOUS (RULE 210).

Pleadings in contested cases are called applications or claims or appeals, petitions, complaints, protests, motions, answers, and consent agreements. Affidavits or declarations under penalty of perjury may be filed in support of any pleading. A party's initial pleading in any proceeding must comply with Rule 200, but the presiding officer may allow documents filed during informal stages of the proceeding to be considered a party's initial pleading without the requirement of resubmission to comply with this rule. All pleadings filed during the formal stage of a proceeding must be filed in accordance with Rules 300 through 303. A party may adopt or join any other party's pleading. Two (2) or more separately stated grounds, claims or answers concerning the same subject matter may be included in one (1) pleading. ()

211. -- 219. (RESERVED)

220. APPLICATIONS/CLAIMS/APPEALS -- DEFINED -- FORM AND CONTENTS (RULE 220).

All pleadings requesting a right, license, award or authority from the agency are called "applications" or "claims" or "appeals." All pleadings must be submitted on Department approved forms if available. Applications or claims or appeals not submitted on Department approved forms should: ()

01. Facts. Fully state the facts upon which they are based. ()

02. Refer to Provisions. Refer to the particular provisions of statute, rule, order, or other controlling law upon which they are based. ()

03. Other. State the right, license, award, or authority sought. ()

221. -- 229. (RESERVED)

230. PETITIONS -- DEFINED -- FORM AND CONTENTS (RULE 230).

01. Pleadings Defined. All pleadings requesting the following are called "petitions:" ()

a. Modification, amendment or stay of existing orders or rules; ()

b. Clarification, declaration or construction of the law administered by the agency or of a party's rights or obligations under law administered by the agency; ()

c. The initiation of a contested case not an application, claim or complaint or otherwise taking action that will lead to the issuance of an order or a rule; ()

d. Rehearing; or ()

e. Intervention. ()

02. Petitions. Petitions should: ()

a. Fully state the facts upon which they are based; ()

b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; ()

c. State the relief desired; and ()

d. State the name of the person petitioned against (the respondent), if any. ()

231. -- 239. (RESERVED)

240. COMPLAINTS -- DEFINED -- FORM AND CONTENTS (RULE 240).

01. Complaints - Defined. All pleadings charging other person(s) with acts or omissions under law administered by the agency are called “complaints.” ()

02. Form and Contents. Complaints must: ()

a. Be in writing; ()

b. Fully state the acts or things done or omitted to be done by the persons complained against by reciting the facts constituting the acts or omissions and the dates when they occurred; ()

c. Refer to statutes, rules, orders or other controlling law involved; ()

d. State the relief desired; ()

e. State the name of the person complained against (the respondent). ()

241. -- 249. (RESERVED)

250. PROTESTS -- DEFINED -- FORM AND CONTENTS (RULE 250).

01. Protests - Defined. All pleadings opposing an application or claim or appeal as a matter of right are called “protests.” ()

02. Form and Contents. Protests should: ()

a. Fully state the facts upon which they are based, including the protestant’s claim of right to oppose the application or claim; ()

b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; and ()

c. State any proposed limitation (or the denial) of any right, license, award or authority sought in the application. ()

251. -- 259. (RESERVED)

260. MOTIONS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 260).

01. Motions - Defined. All other pleadings requesting the agency to take any other action in a contested case, except consent agreements or pleadings specifically answering other pleadings, are called “motions.” ()

02. Form and Contents. Motions should: ()

a. Fully state the facts upon which they are based; ()

b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and ()

c. State the relief sought. ()

03. Other. If the moving party desires oral argument or hearing on the motion, it must state so in the motion. Any motion to dismiss, strike or limit an application or claim or appeal, complaint, petition, or protest must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within fourteen (14) days after service of the answer. Other motions may be filed at any time upon compliance with Rule 565. ()

261. -- 269. (RESERVED)

270. ANSWERS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 270).

All pleadings responding to the allegations or requests of applications or claims or appeals, complaints, petitions, or motions are called “answers.” ()

01. Answers to Pleadings Other than Motions. Answers to applications, claims, appeals, complaints, or petitions when required to be filed by provision of statute, rule, or order must be filed and served on all parties of record within twenty-one (21) days after service of the pleading being answered, unless order or notice modifies the time within which answer may be made, or a motion to dismiss is made within twenty-one (21) days. When an answer is not timely filed under this rule, the presiding officer may issue a notice of default against the respondent pursuant to Rule 700. Answers to applications or claims, complaints, or petitions, must admit or deny each material allegation of the applications or claims, complaint, or petition. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. This rule does not prevent a party from filing a responsive pleading in instances not required under these rules. ()

02. Answers to Motions. Answers to motions may be filed by persons or parties who are the object of a motion or by parties opposing a motion within fourteen (14) days of the filing of the motion. The time to file an answer to a motion may be enlarged or shortened by the presiding officer upon a showing of good cause by a party. The presiding officer may act upon a prehearing motion under Rule 565. ()

271. -- 279. (RESERVED)

280. CONSENT AGREEMENTS -- DEFINED -- FORM AND CONTENTS (RULE 280).

Agreements between the agency or agency staff and another person(s) in which one (1) or more person(s) agree to engage in certain conduct mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, case decision, or other provision of law, are called “consent agreements.” Consent agreements are intended to require compliance with existing law. ()

01. Requirements. Consent agreements must: ()

a. Recite the parties to the agreement; and ()

b. Fully state the conduct proscribed or prescribed by the consent agreement. ()

02. Additional. In addition, consent agreements may: ()

a. Recite the consequences of failure to abide by the consent agreement; ()

b. Provide for payment of civil or administrative penalties authorized by law; ()

c. Provide for loss of rights, licenses, awards or authority; ()

d. Provide for other consequences as agreed to by the parties; and ()

e. Provide that the parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent agreement. ()

281. -- 299. (RESERVED)

300. FILING DOCUMENTS WITH THE AGENCY -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX) -- ELECTRONICALLY SIGNED DOCUMENTS (RULE 300).

An original and necessary copies (if any are required by the agency) of all documents intended to be part of an agency record must be filed with the officer designated by the agency to receive filing in the case. Pleadings and other documents not exceeding ten (10) pages in length requiring urgent or immediate action may be filed by facsimile

transmission (FAX). Whenever any document is filed by FAX, the original must be mailed by United States mail or physically delivered to the agency the next working day. A document required to be accompanied by a filing fee shall not be filed with the agency until the fee is received. There shall be no limit as to the number of pages of a facsimile copy which was not transmitted directly to the agency by the facsimile machine process. The Department will accept electronic signatures and electronically signed communications complying with the requirements of Rules 306 through 311 and Sections 67-2351 through 67-2357, Idaho Code, for all communications, filings and transactions with the Department. ()

301. FORM OF PLEADINGS (RULE 301).

01. Pleadings. All pleadings, except those on agency forms, submitted by a party and intended to be part of an agency record should: ()

a. Be submitted on white eight and one-half inch (8 1/2") by eleven inch (11") paper copied on one (1) side only; ()

b. State the case caption, case number, if applicable, and title of the document; ()

c. Include on the upper left corner of the first page the name(s), mailing and street address(es), and telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; and ()

d. Have at least one inch (1") left and top margins. ()

02. Form. Documents complying with this rule will be in the following form:

Name of Representative
Mailing Address of Representative
Street Address of Representative (if different)
Telephone Number of Representative
FAX Number of Representative (if there is one)
Attorney/Representative for (Name of Party)

BEFORE THE AGENCY
(Title of Proceeding)) CASE NO.
)
) (TITLE OF DOCUMENT)
) ()

302. SERVICE ON PARTIES AND OTHER PERSONS (RULE 302).

All documents intended to be part of the agency record for decision must be served upon the representatives of each party of record concurrently with filing the original with the officer designated by the agency to receive filings in the case. ()

303. PROOF OF SERVICE (RULE 303).

Every document filed with and intended to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have this day of, served the foregoing (name(s) of document(s) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names)).
(Signature) ()

304. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 304).

Defective, insufficient or late pleadings may be returned or dismissed. ()

305. AMENDMENTS TO PLEADINGS – WITHDRAWAL OF PLEADINGS (RULE 305).

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective fourteen (14) days after filing. ()

306. ELECTRONICALLY SIGNED COMMUNICATIONS (RULE 306).

The Department will accept electronic signatures and electronically signed communications complying with the requirements of Rules 306 through 311 and Sections 67-2351 through 67-2357, Idaho Code, for all communications, filings and transactions with the Department. For an electronic signature to be valid for use by the Department, it must be created by a technology that is accepted for use by the Department. ()

307. CRITERIA FOR ACCEPTABLE ELECTRONIC SIGNATURE TECHNOLOGY (RULE 307).

For an electronic signature technology to be accepted for use by the Department, it must comply with the following criteria: ()

01. Statutory Criteria. An acceptable electronic signature technology must be capable of creating signatures that conform to the requirements set forth in Section 67-2354, Idaho Code: ()

a. It is unique to the person using it; ()

b. It is capable of verification; and ()

c. It conforms to the applicable rules promulgated by the Department pursuant to Section 67-2356, Idaho Code. ()

02. Additional Criteria. An electronic signature technology acceptable to the Department also must be capable of creating a signature that satisfies the following additional criteria: ()

a. It is under the sole control of the person using it; ()

b. It is linked to the data in such a manner that if the data are changed, the electronic signature is invalidated; and ()

c. It meets International Standards Organization ISO X.509 standard. ()

308. PUBLIC KEY CRYPTOGRAPHY (RULE 308).

The technology known as Public Key Cryptography is an accepted technology for use by the Department, provided that the electronic signature is created consistent with the provisions in these rules. ()

01. Terminology. For purposes of Rules 306 through 311, and unless the context expressly indicates otherwise, the following terms shall have the meanings here ascribed to them: ()

a. Approved certification authority. The Certification Authority authorized and accepted by the State of Idaho to issue certificates for electronic signature transactions involving the State; ()

b. Asymmetric cryptosystem. A computer algorithm or series of algorithms that utilize(s) two (2) different keys with the following characteristics: ()

i. Identifies the certification authority issuing it; ()

ii. One (1) key verifies a given message; and ()

iii. The keys have the property that, knowing one (1) key, it is computationally infeasible to discover the other key. ()

c. Certificate. A computer-based record that: ()

- i. Identifies the certification authority issuing it; ()
- ii. Names or identifies its subscriber; ()
- iii. Contains the subscriber’s public key; ()
- iv. Is electronically signed by the Certification Authority issuing or amending it; and ()
- v. Conforms to widely-used industry standards. ()
- d.** Certification authority. A person or entity that issues a certificate, or in the case of certain certification processes, certifies amendments to an existing certificate; ()
- e.** Electronic message. An electronic representation of information intended to serve as a written communication with the Department; ()
- f.** Electronically signed communication. A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message; ()
- g.** Key pair. A private key and its corresponding public key in an asymmetric cryptosystem. The keys have the property that the public key can verify an electronic signature that the private key creates; ()
- h.** Private key. The key of a key pair used to create an electronic signature; ()
- i.** Proof of identification. The document or documents presented to a Certification Authority to establish the identity of a subscriber; ()
- j.** Public key. The key of a pair used to verify an electronic signature; ()
- k.** Subscriber. A person who: ()
 - i. Is the subject listed in a certificate; ()
 - ii. Accepts the certificate; and ()
 - iii. Holds a private key which corresponds to a public key listed in that certificate. ()
- l.** Technology. The computer hardware or software-based method or process used to create electronic signatures. ()
- 02. Electronic Signature to Be Unique.** Section 67-2354, Idaho Code, requires that an electronic signature be “unique to the person using it.” A public key-based electronic signature may be considered unique to the person using it if: ()
 - a.** The private key used to create the signature on the document is known only to the signer; ()
 - b.** The electronic signature is created when a person runs a message through a one-way function, creating a message digest, then encrypting the resulting message digest using an asymmetrical cryptosystem and the signer’s private key; ()
 - c.** Although not all electronically signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature; and ()
 - d.** It is computationally infeasible to derive the private key from knowledge of the public key. ()

03. Signature Capable of Verification. Section 67-2354, Idaho Code, requires that an electronic signature be “capable of verification.” A public-key based electronic signature is capable of verification: ()

a. If the acceptor of the electronically signed document can verify the document was electronically signed by using the signer’s public key; ()

b. If a certificate is a required component of a transaction, the certificate was valid; and ()

c. If a certificate is a required component of a transaction, the issuing Certification Authority identifies which, if any, form(s) of proof of identification it required of the signer prior to issuing the certificate. ()

04. Electronic Signature Must Meet ISO X.509 Standards. The electronic signature must meet International Standards Organization ISO X.509 standards. ()

05. Approved Certification Authority. The Department shall only accept certificates from an Approved Certification Authority. ()

309. CRITERIA FOR ACCEPTING AN ELECTRONIC SIGNATURE (RULE 309).
The following criteria shall be used in determining the acceptability of electronic signatures: ()

01. Level of Security Used to Identify the Signer. Prior to accepting an electronic signature, the Department shall ensure that the level of security used to identify the signer of a document is sufficient for the transaction being conducted. ()

02. Level of Security Used to Transmit the Signature. Prior to accepting an electronic signature, the Department shall ensure that the level of security used to transmit the signature is sufficient for the transaction being conducted. ()

03. Certificate Format Used by the Signer. If a certificate is a required component of an electronic signature transaction, the Department shall ensure that the certificate format used by the signer is sufficient for the security and interoperability needs of the Department. ()

310. RETENTION OF CERTIFICATES (RULE 310).
All electronically signed messages received by the Department in accordance with this rule, as well as any information resources necessary to permit access to the message and to verify the electronic signature, shall be retained by the Department as necessary to comply with applicable law pertaining to records retention requirements for that message. ()

311. ELECTRONIC SIGNATURE REPUDIATION (RULE 311).
It is the responsibility of the rightful holder of the private key to maintain the private key’s security. Repudiation of an electronically signed and transmitted message may only occur by the determination of a court of competent jurisdiction that the private key of the rightful holder was compromised through no fault of the rightful holder and without knowledge on the part of the rightful holder. It is the legal prerequisite for a claim of repudiation that the repudiator have filed a notice of revocation with the Certification Authority prior to making the claim of repudiation. ()

312. -- 349. (RESERVED)

350. ORDER GRANTING INTERVENTION NECESSARY (RULE 350).
Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, if a formal hearing is required by statute to be held in the proceeding. ()

351. FORM AND CONTENTS OF PETITIONS TO INTERVENE (RULE 351).
Petitions to intervene must comply with Rules 200, 300, and 301. The petition must set forth the name and address of

the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. ()

352. TIMELY FILING OF PETITIONS TO INTERVENE (RULE 352).

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. ()

353. GRANTING PETITIONS TO INTERVENE (RULE 353).

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding. ()

354. ORDERS GRANTING INTERVENTION -- OPPOSITION (RULE 354).

No order granting a petition to intervene will be acted upon sooner than seven (7) days after its filing, except in a hearing in which any party may be heard or except where no objection to the intervention is made. Any party opposing a petition to intervene by motion must file the motion within seven (7) days after receipt of the petition to intervene and serve the motion upon all parties of record and upon the person petitioning to intervene. ()

355. PUBLIC WITNESSES (RULE 355).

Persons not parties and not called by a party who testify at hearing are called "public witnesses." Public witnesses do not have parties' rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses' written or oral statements and exhibits are subject to examination and objection by parties. Subject to Rules 557 and 559, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits introduced at hearing, except that public witnesses offering expert opinions at hearing or detailed analysis or detailed exhibits must comply with Rule 528 with regard to filing and service of testimony and exhibits to the same extent as expert witnesses of parties. A person intending to present public witness testimony shall provide five (5) days notice prior to the hearing. The notice shall include the name and address of the witness and the general nature or subject matter of the testimony to be given. If the notice is not given, the public testimony will be allowed only at the discretion of the presiding officer upon a finding of good cause. ()

356. -- 399. (RESERVED)

400. FORM AND CONTENTS OF PETITION FOR DECLARATORY RULINGS (RULE 400).

Any person petitioning for a declaratory ruling on the applicability of a statute, rule or order administered by the agency must substantially comply with this rule. ()

01. Form. The petition shall: ()

a. Identify the petitioner and state the petitioner's interest in the matter; ()

b. State the declaratory ruling that the petitioner seeks; and ()

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. ()

02. Legal Assertions. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. ()

401. NOTICE OF PETITION FOR DECLARATORY RULING (RULE 401).

Notice of petition for declaratory ruling may be issued in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition. ()

402. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER (RULE 402).

01. Final Agency Action. The agency’s decision on a petition for declaratory ruling on the applicability of any statute, rule or order administered by the agency is a final agency action decided by order. ()

02. Content. The order issuing the declaratory ruling shall contain or must be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ()

a. This is a final agency action issuing a declaratory ruling. ()

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this declaratory ruling may appeal to district court by filing a petition in the District Court in the county in which: ()

i. A hearing was held; ()

ii. The declaratory ruling was issued; ()

iii. The party appealing resides; or ()

iv. The real property or personal property that was the subject of the declaratory ruling is located. ()

c. This appeal must be filed within twenty-eight (28) days of the service date of this declaratory ruling. See Section 67-5273, Idaho Code. ()

403. -- 409. (RESERVED)

410. APPOINTMENT OF HEARING OFFICERS (RULE 410).

A hearing officer is a person other than the agency head appointed to hear contested cases on behalf of the agency. Unless otherwise provided by statute or rule, hearing officers may be employees of the agency or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the agency. The appointment of a hearing officer is a public record available for inspection, examination and copying. ()

411. HEARING OFFICERS CONTRASTED WITH AGENCY HEAD (RULE 411).

Agency heads are not hearing officers, even if they are presiding at contested cases. The term “hearing officer” as used in these rules refers only to officers subordinate to the agency head. ()

412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES (RULE 412).

Pursuant to Section 67-5252, Idaho Code hearing officers are subject to disqualification for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified. Any party may promptly petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or upon discovering facts establishing grounds for disqualification, whichever is later. Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting the designation by a presiding officer. A hearing officer whose disqualification is requested shall determine in writing whether to grant the petition for disqualification, stating facts and reasons for the hearing officer’s determination. Disqualification of agency heads, if allowed, will be pursuant to Sections 74-404 and 67-5252(4), Idaho Code. ()

413. SCOPE OF AUTHORITY OF HEARING OFFICERS (RULE 413).

The scope of hearing officers’ authority may be restricted in the appointment by the agency. ()

01. Scope of Authority. Unless the agency otherwise provides hearing, officers have the standard

scope of authority, which is: ()

a. Authority to schedule cases assigned to the hearing officer, including authority to issue notices of default, of prehearing conference and of hearing, or to provide for the use of informal procedure, as appropriate; ()

b. Authority to schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency; ()

c. Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, rule on dispositive motions upon completion of the applicant's or petitioner's case in chief, and otherwise oversee the orderly presentations of the parties at hearing; and ()

d. Authority to issue a written decision of the hearing officer, including a narrative of the proceedings before the hearing officer and findings of fact, conclusions of law, and recommended or preliminary orders by the hearing officer, following the submission of evidence through stipulation of the parties, affidavits, exhibits, or hearing testimony. ()

02. Limitation. The hearing officer's scope of authority may be limited from the standard scope, either in general, or for a specific proceeding. For example, the hearing officer's authority could be limited to scope in Rule Subsection 413.01.c. (giving the officer authority only to conduct hearing), with the agency retaining all other authority. Hearing officers can be given authority with regard to the agency's rules as provided in Rule 416. ()

414. PRESIDING OFFICER(S) (RULE 414).

One (1) or more members of the agency board, the agency director, or duly appointed hearing officers may preside at hearing as authorized by statute or rule. When more than one (1) officer sits at hearing, they may all jointly be presiding officers or may designate one (1) of them to be the presiding officer. ()

415. CHALLENGES TO STATUTES (RULE 415).

A hearing officer in a contested case has no authority to declare a statute unconstitutional. However, when a court of competent jurisdiction whose decisions are binding precedent in the state of Idaho has declared a statute unconstitutional, or when a federal authority has preempted a state statute or rule, and the hearing officer finds that the same state statute or rule or a substantively identical state statute or rule that would otherwise apply has been challenged in the proceeding before the hearing officer, then the hearing officer shall apply the precedent of the court or the preemptive action of the federal authority to the proceeding before the hearing officer and decide the proceeding before the hearing officer in accordance with the precedent of the court or the preemptive action of the federal authority. ()

416. REVIEW OF RULES (RULE 416).

When an order is issued by the agency head in a contested case, the order may consider and decide whether a rule of that agency is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure. The agency head may delegate to a hearing officer the authority to recommend a decision on issues of whether a rule is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure or may retain all such authority itself. ()

417. EX PARTE COMMUNICATIONS (RULE 417).

Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. A party to a contested agency proceeding shall not communicate directly or indirectly with the presiding officer or the agency head regarding any substantive issue in the contested case. When a presiding officer or the agency head becomes aware of an ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer or agency head shall place a copy or written summary of the communication in the file for the case and order the party providing the communication to serve a copy of the communication or written summary upon all parties of record. Repeated violations of this rule shall be

cause for the presiding officer to dismiss an action or to dismiss a party from an action. Written communications from a party showing service upon all other parties are not ex parte communications. ()

418. -- 499. (RESERVED)

500. ALTERNATIVE RESOLUTION OF CONTESTED CASES (RULE 500).

The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, fact finding, mini-trials, and arbitration, or any combination of them. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. An agency may use ADR for the resolution of issues in controversy in a contested case if the agency finds that such a proceeding is appropriate. An agency may, for example, find that using ADR is not appropriate if it determines that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest. ()

501. NEUTRALS (RULE 501).

When ADR is used for all or a portion of a contested case, the agency may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the agency or of another state agency or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. ()

502. CONFIDENTIALITY (RULE 502).

Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or is required by court order, statute or agency rule to be made public. ()

503. -- 509. (RESERVED)

510. PURPOSES OF PREHEARING CONFERENCES (RULE 510).

The presiding officer, or an authorized employee of the agency, may by order or notice issued to all parties convene a prehearing conference in a contested case for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. ()

511. NOTICE OF PREHEARING CONFERENCE (RULE 511).

Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the prehearing conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference must contain the same information as notices of hearing with regard to an agency's obligations under the American with Disabilities Act. ()

512. RECORD OF CONFERENCE (RULE 512).

Prehearing conferences may be held formally (on the record) or informally (off the record) before or in the absence of a presiding officer, according to order or notice. Agreements by the parties to the conference may be put on the record during formal conferences or may be reduced to writing and filed with the agency after formal or informal conferences. ()

513. ORDERS RESULTING FROM PREHEARING CONFERENCE (RULE 513).

The presiding officer, or an authorized employee of the agency, may issue a prehearing order or notice based upon the results of the agreements reached at or rulings made at a prehearing conference. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause. ()

514. FACTS DISCLOSED NOT PART OF THE RECORD (RULE 514).

Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in prehearing

conferences in a contested case are not part of the record. ()

515. -- 519. (RESERVED)

520. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 520).

01. Kinds of Discovery. The kinds of discovery recognized and authorized by these rules in contested cases are: ()

- a. Depositions; ()
- b. Production requests or written interrogatories; ()
- c. Requests for admission; ()
- d. Subpoenas; and ()
- e. Statutory inspection, examination (including physical or mental examination), investigation, etc. ()

02. Rules of Civil Procedure. Unless otherwise provided by statute, rule, order or notice, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)). ()

521. WHEN DISCOVERY AUTHORIZED (RULE 521).

No party before the agency is entitled to engage in discovery unless the party moves for an order authorizing discovery and the agency issues an order authorizing the requested discovery, or upon agreement of all parties to the discovery that discovery may be conducted. The presiding officer shall provide a schedule for discovery in the order authorizing discovery, but the order authorizing and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery in a manner consistent with the provisions of Rule 37(a) of the Idaho Rules of Civil Procedure. The agency or agency staff may conduct statutory inspection, examination, investigation, etc., at any time without filing a motion to authorize discovery. ()

522. RIGHTS TO DISCOVERY RECIPROCAL (RULE 522).

All parties to a proceeding have a right of discovery of all other parties to a proceeding according to Rule 521 and to the authorizing statutes and rules. The presiding officer may by order authorize or compel necessary discovery authorized by statute or rule. ()

523. DEPOSITIONS (RULE 523).

Depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. ()

524. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 524).

Production requests or written interrogatories and requests for admission may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. ()

525. SUBPOENAS (RULE 525).

The agency may issue subpoenas upon a party's motion or upon its own initiative. The agency upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms. ()

526. STATUTORY INSPECTION, EXAMINATION, INVESTIGATION, ETC. -- CONTRASTED WITH OTHER DISCOVERY (RULE 526).

This rule recognizes, but does not enlarge or restrict, an agency's statutory right of inspection, examination (including

mental or physical examination), investigation, etc. This statutory right of an agency is independent of and cumulative to any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, examination, investigation, etc., may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. The rights of deposition, production request or written interrogatory, request for admission, and subpoena, can be used by parties only in connection with formal proceedings before the agency. ()

527. ANSWERS TO PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND TO REQUESTS FOR ADMISSION (RULE 527).

Answers to production requests or written interrogatories and to requests for admission shall be filed or served as provided by the order compelling discovery. Answers must conform to the requirements of the Idaho Rules of Civil Procedure. The order compelling discovery may provide that voluminous answers to requests need not be served so long as they are made available for inspection and copying under reasonable terms. ()

528. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS (RULE 528).

Notices of deposition, cover letters stating that production requests, written interrogatories or requests for admission have been served, cover letters stating answers to production requests, written interrogatories, or requests for admission have been served or are available for inspection under Rule 527, and objections to discovery must be filed and served as provided in the order authorizing discovery. ()

529. EXHIBIT NUMBERS (RULE 529).

The agency assigns exhibit numbers to each party. ()

530. PREPARED TESTIMONY AND EXHIBITS (RULE 530).

Order, notice or rule may require a party or parties to file before hearing and to serve on all other parties prepared expert testimony and exhibits to be presented at hearing. Assigned exhibits numbers should be used in all prepared testimony. ()

531. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (RULE 531).

The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery, including but not limited to the sanctions listed in paragraphs (A), (B), and (C) of Rule 37(b)(2) of the Idaho Rules of Civil Procedure. ()

532. PROTECTIVE ORDERS (RULE 532).

As authorized by statute or rule, the agency may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. ()

533. -- 549. (RESERVED)

550. NOTICE OF HEARING (RULE 550).

Notice of the place, date and hour of hearing will be served on all parties at least fourteen (14) days before the time set for hearing, unless the agency finds by order that it is necessary or appropriate that the hearing be held earlier. Notices must comply with the requirements of Rule 551. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number or docket number, the names of the presiding officers who will hear the case, the name, address and telephone number of the person to whom inquires about scheduling, hearing facilities, etc., should be directed, and the names of persons with whom the documents, pleadings, etc., in the case should be filed if the presiding officer is not the person who should receive those documents. If no document previously issued by the agency has listed the legal authority of the agency to conduct the hearing, the notice of hearing must do so. The notice of hearing shall state that the hearing will be conducted under these rules of procedure and inform the parties where they may read or obtain a copy. ()

551. FACILITIES AT OR FOR HEARING AND A.D.A. REQUIREMENTS (RULE 551).

All hearings must be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act, and all notices of hearing must inform the parties that the hearing will be conducted in facilities meeting the accessibility requirements of the Americans with Disabilities Act. All notices of hearing must inform the parties and other persons notified that if they require assistance of the kind that the agency is required to provide under the Americans with Disabilities Act in order to participate in or understand the hearing, the agency will supply that

assistance upon request a reasonable number of days before the hearing. The notice of hearing shall explicitly state the number of days before the hearing that the request must be made. ()

552. HOW HEARINGS HELD (RULE 552).

Hearings may be held in person or by telephone or television or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. ()

553. CONDUCT AT HEARINGS (RULE 553).

All persons attending a hearing must conduct themselves in a respectful manner. Smoking is not permitted at hearings. The presiding officer may exclude persons from the hearing who refuse to conduct themselves in a respectful manner. Disruptive conduct that is serious in nature shall be cause for dismissal of a disrupting party from the proceeding. ()

554. CONFERENCE AT HEARING (RULE 554).

In any proceeding the presiding officer may convene the parties before hearing or recess the hearing to discuss formulation or simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer shall state the results of the conference on the record. ()

555. PRELIMINARY PROCEDURE AT HEARING (RULE 555).

Before taking evidence the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements as necessary or appropriate to explain a party's presentation. ()

556. CONSOLIDATION OF PROCEEDINGS (RULE 556).

The agency may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings the presiding officer determines the order of the proceeding. ()

557. STIPULATIONS (RULE 557).

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented at hearing or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The agency may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The agency is not bound to adopt a stipulation of the parties, but may do so. If the agency rejects a stipulation, it will do so before issuing a final order, and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. ()

558. ORDER OF PROCEDURE (RULE 558).

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. ()

559. TESTIMONY UNDER OATH (RULE 559).

All testimony presented in formal hearings will be given under oath. Before testifying each witness must swear or affirm that the testimony the witness will give before the agency is the truth, the whole truth, and nothing but the truth. ()

560. PARTIES AND PERSONS WITH SIMILAR INTERESTS (RULE 560).

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication, the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. ()

561. CONTINUANCE OF HEARING (RULE 561).

The presiding officer may continue proceedings for further hearing. ()

562. RULINGS AT HEARINGS (RULE 562).

The presiding officer rules on motions and objections presented at hearing. When the presiding officer is a hearing officer, the presiding officer's rulings may be reviewed by the agency head in determining the matter on its merits and

the presiding officer may refer or defer rulings to the agency head for determination. ()

563. ORAL ARGUMENT (RULE 563).

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. ()

564. BRIEFS -- MEMORANDA -- PROPOSED ORDERS OF THE PARTIES -- STATEMENTS OF POSITION -- PROPOSED ORDER OF THE PRESIDING OFFICER (RULE 564).

In any contested case, any party may ask to file briefs, memoranda, proposed orders of the parties or statements of position, and the presiding officer may request briefs, proposed orders of the parties, or statements of position. The presiding officer may issue a proposed order and ask the parties for comment upon the proposed order. ()

565. PROCEDURE ON PREHEARING MOTIONS (RULE 565).

The presiding officer may consider and decide prehearing motions with or without oral argument or hearing. Unless otherwise provided by the presiding officer upon a showing of good cause by a party, when a motion has been filed, all parties joining in, answering to or responding to the motion(s) will have fourteen (14) days from the time of filing of the motion in which to respond. ()

566. JOINT HEARINGS (RULE 566).

The agency may hold joint hearings with federal agencies, with agencies of other states, and with other agencies of the state of Idaho. When joint hearings are held, the agencies may agree among themselves which agency's rules of practice and procedure will govern. ()

567. -- 599. (RESERVED)

600. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE (RULE 600).

Evidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence. ()

601. DOCUMENTARY EVIDENCE (RULE 601).

Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original if available. ()

602. OFFICIAL NOTICE -- AGENCY STAFF MEMORANDA (RULE 602).

Official notice may be taken of any facts that could be judicially noticed in the courts of Idaho and of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified of the specific facts or material noticed and the source of the material noticed, including any agency staff memoranda and data. Notice that official notice will be taken should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material officially noticed. Parties must be given an opportunity to contest and rebut the facts or material officially noticed. When the presiding officer proposes to notice agency staff memoranda or agency staff reports, responsible staff employees or agents shall be made available for cross-examination if any party timely requests their availability. ()

603. DEPOSITIONS (RULE 603).

Depositions may be offered into evidence. ()

604. OBJECTIONS -- OFFERS OF PROOF (RULE 604).

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection, or, if the presiding officer is a hearing

officer, the presiding officer may receive the evidence subject to later ruling by the agency head or refer the matter to the agency head. ()

605. PREPARED TESTIMONY (RULE 605).

The presiding officer may order a witness's prepared testimony previously distributed to all parties to be included in the record of hearing as if read. Admissibility of prepared testimony is subject to Rule 600. ()

606. EXHIBITS (RULE 606).

Exhibit numbers may be assigned to the parties before hearing. Exhibits prepared for hearing should ordinarily be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except that maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. Neither motion pictures, slides, opaque projections, videotapes, audiotapes nor other materials not capable of duplication by still photograph or reproduction on paper shall be presented as exhibits without approval of the presiding officer prior to the hearing. ()

607. -- 609. (RESERVED)

610. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS (RULE 610).

Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record. ()

611. SUGGESTION FOR OR INQUIRY ABOUT SETTLEMENTS (RULE 611).

Through notice or order or on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. ()

612. CONSIDERATION OF SETTLEMENTS (RULE 612).

Settlements must be reviewed under this rule. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the presiding officer could summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one (1) or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the agency's charge under the law. ()

613. BURDENS OF PROOF (RULE 613).

Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. ()

614. SETTLEMENT NOT BINDING (RULE 614).

The presiding officer is not bound by settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law. ()

615. -- 649. (RESERVED)

650. RECORD FOR DECISION (RULE 650).

01. Official Record. The agency shall maintain an official record for each contested case and (unless statute provides otherwise) base its decision in a contested case on the official record for the case. ()

- 02. Contents of Record.** The record for a contested case shall include: ()
- a.** All notices of proceedings; ()
 - b.** All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; ()
 - c.** All intermediate or interlocutory rulings of hearing officers or the agency head; ()
 - d.** All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); ()
 - e.** All offers of proof, however made; ()
 - f.** All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; ()
 - g.** All evidentiary rulings on testimony, exhibits, or offers of proof; ()
 - h.** All staff memoranda or data submitted in connection with the consideration of the proceeding; ()
 - i.** A statement of matters officially noticed; and ()
 - j.** All recommended orders, preliminary orders, final orders, and orders on reconsideration. ()

651. RECORDING OF HEARINGS (RULE 651).

All hearings shall be recorded on audiotape or videotape at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. If the transcript prepared at the expense of a party is deemed by the presiding officer to be the official transcript of the hearing, the party shall furnish the agency a transcript without charge. ()

652. -- 699. (RESERVED)

700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR OR RESPOND (RULE 700).

If an applicant or claimant or appellant, petitioner, protestant, complainant, or moving party fails to appear at the time and place set for hearing, or prehearing conference, on an application or claim or appeal, petition, complaint, or motion, or fails to respond to a written information inquiry, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim or appeal, petition, complaint, or motion. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the applicant or claimant or appellant, petitioner, complainant or moving party to appear at the time and place set for hearing or prehearing conference, or to respond to the information inquiry. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted. ()

701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER (RULE 701).

Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered. ()

702. ISSUANCE OF DEFAULT ORDER (RULE 702).

The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven (7) days for the party to file a petition contesting the default order or receipt of a petition. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default (if the defaulting party is not a movant) or upon the results of the denial of the motion (if the defaulting party is a movant). All issues in the contested case shall be determined, including those affecting the defaulting party. Costs may be assessed against a defaulting party. ()

703. -- 709. (RESERVED)

710. INTERLOCUTORY ORDERS (RULE 710).

Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the agency may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by reconsideration or appeal, but is not final on other issues. Unless an order contains or is accompanied by a document containing one (1) of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. The following orders are always interlocutory: orders initiating complaints or investigations; orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the officer issuing the order pursuant to Rules 711, 760, and 770. ()

711. REVIEW OF INTERLOCUTORY ORDERS (RULE 711).

Any party or person affected by an interlocutory order may petition the officer issuing the order to review the interlocutory order. The officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the officer's own motion, but will not on the officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. ()

712. CONTENTS OF ORDERS (RULE 712).

Pursuant to Section 67-5248, Idaho Code, an order that determines the legal rights or interests of one (1) or more parties must be in writing and shall include the following: ()

01. Findings of Fact and Conclusions of Law. An order shall contain a reasoned statement in support of the decision. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings. Findings of fact must be based exclusively on the evidence in the record of the contested case and on matters officially noticed in that proceeding. ()

02. Statement of Available Procedure. An order shall contain a statement of the available procedures and applicable time limits for seeking reconsideration or other administrative relief. ()

713. -- 719. (RESERVED)

720. RECOMMENDED ORDERS (RULE 720).

01. Recommended Orders -- Definition. Recommended orders are orders issued by a person other than the agency head that will become a final order of the agency only after review of the agency head (or the agency head's designee) pursuant to Section 67-5244, Idaho Code. ()

02. Contents of Recommended Orders. Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ()

a. This is a recommended order of the hearing officer. It will not become final without action of the agency head. Any party may file a petition for reconsideration of this recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. ()

b. Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position with the agency head or designee on any issue in the proceeding. If no party files exceptions to the recommended order with the agency head or designee, the agency head or designee will issue a final order within fifty-six (56) days after: ()

- i. The last day a timely petition for reconsideration could have been filed with the hearing officer; ()
 - ii. The service date of a denial of a petition for reconsideration by the hearing officer; or ()
 - iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer. ()
- c. Written briefs in support of or taking exceptions to the recommended order shall be filed with the agency head (or designee of the agency head). Opposing parties shall have fourteen (14) days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. ()

721. -- 729. (RESERVED)

730. PRELIMINARY ORDERS (RULE 730).

01. Preliminary Orders -- Definition. Preliminary orders are orders issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head (or the agency head's designee) pursuant to Section 67-5245, Idaho Code. ()

02. Contents of Preliminary Order. Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ()

a. This is a preliminary order of the hearing officer. It can and will become final without further action of the agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officer's superiors in the agency. Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. ()

b. Within fourteen (14) days after: ()

i. The service date of this preliminary order; ()

ii. The service date of the denial of a petition for reconsideration from this preliminary order; or ()

iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing appeal or take exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head). Otherwise, this preliminary order will become a final order of the agency. ()

c. If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal within the agency. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head (or designee). The agency head (or designee) may review the preliminary order on its own motion. ()

d. If the agency head (or designee) grants a petition to review the preliminary order, the agency head (or designee) shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The agency head (or designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. ()

e. Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Department or the Board is otherwise provided by statute, any person aggrieved by any decision, determination, order or action of the director of the Department or any applicant for any permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the director and requesting a hearing. ()

f. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: ()

- i. A hearing was held; ()
- ii. The final agency action was taken; ()
- iii. The party seeking review of the order resides; or ()
- iv. The real property or personal property that was the subject of the agency action is located. ()

g. This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. ()

731. -- 739. (RESERVED)

740. FINAL ORDERS (RULE 740).

01. Final Order -- Definition. Final orders are preliminary orders that have become final under Rule 730 pursuant to Section 67-5245, Idaho Code, or orders issued by the agency head pursuant to Section 67-5246, Idaho Code, or emergency orders, including cease and desist or show cause orders, issued by the agency head pursuant to Section 67-5247, Idaho Code. ()

02. Content of Final Order. Every final order issued by the agency head must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ()

a. This is a final order of the agency. Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5246(4), Idaho Code. ()

b. Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Department or the Board is otherwise provided by statute, any person aggrieved by any decision, determination, order or action of the director of the Department or any applicant for any permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the director and requesting a hearing. ()

c. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: ()

- i. A hearing was held; ()

- ii. The final agency action was taken; ()
- iii. The party seeking review of the order resides; or ()
- iv. The real property or personal property that was the subject of the agency action is located. ()

d. An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code, and Rule 84 of the Idaho Rules of Civil Procedure. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. ()

741. -- 749. (RESERVED)

750. ORDER NOT DESIGNATED (RULE 750).

If an order does not designate itself as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate. ()

751. -- 759. (RESERVED)

760. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION (RULE 760).

A hearing officer issuing a recommended or preliminary order may modify the recommended or preliminary order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended or preliminary order by withdrawing the recommended or preliminary order and issuing a substitute recommended or preliminary order. The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it. ()

761. -- 769. (RESERVED)

770. CLARIFICATION OF ORDERS (RULE 770).

Any party or person affected by an order may petition to clarify any order, whether interlocutory, recommended, preliminary or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or appeal the order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration. ()

771. -- 779. (RESERVED)

780. STAY OF ORDERS (RULE 780).

Any party or person affected by an order may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion. ()

781. -- 789. (RESERVED)

790. PERSONS WHO MAY APPEAL (RULE 790).

Pursuant to Section 67-5270, Idaho Code, any party aggrieved by a final order of an agency in a contested case may appeal to district court. Pursuant to Section 67-5271, Idaho Code, a person is not entitled to judicial review of an agency action in district court until that person has exhausted all administrative remedies available with the agency, but a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable in district court if

review of the final agency action would not provide an adequate remedy. ()

791. NOTICE OF APPEAL (RULE 791).

The notice of appeal must be filed with the district court and served on the agency and all parties. ()

01. Filing Appeal. Pursuant to Section 67-5272, Idaho Code, appeals may be filed in the district court of the county in which: ()

a. The hearing was held; ()

b. The final agency action was taken; ()

c. The party seeking review of the agency action resides; or ()

d. The real property or personal property that was the subject of the agency is located. ()

02. Filing Deadline. Pursuant to Section 67-5273, Idaho Code, and Rule 84 of the Idaho Rules of Civil Procedure a petition for judicial review of a final order in a contested case must be filed within twenty-eight (28) days: ()

a. Of the service date of the final order; ()

b. Of the denial of the petition for reconsideration; or ()

c. The failure within twenty-one (21) days to grant or deny the petition for reconsideration. ()

792. -- 999. (RESERVED)

37.02.03 – WATER SUPPLY BANK RULES

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Section 42-1762, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. Title. The title of this chapter is IDAPA 37.02.03, “Water Supply Bank Rules.” ()

02. Scope. These rules were first adopted by the Water Resource Board in October 1980 as mandated by Section 42-1762, Idaho Code enacted in 1979. The rules govern the Board’s operation and management of a Water Supply Bank provided for in Sections 42-1761 to 42-1766, Idaho Code. The purposes of the Water Supply Bank, as defined by statute, are to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water uses; and provide a source of funding for improving water user facilities and efficiencies. These rules are to be used by the Water Resource Board in considering the purchase, sale, lease or rental of natural flow or stored water, the use of any funds generated therefrom, and the appointment of local committees to facilitate the lease and rental of stored water. The purchase, sale, lease or rental of water shall be in compliance with state and federal law. The adoption of these rules is not intended to prevent any person from directly selling or leasing water by transactions outside the purview of the Water Supply Bank Rules where such transactions are otherwise allowed by law. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

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

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

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

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

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

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

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

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

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

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

11. Water Right. The right to divert and beneficially use the public waters of the state of Idaho including any storage entitlement. ()

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

13. Year. A time period of twelve (12) consecutive months. ()

14. Person. Any company, corporation, association, firm, agency, individual, partnership, Indian tribe, government or other entity. ()

011. -- 024. (RESERVED)

025. ACQUISITION OF WATER RIGHTS FOR THE BOARD'S WATER SUPPLY BANK (RULE 25).

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

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

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

b. Proof of current ownership of the water right by the applicant; ()

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

d. Evidence to demonstrate the relative availability of water in the source to fill the water right; and ()

e. The written consent of such company, corporation or irrigation district to the proposed sale or lease must accompany the application if the right to the use of the water, or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district. ()

f. A lease application filing fee of two hundred fifty dollars (\$250) per water right up to a maximum total of five hundred dollars (\$500.00) for overlapping water rights which have a common place of use or common diversion rate or diversion volume. The lease filing fee described herein shall be deposited in the Water Administration Account and shall not apply to applications to lease stored water into rental pools described in Rule 40. ()

03. Review. Upon receipt of the completed application the Director will review it for completeness and make such further review as he deems necessary to adequately brief the Board on the proposed transaction. ()

04. Inadequate Application. If an application is not complete, the Director will correspond with the applicant to obtain the needed information. If the requested information is not returned in thirty (30) days, the application will no longer be considered a valid request to place a water right into the Board's water supply bank. ()

05. Consideration. The Board may consider an application at any regular or special meeting. ()

06. Criteria. The Board will consider the following in determining whether to accept an offered water right into the Board's water supply bank: ()

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

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

- c. Whether the information available to the Board indicates that the water right has been abandoned or forfeited; ()
- d. Whether the offering price or requested rental rate is reasonable; ()
- e. Whether acquisition of the water right will be contrary to the State Water Plan; ()
- f. Whether the application is in the local public interest as defined in Section 42-1763, Idaho Code; ()
- g. The probability of selling or renting the water right from the Board's water supply bank. ()
- h. Whether there are sufficient funds on hand to acquire the water right for the Board's water supply bank, provided that, if there are insufficient funds, or if in the opinion of the Board, existing funds should not immediately be expended for such acquisition, the Board may find that the water right should be acquired on a contingency basis, with payment to be made to the seller or lessor only after water is subsequently sold or rented from the Board's water supply bank, and ()
- i. Such other factors as determined to be appropriate by the Board. ()

07. Resolution of Board. The Board may by resolution accept an application to sell or lease a water right to the Board's water supply bank, or to otherwise make water available through the water supply bank for the purposes of Section 42-1763A, Idaho Code. An application to lease together with the resolution accepting it becomes a lease and the water right is placed into the Board's water supply bank upon adoption of the resolution. A resolution accepting an application to sell a right to the Board's water supply bank will provide authority for the chairman of the Board to enter an agreement to purchase the water right. The resolution may include conditions of approval, including but not limited to, the following: ()

- a. A condition providing the length of time the water right will be retained in the Board's water supply bank. ()
- b. A condition describing the terms for payment to the owner of the water right and the sale or rental price from the Board's water supply bank. ()
- c. Other conditions as the Board determines appropriate, including a condition recognizing that water is being made available through the water supply bank pursuant to the provisions of Section 42-1763A, Idaho Code, for purposes of fish migration. ()

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

- a. Upon acceptance of a water right into the Board's water supply bank, the owner of the right may withdraw the right within thirty (30) days of acceptance into the bank if the owner does not agree with the conditions of acceptance. ()
- b. Upon acceptance of a water right into the Board's water supply bank, the owner of the water right is not authorized to continue the diversion and use of the right while it is in the Board's water supply bank, unless the water right is for hydropower and is placed in the Board's water supply bank to be released for salmon migration and power production purposes. ()
- c. A water right which has been accepted shall remain in the Board's water supply bank for the period designated by the Board unless removed by resolution of the Board. ()
- d. The owner of the water right shall remain responsible to take actions required to claim the water right in an adjudication or other legal action concerning the water right and to pay taxes, fees, or assessments related to the water right. ()

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

026. -- 029. (RESERVED)

030. SALE OR RENTAL OF WATER RIGHTS FROM THE BOARD'S WATER SUPPLY BANK (RULE 30).

01. General. The Board may in its discretion initiate the process to sell or rent water rights from the Board's water supply bank to achieve the purposes stated in Rule 1. The Board may from time to time, as water rights are available, authorize the Director to announce the availability of the rights from the Board's water supply bank, establishing a time and date for receiving applications in the office of the Director to purchase or rent the water rights. An application shall be on a form or in a format provided by the Director. The sale or rental price shall be the price, if any, as determined by the Board. The Director will evaluate applications with respect to the purposes of Rule 1, as to whether there will be injury to other water rights, whether the proposal would constitute an enlargement of the water right, whether the water will be put to a beneficial use, whether the water supply available from applicable rights in the Board's water supply bank is sufficient for the use intended, and whether the proposal is in the local public interest. For applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code, the Director will only make an evaluation as to whether the proposed use of water will cause injury to other water rights. The Director may defer the evaluation of potential injury to other water rights conditioned upon the right of any affected water right holder to petition the Director pursuant to Section 42-1766, Idaho Code, to revoke or modify the rental approval upon a showing of injury. ()

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

03. Approval. Sale or rental shall be approved only for use of water within the state of Idaho. The Director shall consider in determining whether to approve a rental of water for use outside of the state of Idaho those factors enumerated in Section 42-401(3), Idaho Code, except that this evaluation shall not be required for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code. ()

04. Consideration. All applications received on or prior to the announced date for receiving applications shall be considered as having been received at the same time. Applications received after the close of the application date may be considered only if sufficient available water remains in the Board's water supply bank after all acceptable, timely applications have been filed. ()

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

06. Board Review. The Board will review applications for purchase or which propose the rental of water rights for a duration of more than five (5) years, and may approve, approve with conditions or may reject the applications as the Board determines to best meet the purposes of Rule 1 and promote the interest of the people of the state of Idaho. ()

07. Order of Consideration. When renting water from the bank, the Director and the Board shall consider rental of water rights in the order the rights were leased to the bank, with first consideration for the rights which have continuously been in the bank the longest period of time provided the rights are suitable for the purpose of the renter. ()

031. -- 034. (RESERVED)

035. HANDLING OF MONEY ASSOCIATED WITH THE BOARD'S WATER SUPPLY BANK (RULE 35).

Payments received by the Department from the sale or rental of water rights from the Board's water supply bank shall be handled as follows: ()

01. Credited Amount. Ten percent (10%) of the gross amount received from the sale or rental of a water right from the Board's water supply bank and the entire lease application fee received pursuant to Rule 025 shall be credited to the Water Administration Account created by Section 42-238a, Idaho Code, or to the federal grant fund if the payment is received from a federal agency, for administrative costs of operating the Water Supply Bank. The ten percent (10%) charge described herein shall not apply to stored water rented from the rental pools described in Rule 040. ()

02. Excess Funds. Any funds in excess of the amount needed to compensate the owner of the water right in accordance with the resolution accepting the water right into the Board's water supply bank and the administrative charge of Rule Subsection 035.01 shall be credited to the Water Management Account created by Section 42-1760, Idaho Code, for use by the Board for the purposes of Rule 1. ()

036. -- 039. (RESERVED)

040. APPOINTMENT OF LOCAL RENTAL POOL COMMITTEES (RULE 40).

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

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

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

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

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

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

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

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

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

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

j. Consistency with the conservation of water resources within the state of Idaho, except for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code; ()

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

02. Local Committee Procedures. The local committee procedures shall provide that a surcharge of ten percent (10%) of the rental fee charged per acre foot of stored water rented from the rental pool shall be assessed and credited to the revolving development account and the water management account established in Sections 42-1752 and 42-1760, Idaho Code, in such proportion as the Board in its discretion shall determine. Such moneys, together with moneys accruing to or earned thereon, shall be set aside, and made available until expended, to be used by the Board for the purposes of Rule 1 unless the surcharge is prohibited by statute, compact or inter-governmental agreement. ()

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

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

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

041. -- 999. (RESERVED)

37.03.01 – ADJUDICATION RULES

000. LEGAL AUTHORITY.

These rules are adopted under the legal authorities of Section 42-1414, and 42-1805(8), Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 37.03.01, “Adjudication Rules.” ()

02. Scope. These rules implement statutes governing the filing of notices of claims to water rights acquired under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications, as provided in Sections 41-1409, 42-1414 and 42-1415, Idaho Code. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Amendment Fee. The additional fee payable at the time of filing an amendment to a claim, as provided in Section 42-1414(2), Idaho Code. ()

02. Aquaculture. The use of water for propagation of fish, shell fish, and any other animal or plant product naturally occurring in an underwater environment. ()

03. Aquaculture Fee. The variable fee payable for aquaculture use, as provided in Section 42-1414(1)(b)(iii), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar. ()

04. Claim. A notice of claim to a water right acquired under state law, as provided in Section 42-1409(4), Idaho Code. ()

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

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

07. Domestic Use. Domestic use as defined in Section 42-1401A(4), Idaho Code. ()

08. Flat Fee. The per claim fee for filing claims, as provided in Section 42-1414(1)(a), Idaho Code. ()

09. Late Fee. The additional fee payable for the filing of late claims, as provided in Section 42-1414(3), Idaho Code. ()

10. Per Acre Fee. The variable fee for irrigation use, as provided in Section 42-1414(1)(b)(i), Idaho Code, which shall be calculated for each acre and fraction thereof rounded to the next whole acre. ()

11. Per Cfs Fee. The variable fee payable for other uses, as provided in Section 42-1414(1)(b)(iii), (iv) and (v), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar. ()

12. Per Kilowatt Fee. The variable fee payable for power generation use, as provided in Section 42-1414(1)(b)(ii), Idaho Code, which shall be calculated for each kilowatt and fraction thereof. ()

13. State Law Claim Form. The department’s form entitled “Notice of Claim to a Water Right Acquired Under State Law as provided in Section 42-1409(4), Idaho Code. ()

14. Stock Watering Use. Stock watering use as defined in Section 42-1401A(11), Idaho Code. ()

15. Total Fee. The fee payable for filing a claim, which consists of the flat fee plus any applicable variable fee and late fee. ()

16. Variable Fee. The fee payable for filing claims in addition to the flat fee, as provided in Section 42-1414(1)(b), Idaho Code. ()

17. Water Delivery System. All structures and equipment used for diversion, storage, transportation,

and use of water from the water source to and including each place of use. ()

18. Water Delivery Organization. An irrigation district, a water utility, a municipality, or any similar claimant of a water right who diverts water pursuant to the water right claimed and delivers the water to others who make beneficial use of the water diverted by the water delivery organization pursuant to the water right claimed by the water delivery organization. ()

011. ABBREVIATIONS.

01. AF. An acre foot (feet). ()

02. CFS. Cubic foot (feet) per second. ()

03. NA. Not applicable. ()

04. PIN. Parcel identification number. ()

012. -- 024. (RESERVED)

025. GENERAL.

01. Requirement to Pay. All persons filing claims to water rights acquired under state law or amendments to claims to water rights acquired under state law shall be required to pay filing fees as set forth by statute and these rules. ()

02. Method of Payment. Fees shall be paid in legal tender of the United States; or by money order, certified check, cashier's check, personal check, or by electronic payment on-line payable to the department in legal tender of the United States. Two-party checks will not be accepted. ()

03. Personal Check. If a personal check in payment of a flat fee, a variable fee, or a late fee, is returned unpaid to the department or the debit or credit card payment is rejected by the financial institution, the claims covered by the returned check or the rejected debit or credit card will be rejected and returned to the claimant. If a personal check in payment of an amendment fee is returned unpaid to the department or the debit or credit card payment is rejected by the financial institution, the amended claim will be rejected and returned to the claimant, but the original claim will still be in effect. ()

04. Time of Payment. Flat fees and variable fees shall be payable to the department at the time of filing a claim. Amendment fees shall be payable to the department at the time of filing the amended claim. Late fees shall be payable at the time of filing the late claim. ()

05. Government Voucher. Fees payable by government agencies (other than agencies of foreign governments) may be paid when due by government voucher. If full payment of the voucher is not received within forty-five (45) days of the date the voucher is received, the unpaid voucher will be treated as a returned check as provided in Subsection 025.03. ()

06. Rejection of Claim. Claims submitted without the correct filing fee shall be rejected and returned to the claimant. ()

07. Fire-Fighting. A claim is not required to be filed for water used solely to extinguish an existing fire on private or public lands, structures, or equipment, or to prevent an existing fire from spreading to private or public lands, structures, or equipment endangered by an existing fire pursuant to Section 42-201(3), Idaho Code. A claim is required for the use of water for domestic purposes in regularly maintained firefighting stations and for the storage of water for fighting future fires. ()

026. -- 029. (RESERVED)

030. FLAT FEES.

01. Small Domestic and Stock Water. A flat fee of twenty-five dollars (\$25) shall be payable for each claim for domestic use and/or stock watering use meeting the definition of domestic use and/or stock watering use in Rule 010. ()

02. Other Claims. A flat fee of fifty dollars (\$50) shall be payable for each claim that does not meet the criteria of Subsection 030.01. ()

031. -- 034. (RESERVED)

035. VARIABLE FEES.

01. General. For each claim not meeting the criteria of Subsection 030.01, there may be a variable fee in addition to the flat fee. ()

02. Per Acre Fee. ()

a. A fee of one dollar (\$1.00) per acre shall be required for claims for irrigation use. ()

b. The per acre fee shall only be charged once against a particular acre, regardless of the number of claims filed for the irrigation of that acre or the number of claimants filing claims for the irrigation of that acre. ()

c. The per acre fee shall be payable by the first person to file a claim for the irrigation of a particular acre. ()

d. The per acre fee for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres shall be determined based upon the acreage claimed to be irrigated by the project or irrigation district within the boundaries of the project or irrigation district. ()

03. Per Kilowatt Fee. ()

a. A per kilowatt of capacity (manufacturer's nameplate rating) fee of three dollars and fifty cents (\$3.50) per kilowatt, or two hundred fifty thousand dollars (\$250,000.00), whichever is less, shall be required for claims for power use. ()

b. The per kilowatt fee shall be determined based upon the total generating capacity of all generators in which the water right claimed is used. ()

c. The total per kilowatt fee for all claims filed for a single hydropower facility shall not exceed the per kilowatt fee for the total generating capacity of all generators in the hydropower facility. ()

04. Per CFS Fee. ()

a. A fee of ten dollars (\$10) per cfs for aquaculture shall be required. A fee of one hundred dollars (\$100) per cfs for all other uses shall be required except for irrigation, power, and domestic and stock watering uses meeting the definition of domestic and stock watering use in Section 010. ()

b. For a claim to water for more than one (1) public purpose, the per cfs fee shall only be charged once per cfs claimed. Public purposes shall include public in-stream flows, lake level maintenance, wildlife, aesthetic beauty, and recreation. ()

c. If there is a seasonal variation in the number of cfs claimed, the per cfs fee shall be based upon the maximum number of cfs claimed for any period during a single calendar year. ()

d. The per cfs fee shall apply to claims for water quality improvement, recreation, aesthetic purposes, and any other purpose not expressly listed at Section 42-1414(1), Idaho Code, except as otherwise provided by these rules. ()

05. Claims Including Storage. ()

a. The variable fee for a claim that includes storage shall be based upon the ultimate use of the water stored. If the claim states purposes other than diversion to storage, storage, and diversion from storage, the total variable fee will be determined as provided in Subsection 035.06. ()

b. No variable fee shall be payable for water claimed for ground water recharge purposes. ()

c. For purposes of determining the per cfs fee for amounts of water claimed in af, one (1) cfs equals one and ninety-eight one-hundredths (1.98) af per day of diversion to storage. ()

d. No variable fee shall be payable for minimum by-pass flows. ()

06. Multiple Purpose Claims. If a claimant claims more than one (1) purpose of use on a single claim, the variable fee will be the total of the variable fees payable for each purpose of use. ()

07. Exceptions. No variable fee shall be payable for claims or portions of claims for fire-fighting purposes if a claim is required under Subsection 025.07 or for domestic use and/or stock watering use meeting the definitions of domestic use and stock watering use in Section 010. ()

036. -- 044. (RESERVED)

045. AMENDMENT FEES.

When a claimant files an amendment to a claim, the total fee shall be recalculated as if the amended claim were the original claim. If the total fee as recalculated is greater than the total fee paid at the time the claim was filed, the amendment fee shall be the difference between the two (2) amounts. No refund shall be made if the total fee as recalculated is less than the total fee paid at the time the claim was filed. ()

046. -- 049. (RESERVED)

050. LATE FEES.

01. Late Fee Payable. A late fee shall be payable when a claim is filed after the date set forth in the first commencement notice mailed to the claimant or the claimant's predecessor in interest pursuant to Sections 42-1414(3), Idaho Code. ()

02. Waiver. The late fee may be waived by the director for good cause shown. ()

051. -- 054. (RESERVED)

055. REFUNDS.

Fees shall not be refunded or returned except where the fee was miscalculated at the time the claim was filed or as expressly provided in these rules. ()

056. -- 059. (RESERVED)

060. SUFFICIENCY OF CLAIMS.

01. Single Claim. Except for claims based on both state law and federal law, a single claim may describe only one (1) water right. A claim that describes more than one (1) water right will be rejected and returned along with any fees paid, and must be refiled as multiple claims. ()

02. State Law Claim Form -- Minimum Requirements. Claims filed on the state law claim form

shall contain the following information: ()

a. Name, Address and Phone Number of Claimant. The name, address, and phone number of the claimant and all co-claimants claiming the water right jointly with the claimant shall be listed at item one (1) of the form. ()

b. Date of Priority. The date of priority shall be listed at item two (2) of the form, and shall include month, day and year. Only one (1) priority may be stated unless the claim is based upon both state and federal law as provided in Subsection 060.01. If more than one (1) priority date is stated, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. ()

i. Within thirty (30) days, unless an extension by the director or his designee is approved, the claimant shall provide evidence of the priority date to support the water right claimed. If the claimant fails to provide evidence of priority, the form may be rejected and returned with no refund of the fees paid. ()

c. Source of Water Supply. The source of water supply shall be stated at item three (3) of the form. ()

i. For surface water sources, the source of water shall be identified by the official name listed on the U.S. Geological Survey Quadrangle map. If no official name has been given, the name in local common usage should be listed. If there is no official or common name, the source should be described as “unnamed stream” or “spring.” The first named downstream water source to which the source is tributary shall also be listed. For ground water sources, the source shall be listed as “ground water.” ()

ii. Only one (1) source shall be listed unless the claim is for a single water delivery system that has more than one (1) source, or the claim is for a single licensed or decreed right that covers more than one (1) water delivery system. If more than one (1) source is listed and the claim is not for a single water delivery system that has more than one (1) source, and the claim is not for a single licensed or decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. ()

d. Location of Point of Diversion. For claims other than in-stream flows, the location of the point(s) of diversion shall be listed at item four (4) part (a) of the form. For claims to in-stream flows, the beginning and ending points of the claimed in-stream flow shall be listed at item four (4) part (b) of the form. ()

i. The location of the point of diversion shall be described to nearest forty (40) acre tract (quarter-quarter section) or government lot number, and shall include township number (including north or south designations), range number (including east or west designations), section number, and county. ()

ii. The claimant shall also list the Parcel Number or Parcel Identification Number (PIN) as assigned by the county assessor’s office for the parcel where the water is diverted unless no Parcel Number or PIN is recorded for the property at the point of diversion. ()

iii. If the point of diversion is located in a platted subdivision, a plat of which has been recorded in the county recorder’s office for the county in which the subdivision is located, the claimant shall also list the subdivision name, block number and lot number in item thirteen (13) of the form (remarks section). ()

iv. A claim to a water right that includes storage shall state the point at which water is impounded (applicable only to on-stream reservoirs) or the point at which water is diverted to storage (applicable only to off-stream reservoirs), the point at which water is released from storage into a natural stream channel (applicable only where a natural stream channel is used to convey stored water), and the point at which water is rediverted (applicable only where a natural channel is used to convey stored water). ()

v. Only one (1) point of diversion shall be listed unless the claim is for a single water delivery system that has more than one (1) point of diversion, or the claim is for a single licensed or decreed water right that covers more than one (1) water delivery system. If more than one (1) point of diversion is listed and the claim is not for a single water delivery system that has more than one (1) point of diversion, and the claim is not for a single licensed or

decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. ()

e. Description of Diversion Works. The diversion works shall be described at item five (5) of the form. ()

i. The description shall include all major components of the water delivery system, such as dams, reservoirs, ditches, pipelines, pumps, wells, headgates, etc. The description shall also include those dimensions of major components which affect the diversion capacity of the water delivery system. The description shall also state whether the ditches are lined and/or covered, the depth of wells, the horsepower capacity of pumps, and whether headgates are automatic or equipped with locks and/or measuring devices. ()

ii. The description shall include the dates and a description of any changes in use (including change in point of diversion, place of use, purpose of use, and period of use) or enlargements in use (including an increase in the amount of water diverted, the number of acres irrigated, or additional uses of water), and as to those dimensions required to be described above, the dimensions as originally constructed and as enlarged. ()

iii. Water delivery organizations shall describe the water delivery system up to and including the point where responsibility for water distribution is assumed by entities other than the water delivery organization. ()

f. Purpose of Use and Period of Use. Each purpose for which water is claimed, the period of use for each purpose for which water is claimed, and the amount of water claimed for each purpose for which water is claimed shall be listed at item six (6) of the form. Period of use shall include the month and day of the first and last day of use. For example, the period of use for domestic use is often January 1st through December 31st. ()

i. The purpose may be described in general terms such as irrigation, industrial, municipal, mining, power generation, fish propagation, domestic, stock watering, etc. ()

ii. A claim to a water right that includes storage shall be broken down into component purposes with the ultimate use(s) of the stored water indicated. The component purposes of a storage right are diversion to storage (not applicable to on-stream reservoirs), storage, and diversion from storage (not applicable where the ultimate use is an in-reservoir public purpose). Detention of water in a holding pond that can be filled in less than twenty-four (24) hours at the claimed diversion rate is not required to be claimed as storage. The amount of water claimed shall be limited to the active storage capacity of the reservoir unless a past practice of refilling the reservoir during the water year (October 1 to September 30) is shown or the claim is for a licensed or decreed right that includes refill. If a past practice of refilling the reservoir is shown or if the claim is for a licensed or decreed right that includes refill, the total amount of water claimed for the calendar year and the entire period during which diversion to storage or impoundment occurs shall be indicated. ()

iii. The amount of water claimed for each purpose for which water is claimed shall not exceed the amount of water beneficially used for the purpose claimed, and the period of use for each purpose claimed shall not exceed the period in which water is beneficially used for the purpose claimed. ()

iv. The amount of water diverted shall be listed in cfs, and the amount of water stored shall be listed in af per annum. ()

g. Amount of Water Claimed. The total amount of water claimed shall be listed at item seven (7) of the form. The total amount of water claimed shall not exceed the total of the amounts listed at item six (6) of the form, or the total diversion capacity of the diversion system, whichever is less. ()

h. Description of Non-Irrigation Uses. Non-irrigation uses shall be fully described at item eight (8) of the form. For domestic uses, the number of households served shall be described; for stock watering uses, the type of stock and number of each type of stock shall be described. ()

i. If the claimant's domestic use does not meet the definition of domestic use in Subsection 010.07, the form will be rejected and returned unless the appropriate variable fee is paid. ()

ii. The claimant shall also state whether the stock watering use is in-stream, or whether water is diverted from the source for stock watering. Both types of stock watering cannot be filed on the same claim form; each type requires a separate claim. ()

iii. Domestic use for organization camps and public campgrounds shall be fully described, including but not limited to the number of camp units, water faucets, flush toilets, showers, and sewer connections. Description of domestic use for organization camps and public campgrounds shall also include the average and peak number of individuals using the facility, and the periods when peak or average rates of usage occur. ()

i. Place of Use. The place of use for each purpose for which water is claimed shall be listed at item nine (9) of the form, except that the place of use for in-stream flows for public purposes need not be listed if the place of use is fully described as the stream between the beginning and ending points listed as the points of diversion. ()

i. Except claims for irrigation projects and irrigation districts meeting the criteria described in Subsection 060.i.ii. below, the number of acres irrigated shall be described by entering the appropriate numbers in the appropriate boxes for each forty (40) acre tract or government lot on the form. For other uses, a symbol or letter corresponding to the purpose for which water is claimed shall be placed in the appropriate box for each forty (40) acre tract or government lot on the form. ()

ii. Claims for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres shall be accompanied by a map showing the boundaries of the project or irrigation district, and shall state the total number of acres irrigated within the boundaries of the project or irrigations district. The project or district shall submit a map of the boundary of the place of use and, when available, a digital boundary defined in Section 42-202(B)(2), Idaho Code. ()

iii. The claimant shall also list the Parcel Number or Parcel Identification Number (PIN) as assigned by the county assessor's office for the parcel where the water is used unless no Parcel Number or PIN is recorded for the property at the place of use or the PIN is the same as the PIN shown in item four (4) for the point of diversion. ()

j. County of Place of Use. The county(ies) in which the place(s) of use is (are) located shall be listed at item ten (10) of the form. ()

k. Authority to Assert Claim. The claimant shall indicate at item eleven (11) of the form whether the claimant is the owner of the place(s) of use. If the claimant is not the owner of the place(s) of use, the claimant shall describe in the remarks section of the form the claimant's authority to assert the claim. Unless the claimant is a water delivery organization, the claimant shall also state the name, address, and phone number of the owner(s) of the place of use in item thirteen (13) (remarks section) of the form. ()

l. Other Water Rights. The claimant shall describe at item twelve (12) of the form any other water rights used at the same place and for the same purpose as the right claimed. If there are no other water rights used at the same place and for the same purpose as the right claimed, the claimant shall state "NA" or "none." ()

m. Remarks. At item thirteen (13) of the form, the claimant may submit any additional, relevant information not specifically requested. If the space provided is not sufficient, remarks shall be set forth on a separate piece of paper and attached to the form. All separate attachments must be specifically referenced in the remarks section of the form. ()

n. Maps. An aerial photograph or USGS quadrangle map shall be included with the claim, unless the claim meets the definition of domestic use and stock watering use as defined in Section 010 or unless the claim is submitted electronically through the department's online claim filing website. The point(s) of diversion, place(s) of use, and the water delivery system shall be identified on the aerial photograph or USGS quadrangle map. ()

o. Basis of Claim. The basis of the claim shall be indicated at item fourteen (14) of the form. If a water

right number has been assigned by the department to the right claimed, the water right number shall also be indicated. If a water right number has not been assigned and the water right is based upon a decree, the claimant shall list the title and date of the decree, the case number, and the court that issued the decree. If the basis of claim is a beneficial use (also known as the constitutional method of appropriation), the claimant shall provide a short description of events or history of the development of the water right. ()

p. Signature. Each claim must be signed by the claimant at item fifteen (15) of the form, unless the claim is submitted electronically through the department's online claim filing website. Each claimant, through submission of a signed claim or through submission of a claim by means of the department's online claim filing website, solemnly swears or affirms under penalty of perjury that the statements contained in the notice of claim are true and correct. ()

i. For claims submitted through the department's online claim filing website, the form shall be submitted by a person listed as the claimant at item one (1) of the form unless the person submitting the form has authority to submit the form for the claimant or claimants. Claims by corporations, municipalities or other organizations shall be submitted by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to submit the form. ()

ii. For claims that are not submitted by means of the internet, the form must be signed by each of the persons listed as claimants at item one (1) of the form unless the signatory has authority to sign for the claimant or claimants. Claims by corporations, municipalities or other organizations shall be signed by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to sign the form. The signatory's title shall be indicated with the signature. ()

q. Notice of Appearance. If notices to be sent by the director to the claimant are to be sent to the claimant's attorney, the claimant's attorney shall list the attorney's name and address and sign and date the form at item sixteen (16) of the form. ()

03. State Law Claim Form -- Insufficient Claims, Waivers. ()

a. Claims filed on the state law claim form that do not contain the information required by Subsection 060.02 shall be rejected and returned along with any fees paid, unless otherwise provided by these rules. ()

b. The director may waive the minimum information requirements of Subsection 060.02 and accept the claim for good cause shown. ()

04. Further Information. This Rule 060 sets forth minimum requirements for the filing of claims. The director may request further information in support of the assertions contained in a claim as part of the investigation of the water system and the claims pursuant to Section 42-1410, Idaho Code. ()

061. -- 064. (RESERVED)

065. REJECTED AND RETURNED CLAIMS.

01. Rejected Claims. Rejected claims shall be returned to the claimant by ordinary mail at the most recent address shown by department records. The rejected claim shall be accompanied by a notice of rejection that states generally the reason(s) for rejection. ()

02. Refiled Claims. Claims that have been rejected and returned to the claimant may be refiled with the appropriate fees and appropriate information at any time prior to the deadline for filing the original claim. Claims refiled after the deadline for filing the original claim will be subject to the late fee, unless the claim is refiled within thirty (30) days from the date of mailing the rejected claim by the department. ()

066. -- 999. (RESERVED)

37.03.02 – BENEFICIAL USE EXAMINATION RULES

000. LEGAL AUTHORITY (RULE 0).

The director of the Department of Water Resources adopts these rules under the authority provided by Section 42-1805(8), Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

Sections 42-217 and 42-221, Idaho Code, requires a license examination fee be submitted together with the written proof of beneficial use or that a field examination report prepared by a certified water right examiner be submitted together with the written proof of beneficial use. The statutes also provided that field examinations could be conducted by certified water right examiners appointed by the director. ()

01. Examination Requirements. The examination requirements listed are intended as a guide to establish acceptable standards to determine the extent of application of water to beneficial use. The requirements are not intended to restrict the application of other sound examination principles by water right examiners. The director will evaluate any deviation from the standards hereinafter stated as they pertain to the review of any given examination. Water right examiners are encouraged to submit new ideas which will advance the art and provide for the public benefit. ()

02. Rules. These rules shall not be construed to deprive or limit the director of the Department of Water Resources of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data, or information which may be required by the director from any owner of a water right permit or authorized representative for the proper administration of the law. ()

002. -- 008. (RESERVED)

009. APPLICABILITY (RULE 9).

01. Proof of Beneficial Use. These rules apply to all permits for which proof of beneficial use is not yet due and has not been submitted to the department. ()

02. Examination. These rules apply to all permits for which an examination has not been conducted. ()

03. Re-Examination. These rules apply to all permits that have been examined but the license has not been issued due to a request for a re-examination by the permit holder. ()

04. Examination Fee. The examination fee requirements of these rules do not apply to a permit for single family domestic use, stockwatering, or other small uses for which the use does not exceed four one-hundredths (0.04) cfs or four (4) AF/year. The examination fee is required for multiple use permits which exceed four one-hundredths (0.04) cfs or four (4) AF/year even though single family domestic use or stockwater use is included as one (1) of the uses on the permit. ()

010. DEFINITIONS (RULE 10).

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

01. Acre-Foot (AF). A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to forty-three thousand, five hundred sixty (43,560) cubic feet. ()

02. Acre-Foot/Annum. An annual volume of water that may be diverted under a given use or right. ()

03. Amendment. A change in point of diversion, place, period or nature of use or other substantial change in the method of diversion or use of a permitted water right. ()

04. Capacity Measurement. The maximum volume of water impounded in the case of reservoirs or the maximum rate of diversion from the source as determined by actual measurement of the system during normal operation. ()

05. Certified Water Right Examiner. A professional engineer or professional geologist, qualified and registered in the state of Idaho who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the Director, and who has been appointed by the Director, Idaho Department of Water Resources as a certified water right examiner. A certified water right examiner is commonly termed a field

examiner, water right examiner or examiner. A certified water right examiner is an impartial investigator and reporter of the information required by the Director to determine the extent of beneficial use established in compliance with a permit. Department employees are authorized to conduct water right examinations at the discretion of the Director.

()

06. Conveyance Works. The ditches, pipes, conduits or other means by which water is carried or moved from the point of diversion to the place of use. Storage works, if any, such as a dam can be considered part of the conveyance works.

()

07. Cubic Foot Per Second (CFS). A rate of flow approximately equal to four hundred forty-eight and eight tenths (448.8) gallons per minute and also equals fifty (50) miner's inches.

()

08. Department. The Idaho Department of Water Resources.

()

09. Director. The Director of the Idaho Department of Water Resources.

()

10. Duty of Water. The quantity of water necessary when economically conducted and applied to land without unnecessary loss as will result in the successful growing of crops.

()

11. Examination or Field Examination. An on-site inspection or investigation to determine the extent of application of water to beneficial use and to determine compliance with terms and conditions of the water right permit.

()

12. Field Report. The form provided by the Department upon which the examiner records the data gathered and describes the extent of diversion of water and application to beneficial use. The report is fully termed beneficial use field report and is also termed a field examination report.

()

13. Headworks or Diversion Works. The constructed barriers or devices on the source of water (surface water or ground water) by which water can be diverted from its natural course of flow and/or measured.

()

14. License. The certificate issued by the Director in accordance with Section 42-219, Idaho Code confirming the extent of diversion and beneficial use of the water that has been made in conformance with the permit conditions.

()

15. License Examination Fee. The fee required in Section 42-221K, Idaho Code, and is also termed an examination fee.

()

16. Legal Subdivision. A tract of land described by the government land survey and usually is described by government lot or quarter-quarter, section, township and range. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the government lot, quarter-quarter, section, township and range description.

()

17. Measuring Device. A generally accepted structure or apparatus used to determine a rate of flow or volume of water. Examples are weirs, meters, and flumes. Less typical devices may be accepted by the Director on a case-by-case basis.

()

18. Nature of Use. The characteristic use for which water is applied. Examples are domestic, irrigation, mining, industrial, fish propagation, power generation, municipal, etc.

()

19. Period of Use. The time period during which water under a given right can be beneficially used.

()

20. Permit Holder or Owner. The person, association, or corporation to whom a permit has been issued or assigned as shown by the records of the Department.

()

21. Permit or Water Right Permit. The water right document issued by the Director authorizing the

diversion and use of unappropriated public water of the state or water held in trust by the state. ()

22. Place of Use (P.U. or POU). The location where the beneficial use is made of the diverted water. ()

23. Point of Diversion (P.D. or POD). The location on the public source of water from which water is diverted. Examples are pump intake, headgate, well locations, and dam locations. ()

24. Project Works. A general term which includes diversion works, conveyance works, and any devices which may be used to measure the water or to apply the water to the intended use. Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works. ()

25. Proof of Beneficial Use. The submittal required in Section 42-217, Idaho Code. This submittal is commonly termed proof. ()

26. Source. The name of the natural water body at the point of diversion. Examples are Snake River, Smith Creek, ground water, spring, etc. ()

011. ABBREVIATIONS.

01. AF. Acre-Foot or Acre-Feet. ()

02. CFS. Cubic Foot Per Second. ()

03. P.D. or POD. Point of Diversion. ()

04. P.U. or POU. Place of Use. ()

05. USGS. United States Geological Survey. ()

012. -- 024. (RESERVED)

025. AUTHORITY OF REPRESENTATIVE (RULE 25).

01. Proof of Beneficial Use. When the proof of beneficial use, field report, and drawings are filed by the water right examiner on behalf of an owner, written evidence of authority to represent the owner shall be filed with the proof, field report, and drawings. ()

02. Responsibility. It is the responsibility of the permit holder or authorized representative to submit proof of beneficial use and provide for the timely submission of a completed field report by the due date in acceptable form to the director by either paying the required examination fee to the department or by employing a certified water right examiner. ()

026. -- 029. (RESERVED)

030. QUALIFICATION, EXAMINATION AND APPOINTMENT OF CERTIFIED WATER RIGHT EXAMINER (RULE 30).

01. Consideration. Any professional engineer or geologist qualified and registered in the state of Idaho who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the Director shall be considered for appointment as a water right examiner upon application to the Director. The application shall be in the form prescribed by the Director and shall be accompanied by a non-refundable fee in the amount provided by statute. ()

02. Information. The Director may require an applicant for appointment to the position of water right examiner to provide detailed information of past experience, provide references, and to satisfactorily complete a

written or oral examination. ()

03. Denial. If the Director determines an applicant is not qualified, the application will be denied. If the Director determines an applicant is qualified, a certificate of appointment will be issued. ()

04. Expiration. Every water right examiner certificate of appointment shall expire March 31 of each year unless renewed by application in the manner prescribed by the Director. A non-refundable fee in the amount provided by statute shall accompany an application for renewal. ()

05. Refusal or Revocation. An appointment or renewal may be refused or revoked by the Director at any time upon a showing of reasonable cause. A party aggrieved by an action of the Director may request an administrative hearing pursuant to Section 42-1701A (3), Idaho Code. ()

06. Reconsideration. An application for appointment or renewal which has been refused or revoked by the Director may not be reconsidered for six (6) months. ()

07. Liability. The state of Idaho shall not be liable for the compensation of any water right examiner other than department employees. The permit holder shall be responsible for costs associated with proof submittal including examination and field report preparation. ()

08. Examinations. The Director may authorize sufficiently knowledgeable and experienced department employees to conduct water right examinations during the course and scope of their employment with the department. Upon termination of employment with the department, such examiners, unless reappointed as a non-department certified examiner under provisions of these rules, are not authorized to conduct field examinations. The fee provisions of these rules do not apply to department employees. ()

09. Ingress or Egress Authority. Appointment as a water right examiner does not grant ingress or egress authority to non-department examiners and does not convey authority unless explicitly prescribed in these rules. ()

10. Reports. The Director will not accept a field examination report prepared by a certified water right examiner or a department employee who has any past or present interest, direct or indirect, in either the water right permit, the land or any enterprise benefiting, or likely to benefit, from the water right. Among those that the Director will presume to have an actual or potential conflict of interest and from whom he will not accept a field examination report are the following: ()

a. The person or persons owning the water right permit or the land or enterprise benefiting from the water right permit, members of their families (spouse, parents, grandparents, lineal descendants including those that are adopted, lineal descendants of parents; and spouse of lineal descendants), and their employees. ()

b. The person or persons, who sold or installed the diversion works or distribution system. ()

11. Money Received. All moneys received by the department under the provisions of these rules shall be deposited in the water administration fund created under Section 42-238a, Idaho Code. ()

031. -- 034. (RESERVED)

035. EXAMINATION FOR BENEFICIAL USE (RULE 35).

01. Field Report. ()

a. All items of the field report must be completed and must provide sufficient information for the Director to determine the extent of the water right developed in order for the report to be acceptable to the Director. ()

b. Permitted uses partially developed by the permit holder shall be described in detail. Permitted uses which were not developed by the permit holder shall be noted. Uses determined to exist which are not authorized by

the permit being examined shall also be described in detail. ()

c. A concise description of the diversion works and a general description of the distribution works shall be given. This description must trace the water from the point of diversion to the place of use and the return to a public water source, if any. Any reservoir, diversion dam, headgate, well, canal, flume, pump and other related structure shall be included. If water is stored, the timing and method of storage, release, redirection and conveyance to the place of use shall be described. The make, capacity, serial number and model number of all pumps, boosters or measuring devices associated with the point of diversion at the source of the water supply shall be described on the field examination report. Schematic diagrams, photographs, and maps sufficient to locate and describe the diversion, conveyance and usage systems shall also be provided in the examination report. ()

d. Any interconnection of the water use being examined with other water rights or with other conveyance systems shall be described on the field report. Interconnection includes, but is not limited to, sharing the same point of diversion, distribution system, place of use, or beneficial use. The examination report shall also include an evaluation of how the water use being examined is distinct from prior existing water rights and provides an alternate source of water or increment of beneficial use not authorized by prior existing water rights. ()

e. If water is returned to a public water source after use, a legal description of the point where the water is returned and source to which discharge is made shall be provided. Examples of uses which generally have an effluent discharge include fish propagation and power facilities. ()

f. The method of compliance with each condition of approval of a permit shall be shown on the field report by the examiner. ()

g. If the water is used for irrigation, the boundaries of the irrigated areas and the location of the project works providing water to each shall be platted on the maps submitted with the report and the full or partial acreage in each legal subdivision of forty (40) acres or government lot shall be shown. ()

h. Irrigated acreage shall be shown on the field report to the nearest whole acre in a legal subdivision except the acreage shall be shown to the nearest one-tenth (0.10) acre for permits covering land of less than ten (10) acres. ()

i. Where a permit has been developed as separate distribution systems from more than one point of diversion, the separate areas irrigated from each point of diversion shall be shown on the maps submitted with the report and the legal subdivisions embracing the irrigated areas for each such respective point of diversion together with the total irrigated area shall be described. ()

j. For each use of water the examiner shall report an annual diversion volume based on actual beneficial use during the development period for the permit. The method of determining the annual diversion volume shall be shown. The annual diversion volume shall account for seasonal variations in factors affecting water use, including seasonal variations in water availability. For irrigation, the volume shall be based on the field headgate requirements in the map titled Irrigation Field Headgate Requirement appended to these rules (see Appendix A located at the end of this chapter). Annual diversion volumes for heating and cooling uses may be adjusted to account for documented weather conditions during any single heating or cooling season from among the fifty (50) years immediately prior to submitting proof of beneficial use for the permit. For storage uses that include filling the reservoir and periodically replenishing evaporation and seepage losses throughout the year, the annual diversion volume shall be the sum of the amounts used for filling and for replenishment. Volumes may include reasonable conveyance losses actually incurred by the water user. The following water uses are exempt from the volume reporting requirement: ()

- i. Diversion to storage. (Volume should be reported for the storage use, such as irrigation storage.) ()
- ii. Domestic uses as defined in Section 42-111, Idaho Code. ()
- iii. In-stream watering of livestock. ()

- iv. Fire protection. (Volume is required for fire protection storage.) ()
- v. On-stream, run-of-the-river, non-consumptive power generation uses. ()
- vi. Minimum stream flows established pursuant to Chapter 15, Title 42, Idaho Code. ()
- vii. Municipal use by an incorporated city or other entity serving users throughout an incorporated city, except the following situations that do require a volume to be reported: ()
 - (1) The permit or amended permit was approved with a volume limitation; or ()
 - (2) The permit was not approved for municipal use but can be amended and licensed for a municipal use established during the authorized development period for the permit. ()
- viii. Irrigation using natural stream flow diverted from a stream or spring. (Volumes must be reported for irrigation uses from ponds, lakes and ground water and for irrigation storage and irrigation from storage.) ()
- k. The total number of holding/rearing ponds and the dimensions and volume of the ponds shall be shown on the field report for fish rearing or fish propagation use. The annual volume shall be calculated based on the changes of water per hour. ()
- l. Information shall be submitted concerning the beneficial use that has been made of the water unless the purpose of use is for irrigation. For example, for stockwater use, the number and type of stock watered shall be provided. Similar indications of the extent of beneficial use shall be provided for all other non-irrigation uses. ()
- m. The period during each year that the water is used shall be described for each use. ()
- n. For permits having more than one (1) use, the diversion rate measured for each use, the annual diversion volume determined for each use (unless specifically exempted by rule or statute), and the place of use for each use shall be described. ()
- o. The amount (rate and/or volume) of water shall be limited by the smaller of the permitted amount, the amount upon which the license examination fee is paid, the capacity of the diversion works or the amount beneficially used prior to submitting proof of beneficial use, including any statutory limitation of the duty of water. ()
- p. Suggested amendments shall be noted on the field report when the place of use, point of diversion, period or nature of use is different from the permit. Suggested amendments shall be based on actual use, not on potential use. ()
- q. An aerial photo marked to depict the point(s) of diversion and place(s) of use for each use must accompany each field report unless waived by the Director. If existing photos are not available, the Director will accept a USGS Quadrangle map at the largest scale available. ()
- r. Unless required as a condition of permit approval, an on-site examination and direct measurement of the diversion rate are not required for the following water uses if the beneficial use, place of use, season of use, and point of diversion can be confirmed by documentary means such as well driller reports, property tax records, receipts and other records of the permit holder, or photographs, including aerial photographs: ()
 - i. Irrigation up to five (5) acres. ()
 - ii. Storage of up to fourteen point six (14.6) acre-feet of water solely for stock watering purposes. ()
 - iii. Any uses other than irrigation or storage if the total combined diversion rate for all the uses established in connection with the permit does not exceed twenty-four one hundredths (0.24) cubic feet per second.

()

02. Field Report Acceptability.

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a. All field reports shall be prepared by or under the supervision of certified water right examiners or authorized department employees. Reports submitted by certified water right examiners must be properly endorsed with an engineer or geologist seal and signature. Field reports received from certified water right examiners will be accepted if the report includes all the information required to complete the report and provides the information required by Rule Subsection 035.01. ()

b. Field reports not completed as required by these rules will be returned to the certified water right examiner for completion. If the date for submitting proof of beneficial use has passed, the penalty provisions of Rule 055 shall apply. ()

c. If the Director determines that a field report prepared by a certified water right examiner is acceptable but that additional information is needed to clarify the field report, he will notify the examiner in writing of the information required. If the additional information is not submitted within thirty (30) days or within the time specified in the written notice, the priority date of the permit will be advanced one (1) day for each day the information submittal is late. Failure to submit the required information within one (1) year of the date of the department's request is cause for the Director to take action to cancel the permit. ()

d. Field reports which indicate that a measuring device or lockable controlling works, required as a condition of approval of the permit, has not been installed, are not acceptable and will be returned to the examiner unless the measuring device requirement or lockable controlling works requirement has been formally waived or modified by the Director. ()

03. General.

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a. For irrigation purposes, the duty of water shall not exceed five (5) acre feet of stored water for each acre of land to be irrigated or more than one (1) cubic foot per second for each fifty (50) acres of land to be irrigated unless it can be shown to the satisfaction of the Director that a greater amount is necessary. ()

b. For irrigated acreage of five (5) acres or less, a diversion rate up to three one-hundredths (0.03) cfs per acre may be allowed on the license to be issued by the Director. ()

c. Conveyance losses of water from the point of diversion to the place of use which are determined by actual measurement may be allowed by the Director if the loss is determined by the Director to be reasonable. ()

d. The duty of water described in Subsections 035.03.a. or 035.03.b. may be exceeded if the department has authorized a greater diversion rate per acre when the permit was issued and good cause acceptable to the Director has been demonstrated. ()

e. For irrigation systems which cover twenty-five thousand (25,000) acres or more, within irrigation districts organized and existing under the laws of the state of Idaho, and for irrigation projects developed under a permit held by an association, company, corporation, or the United States to deliver surface water to more than five (5) water users under an annual charge or rental, the field report does not need to describe the irrigated land by legal subdivision, but may describe generally the lands under the project works if the total irrigated acres has been accurately determined and is shown on the field report. The amount of water beneficially used under such projects must be shown on the field report. ()

036. -- 039. (RESERVED)

040. WATER MEASUREMENT (RULE 40).

01. Measurement Terminology.

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a. Rate of flow measurements shall be shown in units of cubic feet per second (cfs) with three (3) significant figures and no more precision than hundredths. ()

b. Volume measurements shall be shown in units of acre-feet (AF) with three (3) significant figures, and no more precision than tenths. ()

02. Rate of Diversion. The rate of diversion measurement shall be conducted as close as reasonably possible to the source of supply and shall be measured with the project works fully in place operating at normal capacity. For example, if a sprinkler system is used for irrigation purposes, discharge from the pump must be measured with the sprinkler system connected. ()

03. Measurements. Water measurements may be made by vessel, weir, meter, rated flume, reservoir capacity table or other standard method of measurement acceptable to the Director. The field report shall describe the method used in making the measurement, the date when made, the name of the person making the measurement, the legal description of the location where the measurement was taken and shall include sufficient information, including current meter notes, rating tables, and/or calibration information to enable the Director to check the quantity of water measured in each case. ()

04. Unacceptable Measurements. Theoretical diversion rates or theoretical carrying capacities are not acceptable as a measure of the rate of diversion except as indicated in these rules and for some diversion systems where the flow rate cannot be measured accurately due to the physical characteristics of the diversion and distribution system. ()

05. Method. Rate of flow measurements shall be determined using equipment and methods capable of obtaining an accuracy of plus or minus ten percent (10%). ()

041. -- 044. (RESERVED)

045. DRAWINGS, MAP, AND SCHEMATIC DIAGRAM (RULE 45).

The following provisions shall apply to the submittal of drawings, maps, photos and the schematic diagrams. ()

01. Submittal of Drawings, Maps, Photos and Schematic Diagrams. Drawings, maps, photos and schematic diagrams used as an attachment to the field report shall be on eight and one-half by eleven (8 1/2 x 11) inch paper whenever possible. ()

02. Attachment Sheets. Attachment sheets shall depict information on one (1) side only. ()

03. Scale of Map. The map depicting the point of diversion and place of use shall be of a reasonable scale but not less than two (2) inches equals one (1) mile. The map shall show the location of the point(s) of diversion to the nearest forty (40) acre tract or to a ten (10) acre tract for springs. The location of ditches, canals, mainlines, distribution systems and the place of use by forty (40) acre tract must be shown. ()

04. Drawings. Drawings need to generally depict the size and type of diversion works, measuring device, conveyance system, water application method, and the location of any measurements taken. ()

05. Photographs. Photographs of the diversion works, the typical distribution works and other prominent features of the system shall be provided with the field report. ()

046. -- 049. (RESERVED)

050. LICENSE EXAMINATION FEE (RULE 50).

01. Examinations Conducted by Department Staff. ()

a. The examination fee shall be payable to the Department of Water Resources unless the field examination is conducted by a certified water right examiner. ()

b. The department will not conduct an examination for which the fee has not been paid to the department unless exempted in Rule Subsection 009.04, except that for any prior examination, whether conducted by a certified water right examiner or by department staff, the department may conduct a supplemental examination on its own initiative at any time. No examination fee shall be charged for a supplemental examination conducted by the department on its own initiative. ()

c. A license shall not be issued for an amount of water in excess of the amount covered by the examination fee. Subsequent to the examination and prior to a license being issued, the Director will notify the permit holder that the licensed amount will be limited because an insufficient examination fee was paid. The permit holder will be allowed thirty (30) days after the notice is mailed to pay the additional examination fee, along with a late payment penalty of twenty-five dollars (\$25) or twenty percent (20%) of the amount of the additional required fee whichever is more. If payment is received within the thirty (30) day period, the rate or volume licensed shall not be reduced by reason of the examination fee. If payment is not received within the thirty (30) day period, the rate or volume licensed shall be limited by the original examination fee paid. For the purpose of determining advancement of priority for late fee as provided in Section 42-217, Idaho Code, fees shall not be considered as having been paid until paid in full, including any subsequent fee. ()

d. Excess examination fees are non-refundable. ()

e. An examination fee equal to the initial examination fee paid to the department shall be paid for a re-examination made at the request for the permit holder except upon a showing of error by the department on the initial examination. ()

02. Examinations Conducted by Non-Department Certified Water Right Examiners. ()

a. The examination fee required by Section 42-217, Idaho Code is not applicable for examination conducted by or under the supervision of certified water right examiners. ()

b. A permit holder may not choose to have the examination conducted by the department after selecting a certified water right examiner. ()

c. After submitting proof of beneficial use and paying an examination fee to the department, but before the department's actual examination, a permit holder may submit an examination report completed by a certified water right examiner. Because the examination fee is an essential component of timely proof submittal, the department will not refund the examination fee. ()

051. -- 054. (RESERVED)

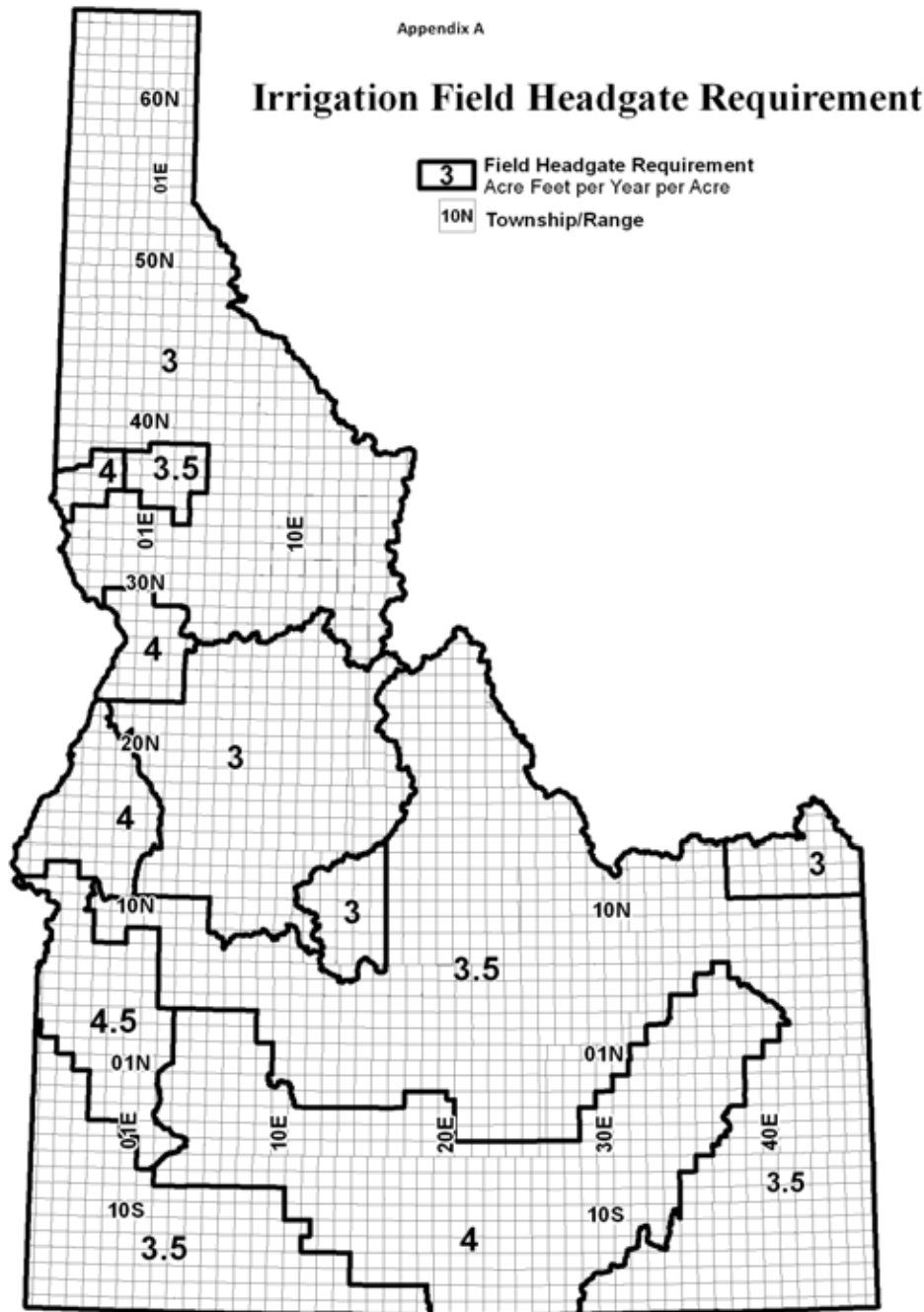
055. PENALTY (RULE 55).

01. Permits for Which Proof Has Not Been Submitted. The submittal required is the proof and the examination fee or the proof and a completed field report. ()

02. Failure to Submit. Failure to submit either the license examination fee or an acceptable field examination report prepared by or under the supervision of a certified water right examiner by the proof due date is cause to lapse the permit pursuant to Section 42-218a, Idaho Code, unless an extension of time pursuant to Section 42-204, Idaho Code, extending the proof of beneficial use due date has been approved. ()

056. -- 999. (RESERVED)

Appendix A



**37.03.03 – RULES AND MINIMUM STANDARDS FOR THE CONSTRUCTION
AND USE OF INJECTION WELLS**

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authority of Sections 42-3913, 42-3914, and 42-3915, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 37.03.03 “Rules and Minimum Standards for the Construction and Use of Injection Wells.” ()

02. Scope. These rules and minimum standards are for construction and use of injection wells in the state of Idaho. Upon promulgation, these rules apply to all injection wells (see Rule Subsection 035.01). The construction and use of Class I, III, IV, or VI injection wells are prohibited by these rules. Class IV wells are also prohibited by federal law. These rules and minimum standards for construction and use of injection wells apply to all injection wells in the state of Idaho, except in Indian lands. All injection wells shall be permitted and constructed in accordance with the “Well Construction Standards Rules” found in IDAPA 37.03.09 which are authorized under Section 42-238, Idaho Code. ()

03. Rule Coverage. In the event that a portion of these rules is less stringent than the minimum requirements for injection wells as established by Federal regulations, the correlative Federal requirement will be used to regulate the injection well. ()

04. Variance of Methods. The Director may approve the use of a different testing method or technology if it is no less protective of human health and the environment, will not allow the migration of injected fluids into a USDW, meets the intent of the rule, and yields information or data consistent with the original method or technology required. A request for review by the Director must be submitted in writing by the applicant, permit holder, or operator and be included with all pertinent information necessary for the Director to evaluate the proposed testing method or technology. ()

002. INCORPORATION BY REFERENCE.

01. Incorporated Document. IDAPA 37.03.03 adopts and incorporates by reference those ground water quality standards found in Section 200 of IDAPA 58.01.11, “Ground Water Quality Rule,” of the Department of Environmental Quality. ()

02. Document Availability. Copies of the incorporated document may be found at the central office of the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, 83720-0098 or online through the department or state websites. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Abandonment. See “permanent decommission. ()

02. Abandoned Well. See “permanent decommission”. ()

03. Agricultural Runoff Waste. Excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tail water, as well as natural drainage resulting from precipitation, snowmelt, and floodwaters, and is identical to the statutory phrase “irrigation waste water” found in Idaho Code 42-3902. ()

04. Applicant. Any owner or operator submitting an application for permit to construct, modify or maintain an injection well to the Director of the Department of Water Resources. ()

05. Application. The standard Department forms for applying for a permit, including any additions, revisions or modifications to the forms. ()

06. Aquifer. Any formation that will yield water to a well in sufficient quantities to make production of water from the formation reasonable for a beneficial use, except when the water in such formation results solely from fluids deposited through an injection well. ()

07. Beneficial Use. One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, aquifer recharge and storage, stockwatering and fish propagation uses, as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water. ()

08. Best Management Practice (BMP). A practice or combination of practices that are more effective than other techniques at preventing or reducing contamination of ground water and surface water by injection well operation. ()

09. Casing. A pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling fluid into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole. ()

10. Cementing. The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing. ()

11. Cesspool. An injection well that receives sanitary waste without benefit of a treatment system or treatment device such as a septic tank. Cesspools sometimes have open bottom and/or perforated sides. ()

12. Coliform Bacteria. All of the aerobic and facultative anaerobic, gram-negative, non-spore forming, rod-shaped bacteria that either ferment lactose broth with gas formation within forty-eight (48) hours at thirty-five degrees Celsius (35C), or produce a dark colony with a metallic sheen within twenty-four (24) hours on an Endo-type medium containing lactose. ()

13. Confining Bed. A body of impermeable or distinctly less permeable material stratigraphically adjacent to one (1) or more aquifers. ()

14. Construct. To create a new injection well or to convert any structure into an injection well. ()

15. Contaminant. Any physical, chemical, biological, or radiological substance or matter. ()

16. Contamination. The introduction into the natural ground water of any physical, chemical, biological, or radioactive material that may: ()

a. Cause a violation of Idaho Ground Water Quality Standards found in IDAPA 58.01.11 “Ground Water Quality Rule” or the federal drinking water quality standards, whichever is more stringent; or ()

b. Adversely affect the health of the public; or ()

c. Adversely affect a designated or beneficial use of the State’s ground water. Contamination includes the introduction of heated or cooled water into the subsurface that will alter the ground water temperature and render the local ground water less suitable for beneficial use. ()

17. Conventional Mine. An open pit or underground excavation for the production of minerals. ()

18. Decommission. To remove a well from operation such that injection through the well is not possible. See “permanent decommission” and “unauthorized decommission”. ()

19. DEQ. The Idaho Department of Environmental Quality. ()

20. Deep Injection Well. An injection well which is more than eighteen (18) feet in vertical depth below land surface. ()

21. **Department.** The Idaho Department of Water Resources. ()
22. **Director.** The Director of the Idaho Department of Water Resources. ()
23. **Disposal Well.** A well used for the disposal of waste into a subsurface stratum. ()
24. **Draft Permit.** A prepared document indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." Permit conditions, compliance schedules, and monitoring requirements are typically included in a "draft permit". A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination is not a "draft permit." ()
25. **Drilling Fluid.** Any number of liquid or gaseous fluids and mixtures of fluids and solids (such as solid suspensions, mixtures and emulsions of liquids, gases, and solids) used in operations to drill boreholes into the earth. ()
26. **Drywell.** An injection well completed above the water table so that its bottom and sides are typically dry except when receiving fluids. ()
27. **Endangerment.** Injection of any fluid which exceeds Idaho ground water quality standards, or federal drinking water quality standards, whichever is more stringent, that may result in the presence of any contaminant in ground water which supplies or can reasonably be expected to supply any public or non-public water system, and if the presence of such contaminant may result in such a system not complying with any ground water quality standard or may otherwise adversely affect the health of persons or result in a violation of ground water quality standards that would adversely affect beneficial uses. ()
28. **Exempted Aquifer.** An "aquifer" or its portion that meets the criteria in the definition of USDW but which has been recategorized as "other" according to the procedures in IDAPA 58.01.11 "Ground Water Quality Rule". ()
29. **Existing Injection Well.** An "injection well" other than a "new injection well." ()
30. **Experimental Technology.** A technology which has not been proven feasible under the conditions in which it is being tested. ()
31. **Facility or Activity.** Any UIC "injection well," or another facility or activity that is subject to regulation under the UIC program. ()
32. **Fault.** A surface or zone of rock fracture along which there has been displacement. ()
33. **Flow Rate.** The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel. ()
34. **Fluid.** Any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gaseous or any other form or state. ()
35. **Formation.** A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface. ()
36. **Generator.** Any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR part 261. ()
37. **Ground Water.** Any water that occurs beneath the surface of the earth in a saturated formation of rock or soil. ()
38. **Ground Water Quality Standards.** Standards found in IDAPA 58.01.11, "Ground Water Quality

Rule,” Section 200. ()

39. Hazardous Waste. Any substance defined by IDAPA 58.01.05, “Rules and Standards for Hazardous Waste.” ()

40. Indian Lands. “Indian Country” as defined in 18 U.S.C. 1151. That section defines Indian Country as: ()

a. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; ()

b. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and ()

c. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. ()

41. Individual Subsurface Sewage Disposal System. For the purpose of these rules, any standard or alternative disposal system which injects sanitary waste from single family residential septic systems, or non-residential septic systems which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than twenty (20) people a day. ()

42. Improved Sinkhole. A naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface. ()

43. Injection. The subsurface emplacement of fluids through an injection well. ()

44. Injection Well. Any feature that is operated to allow injection which also meets at least one (1) of the following criteria: ()

a. A bored, or driven shaft whose depth is greater than the largest surface dimension; ()

b. A dug hole whose depth is greater than the largest surface dimension; ()

c. An improved sinkhole; or ()

d. A subsurface fluid distribution system. ()

45. Injection Zone. A geological “formation”, or those sections of a formation receiving fluids through an “injection well.” ()

46. IWRB. Idaho Water Resource Board. ()

47. Large Capacity Cesspools. Any cesspool used by a multiple dwelling, community or regional system for the disposal of sanitary wastes (for example: a duplex or an apartment building) or any cesspool used by or intended to be used by twenty (20) or more people per day (for example: a rest stop, campground, restaurant or church). ()

48. Large Capacity Septic System. Class V wells that are used to inject sanitary waste through a septic tank and do not meet the criteria of an individual subsurface sewage disposal system. ()

49. Maintain. To allow, either expressly or by implication, an injection well to exist in such condition as to accept or be able to accept fluids. Unless a well has been permanently decommissioned pursuant to the criteria contained in these rules it is considered to be capable of accepting fluids. ()

- 50. Modify.** To alter the construction of an injection well, but does not include cleaning or redrilling operations which neither deepen nor increase the dimensions of the well. ()
- 51. Motor Vehicle Waste Disposal Wells.** Injection wells that receive or have received fluids from vehicle repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (transmission and muffler repair shop), or any facility that does any vehicular repair work. ()
- 52. New Injection Well.** An “injection well” which began to be used for injection after a UIC program for the State applicable to the well is approved or prescribed. ()
- 53. Open-Loop Heat Pump Return Wells.** Injection wells that receive surface water or ground water that has been passed through a heat exchange system for cooling or heating purposes. ()
- 54. Operate.** To allow fluids to enter an injection well by action or inaction of the operator. ()
- 55. Operator.** Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity that operates or proposes to operate any injection well. ()
- 56. Owner.** Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity owning land on which any injection well exists or is proposed to be constructed. ()
- 57. Packer.** A device lowered into a well to produce a fluid-tight seal. ()
- 58. Perched Aquifer.** Ground water separated from an underlying main body of ground water by an unsaturated zone. ()
- 59. Permanent Decommission.** The discontinuance of use of an injection well in a method approved by the Director such that the injection well no longer has the capacity to inject fluids and the upward or downward migration of fluid is prevented. This also includes the disposal and proper management of any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the injection well in accordance with all applicable Federal, State, and local regulations and requirements. ()
- 60. Permit.** An authorization, license, or equivalent control document issued by the Department. ()
- 61. Person.** Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law. ()
- 62. Point of Beneficial Use.** The top or surface of a USDW, directly below an injection well, where water is available for a beneficial use. ()
- 63. Point of Diversion for Beneficial Use.** A location such as a producing well or spring where ground water is taken under control and diverted for a beneficial use. ()
- 64. Point of Injection.** The last accessible sampling point prior to waste being released into the subsurface environment through an injection well. For example, the point of injection for a Class V septic system might be the distribution box. For a drywell, it is likely to be the well bore itself. ()
- 65. Pressure.** The total load or force per unit area acting on a surface. ()
- 66. Radioactive Material.** Any material, solid, liquid or gas which emits radiation spontaneously. Radioactive geologic materials occurring in their natural state are not included. ()

67. **Radioactive Waste.** Any fluid which contains radioactive material in concentrations which exceed those established for discharges to water in an unrestricted area by 10 CFR 20.1302.(b)(2)(i) and Table 2 in Appendix B of 10 CFR 20. ()
68. **RCRA.** The Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976. ()
69. **Remediation Project.** Use of an injection well for the removal, treatment or isolation of a contaminant from ground water through actions or the removal or treatment of a contaminant in ground water as approved by the Director. ()
70. **Residential (Domestic) Activities.** Human activities that generate liquid or solid waste in any public, private, industrial, commercial, municipal, or other facility. ()
71. **Sanitary Waste.** Any fluid generated through residential (domestic) activities, such as food preparation, cleaning and personal hygiene. This term does not include industrial, municipal, commercial, or other non-residential process fluids. ()
72. **Schedule of Compliance.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the standards. ()
73. **Septic System.** An injection well that is used to inject sanitary waste below the surface. A septic system is typically comprised of a septic tank and subsurface fluid distribution system or disposal system. ()
74. **Shallow Injection Well.** An injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface. ()
75. **Site.** The land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity. ()
76. **State.** The state of Idaho. ()
77. **Stratum (plural strata).** A single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material. ()
78. **Subsidence.** The lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface. ()
79. **Subsurface Fluid Distribution System.** An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. ()
80. **UIC.** The Underground Injection Control program under Part C of the Safe Drinking Water Act, including an “approved State program.” ()
81. **Unauthorized Decommission.** The decommissioning of any injection well that has not received the approval of the Department prior to decommissioning, or was not decommissioned in a method approved by the Director. These wells may have to be properly decommissioned when discovered by the Director to ensure that the well prevents commingling of aquifers or is no longer capable of injection. ()
82. **Underground Injection.** See “injection.” ()
83. **Underground Source of Drinking Water (USDW).** An aquifer or its portion: ()
- a. Which: ()

- i. Supplies any public water system; or ()
- ii. Contains a sufficient quantity of ground water to supply a public water system; or ()
- (1) Currently supplies drinking water for human consumption; or ()
- (2) Contains fewer than ten thousand (10,000) mg/l total dissolved solids; and ()
- b. Which is not an exempted aquifer. ()

84. Unreasonable Contamination. Endangerment of a USDW or the health of persons or other beneficial uses by injection. See “endangerment.” ()

85. Water Quality Standards. Refers to those standards found in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards” and IDAPA 58.01.11, “Ground Water Quality Rule.” ()

86. Well. For the purposes of these rules, “well” means “injection well.” ()

011. -- 014. (RESERVED)

015. VIOLATIONS, FORMAL NOTIFICATION AND ENFORCEMENT.

- 01. Violations.** It shall be a violation of these rules for any owner or operator to: ()
 - a. Fail to comply with a permit or authorization, or terms or conditions thereof; ()
 - b. Fail to comply with applicable standards for water quality; ()
 - c. Fail to comply with any permit application notification or filing requirement; ()
 - d. Knowingly make any false statement, representation or certification in any application, report, document or record filed pursuant to these rules, or terms and conditions of an issued permit; ()
 - e. Falsify, tamper with or knowingly render inaccurate any monitoring device or method required to be maintained or utilized by the terms and conditions of an issued permit; ()
 - f. Fail to respond to any formal notification of a violation when a response is required; or ()
 - g. Decommission a well in an unauthorized manner. ()

02. Additional. It shall be a violation of these rules for any person to construct, operate, maintain, convert, plug, decommission or conduct any other activity in a manner which results or may result in the unauthorized injection of a hazardous waste or of a radioactive waste by an injection well. ()

03. Formal Notification. Formal notification of violations may be communicated to the owner or operator with a letter, a notice of violation, a compliance or enforcement order or other appropriate means. ()

04. Enforcement. Violation of any of the provisions of the Injection Well Act (Chapter 39, Title 42, Idaho Code) or of any rule, regulation, standard or criteria pertaining to the Injection Well Act may result in the Director initiating an enforcement action as provided under Chapters 17 and 39, Title 42, Idaho Code. ()

016. -- 019. (RESERVED)

020. HEARING BEFORE THE WATER RESOURCE BOARD.

- 01. General.** All hearings before the IWRB will be conducted in accordance with Chapter 52, Title 67,

Idaho Code, at a place convenient to the owner and/or operator. For purposes of such hearings, the IWRB or its designated hearing officer shall have power to administer oaths, examine witnesses, and issue in the name of the said Board subpoenas requiring testimony of witnesses and the production of evidence relevant to any matter in the hearing. Judicial review of the final determination by the IWRB may be secured by the owner by filing a petition for review as prescribed by Chapter 52, Title 67, Idaho Code, in the District Court of the county where the injection well is situated or proposed to be located. The petition for review shall be served upon the Chairman of the IWRB and upon the Attorney General. ()

02. Hearings on Conditional Permits, Disapproved Applications, or Petitions for Exemption. Any owner or operator aggrieved by the approval or disapproval of an application, or by conditions imposed upon a permit, or any person aggrieved by the Director's decision on a petition for exemption under Section 025 of these rules, shall be afforded an opportunity for a hearing before the IWRB or its designated hearing officer. Written notice of such grievance shall be transmitted to the Director within thirty (30) days after receipt of notice of such approval, disapproval or conditional approval. Such hearing shall be held for the purpose of determining whether the permit shall be issued, whether the conditions imposed in a permit are reasonable, whether a change in circumstances warrants a change in conditions imposed in a valid permit, or whether the Director's decision on a petition for exemption should not be changed. ()

03. Hearings on Permit Cancellations. When the Director has reason to believe the operation of an injection well for which a permit has been issued is interfering with the right of the public to withdraw water for beneficial uses, or is causing unreasonable contamination of a drinking or other ground water source as provided for in Title 42, Chapter 39, Idaho Code, the permit may be canceled by the Director. Prior to the cancellation of such permit there shall be a hearing before the IWRB for the purpose of determining whether or not the permit should be canceled. At such hearing, the Director shall be the complaining party. At least thirty (30) days prior to the hearing, a notice, which shall be in accordance with Chapter 52, Title 67, Idaho Code, shall be sent by certified mail to the owner or operator whose permit is proposed to be canceled. The Board shall affirm, modify, or reject the Director's decision and make its decision in the form of an order to the Director. ()

021. -- 034. (RESERVED)

035. CLASSIFICATION OF INJECTION WELLS.

01. Classification of Injection Wells. For the purposes of these rules, injection wells are classified as follows: ()

a. Class I: ()

i. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water. ()

ii. Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water. ()

iii. Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within one-quarter (1/4) mile of the well bore. ()

b. Class II. Wells used to inject fluids: ()

i. Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants, dehydration stations, or compressor stations which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection. ()

ii. For enhanced recovery of oil or natural gas; and ()

iii. For storage of hydrocarbons which are liquid at standard temperature and pressure. ()

- c. Class III. Wells used to inject fluids for extraction of minerals including: ()
 - i. Mining of sulfur by the Frasch process; ()
 - ii. In situ production of uranium or other metals; this category includes only in-situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V. ()
 - iii. Solution mining of salts or potash. ()
- d. Class IV: ()
 - i. Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one-quarter (1/4) mile of the well contains an underground source of drinking water. ()
 - ii. Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one-quarter (1/4) mile of the well contains an underground source of drinking water. ()
 - iii. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under Subparagraphs 035.01.a.i. or 035.01.d.i. or 035.01.d.ii. of this rule (e.g., wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to Section 025 of these rules). ()
- e. Class V -- All injection wells not included in Classes I, II, III, IV, or VI. ()
- f. Class VI. ()
 - i. Wells that are not experimental in nature that are used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW; or ()
 - ii. Wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to requirements at 40 CFR Section 146.95; or ()
 - iii. Wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to Section 025 of these rules. ()
- 02. Subclassification.** Class V wells are subclassified as follows: ()
 - a. 5A5-Electric Power Generation. ()
 - b. 5A6-Geothermal Heat. ()
 - c. 5A7-Heat Pump Return. ()
 - d. 5A8-Aquaculture Return Flow. ()
 - e. 5A19-Cooling Water Return. ()
 - f. 5B22-Saline Water Intrusion Barrier. ()
 - g. 5D2-Storm Runoff. ()

- h. 5D3-Improved Sinkholes. ()
- i. 5D4-Industrial Storm Runoff. ()
- j. 5F1-Agricultural Runoff Waste. ()
- k. 5G30-Special Drainage Water. ()
- l. 5N24¹-Radioactive Waste Disposal. ()
- m. 5R21-Aquifer Recharge. ()
- n. 5S23-Subsidence Control. ()
- o. 5W9-Untreated Sewage. ()
- p. 5W10-Cesspools. ()
- q. 5W11-Septic Systems (General). ()
- r. 5W12-Waste Water Treatment Plant Effluent. ()
- s. 5W20-Industrial Process Water. ()
- t. 5W31-Septic Systems (Well Disposal). ()
- u. 5W32-Septic System (Drainfield). ()
- v. 5X13-Mine Tailings Backfill. ()
- w. 5X14-Solution Mining. ()
- x. 5X15-In-Situ Fossil Fuel Recovery. ()
- y. 5X16-Spent Brine Return Flow. ()
- z. 5X25-Experimental Technology. ()
- aa. 5X26-Aquifer Remediation. ()
- bb. 5X27-Other Wells. ()
- cc. 5X28¹-Motor Vehicle Waste Disposal Wells. ()
- dd. 5X29-Abandoned Water Wells. ()

¹ The construction and operation of wells in these subclasses is currently illegal in Idaho.

036. -- 039. (RESERVED)

040. AUTHORIZATIONS, PROHIBITIONS AND EXEMPTIONS.

01. Authorizations. Construction and use of Class V deep injection wells may be authorized by permit as approved by the Director in accordance with these rules. ()

02. Prohibitions. ()

- a. These rules prohibit the permitting, construction, or use of any Class I, III IV, or VI injection well. ()
- b. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows or causes the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary or secondary drinking water regulation, under IDAPA 58.01.11, “Ground Water Quality Rule,” Section 200 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of Paragraph 040.02.c. are met. ()
- c. Notwithstanding any other provision of this section, the Director may take emergency action upon receipt of information that a contaminant which is present in or likely to enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons. ()
- d. Construction of large capacity cesspools, motor vehicle waste disposal wells, radioactive waste disposal wells, and untreated sewage disposal wells is prohibited. Construction and use of other Class V shallow injection wells are authorized by these rules without permit provided that: ()
- i. Required inventory information is submitted to the Director pursuant to Subsection 070.01 of this rule. ()
- ii. Use of the shallow injection well shall not result in unreasonable contamination of a USDW or cause a violation of surface or ground water quality standards that would affect a beneficial use. ()
- e. Class IV injection wells used to inject contaminated ground water that has been treated and is being reinjected into the same formation from which it was drawn are not prohibited by these rules if such injection is approved by EPA, or Idaho, pursuant to provisions for cleanup of releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601–9657, or pursuant to requirements and provisions under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 through 6987. ()
- f. All large capacity cesspools must be properly decommissioned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a large capacity cesspool is found to be a threat to the ground water resources as described in Paragraph 070.01.c. ()
- g. All motor vehicle waste disposal wells must be properly decommissioned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a motor vehicle waste disposal well is found to be a threat to the ground water resources as described in Paragraph 070.01.c. ()
- h. The Construction, operation or maintenance of any non-experimental Class V geologic sequestration well is prohibited. ()
- i. Owners or operators of shallow injection wells are prohibited from injecting into the well upon failure to submit inventory information in a timely manner pursuant to Paragraph 070.01.a. of these rules. ()
- 03. Exemptions.** ()
- a. The UIC inventory and fee requirements of these rules do not apply to individual subsurface sewage disposal system wells. These systems are, however, subject to the permitting and fee requirements of IDAPA 58.01.03 “Individual/Subsurface Sewage Disposal Rules,” Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code. ()
- b. State or local government entities are exempt from the permit requirements of these rules for wells associated with highway and street construction and maintenance projects, but shall submit shallow injection well inventory information for said wells and shall comply with all other requirements of these rules. ()
- c. Mine tailings backfill (5X13) wells are authorized by rule as part of mining operations. They are

therefore exempt from the ground water quality standards and permitting requirements of these rules provided that their use is limited to the injection of mine tailings only. The use of any 5X13 well(s) shall not result in water quality standards at points of diversion for beneficial use being exceeded or otherwise affect a beneficial use. Should water quality standards be exceeded or beneficial uses be affected, the Director may order the wells to be put under the permit requirements of these rules, or the wells may be required to be remediated or closed. As a condition of their use, the Director may require the construction and sampling of monitoring wells by the owner/operator. 5X13 wells are subject to the inventory requirements of Subsection 070.01. ()

041. -- 069. (RESERVED)

070. CLASS V: CRITERIA AND STANDARDS.

01. Class V Shallow Injection Well Requirements. ()

a. Authorization. As a condition of authorization, all owners or operators of shallow Class V injection wells, including improved sinkholes used for aquifer recharge, that dispose of nonhazardous and nonradioactive wastes are required to submit a Shallow Injection Well Inventory Form to the Department no later than thirty (30) days prior to commencement of construction for each new well or no later than thirty (30) days after the discovery of an existing injection well that has not previously been inventoried with the Department. Forms are available from any Department office or at the Department website at <http://www.idwr.idaho.gov>. State or local government entities shall submit the following inventory information for wells associated with highway and street construction and maintenance projects. ()

- i. Facility name and location; and ()
- ii. County in which the injection well(s) is (are) located; and ()
- iii. Ownership of the well(s); and ()
- iv. Name, address and phone number of legal contact; and ()
- v. Type or function of the well(s); and ()
- vi. Number of wells of each type; and ()
- vii. Operational status of the well(s). ()

b. Inventory Fees. For shallow injection wells constructed after July 1, 1997, the Shallow Injection Well Inventory Form shall be accompanied by a fee as specified in Section 42-3905, Idaho Code, payable to the Department of Water Resources. State or local government entities are exempt from Shallow Injection Well Inventory Form filing fees for wells associated with highway and street construction and maintenance, but shall comply with all other requirements of these rules. ()

c. Permit Requirements. If operation of a shallow Class V injection well is causing or may cause unreasonable contamination of a USDW, or cause a violation of the ground water quality standards at a place of beneficial use, the Director shall require immediate cessation of the injection activity. Where a Class V injection well is owned or operated by an entity other than a state or local entity involved in highway and street construction and maintenance, the Director may authorize continued operation of the well through a permit that specifies the terms and conditions of acceptable operation. ()

d. Permanent Decommission. Owners or operators of shallow injection wells shall notify the Director not less than thirty (30) days prior to permanent decommissioning of any shallow injection well. Permanent decommissioning shall be accomplished in accordance with procedures approved by the Director. ()

e. Inter-Agency Cooperation. The Department may seek the assistance of other government agencies, including cities and counties, health districts, highway districts, and other departments of state government to inventory, monitor and inspect shallow injection wells, where local assistance is needed to prevent deterioration of

ground water quality, and where injection well operation overlaps with water quality concerns of other agencies or local governing entities. Assistance is to be negotiated through a memorandum of understanding between the Department and the local entity, agency, or department, and is subject to the approval of the Director. ()

02. Class V Deep Injection Well Requirements. ()

a. Application Requirements. ()

i. No person shall continue to maintain or use an unauthorized injection well after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit under Subsection 070.02 shall be constructed, modified or maintained after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit shall continue to be used after the expiration of the permit issued for such well unless another application for permit shall be on forms furnished by the Director. All applications for permit shall be on forms furnished by the Director. ()

ii. Each application for permit to construct, modify or maintain an injection well, as required by these rules, shall be accompanied by a filing fee as specified in Section 42-3905, Idaho Code, payable to the Department of Water Resources. For the purposes of these rules, all wells or groups of wells associated with a “Remediation Project” may be administered as one (1) “well” at the discretion of the Director. ()

b. Application Information Required. An applicant shall submit the following information to the Director for all injection wells to be authorized by permit, unless the Director determines that it is not needed in whole or in part, and issues a written waiver to the applicant: ()

- i. Facility name and location; ()
- ii. Name, address and phone number of the well operator; ()
- iii. Class, subclass and function of the injection well (see Section 035); ()
- iv. Latitude/longitude or legal description of the well location to the nearest ten (10) acre tract; ()
- v. Ownership of the well; ()
- vi. County in which the injection well is located; ()
- vii. Construction information for the well; ()
- viii. Quantity and general character of the injected fluids; ()
- ix. Status of the well; ()
- x. A topographic map or aerial photograph extending one (1) mile beyond property boundaries, depicting:
 - (1) Location of the injection well and associated facilities described in the application; ()
 - (2) Locations of other injection wells; ()
 - (3) Approximate drainage area, if applicable; ()
 - (4) Hazardous waste facilities, if applicable; ()
 - (5) All wells used to withdraw drinking water; ()

- (6) All other wells, springs and surface waters. ()
- xi. Distance and direction to nearest domestic well; ()
- xii. Depth to ground water; and ()
- xiii. Alternative methods of waste disposal. ()
- c. Additional Information. The Director may require the following additional information for Class V injection wells to assess potential effects of injection: ()
 - i. A topographic map showing locations of the following within a two (2) mile radius of the injection well: ()
 - (1) All wells producing water; ()
 - (2) All exploratory and test wells; ()
 - (3) All other injection wells; ()
 - (4) Surface waters (including man-made impoundments, canals and ditches); ()
 - (5) Mines and quarries; ()
 - (6) Residences; ()
 - (7) Roads; ()
 - (8) Bedrock outcrops; and ()
 - (9) Faults and fractures. ()
 - ii. Additional maps or aerial photographs of suitable scale to accurately depict the following: ()
 - (1) Location and surface elevation of the injection well described in this permit; ()
 - (2) Location and identification of all facilities within the property boundaries; ()
 - (3) Locations of all wells penetrating the proposed injection zone or within a one-quarter (1/4) mile radius of the injection well; ()
 - (4) Maps and cross sections depicting all underground sources of drinking water to include vertical and lateral limits within a one-quarter (1/4) mile radius of the injection well, their position relative to the injection zone and the direction of water movement: local geologic structures; regional geologic setting. ()
 - iii. A comprehensive report of the following information: ()
 - (1) A tabulation of all wells penetrating the proposed injection zone, listing owner, lease holder and operator; well identification (permit) number; size, weight, depth and cementing data for all strings of casing; ()
 - (2) Description of the quality and quantity of fluids to be injected; ()
 - (3) Geologic, hydrogeologic, and physical characteristics of the injection zone and confining beds; ()
 - (4) Engineering data for the proposed injection well; ()

- (5) Proposed operating pressure; ()
- (6) A detailed evaluation of alternative disposal practices; ()
- (7) A plan of corrective action for wells penetrating the zone of injection, but not properly sealed or decommissioned; and ()
- (8) Contingency plans to cope with all shut-ins or well failures to prevent the migration of unacceptable fluids into underground sources of drinking waters. ()
- iv. Name, address and phone number of person(s) or firm(s) supplying the technical information and/or designing the injection well; ()
- v. Proof that the applicant is financially responsible, through a performance bond or other appropriate means, to decommission the injection well in a manner approved by the Director. ()
- d. Other Information. The Director may require of any applicant such additional information as may be necessary to demonstrate that the proposed or existing injection well will not endanger a USDW. The Director will not complete the processing of an application for which additional information has been requested until such time as the additional information is supplied. The Director may return any incomplete application and will not process such application until such time as the application is received in complete form. ()
- 03. Application Processing.** ()
- a. Draft Permit. After all application information is received and evaluated, the Director will prepare a draft permit or denial, which will include the application for permit, permit conditions or reasons for denial, and any compliance schedules or monitoring requirements. In preparing the draft permit or denial, the Director shall consider the following factors: ()
 - i. The availability of economic and practical alternative means of disposal; ()
 - ii. The application of best management practices to the facilities and/or area draining into the well; ()
 - iii. The availability of economical, practical means of treating or otherwise reducing the amount of contaminants in the injected fluids; ()
 - iv. The quality of the receiving ground water, its category, its present and future beneficial uses or interconnected surface water; ()
 - v. The location of the injection well with respect to drinking water supply wells; and ()
 - vi. Compliance with the IDAPA 58.01.11, “Ground Water Quality Rule.” ()
- b. Public Notice. The Director will provide public notice of any draft permit to construct, maintain or modify a Class V injection well by means of a legal notice in a newspaper of general circulation in the county in which the well is located. The Director may give additional notice as necessary to adequately inform the interested public and governmental agencies. There shall be a period of at least thirty (30) days following publication for any interested person to submit written comments and to request a fact-finding hearing. The hearing will be held by the Director if deemed necessary. ()
- c. Review by the Directors of Other State Agencies. The Directors of other state agencies, as determined by the Director, shall be provided the opportunity to review and comment on draft permits. Comments shall be submitted to the Director within thirty (30) days of the public or legal notice. ()
- d. Open-Loop Heat Pump Return Wells (Subclass 5A7). ()

i. An open-loop heat pump return well greater than eighteen (18) feet in depth to be used solely for disposal of heat pump water at a rate not exceeding fifty (50) gpm does not require a draft permit and is not subject to a recurring permit cycle, however, registration of the well with the Department and submittal of a filing fee as specified in Section 42-3905, Idaho Code is required. The Director reserves the right to override the exemptions from the draft permit and permit cycle requirements. ()

ii. An open-loop heat pump return well greater than eighteen (18) feet in depth to be used solely for disposal of heat pump return water at a rate exceeding fifty (50) gpm is subject to the requirements of Subsections 070.02 and 070.03 of these rules. ()

e. Fact-Finding Hearings. At the Director's discretion, or upon motion of any interested individual, the Director may elect to hold a fact-finding hearing. Said hearing will be held at a location in the geographical area of the injection well. Notice of said hearing will be provided at least thirty (30) days in advance of the hearing by regular mail to the applicant and to the person or persons requesting the hearing. Public notice of the fact-finding hearing will be made by means of press release to a newspaper of general circulation in the county of the application. ()

04. The Director's Action On Draft Permits and Duration Of Approved Permits. The role of the Director is to determine whether or not the injection wells and their respective owners or operators are in compliance with the intent of these rules, thus protecting the ground waters of the state against unreasonable contamination or deterioration of quality and preserving them for diversion to beneficial uses. ()

a. Consideration. The Director will consider the following factors in taking final action on draft permits: ()

i. The likelihood and consequences of the injection well system failing; ()

ii. The long term effects of such disposal or storage; ()

iii. The recommendations and related justifications of the Directors of other state agencies and the public; ()

iv. The potential for violation of ground water quality standards at the point of injection or the point of beneficial use; and ()

v. Compliance with the Idaho Ground Water Quality Plan. ()

b. Issuance of Permit. After considering the draft permit for construction, modification, or maintenance, and all matters relating thereto, the Director shall issue a permit if the standards and criteria of Subsection 070.05 will be met and USDW's will not otherwise be unreasonably affected. If the Director finds that the standards and criteria cannot be met or that ground water sources cannot otherwise be protected from unreasonable contamination at all times, the draft permit may be denied or a permit may be issued with conditions designed to protect ground water sources. The Director's decision shall be in writing and a copy shall be mailed by regular mail to the applicant and to all persons who commented in writing on the draft permit or appeared at a hearing held to consider the draft permit. ()

c. Permit Conditions and Requirements. Any permit issued by the Director shall contain conditions to insure that ground water sources will be protected from waste, unreasonable contamination, or deterioration of ground water quality that could result in violations of the ground water quality standards. In addition to specific construction, operation, maintenance and monitoring requirements that the Director finds necessary, each permit shall be subject to the standard conditions and requirements of this rule. ()

d. Construction Requirements. ()

i. Well drillers or other persons involved with the construction of any injection well requiring a permit shall not commence construction on the facility until a certified copy of the approved permit is obtained from

the Director. ()

ii. Deep injection wells shall be constructed by a licensed water well driller to conform with the current Minimum Well Construction Standards and the conditions of the permit, except that a driller's license is not required for the construction of a driven mine shaft or a dug hole. ()

iii. Shallow injection wells authorized by permit shall be constructed in accordance with the conditions of the permit. Rule-authorized shallow injection wells shall be constructed as shown or described in the inventory submittal. ()

iv. Injection wells shall be constructed to prevent the entrance of any fluids other than specified in the permit. ()

v. Injection wells shall be constructed to prevent waste of artesian fluids or movement of fluids from one aquifer into another. ()

vi. When construction or modification of an injection well has been completed, the owner or operator shall inform the Director of completion on a form provided by the Department. ()

vii. A sampling port shall be provided if the injection well system is enclosed. ()

viii. All new injection wells constructed into alluvial formations shall have a minimum ten (10) foot separation from the bottom of the well and seasonal high ground water. ()

(1) Injection wells installed into fractured basalt are exempt from separation distances. ()

(2) The Director may reduce separation distance requirements if the quality of injected fluids are improved through additional treatment or BMPs. ()

(3) Heat pump return wells (sub-class 5A7) are exempt from the separation distance requirement of this section. ()

e. Operational Conditions. ()

i. The injection well shall not be used until the construction, operation and maintenance requirements of the permit are met and provisions are made for any required inspection, monitoring and record keeping. ()

ii. Injection of any contaminant at concentrations exceeding the standards set in Paragraph 070.05.c. into a present or future drinking or other ground water source that may cause a health hazard or adversely affect a designated and protected use is prohibited. ()

iii. The injection well owner or operator shall develop approved procedures to detect constructional or operational failure in a timely fashion, and shall have contingency plans to cope with the well failure. ()

iv. Authorized representatives of the Department shall be allowed to enter, inspect and/or sample: ()

(1) The injection well and related facilities; ()

(2) The owner or operator's records of the injection operation; ()

(3) Monitoring instrumentation associated with the injection operation; and ()

(4) The injected fluids. ()

v. The injection facilities shall be operated and maintained to achieve compliance with all terms and conditions of this permit. ()

(1) Proper operation and maintenance includes effective performance, adequate funding, operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures; ()

(2) If compliance cannot be met, the owner shall take corrective action as determined by the Director or terminate injection. ()

vi. The owner shall mitigate any adverse effects resulting from non-compliance with the terms and conditions of the permit. ()

vii. If the injection well was constructed prior to issuance of the permit, the well shall be brought into compliance with the terms and conditions of the permit in accordance with the schedule of compliance issued by the Director. ()

viii. The permit shall not convey any property rights. ()

f. Conditions of Permanent Decommissioning. ()

i. Notice of intent to permanently decommission a well shall be submitted to the Director not less than thirty (30) days prior to commencement of the decommissioning activity. ()

ii. The method of permanent decommissioning for all injection wells shall be approved by the Director prior to commencement of the decommissioning activity. ()

iii. Notice of completion of permanent decommission shall be submitted to the Director within thirty (30) days of completion. ()

iv. All deep injection wells that are to be permanently decommissioned shall be plugged in accordance with current Well Construction Standards. ()

v. Following permanent cessation of use, or where an injection well is not completed, the Director shall be notified. Decommissioning procedures or other action, as prescribed by the Director, shall be conducted. ()

vi. The injection well owner or operator has the responsibility to insure that the injection operation is decommissioned as prescribed. ()

g. Duration of Approved Permits. The length of time that a permit may be in effect for Class V wells requiring permits shall not exceed ten (10) years. ()

05. Standards For The Quality of Injected Fluids and Criteria For Location and Use. ()

a. General. These standards, which are minimum standards that are to be adhered to for all deep injection wells and shallow injection wells requiring permits and rule-authorized wells not requiring permits, are based on the premise that if the injected fluids meet ground water quality standards for physical, chemical and radiological contaminants, and if ground water produced from adjacent points of diversion for beneficial use meets the water quality standards as defined in Section 010 of these rules, then that aquifer will be protected from unreasonable contamination and will be preserved for diversion to beneficial uses. The Director may, however, when it is deemed necessary, require specific injection wells to be constructed and operated in compliance with additional requirements, such as best management practices (BMPs), so as to protect the ground water resource from deterioration and preserve it for diversion to beneficial use. ()

b. Waivers. A waiver of one (1) or more standards may be granted by the Director if it can be demonstrated by the applicant that the contaminants in injected fluid will not endanger a ground water source for any present or future beneficial use. ()

- c. Standards for Quality of Fluids Injected into Class V Wells. ()
- i. Ground water quality standards for chemical and radiological contaminants in injected fluids. After the effective date of these standards, the following limits shall not be exceeded in injected fluids from a well when such fluids will or are likely to reach a USDW: ()
- (1) Chemical contaminants. The concentration of each chemical contaminant in the injected fluids shall not exceed the ground water quality standard for that chemical contaminant, or the concentration of each contaminant in the receiving water, whichever requirement is less stringent; and ()
- (2) Radiological contaminants. Radiological levels of the injected fluids shall not exceed those levels specified by the ground water quality standards. ()
- ii. Restrictions on injection of fluids containing biological contaminants. The following restrictions apply to biological contaminants included in the ground water quality standard in injected fluids. Coliform bacteria: injected fluids containing coliform bacteria are subject to the following restrictions: ()
- (1) Contamination of ground water produced at any existing point of diversion for beneficial use, or any point of diversion for beneficial use developed in the future, by injected fluids is prohibited; ()
- (2) The Director may require the use of best management practices (BMPs) to reduce the concentration of coliform bacteria in the injected fluids; ()
- (3) The Director may require the use of water treatment technology, including ozonation and chlorination devices, sand filters, and settling pond specifications to reduce the concentration of coliform bacteria in injected fluids; ()
- (4) Ground water produced from points of diversion for beneficial use adjacent to injection wells that dispose of fluids containing coliform bacteria in concentrations greater than the current ground water quality standard shall be subject to monitoring for bacteria by the owner/operator of the injection well. A waiver of the monitoring requirement may be granted by the Director when it can be demonstrated that injection will not result in unreasonable contamination of ground water produced from these adjacent points; ()
- (5) Construction of new Subclass 5F1 injection wells, and other shallow and deep injection wells, as specified by the Director, that are likely to exceed the current ground water quality standard for coliform bacteria at the point of beneficial use is prohibited; and ()
- (6) At no time shall any fluid containing or suspected of containing fecal contaminants of human origin be injected into any Class V injection well authorized under these rules. ()
- iii. Physical, visual and olfactory characteristics. The following restrictions apply to physical, visual and olfactory characteristics of injected fluids. Temperature, color, odor, turbidity, conductivity and pH: the temperature, color, odor, conductivity, turbidity, pH or other characteristics of the injected fluid may not result in the receiving ground water becoming less suitable for diversion to beneficial uses, as determined by the Director. ()
- iv. Contamination by an injection well of ground water produced at an existing point of diversion for beneficial use, or a point of diversion for beneficial use developed in the future, shall not exceed water quality standards defined in Section 010 of these rules. ()
- d. Criteria for Location and Use of Class V Wells Requiring Permits. ()
- i. A Class V well requiring a permit may be required to be located a minimum distance, as determined from Table 1, from any point of diversion for beneficial use that could be harmed by bacterial contaminants. This requirement is not applicable to injection wells injecting wastes of quality equal to or better than adopted ground water quality standards in all respects. In addition, Class V wells may be required to be located at such a distance from a point of diversion for beneficial use as to minimize or prevent ground water contamination

resulting from unauthorized or accidental injection, as determined by the Director. ()

ii. These location requirements in Table 1 may be waived, as per Paragraph 070.05.b., when the applicant can demonstrate that any springs or wells within the calculated perimeter of the generated perched water zone will not be contaminated by the applicant’s waste disposal or injection well. Monitoring by the applicant of the production wells or springs in question may be required to demonstrate that they are not being contaminated.

| Determined Radii of Perched Water Zones Based on Maximum Average Weekly Injection Rates (cfs) of Class V Injection Wells * | |
|---|--|
| Injection (cfs) | Radius of Generated Perched Water Zone (ft) |
| 0 - 0.20 | 800 |
| 0.20 - 0.60 | 1,400 |
| 0.61 - 1.00 | 1,800 |
| 1.01 - 2.00 | 2,500 |
| 2.01 - 3.00 | 3,000 |
| 3.01 - 4.00 | 3,500 |
| 4.01 - 5.00 | 4,000 |
| Greater than 5.00 | As determined by the Director |

* Injection rates shall be based on the average volume of wastes injected by the well during the week of greatest injection in an average water year. ()

e. Standards for the Quality of Fluids Injected by Subclass 5A7 Wells (Open-Loop Heat Pump Return). ()

i. The quality of fluids injected by a Subclass 5A7 injection well shall comply with ground water quality standards or shall be equal to the quality of the ground water source to the heat pump, whichever is less stringent. ()

ii. If the quality of the ground water source does not meet ground water quality standards, the injected fluids must be returned to the formation containing the ground water source. ()

iii. The temperature of the injected fluids shall not impair the designated beneficial uses of the receiving ground water. ()

iv. All Rule-authorized Injection Wells shall conform to the ground water quality standards at the point of injection and not cause any water quality standards to be violated at any point of beneficial use. ()

06. Monitoring, Record Keeping and Reporting Requirements. The Director may require monitoring, record keeping and reporting by any owner or operator if the Director finds that the well may adversely affect a ground water source or is injecting a contaminant that could have an unacceptable effect upon the quality of the ground waters of the state. ()

a. Monitoring. ()

i. Any injection authorized by the Director shall be subject to monitoring and record keeping requirements as conditions of the permit. Such conditions may require the installation, use and maintenance of monitoring equipment or methods. The Director may require where appropriate, but is not limited to, the following: ()

- (1) Monitoring of injection pressures and pressures in the annular space between casings; ()
- (2) Flow rate and volumes; ()
- (3) Analysis of quality of the injected fluids for contaminants that are subject to limitation or reduction under the conditions of the permit; or contaminants which the Director determines could have an unacceptable effect on the quality of the ground waters of the state, and which the Director has reason to believe are in the injected fluids; ()
- (4) Monitoring of ground water through special monitoring wells or existing points of diversion for beneficial use in the zone of influence as determined by the Director; ()
- (5) A demonstration of the integrity of the casing, tubing or seal of the injection well. ()
 - ii. The frequency of required monitoring shall be specified in the permit when issued, except that the Director at any time may, in writing, require additional monitoring and reporting. ()
 - iii. All monitoring tests and analysis required by permit conditions shall be performed in a state certified laboratory or other laboratory approved by the Director. ()
 - iv. Any field instrumentation used to gather data, when specified as a condition of the permit, shall be required by the Director to be tested and maintained in such a manner as to ensure the accuracy of the data. ()
 - v. All samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity and fluids injected. ()
- b. Record Keeping.** The permittee shall maintain records of all monitoring activities to include: ()
 - i. Date, time and exact place of sampling; ()
 - ii. Person or firm performing analysis; ()
 - iii. Date of analysis, analytical methods used and results of analysis; ()
 - iv. Calibration and maintenance of all monitoring instruments; and ()
 - v. All original tapes, strip charts or other data from continuous or automated monitoring instruments. ()
- c. Reporting.** ()
 - i. Monitoring results obtained by the permittee pursuant to the monitoring requirements prescribed by the Director shall be reported to the Director as required by permit conditions. ()
 - ii. The Director shall be notified in writing by the permittee within five (5) days after the discovery of violation of the terms and conditions of the permit. If the injection activity endangers human health or a public or domestic water supply, use of the injection well shall be immediately discontinued and the owner or operator shall immediately notify the Director. Notification shall contain the following information: ()
 - (1) A description of the violation and its cause; ()
 - (2) The duration of the violation, including dates and times; if not corrected or use of the well discontinued, the anticipated time of correction; and ()
 - (3) Steps being taken to reduce, eliminate and prevent recurrence of the injection. ()

iii. Where the owner or operator becomes aware of failure to submit any relevant facts in any permit application or report to the Director, that person shall promptly submit such facts or information. ()

iv. The permittee shall furnish the Director, within a time specified by the Director, any information which the Director may request to determine compliance with the permit. ()

v. All applications for permits, notices and reports submitted to the Director shall be signed and certified. ()

vi. The Director shall be notified in writing of planned physical alterations or additions to any facility related to the permitted injection well operation. ()

vii. Additional information to be reported to the Director in writing: ()

(1) Transfer of ownership; ()

(2) Any change in operational status not previously reported; ()

(3) Any anticipated noncompliance; and ()

(4) Reports of progress toward meeting the requirements of any compliance schedule attached or assigned to this permit. ()

07. Permit Assignable. Permits may be assignable to a new owner or operator of an injection well if the new owner or operator, within thirty (30) days of the change, notifies the Director of such change. The new owner or operator shall be responsible for complying with the terms and conditions of the permit from the time that such change takes place. ()

071. -- 999. (RESERVED)

37.03.04 – DRILLING FOR GEOTHERMAL RESOURCES RULES

000. LEGAL AUTHORITY (RULE 0).

The Idaho Department of Water Resources, through authority granted by Section 42-4001 through Section 42-4015, Idaho Code, is the regulatory agency for the drilling, operation, maintenance, and abandonment of all geothermal wells in the state. The Department's authority also includes regulatory jurisdiction over other related operations and environmental hazards pertaining to the exploration and development of geothermal resources. ()

001. TITLE AND SCOPE (RULE 1).

The geothermal policy of the state of Idaho as stated in Section 42-4001, Idaho Code, is as follows: "It is the policy and purpose of this state to maximize the benefits to the entire state which may be derived from the utilization of our geothermal resources, while minimizing the detriments and costs of all kinds which could result from their utilization. This policy and purpose is embodied in this act which provides for the immediate regulation of geothermal resource exploration and development in the public interest." ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

For the purpose of these rules, the following definitions apply. ()

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

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

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

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

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

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

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

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

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

10. Exploratory Well. A well drilled for the discovery and/or evaluation of geothermal resources either in an established geothermal field or in unexplored areas. Exploratory well does not include holes six (6) inches in diameter or less if they are used for gathering geotechnical data such as, but not limited to, heat flow, earth temperature, temperature gradient and/or seismic measurements, provided said holes are not greater than one thousand (1000) feet in depth below land surface and provided the material medium is not intended to be encountered. ()

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

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

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

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

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

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

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

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

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

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

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

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

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

24. Production Well. Any well which is commercially producing or is intended for commercial production of a geothermal resource. ()

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

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

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

a. Underground waste resulting from inefficient, excessive, or improper use, or dissipation of

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

b. The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well. ()

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

011. -- 024. (RESERVED)

025. DRILLING (RULE 25).

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

02. Permits and Notices. ()

a. Permit to Drill for Geothermal Resources. Any person, owner, or operator who proposes to construct a well for the production of or exploration for geothermal resources or to construct an injection well shall first apply to the Director for permit. Application for permit shall be on department form 4003-1. Any person, owner, or operator who proposes to construct a hole for the gathering of geotechnical data shall file a notice of intent with the Director twenty (20) days prior to construction. Written approval of the Director is required before construction may begin. The notice of intent shall show the hole location, proposed depth, hole size, construction methods, intended use and abandonment plan together with other information as required by the Director. ()

b. Permit to Deepen or Modify an Existing Well. If the owner or operator plans to deepen, redrill, plug, or perform any operation that will in any manner modify the well, an application shall be filed with the Director and written approval must be received prior to beginning work. Application for permit to alter a geothermal well shall be on department form 4003-2. ()

c. Application for Permit to Convert to Injection. If the owner or operator plans to convert an existing geothermal well into an injection well with no change of mechanical condition, an application for permit shall be filed with the Director and written approval must be received prior to beginning injection. Application for permit shall be made on department form 4003-3. ()

d. Amendment of Permit. No well may be owned or operated by any person whose name does not appear on the permit or permit application and no changes in departure from the procedures, location, data, or persons specified on the face of a permit shall be allowed until an amendment to such permit is approved by the Director. Application for amendment shall be made on department form 4003-1. ()

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

f. No filing fee shall be charged for filing a notice of intent to construct a hole for gathering geotechnical data, for abandonment, or for the drilling of an observation well. ()

g. No application shall be accepted and filed by the Director until such filing fee has been deposited with the Director. ()

03. Bonds. ()

a. The Director shall require as a condition of every permit every operator or owner who engages in the construction, alteration, testing, or operation of the well to file with the Director on a form prescribed by the Director a bond indemnifying the state of Idaho providing good and sufficient security conditioned upon the performance of the duties required by these regulations and the Geothermal Resource Act and the proper abandonment of any well covered by such permit. Such bond shall be in an amount which is not less than ten thousand dollars (\$10,000) for each individual well. ()

b. Bonds remain in force for the life of the well or wells and may not be released until the well or wells are properly abandoned or another valid bond is substituted therefor. Any person who acquires the ownership or operation of any well or wells shall within five (5) days after acquisition file with the Director an indemnity bond in the sum of ten thousand dollars (\$10,000) for each well acquired. The Director reserves the right to request additional bonding prior to abandonment if deemed necessary. ()

04. Well Spacing. ()

a. Any well drilled for the discovery and production of geothermal resources or as an injection well shall be located more than one hundred (100) feet from and within the outer boundary of the parcel of land on which the well is situated, or more than one hundred (100) feet from a public road, street, or highway dedicated prior to the commencement of drilling. This requirement may be modified or waived by the Director upon written request. ()

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

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

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

05. Casing. ()

a. General. All wells shall be cased in such a manner as to protect or minimize damage to the environment, usable ground waters, geothermal resources, life, health, and property. The permanent well head completion equipment shall be attached to the production casing or to the intermediate casing if production casing does not reach the surface. No permanent well head equipment may be attached to any conductor or surface casing alone. The specification for casing strength shall be determined by the Director on a well-to-well basis. All casing reaching the surface shall provide adequate anchorage for blow out prevention equipment, hole pressure control, and protection for natural resources. Sufficient casing shall be run to reach a depth below all known or reasonably estimated groundwater levels to prevent blow outs or uncontrolled flows. The following casing requirements are general but should be used as guidelines in submitting applications for permit to drill. ()

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

necessary by the Department. ()

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

i. A minimum of two hundred (200) feet of surface casing shall be set in areas where pressures and formations are unknown. In no case may surface casing be set at a depth less than ten percent (10%) of the proposed total depth of the well. ()

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

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

iv. The temperature of the return drilling mud shall be monitored continuously during the drilling of the surface casing hole. Either a continuous temperature-monitoring device shall be installed and maintained in a working condition or the temperature shall be read manually. In either case, the return temperature shall be entered into the log book for each thirty (30) feet of depth drilled. ()

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

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

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

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

026. -- 029. (RESERVED)

030. RECORDS (RULE 30).

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

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

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

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

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

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

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

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

03. Confidential Status. Information on file with the Director is open to public inspection except any reports, logs, records, or histories derived from the drilling of a well and filed with the Director shall not be available for public inspection and shall be kept confidential by the Director for a period of one year from receipt provided, however, that the Director may use any such reports, logs, records, or histories in any action in any court to enforce the provisions of the Geothermal Act or any order or regulation adopted hereunder. ()

04. Inspection of Records. The records filed by an operator with the Director which relates to the data gathered from the drilling operation shall be open to inspection only to those authorized in writing by the operator and designated personnel. The records of any operator filed for a completed or producing well that has been transferred by sale, lease, or otherwise shall be available to the new owner or lessee for his inspection or copying and shall be available for inspection or copying by others upon written authorization of such new owner or lessee. ()

031. -- 034. (RESERVED)

035. BLOW OUT PREVENTION (RULE 35).

01. Unexplored Areas. ()

a. A department employee may be present at the well at any time during the initial phases of drilling until the surface casing has been cemented and the BOPE has been satisfactorily pressure tested. The Department employee may be present during any drilling operations at the well and if in his opinion conditions warrant he may order additional casing to be run. ()

b. A logging unit equipped to continuously record the following data shall be installed and operated continuously by a technician approved by the Director after drilling out the shoe of the conductor pipe until the well has been drilled to the total depth. ()

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

ii. Drilling mud pit level. ()

iii. Drilling mud pump volume. ()

iv. Drilling mud weight. ()

v. Drilling rate. ()

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

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

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

e. The above requirements for BOPE may be modified by the Director and any proposed modification by the applicant must be approved by the Director in writing. ()

02. Explored Areas. ()

a. A gate valve with a minimum working pressure rating of three hundred (300) PSI must be installed on the well head. ()

b. The temperature of the return mud shall be monitored continuously. Either a continuous temperature monitoring device shall be installed and maintained in working condition or the temperature shall be read manually. In either case, return mud temperatures shall be entered into the log book for each thirty (30) feet of depth drilled. ()

c. An annular BOPE with a minimum working pressure of one thousand (1,000) PSI shall be installed on the surface casing. ()

d. Additional requirements may be set forth by the Director depending upon the knowledge of the area. Such requirements will be set forth on the approved application for permit to drill a geothermal well. Modification of said requirements may be made in the field by Department personnel monitoring construction of the well. ()

036. -- 039. (RESERVED)

040. INJECTION WELLS (RULE 40).

01. Construction. The owner or operator of a proposed injection well or series of injection wells shall provide the Director with such information he deems necessary for evaluation of the impact of such injection on the

geothermal reservoir and other natural resources. Such information shall include existing reservoir conditions, method of injection, source of injection fluid, estimates of daily amount of material medium to be injected, zones or formations affected, and analysis of fluid to be injected and of the fluid from the intended zone of the injection. Such information shall be on department form 4003-3. ()

02. Surveillance. ()

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

b. To establish the integrity of the annular cement above the shoe of the casing, the owner or operator shall make sufficient surveys within thirty (30) days after injection is started into a well to prove that all the injected fluid is confined to the intended zone of injection. Thereafter, such surveys shall be made at least every two (2) years or more often if necessary. The Director shall be notified forty-eight (48) hours in advance of such surveys in order that a representative may be present if deemed necessary. If in the Director's opinion such tests are not necessary, he may grant a waiver excepting the operator from such tests. ()

c. After the well has been placed on injection, the injection well site will be visited periodically by Department personnel. The operator or owner will be notified of any necessary remedial work. Unless modified by the Director, this work must be performed within ninety (90) days or approval for the injection well issued by the Director will be rescinded. ()

041. -- 044. (RESERVED)

045. ABANDONMENT (RULE 45).

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

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

b. Prevent damage to geothermal reservoirs; ()

c. Prevent loss of reservoir energy; ()

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

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

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

b. A history of geothermal resource wells shall be filed within sixty (60) days after completion of abandonment procedures. ()

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

d. Good quality heavy drilling fluid shall be used to replace any water in the hole and to fill all portions of the hole not plugged with cement. ()

- e. All cement plugs with a possible exception of the surface plug shall be pumped into the hole through drill pipe or tubing. ()
- f. All open annuli shall be filled solid with cement to the surface. ()
- g. A minimum of one hundred (100) feet of cement shall be emplaced straddling the interface or transition zone at the base of groundwater aquifers. ()
- h. One hundred (100) feet of cement shall straddle the placement of the shoe plug on all casings including conductor pipe. ()
- i. A surface plug of either neat cement or concrete mix shall be in place from the top of the casing to at least fifty (50) feet below the top of the casing. ()
- j. All casing shall be cut off at least five (5) feet below land surface. ()
- k. Cement plugs shall extend at least fifty (50) feet over the top of any liner installed in the well. ()
- l. Abandonment. Injection wells are required to be abandoned in the same manner as other wells. ()
- m. Other abandonment procedures may be approved by the Director if the owner or operator can demonstrate that the geothermal resource, groundwaters, and other natural resources will be protected. Such approval must be given in writing by the Director prior to the beginning of any abandonment procedures. ()
- n. Within five (5) days after the completion of the abandonment of any well or injection well, the owner or operator of the abandoned well or injection well shall report in writing to the Director on such form as may be prescribed by the Director on all work done with respect to the abandonment. ()

046. -- 049. (RESERVED)

050. MAINTENANCE (RULE 50).

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

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

03. Tests. The Director may require such tests or remedial work as in his judgment are necessary to prevent damage to life, health, property, and natural resources, to protect geothermal reservoirs from damage or to prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or other beneficial uses to the best interest of the neighboring property owners and the public. Such tests may include, but are not limited to, casing tests, cementing tests, and equipment tests. ()

051. -- 054. (RESERVED)

055. HEARINGS, NOTICE, PROCEDURE (RULE 55).

Any applicant or the Director shall have the right to a hearing concerning the propriety of issuing a permit for which an application has been filed. Any applicant who desires a hearing pursuant to Section 42-4004, Idaho Code, must file a written request therefor with the Director of the Department of Water Resources. Any person may file a petition with the Director requesting that the Director hold a hearing concerning the propriety of issuing a permit for which an application has been filed. The petitioner must serve a copy of the petition upon the applicant and set forth in the petition all reasons for requesting the hearing. The applicant may respond to the petition within ten (10) days of its

service. However, failure of the applicant to respond shall not be prejudicial to his right to appear at the hearing and present such evidence as he deems proper, if the Director grants the petition for such hearing. The hearing shall be set by the Director at any location deemed appropriate. Notice of the time and location shall be served on the applicant and/or the petitioner by the Director at least twenty (20) days before said date by certified mail addressed to applicant's address as stated in the application and to the petitioner at the address given in the petition. The hearing shall be conducted in the manner prescribed in the general rules and procedures of the Department. ()

056. -- 059. (RESERVED)

060. HEARINGS ON REFUSED, LIMITED, OR CONDITIONED PERMIT (RULE 60).

Any applicant who is granted a limited or conditioned permit, or who is denied a permit or any person aggrieved by a decision of the Director may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within thirty (30) days of service of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in Rule 055 above. Any applicant may appeal the decision of the Board to the District Court within thirty (30) days of service of the decision. All hearings under this rule shall be conducted in the manner prescribed in the general rules and procedures of the Department. ()

061. -- 064. (RESERVED)

065. PENALTIES (RULE 65).

01. Order by Director. If the Director finds that any person is constructing, operating, or maintaining any hole, well or injection well not in accordance with any applicable permit or in a fashion so as to involve an unreasonable risk of, or so as to cause, damage to life or property or subsurface, surface, or atmospheric resources, the Director may issue an order to such person to correct or to stop such practices as are found to be improper and to mitigate any injury of any sort caused by such practices. ()

02. Enforcement by Director. The Director may enforce any provision of this act or any order or regulation issued or adopted pursuant thereto by an appropriate action in the District Court. The Director may bring action in the District Court to have enjoined any threatened noncompliance with any provision of this act or any order or regulation adopted pursuant hereto or any threatened harm to life, property, or surface, subsurface or atmospheric resources which would be caused by such noncompliance. ()

03. Willful Violations or Failure to Comply. Any willful violations of or failure to comply with any provision of these rules, or if such order or regulation has been served on such person or is otherwise known to him, any valid order or regulation issued or adopted hereto shall be a misdemeanor punishable by fine of up to five thousand dollars (\$5,000) for each offense or a sentence of up to six (6) months in a county jail or both; each day of a continuing violation shall be a separate offense under this subdivision. A responsible or principal executive officer or any corporate person may be liable under this subdivision if such corporate person is not in compliance with any provision of this act or with any valid order or regulation adopted pursuant hereto. ()

066. -- 069. (RESERVED)

070. FORMS (RULE 70).

Forms required by these rules. ()

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

02. Forms. The forms include the following: ()

a. Form 4003-1, Application for Permit to Drill for Geothermal Resources; ()

b. Form 4003-2, Application for Permit to Alter a Geothermal Well; ()

c. Form 4003-3, Application for Permit to Convert a Well to a Geothermal Injection Well; ()

- d.** Form 4005, Geothermal Resources Surety Bond; ()
 - e.** Form 4007, Notice of Intent to Abandon a Well; ()
 - f.** Form 4009, Report of Abandonment of a Well; ()
 - g.** Form 4010-1, Monthly Injection Report for Geothermal Wells; and ()
 - h.** Form 4010-2, Monthly Energy Report for Geothermal Wells. ()
- 071. -- 999. (RESERVED)**

37.03.05 – MINE TAILINGS IMPOUNDMENT STRUCTURES RULES

000. LEGAL AUTHORITY (RULE 0).

These rules are adopted pursuant to Section 42-1714, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules are titled IDAPA 37.03.05, “Mine Tailings Impoundment Structures Rules.” ()

02. Scope. ()

a. These rules and standards will only apply to structures upon which construction, lift construction, enlargement, or alteration is underway on or after July 1, 1978. Under no circumstances shall these rules be construed to deprive or limit the Director of the Department of Water Resources of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data, or information which may be required by the Director from any owner of a mine tailings impoundment structure for the proper administration of the law. ()

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

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

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

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

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

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

04. Mine Tailings Impoundment Structure. Any artificial embankment which is or will be more than thirty (30) feet in height measured from the lowest elevation of the toe to the maximum crest elevation constructed for the purpose of storing mine tailings slurry. ()

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

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

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

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

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

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

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

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

- d. Every public utility; ()
- e. Every person, firm, association, organization, partnership, business, trust, corporation or company; ()
- f. The duly authorized agents, lessees, or trustees of any of the foregoing; ()
- g. Receivers or trustees appointed by any court for any of the foregoing. ()
- 10. Alterations, Repairs or Either of Them.** Only such alterations or repairs as may directly affect the safety of the mine tailings impoundment structure or reservoir, as determined by the Director. ()
- 11. Enlargement.** Any change in or addition to an existing mine tailings impoundment structure or reservoir, which raises or may raise the storage capacity of the structure, as defined in Rule Subsection 010.06. ()
- 12. Days Used in Establishing Deadlines.** Calendar days including Sundays and holidays. ()
- 13. Certificate of Approval.** A certificate issued by the Director for the mine tailings impoundment structure listing restrictions imposed by the Director, and without which no new mine tailings impoundment structures shall be allowed to impound mine tailings slurry or water and no existing impoundment shall be allowed to impound water or continue deposition of mine tailings slurry. The structure will be recertified every two (2) years, unless the Director determines that the structure is unsafe. ()
- 14. Engineer.** A registered professional engineer, licensed as such by the state of Idaho. ()
- 011. -- 024. (RESERVED)**
- 025. AUTHORITY OF REPRESENTATIVE (RULE 25).**
When plans, drawings and specifications are filed by another person in behalf of an owner, written evidence of authority to represent the owners shall be filed with the plans, drawings and specifications. ()
- 026. -- 029. (RESERVED)**
- 030. FORMS (RULE 30).**
Forms required by these rules. ()
- 01. Samples of Forms.** Samples of all forms required by these rules are available from the Department to interested parties upon request. ()
- 02. Form 1721.** Construction of a mine tailings impoundment structure requires the filing of Form 1721. ()
- 031. -- 034. (RESERVED)**
- 035. PLANS, DRAWINGS, AND SPECIFICATIONS (RULE 35).**
The following provisions apply in submitting plans, drawings, and specifications. ()
- 01. Submission of Plans, Drawings, and Specification.** Any owner who shall desire to construct, or enlarge, or alter or repair any mine tailings impoundment structure shall submit duplicate copies of plans, drawings, and specifications prepared by an engineer for the proposed work to the Director with required fees. An owner who desires to construct a continuously raised tailings impoundment structure shall submit duplicate copies of plans, drawings, and specifications prepared by an engineer, showing the stages of lift height, by periods of time, and ultimate design height. ()
- 02. Application for and Receipt of Written Approval.** Construction of a new mine tailings

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

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

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

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

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

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

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

c. A maximum cross-section of the mine tailings impoundment structure showing elevation and width of crest, slopes of upstream and downstream faces, thickness of any proposed riprap, zoning of the earth embankment (if any), location of cutoff and bonding trenches, elevations, size and type of decant systems, valves, operating mechanism, and dimensions of all other essential structural elements such as cutoff walls, filters, embankment zones, etc.; ()

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

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

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

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

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

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

j. An operation plan; ()

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

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

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

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

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

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

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

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

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

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

f. At such other times as determined necessary by the Director. The Director will, within seven (7) days after notification by the engineer, inspect and if satisfactory, approve the completed stage of construction. Owners are encouraged to give prior notice to the Department, so that the inspection can be scheduled to prevent delays. ()

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

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

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

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

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

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

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

- a. Formulas and assumptions used in designs; ()
- b. Hydrologic data used in determining runoff from the drainage areas; ()
- c. Engineering properties of each type of material to be used in the embankment and of the foundation areas; ()
- d. Stability analysis, including an evaluation of overturning, sliding, upstream and downstream slopes and foundation stability; ()
- e. Geologic description of reservoir area, including evaluation of landslide potential; ()
- f. Chemical analysis of all materials composing the slurry; ()
- g. Earthquake design loads must be evaluated at all sites located east of Range 22 E., Boise Meridian. This area corresponds to Seismic Zone 3 as designated by the Recommended Guidelines of the National Dam Safety Program. Earthquake analysis may be required at other impoundment structure sites if deemed necessary by the Director; ()
- h. A seepage analysis of the embankment and reservoir bottom; ()
- i. A hydraulic analysis of the outlet system and spillway, diversion work or diversion channel; ()
- j. Engineering properties and the weathering characteristics of the proposed tailings to be stored in the impoundment; ()
- k. Other information which would aid in evaluating the safety of the design. ()

17. Filing of Additional Information. The Director may require the filing of such additional information which in his opinion is necessary to assess safety or waive any requirement herein cited if in his opinion it is unnecessary. ()

036. -- 039. (RESERVED)

040. BONDING (RULE 40).

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

01. Filing of Bond. The bond shall be filed prior to any issuance by the Director of a certificate of approval for use of the mine tailings impoundment structure to impound mine tailings slurry and shall run for the two (2) year approval period covered on the certificate of approval. ()

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

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

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

05. Current Costs for Abandonment. Bond amount will be based on current costs for abandonment

of the facility based on the approved cost estimate for abandonment at the present construction condition or the next approved proposed stage, whichever represents the larger bond amount. ()

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

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

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

041. -- 044. (RESERVED)

045. MINE TAILINGS IMPOUNDMENT STRUCTURES DESIGN CRITERIA (RULE 45).

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

01. Embankment Slopes. ()

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

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

()

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

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

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

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

ii. Contain phosphate clays; ()

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

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

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

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

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

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

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

02. Top Width Embankment. ()

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

$$W = 2 (H \text{ to } 1/2 \text{ power}) + 4, \text{ minimum}$$

W = Top width
H = Embankment height ()

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

03. Cutoff Trenches or Walls. ()

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

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

04. Borrowed Fill Embankment. ()

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

greater. ()

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

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

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

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

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

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

05. Riprap. ()

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

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

06. Outlet Systems. ()

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

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

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

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

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

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

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

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

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

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

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

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

07. Freeboard. A minimum freeboard of two (2) feet plus wave height (H) shall be provided on the crest of the mine tailings impoundment structure during passage of the design inflow.

$$H = 1.95 (F \text{ to } 1/2 \text{ power})$$

F = Fetch in miles across water surface at a design maximum level. ()

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

09. Inspection and Completion Reports. ()

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

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

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

046. -- 049. (RESERVED)

050. DAMS STORING TAILING AND WATER (RULE 50).

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

051. -- 054. (RESERVED)

055. PROVISIONS OF CHAPTER 17, TITLE 42, IDAHO CODE (RULE 55).

The provisions of Sections 42-1709 through 42-1721, Idaho Code, are a part of these rules. ()

056. -- 999. (RESERVED)

37.03.06 – SAFETY OF DAMS RULES

000. LEGAL AUTHORITY (RULE 0).

These rules are adopted pursuant to Chapter 17, Section 42-1714, Idaho Code, and implement the provisions of Sections 42-1709 through 42-1721, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. **Title.** These rules are titled IDAPA 37.03.06, “Safety of Dams Rules.” ()

02. **Scope.** ()

a. The requirements that follow are intended as a guide to establish acceptable standards for construction and to provide guidelines for safety evaluation of new or existing dams. The rules apply to all new dams, to existing dams to be enlarged, altered or repaired, and maintenance of certain existing dams, as specifically provided in the rules. The Director will evaluate any deviation from the standards hereinafter stated as they pertain to the safety of any given dam. The standards are not intended to restrict the application of other sound engineering design principles. Engineers are encouraged to submit new ideas which will advance the state of the art and provide for the public safety. ()

b. Under no circumstances shall these rules be construed to deprive or limit the Director of the Department of Water Resources of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data, or information which may be required by the Director from any owner of a dam for the proper administration of the law. State sovereignty as expressed in Policy 1A of the adopted State Water Plan for independent review and approval of dam construction, operation and maintenance will not be waived due to any overlapping jurisdiction from federal agencies. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

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

01. **Active Storage.** The water volume in the reservoir stored for irrigation, water supply, power generation, flood control, or other purposes but does not include flood surcharge. Active storage is the total reservoir capacity in acre-feet, less the inactive and dead storage. ()

02. **Alterations, Repairs or Either of Them.** Only such alterations or repairs as may directly affect the safety of the dam or reservoir, as determined by the Director. Alterations, repairs does not include routine maintenance items. (See Rule Subsections 055.02.a. and 055.02.b.) ()

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

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

05. **Certificate of Approval.** A certificate issued by the Director for all dams listing restrictions imposed by the Director, and without which no new dams shall be allowed by the owner to impound water. A certificate of approval is also required for existing dams before impoundment of water is authorized. ()

06. **Dam.** Any artificial barrier together with appurtenant works, which is or will be ten (10) feet or more in height or has or will have an impounding capacity at maximum storage elevation of fifty (50) acre-feet or more. Height of a dam is defined as the vertical distance from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the Director, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation. ()

07. **Small Dams.** Artificial barriers twenty (20) feet or less in height that are capable of storing less than one hundred (100) acre-feet of water. ()

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

- 09. Large Dams.** Artificial barriers forty (40) feet or more in height or are capable of storing four thousand (4,000) acre-feet or more of water. ()
- 10. Department Jurisdiction.** The following are not subject to department jurisdiction: ()
- a.** Artificial barriers constructed in low risk areas as determined by the Director, which are six (6) feet or less in height, regardless of storage capacity. ()
- b.** Artificial barriers constructed in low risk areas as determined by the Director, which impound ten (10) acre-feet or less at maximum water storage elevation, regardless of height. ()
- c.** Artificial barriers in a canal used to raise or lower water therein or divert water therefrom. ()
- d.** Fills or structures determined by the Director to be designed primarily for highway or railroad traffic. ()
- e.** Fills, retaining dikes or structures, which are under jurisdiction of the Department of Environmental Quality, designed primarily for retention and treatment of municipal, livestock, or domestic wastes, or sediment and wastes from produce washing or food processing plants. ()
- f.** Levees, that store water regardless of storage capacity. Levee means a retaining structure alongside a natural lake which has a length that is two hundred (200) times or more greater than its greatest height measured from the lowest elevation of the toe to the maximum crest elevation of the retaining structure. ()
- 11. Days Used in Establishing Deadlines.** Calendar days including Sundays and holidays. ()
- 12. Dead Storage.** The water volume in the bottom of the reservoir stored below the lowest outlet and generally is not withdrawn from storage. ()
- 13. Department.** The Idaho Department of Water Resources. ()
- 14. Design Evaluation.** The engineering analysis required to evaluate the performance of a dam relative to earthquakes, floods or other site specific conditions that are anticipated to affect the safety of a dam or operation of appurtenant facilities. ()
- 15. Director.** The Director of the Idaho Department of Water Resources. ()
- 16. Engineer.** A registered professional engineer, licensed as such by the state of Idaho. ()
- 17. Enlargement.** Any change in or addition to an existing dam or reservoir, which raises or may raise the water storage elevation of the water impounded by the dam. ()
- 18. Factor of Safety.** A ratio of available shear strength to shear stress, required for stability. ()
- 19. Flood Surge.** A variable volume of water temporarily detained in the upper part of a reservoir, in the space (or part thereof) that is filled by excess runoff or flood water, above the maximum storage elevation. Flood surge cannot be retained either because of physical or administrative factors but is passed through the reservoir and discharged by the spillway(s) until the reservoir level has been drawn down to the maximum storage elevation. ()
- 20. Inflow Design Flood (IDF).** The flood specified for designing the dam and appurtenant facilities. ()
- 21. Maximum Credible Earthquake.** The largest earthquake that reasonably appears capable of occurring under the conditions of the presently known geological environment. ()
- 22. Operation Plan.** A specific plan that will assure the project is safely managed for its intended

purpose and which provides reservoir operating rule curves or specific limits and procedures for controlling inflow, storage, and/or release of water, diverted into, passed through or impounded by a dam. ()

23. Owner. Includes any of the following who own, control, operate, maintain, manage, hold the right to store and use water from the reservoir or propose to construct a dam or reservoir. ()

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

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

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

d. Every public utility; ()

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

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

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

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

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

26. Water Storage Elevation. The maximum elevation of the water surface which can be obtained by the dam or reservoir. It is further defined as the storage level attained when the reservoir is filled to capacity (i.e. to the spillway crest) or an authorized storage level attained by installing flashboards to increase the reservoir capacity, or a specified upper storage limit, which is attained by operation of movable gates that raises the reservoir to a controlled operating level. The maximum storage elevation is an equivalent term of water storage elevation. ()

27. Release Capability. The ability of a dam to pass excess water through the spillway(s) and outlet works and otherwise discharge. ()

011. -- 024. (RESERVED)

025. DAM SIZE CLASSIFICATION AND RISK CATEGORY (RULE 25).

01. Size Classification. The following table defines the height and storage capacity limits used by the Department to classify dams:

| Size Classification | Height (ft) | | Storage Capacity |
|---------------------|---------------------------------------|-----|---|
| Small | 20 ft. or less | and | Less than 100 acre-ft. |
| Intermediate | More than 20 ft. but less than 40 ft. | or | 100 Acre-ft or more, but less than 4000 acre ft |
| Large | 40 ft. or more | or | 4000 acre-ft., or more |

()

02. Risk Category. The following table describes categories of risk used by the Department to classify losses and damages anticipated in down-stream areas, that could be attributable to failure of a dam during typical

flow conditions.

| Risk Category | Dwellings | Economic Losses |
|----------------------|---|--|
| Low | No permanent structures for human habitation. | Minor damage to land, crops, agricultural, commercial or industrial facilities, transportation, utilities or other public facilities or values. |
| Significant | No concentrated urban development, 1 or more permanent structures for human habitation which are potentially inundated with flood water at a depth of 2 ft. or less or at a velocity of 2 ft. per second or less. | Significant damage to land, crops, agricultural, commercial or industrial facilities, loss of use and/or damage to transportation, utilities or other public facilities or values. |
| High | Urban development, or any permanent structure for human habitation which are potentially inundated with flood water at a depth of more than 2 ft. or at a velocity of more than 2 ft. per second. | Major damage to land, crops, agricultural, commercial or industrial facilities, loss of use and/or damage to transportation, utilities or other public facilities or values. |

()

03. Determination of Size and Risk Category. The Director shall determine the size and risk category of a new or existing dam. ()

026. -- 029. (RESERVED)

030. AUTHORITY OF REPRESENTATIVE (RULE 30).

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

031. -- 034. (RESERVED)

035. FORMS (RULE 35).

Forms required by these rules are available from the Department to interested parties upon request. Construction of a small dam requires the filing of Form 1710 and construction of an intermediate or large dam requires the filing of Form 1712. ()

036. -- 039. (RESERVED)

040. CONSTRUCTION PLANS, DRAWINGS AND SPECIFICATIONS (RULE 40).

The following provisions shall apply in submitting plans, drawings and specifications. ()

01. Submission of Duplicate Plans, Drawings and Specifications. Any owner who shall desire to construct, enlarge, alter or repair any intermediate or large dam, shall submit duplicate plans, drawings and specifications prepared by an engineer for the proposed work to the Director with required fees. The Director may, however, require the submittal of plans, drawings and specifications prior to the construction of any dam. ()

02. Applying for and Obtaining Written Approval. Construction of a new dam or enlargement, alteration or repairs on existing dams shall not be commenced until the owner has applied for and obtained written approval of the plans, drawings and specifications. Alteration or repairs do not include routine maintenance for which prior approval is not required. (See Rule Subsections 055.02.a and 055.02.b) ()

03. Plans Shall Be Prepared on a Good Quality Vellum or Mylar. Transparent copies reproducible by standard duplicating processes, if accurate, legible and permanent, will be accepted. Plans may initially be submitted in the form of nonreproducible paper prints. After reviewing the plans, the Director will notify the owner of

any required changes. ()

04. Preparation and Submission of Plans. Plans and drawings shall be of a sufficient scale with an adequate number of views showing proper dimensions, so that the plans and drawings may be readily interpreted and so that the structure and appurtenances can be built in conformance with the plans and drawings. ()

05. Information Included with Plans. Plans for new dams shall include the following information and plans for enlargement, alteration or repair of an existing dam shall include as much of the following information as required by the Director to adequately describe the enlargement, alteration or repair and the affect on the existing dam or its appurtenant facilities: ()

a. A topographic map of the dam site showing the location of the proposed dam by section, township and range, and location of spillway, outlet works, and all borings, test pits, borrow pits; ()

b. A profile along the dam axis showing the locations, elevations, and depths of borings or test pits, including logs of bore holes and/or test pits; ()

c. A maximum cross-section of the dam showing elevation and width of crest, slopes of upstream and downstream faces, thickness of riprap, zoning of earth embankment, location of cutoff and bonding trenches, elevations, size and type of outlet conduit, valves, operating mechanism and dimensions of all other essential structural elements such as cutoff walls, filters, embankment zones, etc.; ()

d. Detailed drawings showing plans, cross and longitudinal sections of the outlet conduits, valves and controls for operating the same, and trash racks; ()

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

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

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

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

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

j. Plans or drawings of instruments, recommended by the owner's engineer to monitor performance of intermediate or large dams to assure safe operation, or as may be required by the Director to monitor any dam regardless of size, that is situated upstream of a high risk area. ()

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

07. Changes to Specifications. The specifications shall not be materially changed without prior written consent of the Director. Significant design changes, while construction is underway, shall be submitted for the Director's review and approval. ()

08. Inspections. The owner shall provide for and allow inspections by the Department to assure the dam and appurtenant structures are constructed in conformance with the approved plans and specifications, or as may

be revised by the engineer and approved by the Director if there are unforeseen conditions discovered during site excavation or construction of the dam which potentially jeopardize the future integrity and safety of the dam. Certain stages of construction shall not proceed without inspection and approval by the Director, including the following:

()

a. After clearing and excavation of the foundation area and cutoff trench and prior to placing any fill material. ()

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

c. After construction is completed and before any water is stored in the reservoir. ()

d. At such other times as determined necessary by the Director. The Director will, upon seven (7) days notice, inspect and if satisfactory, approve the completed stage of construction. The Director may conduct inspections upon shorter notice upon good reason being shown or upon a schedule jointly agreed upon by the Director and the owner. ()

09. Inspection, Examination and Testing of Materials. All materials and workmanship shall be subject to inspection, examination and testing by the Director at any and all times. ()

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

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

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

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

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

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

b. Hydrologic data used in determining runoff from the drainage areas; reservoir flood routing(s); and hydraulic evaluations of the outlet(s) and the spillway(s). ()

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

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

i. Seismic design loads shall be evaluated and applied at all large dams to be located in significant or high risk areas, in Seismic Zone 3, which for purposes of these rules is the area in Idaho east of Range 22 East, Boise Meridian. The evaluation required of large dams, that are classified significant or high risk, shall use the maximum ground motion/ acceleration generated by the maximum credible earthquake, which could affect the dam site. ()

ii. Seismic analysis may be required as determined by the Director for large dams located above high risk areas in Seismic Zone 2, which for purposes of these rules is the area in Idaho west of Range 22 East, Boise Meridian. ()

15. Additional Information/Waiver. The Director may require the filing of such additional information which in his opinion is necessary or waive any requirement herein cited if in his opinion it is unnecessary. ()

16. Alternate Plans. The Director may accept plans and specifications or portions thereof prepared for other agencies which are determined to meet the requirements of Rule 40. ()

041. -- 044. (RESERVED)

045. OPERATION PLAN (RULE 45).

An operation plan is required as described in the following rules and shall provide procedures for emergency operations and include guidelines and procedures for inspection, operation and maintenance of the dam and appurtenances, including any instruments required to monitor performance of the dam during normal operating cycles, critical filling or flood periods, or as may be required to monitor new or existing dams subject to earthquake effects. ()

01. New, Reconstructed or Enlarged Dams. Prior to the initial filling of the reservoir or refilling the reservoir for a reconstructed or enlarged dam in the following categories, the owner shall file with the Director an operation plan for review and approval: ()

- a. Small, high risk. ()
- b. Intermediate, significant risk. ()
- c. Intermediate, high risk. ()
- d. Large, any risk category. ()

02. Existing Dams. Unless exempted by the Director, owners of the following categories of dams shall file an operation plan with the Director on or before July 1, 1992 for review and approval: ()

- a. Intermediate, high risk. ()
- b. Large, significant risk. ()
- c. Large, high risk. ()

03. Alternate Plans. The Director may accept existing studies or plans in lieu of an operation plan if the Director determines the information provided fulfills the requirements of Rule 45. ()

046. -- 049. (RESERVED)

050. NEW INTERMEDIATE OR LARGE DAMS (RULE 50).

The following minimum criteria shall be used to evaluate the design of intermediate or large earthfill dams in Idaho. These standards are intended to serve as guidelines for a broad range of circumstances, and engineers should not consider them as a restriction to the use of other sound engineering design principles. Exclusion from this established criteria will be considered by the Director on a case-by-case basis in approving plans and specifications and evaluating dams. Dams constructed of other materials shall comply with these criteria as found appropriate by the Director and with other engineering criteria approved by the Director. ()

01. Embankment Stability. Slope stability analyses shall determine the appropriate upstream and downstream slopes. Unless slope stability analysis determines otherwise, the embankment slopes shall be:

| | |
|------------------|----------------|
| Upstream slope | 3:1 or flatter |
| Downstream slope | 2:1 or flatter |

()

a. For large high and significant hazard dams and intermediate high hazard dams the embankment shall be designed, constructed and maintained to assure stability under static loads and prevent instability due to seepage or uplift forces, or drawdown conditions. Transmission of seepage through the embankment, abutments and foundation shall be controlled to prevent internal removal of material and instability where seepage erodes or emerges. ()

b. The design analysis shall consider the need for installing filters, filter fabric and/or toe drains to stabilize the fill and protect against piping of the embankment fill material. ()

c. The minimum factor of safety for a dam under steady state condition shall be 1.5. During rapid drawdown of the reservoir, the minimum factor of safety for the embankment shall be 1.2. For dams constructed in Seismic Zone 3, the minimum factor of safety under seismic load shall be 1.0. ()

d. The stability of an embankment subjected to earthquake ground motions can be analyzed by dynamic response or pseudo-static analyses. Pseudo-static analyses are acceptable for embankment dams constructed of soils that will not build-up excess pore pressures due to shaking, nor sustain more than fifteen percent (15%) strength loss during earthquake events, otherwise the stability of an embankment dam shall be analyzed by a dynamic response method. A pseudo-static analysis simplifies the structural analysis (i.e. the resultant force of the seismic occurrence is represented by a static horizontal force applied to the critical section to derive the factor of safety against sliding along an assumed shear surface). The value of the horizontal force used in the pseudo-static analysis, is the product of the seismic coefficient and the weight of the assumed sliding mass. ()

e. Slope deformation analyses are required for dams located in Seismic Zone 3, that are constructed of cohesionless soils and/or on foundations which are subject to liquefaction, when the peak acceleration at the site is anticipated to exceed 0.15g. ()

f. The design analyses for new dams located in high risk areas (in Seismic Zone 2 or 3) shall include geologic and seismic reports, location of faults and history of seismicity. ()

g. Where in the opinion of the Director, embankment design or conditions warrant, instrumentation of the embankment and/or foundation will be required. ()

h. The design analyses for new large dams located in high risk areas (in Seismic Zone 3) shall include an evaluation of potential landslides in the vicinity of the dam or immediate area of the reservoir, which could cause damage to the dam or appurtenant structures, obstruct the spillway or suddenly displace water in the reservoir causing the dam to overtop. If potential landslides pose such a threat, they shall be stabilized against sliding, with a minimum factor of safety of 1.5. ()

02. Top Width. The crest width shall be sufficient to provide a safe percolation gradient through the embankment at the level of the maximum storage elevation. The minimum crest width (top of embankment) shall be determined by:

$$W = H / 5 + 10$$

W = Width, in feet
H = Structural Height, in feet

The minimum top width for any dam is twelve (12) feet. ()

03. Cutoff Trenches or Walls. Cutoff trenches shall be excavated through relatively pervious foundation material to an impervious stratum or zone. The trench shall be backfilled with suitable material, compacted to the specified density. The cutoff trench shall extend up the abutments to the maximum storage elevation. ()

a. Cutoff trenches shall be wide enough to allow the free movement of excavation and compaction equipment. Side slopes shall be no steeper than one to one (1:1) for depths up to twelve (12) feet, and no steeper than one and one half to one (1 1/2:1) for greater depths to provide for proper compaction. Flatter slopes may be required for safety and stability. ()

b. Concrete cutoff walls may be used to bond fills to smooth rock surfaces in a similar manner as cutoff trenches and shall be entrenched in the rock to a depth approximately one-half the thickness of the cutoff wall. Concrete cutoff walls shall be doweled into the rock a minimum of eight (8) inches with a maximum spacing of eighteen (18) inches for three-fourths (3/4) inch steel dowels. Concrete walls shall have a minimum projection of three (3) feet perpendicular to the rock surface and shall have a minimum thickness of twelve (12) inches. ()

04. Impervious Core Material. The approved earth materials (silt soils are seldom acceptable) shall be zoned as shown in the plans and placed in the embankment in continuous, approximately level layers, having a thickness of not more than six (6) inches before compaction. Compaction shall be based on ASTM D-698. A minimum compaction of ninety-five percent (95%) is required. ()

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

b. The material shall be compacted by means of a loaded sheepsfoot or pneumatic roller to the required density. ()

c. No rock shall be left in the core material which has a maximum dimension of more than four (4) inches. The core material shall be free of organic and extraneous material. ()

d. The core material shall be carried up simultaneously the full width and length of the dam, and the top of the core material shall be kept substantially level at all times, or slope slightly toward the reservoir. ()

e. No frozen or cloddy material shall be used, and no material shall be placed upon frozen, muddy or unscarified surfaces. ()

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

05. Drains. Toe or chimney drains or free draining downstream material shall be installed where necessary to maintain the phreatic line within the downstream toe. ()

a. Filter design for chimney drains, filter blankets and toe drains in clay and silt soils shall be selected using the following design criteria, unless deviations are substantiated by laboratory tests. All tests are subject to review and approval by the Director.

D15 filter/D15 base > 5 but < 20

D15 filter/D85 base < 5

D50 filter/D50 base < 25

D85 filter > 2 times diameter of pipe perforations, or 1.2 times width of pipe slots. ()

b. Filter material requirements are determined by comparing the particle size distribution of the filter to the particle size distribution of the materials to be protected;

e.g. D50 filter
D50 material to be protected

Where D is the particle size passing a mechanical (sieve) analysis expressed as a percentage by weight. ()

c. The base material should be analyzed considering the portion of the material passing the No. 4 sieve, for designing filters for base materials that contain gravel size particles. To assure internal stability and prevent segregation of the filter material, the coefficient of uniformity (D60/D10) shall not be greater than 20. ()

d. The minimum thickness of filter blankets and chimney drains shall be twelve (12) inches, with the maximum size particle passing the one (1) inch sieve. The maximum particle size may be increased with increasing thickness of the filter, by the rate of one (1) inch per foot of filter. However, the maximum particle shall not exceed three (3) inches. Zoned filters and chimney drains must not be less than twelve (12) inches thick per each zone. The width of granular filters shall not be less than the width of the installation equipment unless the plans and specifications include construction procedures adequate to insure the integrity of a narrower width. ()

e. Perforated drain pipes must have a minimum of six (6) inches of drain material around the pipe. The maximum particle size shall not exceed one-half (1/2) inch unless the layer thickness is increased at the rate of one (1) inch per foot of filter. Underdrains and collection pipes must be constructed of noncorrosive material. ()

06. Freeboard. The elevation of the top of the embankment shall be constructed and maintained above the flood surcharge level to prevent the dam from overtopping during passage of the inflow design flood and to provide freeboard for wind generated waves. Camber shall be included in the design and incorporated in the construction of the top of the embankment, unless waived by the Director. Camber may be estimated by multiplying the structural height of the dam by five percent (5%). ()

a. The height of wind generated waves (H) moving across a surcharged reservoir can be estimated by the following equation:

$H = 1.95 (F/2)$ where F = fetch, the distance in miles across the reservoir, measured perpendicular to the major axis of the dam. ()

b. For large, high risk dams the minimum freeboard shall be two (2) feet plus wave height during passage of the one percent (1%) flood or equal to the surcharge elevation of the reservoir during passage of the inflow design flood whichever is greater. ()

c. Estimation of the height of the wind generated wave using the empirical equation in Rule 050.06.a. shall not preclude a more conservative design including consideration of fill materials, embankment zoning, slope surface protection, drainage or other safety factors. ()

07. Riprap. All dams which are subject to erosion shall be protected from wave action. The design engineer, with approval of the Director, shall determine whether or not rock riprap or other protection is necessary. ()

a. Where rock riprap is used, it shall be placed on a granular bedding material, and extend up the slope, from three (3) feet below the normal minimum operating level to the top of the dam. ()

b. Where riprap is required by Rule Subsection 055.07, pipes, cables, brush, tree growth, dead growth, logs, or floating debris are not acceptable substitutes for rock riprap and granular bedding material. ()

08. Outlet Conduits. All reservoirs shall be provided with an outlet conduit of sufficient capacity to prevent interference with natural streamflow through the reservoir to the injury of downstream appropriators unless waived by the Director. In addition to any natural flow releases, the outlet conduit should be of sufficient capacity to pass at the same time, the maximum water requirement of the owner. A larger outlet conduit may be required to provide adequate release capability as determined by the Director. ()

a. Outlet conduits shall be laid on a firm, stable foundation and normally not be placed on fills which can consolidate, allow differential settlement, and cause separation or misalignment of the pipe. Unless otherwise required, the outlet shall have a minimum inside diameter of twelve (12) inches. The conduits shall be of reinforced concrete or of metal pipe encased in concrete, poured with a continuous seal between the concrete and the trench

except as otherwise approved by the Director. Void spaces and uncompacted areas shall not be covered over when the outlet trench is backfilled. Outlets shall be properly aligned on an established grade and may be supported on a concrete cradle, or otherwise supported and kept aligned when the outlet is covered. ()

b. Asphalt dipped or other metal pipe is not acceptable unless it is encased in concrete. Exceptions may be made only where conditions warrant, but in no case shall the reasonable life expectancy of the pipe be less than the design life of the dam. ()

c. All outlet conduits shall have a seepage path through the impervious zone at least equivalent in length to the maximum head above the downstream end of the system. Only one-third (1/3) the horizontal distance through the impervious zone will be utilized when calculating the length of the seepage path. Collars may be used to satisfy this requirement but all collars shall extend a minimum of two (2) feet outside the conduit for dams up to thirty (30) feet in height and a minimum of three (3) feet for dams above that height. Collars shall be spaced at intervals of at least seven (7) times their height and no collar may be closer to the outer surface of the impervious zone than the distance it extends out from the conduit. ()

d. The use of multiple conduits is allowed only upon the written approval of the Director. ()

09. Gates. All conduits shall be gated on the upstream end, unless otherwise approved by the Director, with either a vertical or an inclined gate. All conduits shall be vented directly behind the gate unless otherwise determined by the Director. Reservoirs storing water during the winter and subject to severe ice conditions shall have inclined gate controls enclosed in a protective sleeve which is buried. All gate stem pedestals shall be made of concrete. All trash racks shall slope toward the reservoir. At least one (1) of the sides of the inlet structure shall be open to allow water to flow into the outlet conduit and shall be covered with a trash rack. Trash racks should be designed with bars primarily in one (1) direction so they can be cleaned. If fish screens are used, they shall be placed over the trash rack and shall be removable for cleaning, or of the self-cleaning type. ()

10. Outlet Controls. Outlet controls shall be installed at a stable location, on the crest or on an elevated platform, or within an enclosure when required, which is readily accessible, but secured to prevent unauthorized operation. ()

11. Release Capability. Based on the size of the dam and on the risk category assigned by the Director, the release capability of a dam shall equal or exceed the inflow design flood in the following table:

| Downstream Risk Category | Size Classification | Inflow Design Flood |
|--------------------------|---------------------|---------------------|
| Low | Small | Q50 |
| | Intermediate | Q100 |
| | Large | Q500 |
| Significant | Small | Q100 |
| | Intermediate | Q500 |
| | Large | 0.5 PMF |
| High | Small | Q100 |
| | Intermediate | 0.5 PMF |
| | Large | PMF |

NOTE: The inflow design flood(s) indicated in the table include specific frequency floods (2%/50yr, 1%/100 yr.) expressed in terms of exceedance with a probability the flood will be equaled or exceeded in any given year (a fifty (50) year flood has a two percent (2%) chance of occurring in any given year and a one hundred (100) year flood has a one percent (1%) chance of occurring in any given year); or PMF - probable maximum flood, which may be

expected from the most severe combination of meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from the probable maximum precipitation (PMP) which is the greatest theoretical depth of precipitation for a given duration that is physically possible over a particular drainage area at a certain time of year. ()

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

b. Where site conditions allow, the spillway shall be constructed independent of embankment dams. The spillway(s) shall guide the discharge of water away from the dam embankment so as not to erode or endanger the structure. ()

c. The minimum base width of an open-channel spillway shall be ten (10) feet. Conduits or siphon pipes other than glory hole spillways are not acceptable substitutes for an open-channel spillway. ()

d. The effectiveness of spillways shall be undiminished by bridges, fences, pipelines or other structures. ()

e. Unless expressly authorized in writing by the Director, or approved as an integral part of an operation plan, stop logs or flashboards shall not be installed in spillways. ()

12. Reservoir Site. The dam site shall be cleared of all trees, brush, large rocks, and debris unless otherwise waived by the Director. The reservoir site shall be cleared of all woody material, growth or debris that is large enough to lodge in the spillway, or outlet works, except as otherwise approved by the Director. ()

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

a. Upon completion of construction the owner or his engineer shall provide the Director a short, written narrative account of all items of work. Record drawings and revised specifications shall be submitted to the Director if the completed project has been substantially changed from the plans and construction specifications originally approved. ()

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

051. -- 054. (RESERVED)

055. EXISTING INTERMEDIATE OR LARGE DAMS (RULE 55).

All dams regulated by the department shall be operated and maintained to retain the embankment dimensions and the hydraulic capacity of the outlet works and spillway(s) as designed and constructed, or as otherwise required by these rules. ()

01. Analyses Required. The analyses required by Rule 40 are not applicable to existing dams except as required in Rule Subsections 055.01.a. and 055.01.e. unless for good cause, the Director specifically requires the analyses. Dams constructed of other than earth material shall comply with these criteria, as determined by the Director, or with other engineering criteria approved by the Director. ()

a. For large, significant or high risk dams, the release capability required by Rule Subsection 050.11 shall be evaluated and applied to the structure. Dams of other size and risk are required to provide the release capability of Rule Subsection 050.11 but are not required to conduct the analyses. ()

b. Every dam, unless exempted by the Director shall have a spillway with a capacity to pass a flood of one percent (1%) (two percent (2%) for small low hazard dams) occurring with the reservoir full to the spillway crest at the beginning of the flood while maintaining the freeboard required by Rule Subsection 050.06. ()

c. The Director may waive the spillway requirement for dams proposing off stream storage or upon a showing acceptable to the Director. ()

d. The release capability can include the capacity of spillway(s) and outlet(s), diversion facilities, or other appurtenant structures, and any approved operating procedures which utilize upstream storage, diversion and flood routing storage to pass flood events. The remainder of the required release capacity, if any, may be met by the following: ()

i. Reconstruction, enlargement or addition of spillway(s), outlet(s), diversion facilities or other appurtenant structures. ()

ii. A showing acceptable to the Director that failure of the dam during a flood of the specified magnitude described in Rule Subsection 050.11 would not substantially increase downstream damages over and above the losses and damages that would result from any natural flood up to that magnitude. ()

iii. A showing acceptable to the Director that the release capability of the dam together with other emergency release modes such as a controlled failure or overtopping of the dam would not result in a larger rate of discharge than the rate of inflow to the reservoir. ()

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

e. For large, high risk dams, the seismic design loads shall be evaluated and applied to dams located east of Range 22E, B.M. The evaluation shall use the maximum ground motion/acceleration generated by the maximum credible earthquake. ()

f. The Director may accept existing studies relative to requirements of Rule Subsections 055.01.a. and 055.01.e., if the Director determines the information provided fulfills the requirements of Rule Subsections 055.01.a. and 055.01.e. ()

g. The Director may allow until July 1, 1992 for completion of the analyses required in Rule Subsections 055.01.a. and 055.01.g. and may allow the owner of an existing dam a compliance period of up to ten years for completing the studies, to complete structural modifications or implement other improvements necessary to provide the release capability determined to be required (Rule Subsection 055.01.a.) or complete structural modifications necessary to assure the dam and appurtenant facilities will safely function under earthquake loads (Rule Subsection 055.01.g.). ()

h. Within thirty (30) days after completing the analyses required in Rule Subsection 055.01.a. or 055.01.g., the owner of an existing dam that is deficient in either case (Rule Subsection 055.01.a. or 055.01.g.) shall file with the Director a schedule outlining the dates work or construction items will be completed. ()

02. Other Requirements. ()

a. Routine maintenance items include the following: ()

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

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

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

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

- v. Repair or replacement of gates, gate stems, seals, valves, lift mechanisms or vent pipes with similar equipment. ()
- vi. Repair or replacement of wingwalls, headwalls or aprons including spalling concrete. ()
- b.** The following are not routine maintenance items: ()
 - i. Reconstruction of embankment slopes. ()
 - ii. Replacement, reconstruction or extension of outlets. ()
 - iii. Foundation stabilization. ()
 - iv. Filter or drain construction or replacement. ()
 - v. Spillway size alteration or modification. ()
 - vi. Installation of instrumentation or piezometers. ()
 - vii. Release capability modification. ()
- c.** Items not specifically described in Rule Subsections 055.02.a. and 055.02.b. will be determined by the Director to be included in one rule or the other upon receipt of a written request from the owner or his representative seeking such a determination. ()
- d.** Where riprap is required to prevent erosion and to maintain a stable embankment, pipes, cables, brush, tree growth, logs, or floating debris are not acceptable substitutes for rock riprap and granular bedding material. Dams or portions thereof which are stable without riprap, are not required to have riprap. ()
- e.** Upon completion of reconstruction of a dam or feature of a dam included in Rule Subsection 055.02.b., the owner or his engineer shall provide the Director a short written narrative account of all items of work. Record drawings and revised specifications shall be submitted to the Director if the completed project has been substantially changed from the plans and construction specifications originally approved. ()
- f.** Upon request, the owner of every dam shall provide his name and address to the Director and shall advise the Director of future changes in ownership. If the owner does not reside in Idaho, the owner shall provide the name and address of the person residing in Idaho who is responsible for the operation, maintenance and repair of the dam. ()

056. -- 061. (RESERVED)

060. SMALL DAM DESIGN CRITERIA (RULE 60).

The following provisions apply to small dams. ()

01. Design and Construction of Small Dams. Design and construction of small dams located in high risk areas as determined by the Director require submittal of fees, plans and specifications prepared by an engineer and shall follow the same general criteria established under Rules 40, 45, 50, and 55. Other small dams not determined to be in a high risk area shall follow the same general criteria established under Rules 50 and 55 or larger dams, except that submittal of plans, specifications and test results is not required. ()

02. Notification Prior to Construction. The owner shall notify the Director in writing ten (10) calendar days prior to commencing construction. ()

03. Approval Required. The owner shall not proceed with the following stages of construction without approval from the Director. ()

- a.** After clearing and excavation of the foundation area and cutoff trench, and prior to placing any fill

material; ()

b. After installation of the outlet conduit, and before placing any backfill material around the conduit; ()

c. After construction is completed, and before any water is stored in the reservoir; ()

d. At such other times as determined necessary by the Director. The Director, will, upon seven (7) day notice, inspect and, if satisfactory, approve the completed stage of construction. ()

04. Notification upon Completion of Construction. The owner shall in writing notify the Director upon completion of construction. ()

061. -- 064. (RESERVED)

065. DAMS STORING TAILINGS AND WATER (RULE 65).

01. Construction of Dams Storing Fifty Acre-Feet or More. Construction of dams intended to store or likely to store fifty (50) acre-feet or more of water in excess of the water contained in the tailings material shall meet the requirements specified in Rules 40, 45, 50 and 55 of these rules. The Director may waive any or all of these requirements if, in the opinion of the Director, sound engineering design provided by the owner indicates such requirements are not applicable. ()

02. Abandonment Plan. An abandonment plan which provides a stable, maintenance-free condition at any time tailings are not being actively placed for an extended period of time, as determined by the Director, shall be submitted to the Director by the owner of a dam storing tailings and water. This rule may be waived by the Director if determined not to be applicable. ()

066. -- 999. (RESERVED)

37.03.07 – STREAM CHANNEL ALTERATION RULES

000. LEGAL AUTHORITY (RULE 0).

The purpose of these rules and minimum standards is to specify procedures for processing and considering applications for stream channel alterations under the provisions of Title 42, Chapter 38, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. **Title.** These rules are titled IDAPA 37.03.07, “Stream Channel Alteration Rules.” ()

02. **Scope.** The minimum standards are intended to enable the Director to process, in a short period of time, those applications which are of a common type and which do not propose alterations which will be a hazard to the stream channel and its environment. It is intended that these rules and minimum standards be administered in a reasonable manner, giving due consideration, to all factors affecting the stream and adjacent property. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

01. **Alteration.** To obstruct, diminish, destroy, alter, modify, relocate or change the natural existing shape of the channel or to change the direction of flow of water of any stream channel within or below the mean high water mark. It includes removal of material from the stream channel and emplacement of material or structures in or across the stream channel where the material or structure has the potential to affect flow in the channel as determined by the director. ()

02. **Applicant.** Any individual, partnership, company, corporation, municipality, county, state or federal agency, their agent, or other entity proposing to alter a stream channel or actually engaged in constructing a channel alteration, whether authorized or not. ()

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

04. **Continuously Flowing Water.** A sufficient flow of water that could provide for migration and movement of fish, and excludes those reaches of streams which, in their natural state, normally go dry at the location of the proposed alteration. IDWR will assume, subject to information to the contrary, that the USGS quadrangle maps accurately depict whether a stream reach is continuously flowing, at the location of the proposed alteration. Such exclusion does not apply to minor flood channels that are a part of a stream which is continuously flowing in the reach where the alteration is located. Also, such exclusion does not apply to streams which may be dry as a result of upstream diversion or storage of water. ()

05. **Department.** The Idaho Department of Water Resources. ()

06. **Drop Structures, Sills and Barbs.** Physical obstructions placed within a stream channel for the purpose of stabilizing the channel by decreasing stream gradient and velocity and by dissipating stream energy. ()

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

08. **Mean High Water Mark.** A water level corresponding to the “natural or ordinary high water mark” as defined in Section 58-104(9), Idaho Code, and is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its terrestrial vegetation and destroy its value for commonly accepted agricultural purposes. ()

09. **Non-Powered Sluice Equipment.** Equipment which is powered only by human strength. ()

10. **Plans.** Maps, sketches, engineering drawings, photos, work descriptions and specifications sufficient to describe the extent, nature, and location of the proposed stream channel alteration and the proposed method of accomplishing the alteration. ()

11. **Repair.** Any work needed or accomplished, to protect, maintain, or restore any water diversion structure and the associated stream channel upstream and downstream as necessary for the efficient operation of the water diversion structure. ()

12. **Stream Channel.** A natural water course of perceptible extent with definite beds and banks which

confines and conducts continuously flowing water. The channel referred to is that which exists at the present time, regardless of where the channel may have been located at any time in the past. For the purposes of these rules only, the beds of lakes and reservoir pool areas are not considered to be stream channels. ()

13. Base Flood Elevation. The Base Flood (BF) is referred to as the one hundred (100) year flood and is a measure of flood magnitude based on probability. The base flood has a one percent chance of occurring or being exceeded in any given year, with the Base Flood Elevation (BFE) being the level of flooding reached during the BF or the one hundred (100) year flood event. ()

011. -- 024. (RESERVED)

025. EXEMPTIONS (RULE 25).

01. Work on Existing or Proposed Reservoir Projects. Permits are not required under the provisions of Title 42, Chapter 38 for construction work on any existing or proposed reservoir project, including the dam, and such areas downstream as the Director may determine is reasonably necessary for construction and maintenance of the dam. ()

02. Snake and Clearwater Rivers. Permits are not required for work within that portion of the Snake and Clearwater rivers from the state boundary upstream to the upper boundary of the Port of Lewiston Port District as it now exists or may exist in the future. ()

03. Cleaning, Maintenance, Construction or Repair Work. No permit is required of a water user or his agent to clean, maintain, construct, or repair any diversion structure, canal, ditch, or lateral or to remove any obstruction from a stream channel which is interfering with the delivery of any water under a valid existing water right or water right permit. ()

04. Removal of Debris. No permit is required for removal of debris from a stream channel provided that no equipment will be working in the channel and all material removed will be disposed of at some point outside the channel where it cannot again reenter the channel. ()

026. -- 029. (RESERVED)

030. APPLICATIONS (RULE 30).

01. Joint Application Permit Form. The Department of Water Resources, Department of Lands, and the U.S. Army Corps of Engineers have developed a joint application for permit form which will suffice for the required application under the Stream Protection Act. An application should be filed at least sixty (60) days before the applicant proposes to start the construction and shall be upon the joint application form furnished by the Department. The application shall be accompanied by plans which clearly describe the nature and purpose of the proposed work. ()

02. Applicant Following Minimum Standards. In those cases where the applicant intends to follow the minimum standards (Rule 055), detailed plans may be eliminated by referring to the specific minimum standard; however, drawings necessary to adequately define the extent, purpose, and location of the work will still be required. Plans shall include some reference to water surface elevations and stream boundaries to facilitate review. The application should show the mean high water mark on the plans; however, any water surface or water line reference available will be helpful as long as this reference is described. (Examples: present water surface, low water, high water.) ()

03. Submission of Copies. The applicant shall submit one (1) copy of all necessary plans along with the application form. When drawings submitted are larger than eight and one half by eleven (8 1/2 x 11), the applicant shall provide the number of copies specified by the department. ()

04. Stream Channel Alteration Permit. Any applicant proposing to operate a vacuum or suction dredge within or below the mean high water mark of a stream channel shall apply for and obtain a stream channel alteration permit. The vacuum or suction dredge shall only be operated in accordance with the conditions of the

permit and with the applicable rules. ()

031. -- 034. (RESERVED)

035. APPLICATION REVIEW (RULE 35).

01. Prior to Issuance of Permit. The following items shall be among those considered by the Director prior to issuing a permit: ()

- a. What is the purpose of doing the work? ()
- b. What is the necessity and justification for the proposed alteration? ()
- c. Is the proposal a reasonable means of accomplishing the purpose? ()
- d. Will the alteration be a permanent solution? ()
- e. Will the alteration pass anticipated water flows without creating harmful flooding or erosion problems upstream or downstream? ()
- f. What effect will the alteration have on fish habitat? ()
- g. Will the materials used or the removal of ground cover create turbidity or other water quality problems? ()
- h. Will the alteration interfere with recreational use of the stream? ()
- i. Will the alteration detract from the aesthetic beauty of the area? ()
- j. What modification or alternative solutions are reasonably possible which would reduce the disturbance to the stream channel and its environment and/or better accomplish the desired goal of the proposed alteration? ()
- k. Is the alteration to be accomplished in accordance with the adopted minimum standards? ()
- l. Are there public safety factors to consider? ()

02. Proposed Alteration Which Does Not Follow Minimum Standards. In those cases where a proposed alteration does not follow the minimum standards, a copy of the application will be sent for review to those state agencies requesting notification. The Director shall provide for review by the Department of Lands, copies of applications on navigable rivers. The Director will provide a copy of any other application requested by the Department of Lands and may request review by other state agencies regardless of whether or not the proposed alteration will comply with the minimum standards. ()

036. -- 039. (RESERVED)

040. APPROVAL (RULE 40).

01. Conformance to Application. All work shall be done in accordance with the approved application, subject to any conditions specified by the department. ()

02. Permits Allowed Without Review. A permit may be approved by the Director of the Department of Water Resources without review by other agencies in situations where the work is of a nature not uncommon to the particular area and where it is clear that the work will not seriously degrade the stream values except on navigable rivers which require review by the Department of Lands. All work approved in this manner shall be accomplished in accordance with the minimum standards. ()

03. Reinstatement of Expired Permit. A permit which has expired may be reinstated by the Director after review by other agencies as determined by the Director. ()

041. -- 044. (RESERVED)

045. ENFORCEMENT OF ACT (RULE 45).

01. Written Orders Issued by Designated Employees of Department. Employees of the Department designated by the Director may issue written orders directing an applicant to cease and desist, to ensure proper notice to applicants who are found to be altering a stream without a permit or not in compliance with the conditions of a permit. Such orders shall be in effect immediately upon issuance and will continue in force until a permit is issued or until the order is rescinded by the Director. ()

02. Failure to Comply with Stream Protection Act. Failure to comply with any of the provisions of the Stream Protection Act (Chapter 38, Title 42, Idaho Code), may result in issuance of an Idaho uniform citation and/or the cancellation of any permit by the Director without further notice and the pursuit in a court of competent jurisdiction, such civil or criminal remedies as may be appropriate and provided by law. The Director may allow reasonable time for an applicant to complete stabilization and restoration work. ()

046. -- 049. (RESERVED)

050. EMERGENCY WAIVER (RULE 50).

01. Waiver of Provisions of Stream Protection Act. Section 42-3808, Idaho Code, provides for waiver of the provisions of the Stream Protection Act in emergency situations where immediate action must be taken to protect life or property including growing crops. The Director will not consider failure to submit an application for a stream channel alteration far enough ahead of the desired starting time of the construction work as an emergency situation. ()

02. Verbal Waivers. A verbal waiver may be granted initially; however, all verbal requests for waivers shall be followed up by the applicant in writing within fifteen (15) days of any initial authorization to do work. If the applicant is unable to contact the Director to obtain an emergency waiver, he may proceed with emergency work; however, he must contact the Director as soon as possible thereafter. Proving that a bonafide emergency did actually exist will be the responsibility of the applicant. ()

03. Emergency Waiver. Work authorized by an emergency waiver shall be limited to only that which is necessary to safeguard life or property, including growing crops, during the period of emergency. ()

04. Conformance to Conditions of Waiver. The applicant shall adhere to all conditions set by the Director as part of a waiver. ()

05. Waivers Granted by Designated Employees. The Director may delegate the authority to grant waivers to designated employees of the Department. Names and telephone numbers of such employees will be made available to any interested applicant upon request. ()

051. -- 054. (RESERVED)

055. MINIMUM STANDARDS (RULE 55).

These standards are intended to cover the ordinary type of stream channel alteration and to prescribe minimum conditions for approval of such construction. Unless otherwise provided in a permit, these standards shall govern all stream channel alterations in this state. An applicant should not assume that because an application utilizes methods set forth in these standards it will automatically be approved. These minimum standards include the following items: ()

01. Construction Procedures. ()

02. Dumped Rock Riprap. ()

- 03. Drop Structures, Sills and Barbs. ()
- 04. Culverts and Bridges. ()
- 05. Removal of Sand and Gravel Deposits. ()
- 06. Suction Dredges and Non-Powered Sluice Equipment. ()
- 07. Piling. ()
- 08. Pipe Crossings. ()
- 09. Concrete Plank Boat Launch Ramps. ()

056. CONSTRUCTION PROCEDURES (RULE 56).

01. Conformance to Procedures. Construction shall be done in accordance with the following procedures unless specific approval of other procedures has been given by the Director. When an applicant desires to proceed in a manner different from the following, such procedures should be described on the application. ()

02. Operation of Construction Equipment. No construction equipment shall be operated below the existing water surface without specific approval from the Director except as follows: Forging the stream at one (1) location only will be permitted unless otherwise specified; however, vehicles and equipment will not be permitted to push or pull material along the streambed below the existing water level. Work below the water which is essential for preparation of culvert bedding or approved footing installations shall be permitted to the extent that it does not create unnecessary turbidity or stream channel disturbance. Frequent forging will not be permitted in areas where extensive turbidity will be created. ()

03. Temporary Structures. Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction shall be designed to handle high flows that could be anticipated during the construction period. All structures shall be completely removed from the stream channel at the conclusion of construction and the area shall be restored to a natural appearance. ()

04. Minimizing Disturbance of Area. Care shall be taken to cause only the minimum necessary disturbance to the natural appearance of the area. Streambank vegetation shall be protected except where its removal is absolutely necessary for completion of the work adjacent to the stream channel. ()

05. Disposal of Removed Materials. Any vegetation, debris, or other material removed during construction shall be disposed of at some location out of the stream channel where it cannot reenter the channel during high stream flows. ()

06. New Cut of Fill Slopes. All new cut or fill slopes that will not be protected with some form of riprap shall be seeded with grass and planted with native vegetation to prevent erosion. ()

07. Fill Material. All fill material shall be placed and compacted in horizontal lifts. Areas to be filled shall be cleared of all vegetation, debris and other materials that would be objectionable in the fill. ()

08. Limitations on Construction Period. The Director may limit the period of construction as needed to minimize conflicts with fish migration and spawning, recreation use, and other uses. ()

057. DUMPED ROCK RIPRAP (RULE 57).

01. Placement of Riprap. Riprap shall be placed on a granular bedding material or a compact and stable embankment. ()

02. Sideslopes of Riprap. Sideslopes of riprap shall not be steeper than 2:1 (2' horizontal to 1' vertical) except at ends of culverts and at bridge approaches where a 1 1/2:1 sideslope is standard. ()

03. Minimum Thickness of Riprap. The minimum thickness of the riprap layer shall equal the dimension of the largest size riprap rock used or be eighteen (18) inches, whichever is greater. When riprap will be placed below high water level, the thickness of the layer shall be fifty percent (50%) greater than specified below. ()

04. Riprap Protection. Riprap protection must extend at least one (1) foot above the anticipated high water surface elevation in the stream. ()

05. Rock Used for Riprap. Rock for riprap shall consist of sound, dense, durable, angular rock fragments, resistant to weathering and free from large quantities of soil, shale, and organic matter. The length of a rock shall not be more than three (3) times its width or thickness. Rounded cobbles, boulders, and streambed gravels are not acceptable as dumped riprap. ()

06. Size and Gradation of Riprap. Riprap size and gradation are commonly determined in terms of the weight of riprap rock. The average size of riprap rock shall be at least as large as the maximum size rock that the stream is capable of moving. The maximum size of riprap rock used shall be two (2) to five (5) times larger than the average size. ()

07. Methods Used for Determining Gradation of Riprap. There are many methods used for determining the gradation of riprap rock. One of these many acceptable methods is shown in Table 1 below the Far West States (FWS) method shown in APPENDIX A - Table 1A at the end of this chapter.

| GRADATION OF RIPRAP IN POUNDS | | |
|-------------------------------------|---|---|
| Max. Weight of Stone required (lbs) | Min. and Max. Range in weight of Stones (lbs) | Weight Range 75 percent of Stones (lbs) |
| 150 | 25 - 150 | 50 - 150 |
| 200 | 25 - 200 | 50 - 200 |
| 250 | 25 - 250 | 50 - 250 |
| 400 | 25 - 400 | 100 - 400 |
| 600 | 25 - 600 | 150 - 600 |
| 800 | 25 - 800 | 200 - 800 |
| 1000 | 50 - 1000 | 250 - 1000 |
| 1300 | 50 - 1300 | 325 - 1300 |
| 1600 | 50 - 1600 | 400 - 1600 |
| 2000 | 75 - 2000 | 600 - 2000 |
| 2700 | 100 - 2700 | 800 - 2700 |

()

08. Use of Filter Material. A blanket of granular filter material or filter fabric shall be placed between the riprap layer and the bank in all cases where the bank is composed of erodible material that may be washed out from between the riprap rock. Filter material shall consist of a layer of well-graded gravel and coarse sand at least six (6) inches thick. ()

09. Toe Protection. Some suitable form of toe protection shall be provided for riprap located on erodible streambed material. ()

a. Various acceptable methods of providing toe protection are shown in APPENDIX B at the end of this chapter. ()

b. In addition to the approved methods of providing toe protection as shown in APPENDIX B at the end of this chapter, any other reasonable method will be considered by the Director during review of a proposed project. ()

10. Extension of Riprap Area. Riprap shall extend far enough upstream and downstream to reach stable areas, unless protected against undermining at ends by the method shown in APPENDIX C, Figure 3 at the end of this chapter. On extremely long riprap sections, it is recommended that similar cutoff sections be used at several intermediate points to reduce the hazard that would be created if failure of the riprap occurred at any one (1) location. ()

11. Finished Surface. Placement shall result in a smooth, even finished surface. Compaction is not necessary. ()

12. Placement of Riprap. The full course thickness of the riprap shall be placed in one (1) operation. Dumping riprap long distances down the bank or pushing it over the top of the bank with a dozer shall be avoided if possible. Material should be placed with a backhoe, loader, or dragline. Dumping material near its final position on the slope or dumping rock at the toe and bulldozing it up the slope is a very satisfactory method of placement, if approval is obtained for the use of equipment in the channel. ()

13. Design Procedure. Design procedure using the Far West States (FWS) method. ()

a. The FWS method uses a single equation to deal with variables for riprap. ()

$$D_{75} = 3.5/CK \text{ WDS for Channel Banks}$$

where: D_{75} = Size of the rock at seventy five percent (75%) is finer in gradation, in inches.

| | |
|---|--|
| W | = Specific weight of water, usually 62.4 lbs./cu.ft. |
| D | = Depth of flow in stream, in feet in flood stage |
| S | = Channel slope or gradient, in ft/ft. |
| C | = A coefficient relating to curvature in the stream |
| K | = A coefficient relating to steepness of bank slopes |

()

b. The coefficient, C, is based on the ratio of the radius of curvature of the stream, (CR), to the water surface width, (WSW), so it is necessary for the user to make field determination of these values. The coefficient varies from 0.6 for a curve ratio of 4 to 6, up to 1.0 for a straight channel. If the computed ratio for a particular project is less than 4, the designer should consider some modification less than 4.

| CR/WSW | C |
|------------------|------|
| 4 - 6 | 0.60 |
| 6 - 9 | 0.75 |
| 9 - 12 | 0.90 |
| Straight Channel | 1.00 |

()

c. The coefficient, K, ranges from 0.5 for a 1.5:1 sideslope to 0.87 for 3:1 sideslope. No values are given for steeper or flatter slopes. Slopes steeper than 1.5:1 are not recommended. If slopes flatter than 3:1 are

desired, it would be conservative to use the K-value for 3:1 slopes.

| Bankslope | K |
|-----------|------|
| 1.5:1 | 0.50 |
| 1.75:1 | 0.63 |
| 2.0:1 | 0.72 |
| 2.5:1 | 0.80 |
| 3.0:1 | 0.87 |

()

Table 1A in APPENDIX A, located at the end of this chapter.

058. DROP STRUCTURES, SILLS AND BARBS (RULE 58).

01. Drop Structures. A drop structure shall be constructed of rocks, boulders and/or logs placed within a stream channel to act as a low level dam. Placement of a drop structure perpendicular to stream flow will decrease the stream gradient, dissipate stream energy and decrease stream velocity through an increase in water surface elevation immediately above the structure. Drop structures shall comply with the following criteria: ()

a. Maximum water surface differential across (upstream water surface elevation minus downstream water surface elevation) a drop structure shall not exceed two (2) feet. The department shall approve the final elevation of any structure. ()

b. Rock drop structures shall be constructed of clean, sound, dense, durable, angular rock fragments, and/or boulders of size and gradation, such that the stream is incapable of moving the material during peak flows. Rocks shall be keyed into the stream banks to minimize the likelihood of bank erosion, (See Figure 8 in APPENDIX H located at the end of this chapter). ()

c. Log drop structures are acceptable in four (4) designs including the single log dam, the stacked log dam, the three (3) log dam, and the pyramid log dam. Log ends shall be keyed into both banks at least one-third (1/3) of the channel width or a distance sufficient to prevent end erosion. To prevent undercutting, the bottom log shall be imbedded in the stream bed or hardware cloth, cobbles or boulders shall be placed along the upper edge. Minimum log size for a single log structure shall be determined by on-site conditions and shall be placed to maintain flow over the entire log to prevent decay. Each log drop structure must be accompanied by downstream scour protection, such as a rock apron (See Figure 9 in APPENDIX I located at the end of this chapter). ()

d. All drop structures shall be constructed to facilitate fish passage and centralized scour pool development. ()

02. Sills. A sill shall be constructed of the same material and in the same manner as a drop structure. The top of the sill may not exceed the elevation of the bottom of the channel. The purpose of a sill is to halt the upstream movement of a headcut, thus precluding the widening or deepening of the existing channel. (See Figure 10 in APPENDIX J located at the end of this chapter). ()

03. Barb or Partial Drop Structure. A barb or partial drop structure shall be constructed in the same manner and of the same material as a drop structure and placed into the stream channel to act as a low level dam and grade control structure. The barb will decrease stream gradient, dissipate stream energy and redirect stream flow. ()

a. Barbs shall be constructed of clean, sound, dense, angular rock fragments, of size and gradation such that the stream is incapable of moving the material during peak flows. ()

b. Barbs shall be constructed with a downstream angle of no less than one hundred (100) degrees and no greater than one hundred thirty-five (135) degrees unless otherwise specified. ()

c. Barbs shall “extend” into the channel a distance of not more than twenty percent (20%) of the width of the channel unless otherwise specified by the Director. ()

d. Barbs shall be keyed into the bank a distance equal to or greater than the width of the structure and down to bed level. Whenever moisture is encountered in the construction of the keyways, willow cuttings or clumps shall be placed before and during rock placement in such a manner that the base of the cutting is in permanent moisture and the top extends a minimum of six (6) inches above grade (see Figure 11 in APPENDIX K located at the end of this chapter). ()

059. CULVERTS AND BRIDGES (RULE 59).

01. Culverts and Bridges. Culverts and bridges shall be capable of carrying streamflows and shall not significantly alter conditions upstream or downstream by causing flooding, turbidity, or other problems. The appearance of such installations shall not detract from the natural surroundings of the area. ()

02. Location of Culverts and Bridges. Culverts and bridges should be located so that a direct line of approach exists at both the entrance and exit. Abrupt bends at the entrance or exit shall not exist unless suitable erosion protection is provided. ()

03. Ideal Gradient. The ideal gradient (bottom slope) is one which is steep enough to prevent silting but flat enough to prevent scouring due to high velocity flows. It is often advisable to make the gradient of a culvert coincide with the average streambed gradient. ()

a. Where a culvert is installed on a slope steeper than twenty percent (20%), provisions to anchor the culvert in position will be required. Such provisions shall be included in the application and may involve the use of collars, headwall structures, etc. Smooth concrete pipe having no protruding bell joints or other irregularities shall have such anchoring provisions if the gradient exceeds ten percent (10%). ()

04. Size of Culvert or Bridge Opening. The size of the culvert or bridge opening shall be such that it is capable of passing design flows without overtopping the streambank or causing flooding or other damage. ()

a. Design flows shall be based upon the following minimum criteria:

| Drainage Area | Design Flow Frequency |
|-------------------------|--|
| Less than 50 sq. mi. | 25 Years |
| Over 50 sq. mi. or more | 50 years or greatest flow of record, whichever is more |

()

b. For culverts and bridges located on U.S. Forest Service or other federal lands, the sizing should comply with the Forest Practices Act as adopted by the federal agencies or the Department of Lands. ()

c. For culverts or bridges located in a community qualifying for the national flood issuance program, the minimum size culvert shall accommodate the one hundred (100) year design flow frequency. ()

d. If the culvert or bridge design is impractical for the site, the crossing may be designed with additional flow capacity outside the actual crossing structure, provided there is no increase in the Base Flood Elevation.

(NOTE: When flow data on a particular stream is unavailable, it is almost always safe to maintain the existing gradient and cross-section area present in the existing stream channel. Comparing the proposed crossing size with others upstream or downstream is also a valuable means of obtaining information regarding the size needed for a

proposed crossing.) ()

e. Minimum clearance shall be at least one (1) foot at all bridges. This may need to be increased substantially in the areas where ice passage or debris may be a problem. Minimum culvert sizes required for stream crossings: ()

i. Eighteen (18) inch diameter for culverts up to seventy (70) feet long; ()

ii. Twenty-four (24) inch diameter for all culverts over seventy (70) feet long. ()

f. In streams where fish passage is of concern as determined by the director, an applicant shall comply with the following provisions and/or other approved criteria to ensure that passage will not be prevented by a proposed crossing. ()

g. Minimum water depth shall be approximately eight (8) inches for salmon and steelhead and at least three (3) inches in all other cases. ()

h. Maximum flow velocities for streams shall not exceed those shown in Figure 17 in APPENDIX N, located at the end of this chapter, for more than a forty-eight (48) hour period. The curve used will depend on the type of fish to be passed. ()

i. Where it is not feasible to adjust the size or slope to obtain permissible velocities, the following precautions may be utilized to achieve the desired situation. ()

j. Baffles downstream or inside the culvert may be utilized to increase depth and reduce velocity. Design criteria may be obtained from the Idaho Fish and Game Department. ()

k. Where multiple openings for flow are provided, baffles or other measures used in one (1) opening only shall be adequate provided that the opening is designed to carry the main flow during low-flow periods. ()

05. Construction of Crossings. When crossings are constructed in erodible material, upstream and downstream ends shall be protected from erosive damage through the use of such methods as dumped rock riprap, headwall structures, etc., and such protection shall extend below the erodible streambed and into the banks at least two (2) feet unless some other provisions are made to prevent undermining. ()

a. Where fish passage must be provided, upstream drops at the entrance to a culvert will not be permitted and a maximum drop of one (1) foot will be permitted at the downstream end if an adequate jumping pool is maintained below the drop. ()

b. Downstream control structures such as are shown in Figure 18 in APPENDIX O, located at the end of this chapter, can be used to reduce downstream erosion and improve fish passage. They may be constructed with gabions, pilings and rock drop structures. ()

06. Multiple Openings. Where a multiple opening will consist of two (2) or more separate culvert structures, they shall be spaced far enough apart to allow proper compaction of the fill between the individual structures. The minimum spacing in all situations shall be one (1) foot. In areas where fish passage must be provided, only one (1) opening shall be constructed to carry all low flows. Low flow baffles may be required to facilitate fish passage. ()

07. Areas to be Filled. All areas to be filled shall be cleared of vegetation, topsoil, and other unsuitable material prior to placing fill. Material cleared from the site shall be disposed of above the high water line of the stream. Fill material shall be reasonably well-graded and compacted and shall not contain large quantities of silt, sand, organic matter, or debris. In locations where silty or sandy material must be utilized for fill material, it will be necessary to construct impervious sections both upstream and downstream to prevent the erodible sand or silt from being carried away (see Figure 19, APPENDIX P, located at the end of this chapter), Sideslopes for fills shall not exceed one and one half to one (1.5:1). Minimum cover over all culvert pipes and arches shall be one (1) foot. ()

08. Installation of Pipe and Arch Culvert. All pipe and arch culverts shall be installed in accordance with manufacturer's recommendations. ()

a. The culvert shall be designed so that headwaters will not rise above the top of the culvert entrance unless a headworks is provided. ()

060. REMOVAL OF SAND AND GRAVEL DEPOSITS (RULE 60).

01. Removal of Sand and Gravel. This work consists of removal of sand and gravel deposits from within a stream channel. The following conditions shall be adhered to unless other methods have been specified in detail on the application and approved by the Director. ()

02. Removal Below Water Surface. Sand and gravel must not be removed below the water surface existing at the time of the work. Where work involves clearing a new channel for flow, removal of material below water level will be permitted to allow this flow to occur; however, this must not be done until all other work in the new channel has been completed. ()

03. Buffer Zone. A buffer zone of undisturbed streambed material at least five (5) feet in width or as otherwise specified by the Director shall be maintained between the work area and the existing stream. The applicant shall exercise reasonable precautions to ensure that turbidity is kept to a minimum and does not exceed state water quality standards. ()

04. Movement of Equipment. Equipment may cross the existing stream in one (1) location only, but shall not push or pull material along the streambed while crossing the existing stream. ()

05. Disturbing Natural Appearance of Area. Work must be done in a manner that will least disturb the natural appearance of the area. Sand and gravel shall be removed in a manner that will not leave unsightly pits or other completely unnatural features at the conclusion of the project. ()

061. SUCTION DREDGES AND NON-POWERED SLUICE EQUIPMENT (RULE 61).

01. Standards for Suction Dredges. The following standards shall apply only to uses of suction dredges with nozzle diameter of five (5) inches or less and rated at fifteen (15) HP or less and non-powered sluice equipment moving more than one-quarter (1/4) cubic yard per hour. ()

02. Operating Permit. A permit for the operation of a suction dredge may authorize the use of the dredge within a drainage basin or a large portion of a drainage basin except as otherwise determined by the Director. ()

03. Mechanized Equipment Prohibited Below High Water Mark. There shall be no use of mechanized equipment below the mean high water mark except for the dredge itself, and any life support system necessary to operate the dredge. ()

04. Operation of Dredge. The operation of the dredge shall be done in a manner so as to prevent the undercutting of streambanks. ()

05. Permit Required for Non-Powered Operation -- More Than Five People. A permit shall be required for any non-powered operation in which more than five (5) people are working the same area. ()

06. Permit Required for Non-Powered Operation -- More Than Thirty-Three Percent of Stream Width. A permit shall be required for any non-powered operation if the disturbed area exceeds thirty-three percent (33%) of the stream width at the mining location. ()

07. Limitation of Mining Sites. Only one (1) mining site per one hundred (100) linear feet of stream channel shall be worked at one (1) time unless waived by the Director. ()

062. PILING (RULE 62).

01. Standards for Pilings. The following standards apply to a piling associated with a boat or swimming dock, a log boom, a breakwater, or bridge construction. ()

02. Replacement of Pilings. In replacing a piling the old piling shall be completely removed from the channel, secured to the new piling or cut at stream bed level. ()

03. Condition of Pilings. Chemicals or compounds used for protection of piles and lumber shall be thoroughly dried to prevent bleeding, weeping or dissolution before placing such piles and lumber over, in or near water. ()

04. Prohibited Materials. The application of creosote, arsenicals or phentachlorophenol (Penta) to timber shall not occur in, or over water. ()

063. PIPE CROSSINGS (RULE 63).

01. Standards for Pipe Crossings. The following standards apply to pipe crossings to be installed below the bed of a stream or river such as utility crossings of a gas line, sewer line, electrical line, communication line, water line or similar line. ()

02. Depth of Line. The line shall be installed below the streambed to a depth which will prevent erosion and exposure of the line to free flowing water. In areas of high stream velocity where scouring may occur, the pipe shall be encased in concrete or covered with rock riprap to prevent the pipeline from becoming exposed. ()

03. Pipe Joints. The joints shall be welded, glued, cemented or fastened together in a manner to provide a water tight connection. ()

04. Construction Methods. Construction methods shall provide for eliminating or minimizing discharges of turbidity, sediment, organic matter or toxic chemicals. A settling basin or cofferdam may be required for this purpose. ()

05. Cofferdam. If a cofferdam is used, it shall be completely removed from the stream channel upon completion of the project. ()

06. Revegetation of Disturbed Areas. Areas disturbed as a result of the alteration shall be revegetated with plants and grasses native to these areas. ()

064. CONCRETE PLANK BOAT LAUNCH RAMPS (RULE 64).

01. Construction of Concrete Plank Boat Launch Ramps. Concrete plank boat launch ramps, shall be constructed with individual sections of precast, reinforced concrete planks linked together to provide a stable non-erosive water access. Typical plank size is twelve feet by fourteen inches by four inches (12' x 14" x 4"). (See Figure 20, APPENDIX Q, located at the end of this chapter). ()

02. Construction of Planks. All planks shall be constructed with Type II low alkali cement. ()

03. Concrete Planks. All concrete planks shall have a smooth form finish, free of rock pockets and loose materials. Figure 22 shows a typical launch plank detail. (See Figures 21 and 22 in APPENDIXES R and S). ()

04. Assembly of Planks. The planks shall be assembled out of the water and slid into place on a constructed launch ramp where water velocities do not exceed two (2) feet per second. In waters exceeding (2) feet per second the ramp sections shall be linked together and fastened to pre-positioned stringers anchored into the launch ramp. (See Figure 23, APPENDIX T, located at the end of this chapter). ()

05. Water Depth. The water depth above the lower end of the ramp section shall not be less than three (3) feet during low level or low flow periods. (See Figure 20, APPENDIX Q, located at the end of this chapter). ()

06. Construction of Boat Ramp. The boat launch ramp shall have a base constructed of sound, dense, durable, angular rock resistant to weathering and free from soil, shale and organic materials. Rounded cobbles, boulders and streambed material are not acceptable as base material in areas with stream flow velocities greater than two (2) fps. Base materials shall be covered with a layer of (three-fourths inches (3/4") min.) crushed rock with a minimum depth of two inches (2"). The ramp shall have a minimum and maximum slope of ten percent (10%) and fifteen percent (15%) respectively, and shall be constructed in a manner to avoid long incursions into the stream channel. All ramps and fill material shall be protected with rock riprap in accordance with Rule 057 when stream flow velocities exceed two (2) fps. (See Figure 24, APPENDIX U, located at the end of this chapter). ()

065. -- 069. (RESERVED)

070. HEARINGS ON DENIED, LIMITED, OR CONDITIONED PERMIT OR OTHER DECISIONS OF THE DIRECTOR (RULE 70).

Any applicant who is granted a limited or conditioned permit, or who is denied a permit, may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within fifteen (15) days of receipt of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in the Rules promulgated by the Board under the provisions of Title 67, Chapter 52, Idaho Code. ()

071. -- 999. (RESERVED)

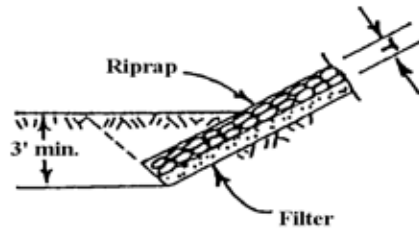
APPENDIX A

Table 1A

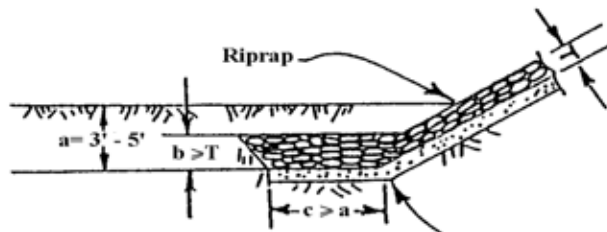
Riprap Gradation Using FWS Method

| % Finer by Weight (Lbs.) | Minimum Size (Lbs.) | Maximum Size (Lbs.) |
|---------------------------------|----------------------------|----------------------------|
| D ₁₀₀ | 1.33 X D ₇₅ | 2.0 X D ₇₅ |
| D ₇₅ | 1.0 X D ₇₅ | 1.67 X D ₇₅ |
| D ₅₀ | 0.67 X D ₇₅ | 1.17 X D ₇₅ |
| D ₂₅ | 0.33 X D ₇₅ | 0.77 X D ₇₅ |
| D ₀ | None | 0.33 X D ₇₅ |

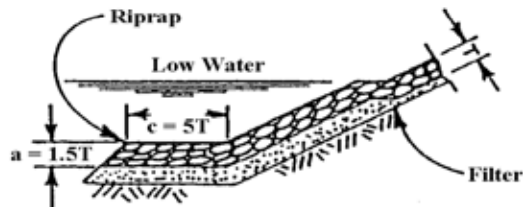
APPENDIX B



METHOD 1: This is most suited to areas where the toe is dry during construction.



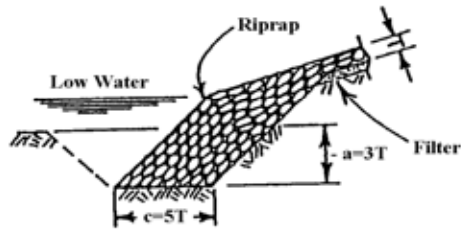
METHOD 2: Used when streambed is very wet or groundwater present makes using Method 1 impractical.



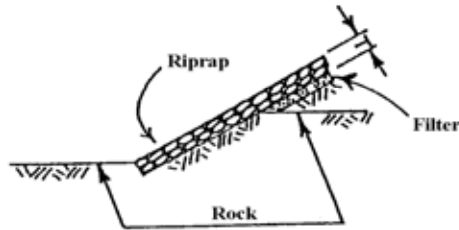
METHOD 3: Often used when toe is underwater during construction. Both Methods 2 and 3 utilize the idea that undermining will cause rock at toe blanket to settle into eroded area providing protection during scouring.

FIGURE 2. Acceptable toe protection

APPENDIX B (CONTINUED)



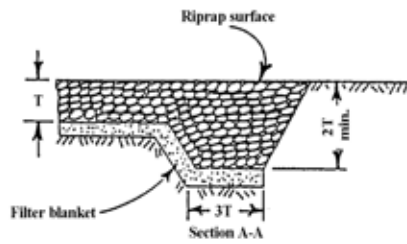
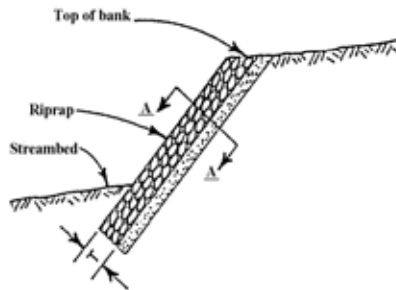
METHOD 4: Used underwater in areas with extremely bad streambed erosion conditions which make Method 3 unfeasible. This method may also be preferred where Method 3 would destroy fish spawning beds.



METHOD 5: When the streambed is non-erodible, no special provisions for toe protection are needed other than insuring that the riprap is well keyed to the rock.

FIGURE 2. Acceptable toe protection *continued*

APPENDIX C

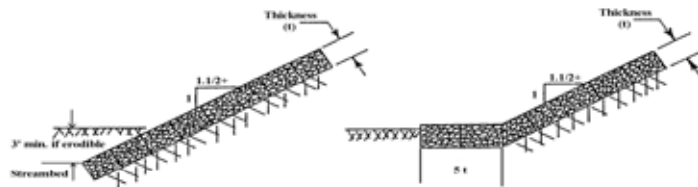


View shown above is cross section at end of riprap looking down along the sideslope toward streambed.

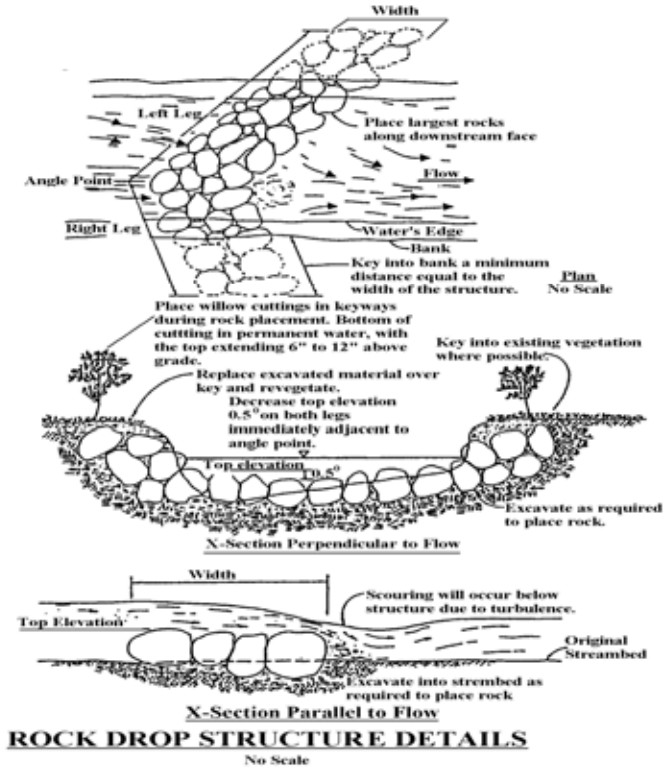
FIGURE 3. Protection against undermining

APPENDIX D

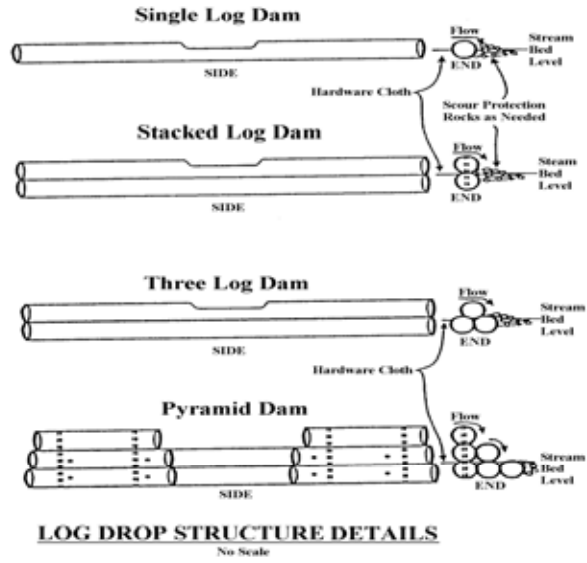
FIGURE 4. Mattress Construction



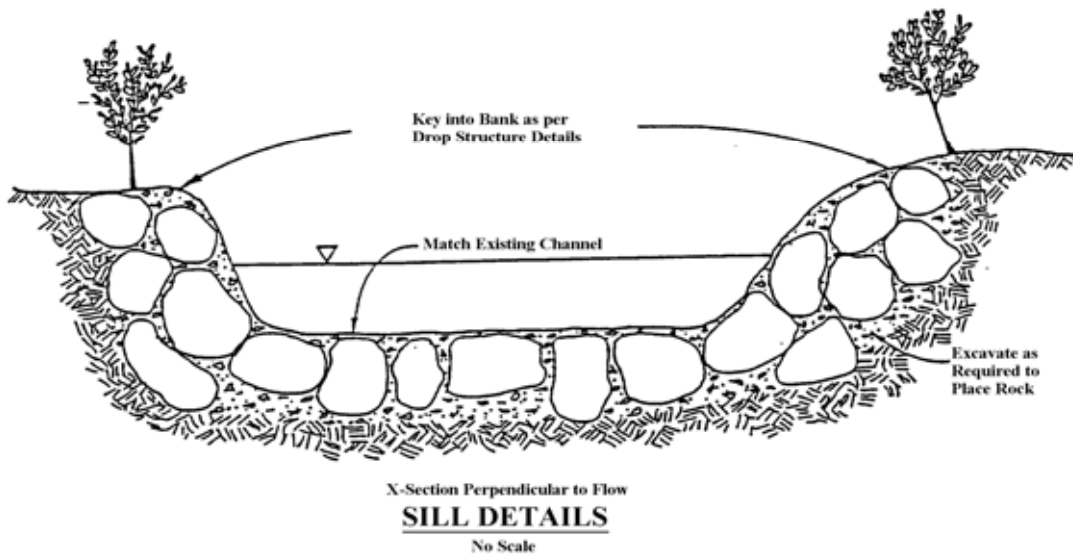
APPENDIX E



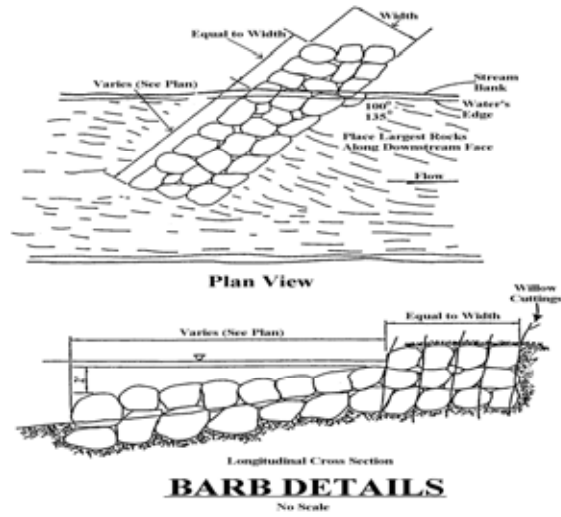
APPENDIX F



APPENDIX G



APPENDIX H



APPENDIX I

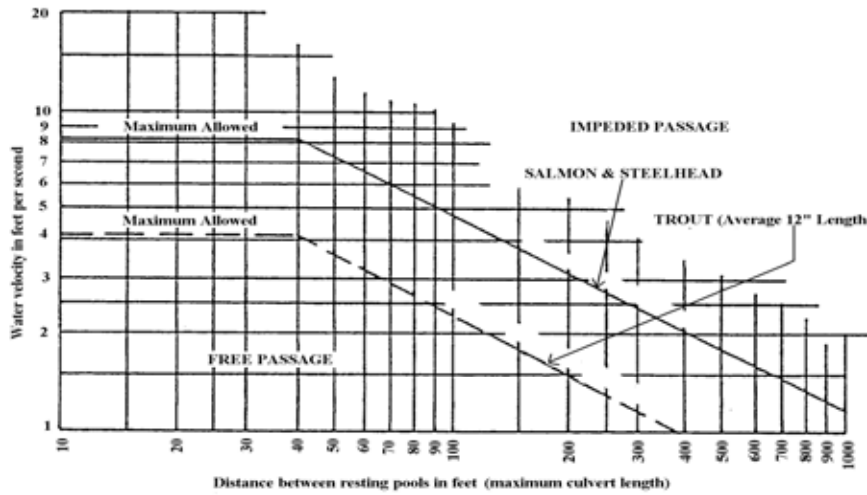


FIGURE 17. Swimming capability of migrating salmon and trout (Alaskan Curve)

APPENDIX J

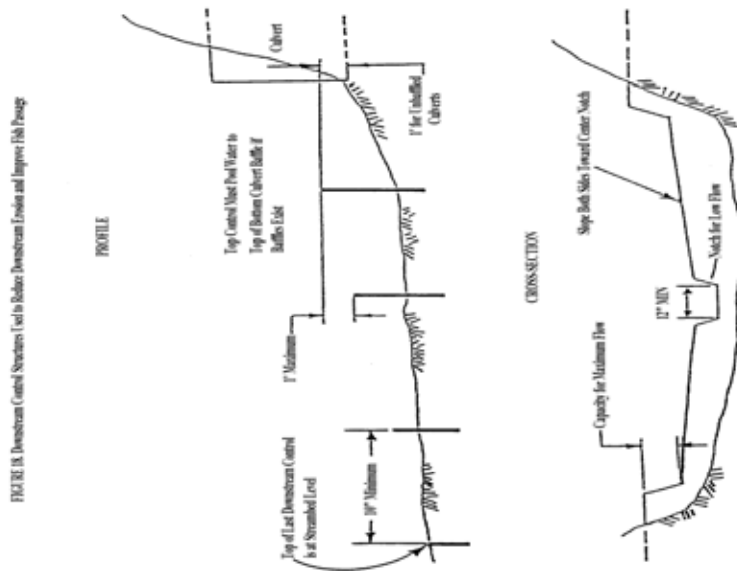


FIGURE 18. Downstream Control Structures Used to Reduce Downstream Erosion and Improve Fish Passage

APPENDIX K

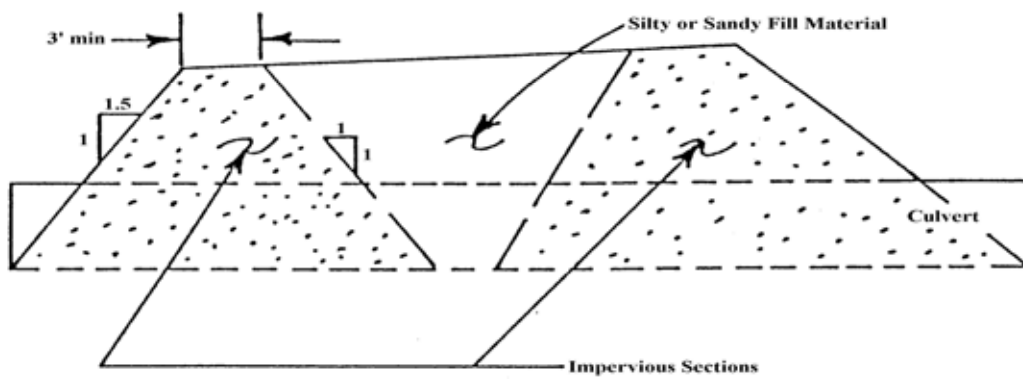
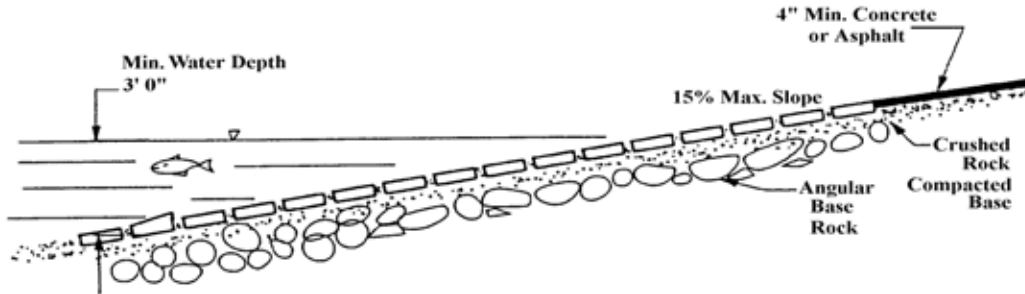


FIGURE 19. Culvert Backfill Using Silty or Sandy Material

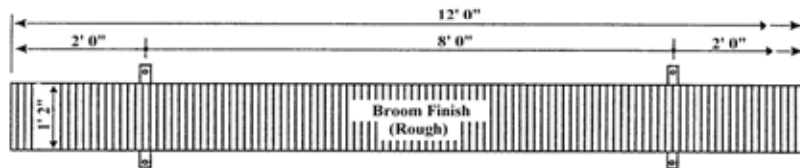
APPENDIX L



LAUNCH RAMP SECTION

No Scale
Figure 20

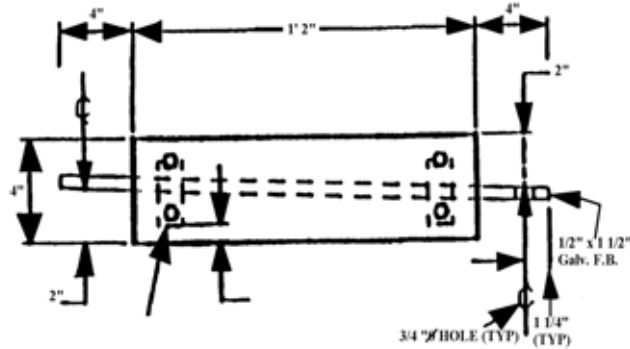
APPENDIX M



CONCRETE PLANK

No Scale
Figure 21

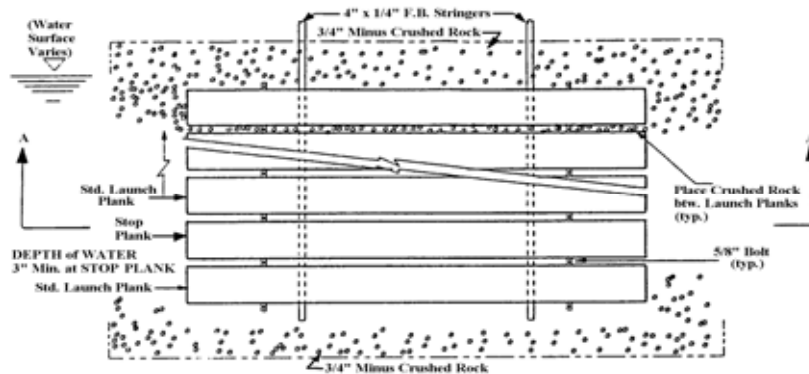
APPENDIX N



CONCRETE LAUNCH PLANK DETAIL

No Scale
Figure 22

APPENDIX O

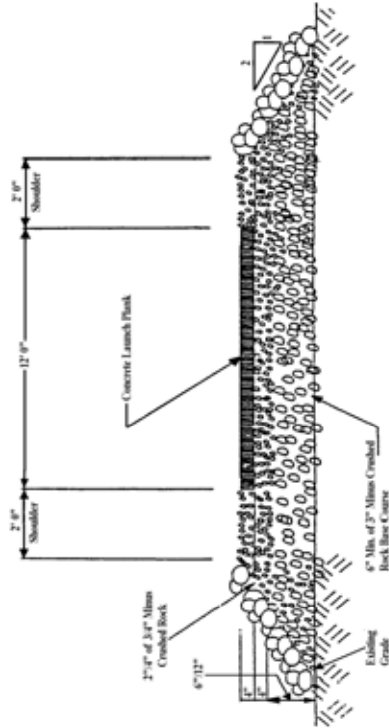


CONCRETE LAUNCH-PLAN VIEW

Figure 23
No Scale

Place crushed rock as shown. Position stringers under planks in order shown and secure with 5/8" bolts. Slide planks on stringers, adding planks as needed, to desired water depth. Stringers consist of 2 - 4" x 1/4" x 20' lng. std. flat bar w/ clevis pin hole one end. Pull flat bar stringers up grade from water when planks are positioned and bolted together, remove when last plank has been set in place.

APPENDIX P



CONCRETE LAUNCH - CROSS-SECTION

No Scale
Figure 24

37.03.08 – WATER APPROPRIATION RULES

000. LEGAL AUTHORITY (RULE 0).

The Director of the Department of Water Resources adopts these rules under the authority provided by Section 42-1805(8), Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules are titled IDAPA 37.03.08, “Water Appropriation Rules.” ()

02. Scope. ()

a. Background and Purpose. The 1985 Idaho Legislature authorized reallocation of certain hydropower water rights to new upstream beneficial uses. The reallocation is to be accomplished using statutes designed to provide for the appropriation of unappropriated public water supplemented by a public interest review of those reallocations which significantly reduce existing hydropower generation. These rules provide the procedures for obtaining the right to divert and use unappropriated public water as well as water previously appropriated for hydropower use which has been placed in trust with the State of Idaho and is subject to reallocation. Guidelines are provided for the filing and processing of applications, and criteria are established for determining the actions to be taken by the Director. ()

b. Scope and Applicability. These rules are applicable to appropriations from all sources of unappropriated public water in the state of Idaho under the authority of Chapter 2, Title 42, Idaho Code. Sources of public water include rivers, streams, springs, lakes and groundwater. The rules are also applicable to the reallocation of hydropower water rights held in trust by the state of Idaho. The rules are applicable to all applications to appropriate water filed with the Department of Water Resources prior to the effective date of these rules upon which an action to approve or deny the application is pending and to all applications filed subsequent to adoption of the rules and regulations. In addition, the rules are applicable to existing permits to appropriate water required to be reviewed under the provisions of Section 42-203D, Idaho Code. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

Unless the context otherwise requires, the following definitions govern these rules: ()

01. Acre-Foot (AF). A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to forty-three thousand five hundred sixty (43,560) cubic feet. ()

02. Advertisement. The action taken by the Director to provide notice, usually by publication of a legal notice in one (1) or more newspapers, of a proposed appropriation or other notice required in administration of his duties and responsibilities. ()

03. Applicant. The person, corporation, association, firm, governmental agency or other entity, or the holder of a permit being reprocessed pursuant to Section 42-203D, Idaho Code, who initiates an appropriation of water or related water matter for the Director’s consideration. ()

04. Application for Permit. The written request to the department on forms furnished by the department proposing to appropriate the public waters or trust waters of the state. ()

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

06. Beneficial Use. One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, stockwatering and fish propagation uses for which permits to appropriate water can be issued as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water. ()

07. Cubic Foot Per Second (CFS). A rate of flow approximately equal to four hundred forty-eight and eight-tenths (448.8) gallons per minute and also equals fifty (50) Idaho miner’s inches. ()

08. DCMI. An acronym for domestic, commercial, municipal and industrial. In these rules it designates certain classes of these uses presumed to satisfy public interest requirements. Domestic use, for purposes of this definition, is water for one or more households and water used for all other purposes including irrigation of a

residential lot in connection with each of the households where the diversion to each household does not exceed thirteen thousand (13,000) gallons per day. Also for purposes of this definition, commercial, municipal and industrial uses are any such uses which do not deplete the system containing the trust water more than two (2) acre feet per day. ()

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

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

11. Legal Subdivision. A tract of land described by the government land survey and usually is described by government lot or quarter-quarter, section, township and range. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the quarter-quarter, section, township and range description. ()

12. Permit or Water Right Permit. The water right document issued by the Director authorizing the diversion and use of unappropriated public water of the state or water held in trust by the state. ()

13. Priority, or Priority of Appropriation, or Priority Date. The date of appropriation established in the development of a water right. The priority of a water right for public water or trust water is used to determine the order of water delivery from a source during times of shortage. The earlier or prior date being the better right. ()

14. Project Works. A general term which includes diversion works, conveyance works, and any devices which may be used to apply the water to the intended use. Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works. ()

15. Single Family Domestic Purposes. Water for household use or livestock and water used for all other purposes including irrigation of up to one half (1/2) acre of land in connection with said household where total use is not in excess of thirteen thousand (13,000) gallons per day. ()

16. Subordinated Water Right. A water right used for hydropower generation purposes that is subject to depletion without compensation by upstream water rights which are initiated later in time and which are for a purpose other than hydropower generation purposes. ()

17. Trust Water. That portion of an unsubordinated water right used for hydropower generation purposes which is in excess of a minimum stream flow established by state action either with agreement of the holder of the hydropower right as provided by Section 42-203B(5), Idaho Code or without an agreement as provided by Section 42-203B(3), Idaho Code. ()

18. Unappropriated Water. The public water of the state of Idaho in streams, rivers, lakes, springs or groundwater in excess of that necessary to satisfy prior rights including prior rights reserved by federal law. ()

011. -- 024. (RESERVED)

025. GENERAL DESCRIPTION OF THE PROCEDURE TO BE USED FOR ALLOCATION (RULE 25).

01. Applications to Appropriate Unappropriated Water and Water Held in Trust. Applications to appropriate unappropriated water and water held in trust as provided by Section 42-203B(3), Idaho Code, will be evaluated using the criteria of Section 42-203A, Idaho Code, which requires an assessment to be made of the impact of the proposed use on water availability for existing water rights, the adequacy of the water supply for the proposed use, whether the application is filed for speculative purposes, the financial ability of the applicant to complete the project, and the effect of the proposed use on the local public interest. ()

02. Applications to Appropriate Water from Sources Held by State in Trust. Applications to appropriate water from sources on which the state holds water in trust, pursuant to Section 203B(5), Idaho Code, will be processed in a three-step analysis. Evaluation will consider the purposes of "trust water" established in Section 42-203B, Idaho Code. ()

a. First, the proposed use must be evaluated using the procedures and criteria of Section 42-203A, Idaho Code. If all criteria of Section 42-203A(5), Idaho Code, are satisfied, the application may be approved for unappropriated water. If the application does not satisfy the criteria of Section 42-203A(5) b, c, d, and e, Idaho Code, or is found to reduce the water to existing water rights other than those held in trust by the state, the application will be denied. If the application satisfies all criteria of Section 42-203A(5), Idaho Code, except Section 42-203A(5)a, Idaho Code, but is found to reduce water held in trust by the state, the application will be reviewed under criteria of Section 42-203C, Idaho Code. ()

b. Second, Section 42-203C, Idaho Code, requires a determination of whether the proposed use will significantly reduce, individually or cumulatively with existing uses and other uses reasonably likely to exist within twelve months of the proposed use, the amount of trust water available to the holder of the water right used for power production that is defined by agreement pursuant to subsection (5) of Section 42-203B, Idaho Code (hereinafter termed "significant reduction"). If a significant reduction will not occur, the application may be approved without an evaluation of the public interest criteria of Section 42-203C(2), Idaho Code. ()

c. Third, based upon a finding of significant reduction, the proposed use will be evaluated in terms of the public interest criteria of Section 42-203C(2), Idaho Code. ()

026. -- 029. (RESERVED)

030. LOCATION AND NATURE OF TRUST WATER (RULE 30).

01. Snake River Water Rights Agreement. The legislation ratifying the Snake River water rights agreement between the state of Idaho and Idaho Power Company places in trust a part of the flows available to Idaho Power Company under its hydropower water rights in the Snake River Basin between Swan Falls Dam and Milner Dam. The flows subject to the trust water provisions and reallocation under Section 42-203C(2), Idaho Code, are as follows: ()

a. Trust water flows under the Snake River water rights agreement are located in the Snake River between Swan Falls Dam located in Section 18, Township 2 South, Range 1 East, Boise Meridian (B.M.) and Milner Dam located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian (B.M.) and all surface and groundwater sources tributary to the Snake River in that reach. ()

b. Surface water and groundwater tributary to the Snake River upstream from Milner Dam is not trust water. After giving notice and considering public comment, the Director will designate the area in which groundwater is presumed to be tributary to the Snake River upstream from Milner Dam. Modification or changes in the designated boundary may be made only after providing notice and considering public comment. The area presently designated as tributary to the Snake River in the Milner Dam to Swan Falls Dam reach is appended to these rules (See Attachment A in APPENDIX A located at the end of this chapter), for information purposes only. ()

c. Trust water flows under the Snake River water rights agreement are those occurring in the Snake River and tributaries in the geographic area designated in Subsection 030.01.a. that exceed the established minimum stream flows but are less than the water rights for hydropower generating facilities in the Swan Falls Dam to Milner Dam reach of Snake River, to the extent such rights were unsubordinated prior to the Snake River water rights agreement. Minimum average daily flows have been established by action of the Board and legislature at the U.S. Geological Survey gauging station located near Murphy (Section 35, Township 1 South, Range 1 West B.M.) in the amount of three thousand nine hundred (3900) cfs from April 1 to October 31 and five thousand six hundred (5600) cfs from November 1 to March 31, and at Milner gauging station located in Section 29, Township 10 South, Range 21 East, B.M. in the amount of zero (0) cfs from January 1 to December 31. ()

02. Trust Water Created by State Action. Section 42-203B(3), Idaho Code, provides that trust water can be created by state action establishing a minimum flow without an agreement with the holder of the hydropower water right. Allocation of trust water so established will be pursuant to state law except the criteria of Section 42-203C, Idaho Code, will not be considered. ()

03. Sources of Public Water Not Trust Water. The following sources of public water are not trust water and are not subject to the public interest provisions of Section 42-203C, Idaho Code: ()

a. Sources or tributaries to sources upon which no hydropower generating facilities are located downstream within the state of Idaho. ()

b. Sources or tributaries to sources which have a state hydropower water right permit or license or Federal Energy Regulatory Commission license which have not been subordinated, and the state of Idaho has not entered into an agreement with the holder of the hydropower water right pursuant to Section 42-203B(2), Idaho Code, and the State of Idaho has not established a minimum stream flow for purposes of protecting hydropower generation. ()

c. Sources or tributaries to sources for which a state hydropower water right permit or license, or the Federal Energy Regulatory Commission license included a subordination condition. Such flows are considered to be public waters subject to appropriation under the provisions of Section 42-203A, Idaho Code. ()

d. Flows in excess of established rights including rights used for hydropower purposes. Such flows are unappropriated waters subject to allocation under Section 42-203A, Idaho Code. ()

e. Flows in the Snake River upstream from Milner Dam and all surface and groundwater tributaries to that reach. Such flows are subject to allocation under Section 42-203A, Idaho Code, without consideration of water rights existing downstream from Milner Dam (Reference: 42-203B(2), Idaho Code). ()

031. -- 034. (RESERVED)

035. APPLICATION REQUIREMENTS (RULE 35).

01. General Provisions. ()

a. No person shall commence the construction of any project works or commence the diversion of the public water or trust water of the state of Idaho from any source without first having filed an application for permit to appropriate the water or other appropriate form with the department and received approval from the Director, unless exempted by these rules or by statute. ()

b. Any person proposing to commence a diversion of the public water or the trust water of the state of Idaho from a groundwater source for single family domestic purposes is exempt from the application and permit requirements of Subsection 035.01.a. ()

c. Any person watering livestock directly from a natural stream or natural lake without the use of a constructed diversion works is exempt from Subsection 035.01.a. ()

d. All applications for permit to appropriate public water or trust water of the state of Idaho shall be on the form provided by the department entitled "Application for Permit to appropriate the Public Waters of the State of Idaho" and include all necessary information as described in Subsection 035.03. An application for permit that is not complete as described in Subsection 035.03 will not be accepted for filing and will be returned along with any fees submitted to the person submitting the application. No priority will be established by an incomplete application. Applications meeting the requirements of Subsection 035.03. will be accepted for filing and will be endorsed by the department as to the time and date received. The acceptability of applications requiring clarification or corrections shall be determined by the Director. ()

e. The department will correspond with the applicant concerning applications which have been accepted for filing by the department which require clarification or correction of the information required by Subsection 035.03. If the additional or corrected information is supplied after thirty (30) days, the priority date of the application will be determined by the date the additional or corrected information is received by the department unless the applicant has requested within the thirty (30) day period additional time to provide the information, has shown good reasons for needing additional time, and the Director has granted additional time. ()

f. Failure to submit the additional or corrected information is cause for the Director to void the department's records of the application. ()

02. Effect of an Application. ()

a. Any application that seeks to appropriate water from a source upon which the state holds trust water shall be considered an application for appropriation of unappropriated water. If the Director determines unappropriated water is not available, the application, if otherwise approvable, will be reviewed for compliance with provisions of Section 42-203C, Idaho Code. ()

b. The priority of an application for unappropriated or trust water is established as of the time and date the application is received in complete form along with the statutory fee in any official office of the department. The priority of the application remains fixed unless changed by action of the Director in accordance with applicable law. ()

c. An application for permit to appropriate water is not a water right and does not authorize diversion or use of water until approved by the Director in accordance with statutes in effect at the time the application is approved. ()

d. An applicant's interest in an application for permit to appropriate water is personal property. An assignment of interest in an application must include evidence satisfactory to the Director that the application was not filed for speculative purposes. ()

03. Requirements for Applications to Be Acceptable for Filing. ()

a. The following information shall be shown on an application for permit form and submitted together with the statutory fee to an office of the department before the application for permit may be accepted for filing by the department. ()

i. The name and post office address of the applicant shall be listed. If the application is in the name of a corporation, the names and addresses of its directors and officers shall be provided. If the application is filed by or on behalf of a partnership or joint venture, the application shall provide the names and addresses of all partners and designate the managing partner, if any. ()

ii. The name of the water source sought to be appropriated shall be listed. For surface water sources, the source of water shall be identified by the official geographic name listed on the U.S. Geological Survey Quadrangle map. If the source has not been named, it can be described as "unnamed," but the system or river to which it is tributary shall be identified. For groundwater sources, the source shall be listed as "groundwater." Only one source shall be listed on an application unless the application is for a single system which will have more than one source. ()

iii. The legal description of the point of diversion and place of use shall be listed. The location of the point(s) of diversion and the place of use shall be described to the nearest forty (40) acre subdivision or U.S. Government Lot of the Public Land Survey System. The location of springs shall be described to the nearest ten (10) acre tract. Subdivision names, lot and block numbers and any name in local common usage for the point of diversion, or place of use shall be included in the comments section of the application form. If irrigation is listed as a purpose of use, the number of acres in each forty (40) acre subdivision of the place of use shall be listed. ()

iv. The quantity of water to be diverted shall be listed as a rate of flow in cubic feet per second and/or as a volume to be stored in acre-feet per year for each purpose of use requested. ()

v. Impoundment (storage) applications shall show the maximum acre-feet requirement per year which shall not exceed the storage capacity of the impoundment structure unless the application describes a plan of operation for filling the reservoir more than once per year. ()

vi. Every offstream storage impoundment application shall show a maximum rate of diversion to storage as well as the total storage volume. ()

vii. The nature of the proposed beneficial use or uses of the water shall be listed. While the purpose

may be described in general terms such as irrigation, industrial or municipal, a description sufficient to identify the proposed use or uses of the water shall also be included. ()

viii. The period of each year during which water will be diverted, stored and beneficially used shall be listed. The period of use for irrigation purposes shall coincide with the annual periods of use shown in Figure 1 in APPENDIX B (located at the end of this chapter), unless it can be shown to the satisfaction of the Director that a different period of use is necessary. ()

ix. The proposed method of diversion, conveyance system and system for distributing and using the water shall be described. ()

x. The period of time required for completion of the project works and application of water to the proposed use shall be listed. This period of time shall not exceed the time required to diligently and uninterruptedly apply the water to beneficial use and shall not exceed five (5) years. ()

xi. A map or plat of sufficient scale (not less than two (2) inches equal to one (1) mile) to show the project proposed shall be included. The map or plat shall agree with the legal descriptions and other information shown on the application. ()

xii. The application form shall be signed by the applicant listed on the application or evidence must be submitted to show that the signator has authority to sign the application. An application in more than one (1) name shall be signed by each applicant unless the names are joined by "or" or "and/or." ()

xiii. Applications by corporations, companies or municipalities or other organizations shall be signed by an officer of the corporation or company or an elected official of the municipality or an individual authorized by the organization to sign the application. The signator's title shall be shown with the signature. ()

xiv. Applications may be signed by a person having a current "power of attorney" authorized by the applicant. A copy of the "power of attorney" shall be included with the application. ()

xv. Applications to appropriate water in connection with Carey Act or Desert Land Entry proposals shall include evidence that appropriate applications have been filed for the lands involved in the proposed project. ()

xvi. The application form shall be accompanied with a fee in the amount required by Section 42-221A, Idaho Code. ()

04. Amended Applications. ()

a. Applications for permit shall be amended whenever significant changes to the place, period or nature of the intended use, method or location of diversion or proposed use of the water or other substantial changes from that shown on the pending application are intended. An application shall be amended if the proposed change will result in a greater rate of diversion or depletion (see Subsection 035.04.c.), if the point of diversion, place of use, or point of discharge of the return flow are to be altered, if the period of the year that water will be used is to be changed, or if the nature of the use is to be changed. ()

b. An application can be amended to clarify the name of the source of water but may not be amended to change the source of water. ()

c. An amendment which increases the rate of diversion, increases the volume of water diverted per year or the volume of water depleted, lengthens the period of use, or adds an additional purpose of use shall result in the priority of the application for permit being changed to the date the amended application is received by the department. ()

d. An application for permit may be amended by endorsement by the applicant or his agent on the original application for permit form which endorsement shall be initialed and dated. If the changes required to the information on the application are, in the judgment of the Director, substantial enough to cause confusion in

interpreting the application form, the amended application shall be submitted on a new application for permit form to be designated as an amended application. ()

e. An amended application shall be accompanied by the additional fee required by Section 42-221A, Idaho Code, if the total rate of diversion or total volume of storage requested is increased and by the fee required by Section 42-221F, Idaho Code, for readvertising if notice of the original application has been published. ()

f. If the applicant's name or mailing address changes, the applicant shall in writing notify the department of the change. ()

036. -- 039. (RESERVED)

040. PROCESSING APPLICATIONS FOR PERMIT AND REPROCESSING PERMITS (RULE 40).

01. General. ()

a. Unprotected applications, whether for unappropriated water or trust water, will be processed using the following general steps: ()

i. Advertisement and protest period; ()

ii. Department review of applications and additional information, including department field review if determined to be necessary by the Director; ()

iii. Fact finding hearing if determined to be necessary by the Director; ()

iv. Director's decision; ()

v. Section 42-1701A, Idaho Code, hearing, if requested; and ()

vi. Director's decision affirmed or modified. ()

b. Protested applications, whether for unappropriated water or trust water, will be processed using the following general steps: ()

i. Advertisement and protest period; ()

ii. Hearing and/or conference; ()

iii. Department review of applications, hearing record and additional information including department field review if determined to be necessary by the Director. ()

iv. Proposed decision (unless waived by parties); ()

v. Briefing or oral argument in accordance with the department's adopted Rules of Procedure. ()

vi. Director's decision accepting or modifying the proposed decision. ()

c. The Director's decision rejecting and denying approval of an application for permit filed for diversion from a source previously designated as a critical groundwater area or upon which a moratorium has previously been entered may be issued without advertisement of the application. ()

d. An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The Director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. The Director may approve a request for delay for a shorter period of time or

upon conditions, and may renew the approval upon written request. ()

02. Public Notice Requirement. ()

a. Applications for permit which have not been advertised. ()

i. Advertisement of applications for permit proposing a rate of diversion of ten (10) cfs or less or storage of one thousand (1000) AF or less shall comply with Section 42-203A, Idaho Code. The first required advertisement will be published on the first or third Thursday of a month when published in daily newspapers and on the first or third publishing day of the month for weekly newspapers. ()

ii. Advertisement of applications for permit in excess of the amounts in Subsection 040.02.a.i. shall comply with Subsection 040.02.a.i. and shall also be published in a newspaper or newspapers to achieve statewide circulation. ()

iii. Statewide circulation with respect to Section 42-203A(2), Idaho Code, shall be obtained by publication of a legal notice at least once each week for two (2) successive weeks in a newspaper, as defined in Section 60-106, Idaho Code, of general circulation in the county in which the point of diversion is located and by publication of a legal notice at least once each week for two (2) successive weeks in at least one (1) daily newspaper, as defined in Section 60-107, Idaho Code, published in each of the department's four (4) administrative regions and determined by the Director to be of general circulation within the department's region within which it is published. The administrative regions of the department are identified on Figure 2 in APPENDIX C (located at the end of this chapter). The names of newspapers used for statewide publication are available from any department office. ()

b. Applications for permit which have been advertised. ()

i. Notice of applications for permit for water from the Snake River between Swan Falls Dam and Milner Dam or surface and groundwater tributaries to that reach of Snake River which were advertised prior to July 1, 1985 and have been held without final action by the department due to the Swan Falls controversy shall be readvertised by the Director in accordance with Subsection 040.02.a. as appropriate to allow opportunity for protests to be entered with respect to the public interest criteria of Section 42-203C(2), Idaho Code. ()

ii. Applications for permit from the Snake River or surface and groundwater sources upstream from Milner Dam which have been held without action due to the Swan Falls controversy may be processed without readvertisement. ()

iii. The applicant shall pay the readvertisement fee provided in Section 42-221F, Idaho Code, prior to the readvertisement. ()

iv. Failure to pay the readvertising fee within thirty (30) days after the applicant is notified to do so is cause for the Director to void the application. ()

c. Notice of existing permits. ()

i. Existing permits appropriating water held in trust by the state of Idaho issued prior to July 1, 1985, unless exempted by Subsection 040.02.c.ii. shall be subject to the review requirements of Section 42-203D, Idaho Code, and shall be readvertised in accordance with Subsection 040.02.a. as appropriate. The review is limited to the criteria described in Section 42-203C(2), Idaho Code. ()

ii. Permits exempt from the provisions of Section 42-203D, Idaho Code, include: ()

(1) Permits appropriating water not held in trust by the state of Idaho; ()

(2) Permits for DCMI uses, stockwater uses and other essentially non-consumptive uses as determined by the Director; and ()

(3) Permits for which an acceptable proof of beneficial use submittal was received by the department

prior to July 1, 1985, or permits for which an acceptable proof of beneficial use was submitted after July 1, 1985, if evidence satisfactory to the Director has been received to show that the permit was fully developed prior to July 1, 1985 to the extent claimed on the proof of beneficial use. ()

iii. Holders of permits subject to the review requirement of Section 42-203D, Idaho Code, shall pay in advance, upon the request of the Director, the readvertising fee required by Section 42-221F, Idaho Code. ()

iv. Failure to pay the readvertising fee within thirty (30) days after the applicant is notified to do so is cause for the Director to cancel the permit. ()

03. Protests, Intervention, Hearings, and Appeals. ()

a. Protests. ()

i. Protests against the approval of an application for permit or against a permit being reprocessed shall comply with the requirements for pleadings as described in the department's adopted Rules of Procedure. ()

ii. Protests against the approval of an application for permit or against a permit being reprocessed will only be considered if received by the department after receipt of the application by the department and prior to the expiration of the protest period announced in the advertisement unless the protestant successfully intervenes in the proceeding. ()

iii. General statements of protest (blanket protests) against appropriations for a particular class of use or from a particular source of water will not be considered as valid protests by the Director. ()

b. Intervention. Requests to intervene in a proceeding pending before the department shall comply with the Department's adopted Rules of Procedure. ()

c. Hearings. Hearings will be scheduled and held in accordance with the department's adopted Rules of Procedure. ()

d. Appeals. Any final decision of the Director may be appealed in accordance with Section 42-1701A, Idaho Code. ()

04. Burden of Proof. ()

a. Burden of proof is divided into two (2) parts: first, the burden of coming forward with evidence to present a prima facie case, and second, the ultimate burden of persuasion. ()

b. The burden of coming forward with evidence is divided between the applicant and the protestant as follows: ()

i. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criteria (a) through (d) of Section 42-203A(5), Idaho Code; ()

ii. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criterion (e) of Section 42-203A(5), Idaho Code, as to any factor affecting local public interest of which he is knowledgeable or reasonably can be expected to be knowledgeable. The protestant shall bear the initial burden of coming forward with evidence for those factors relevant to criterion (e) of Section 42-203A(5), Idaho Code, of which the protestant can reasonably be expected to be more cognizant than the applicant. ()

iii. The protestant shall bear the initial burden of coming forward with evidence for the evaluation of the public interest criteria of Section 42-203C(2), Idaho Code, and of demonstrating a significant reduction, except that the applicant shall provide details of the proposed design, construction, and operation of the project and directly associated operations to allow the impact of the project to be evaluated. ()

c. The applicant has the ultimate burden of persuasion for the criteria of Section 42-203A, Idaho Code, and the protestant has the ultimate burden of persuasion for the criteria of Section 42-203C, Idaho Code. ()

d. For unprotested applications or permits to be reprocessed, the Director will evaluate the application, information submitted pursuant to Subsection 040.05.c. and information in the files and records of the department, and the results of any studies the department may conduct to determine compliance with the appropriate criteria. ()

e. In protested matters the Director will take official notice of information as described in the department's adopted Rules of Procedure, and will, prior to considering, circulate to the parties information from department studies and field examinations concerning the protested application or permit being reprocessed, if such information has not otherwise been made a part of the hearing record. ()

05. Additional Information Requirements. ()

a. For unprotested applications and permits being reprocessed, the additional information required by Subsection 040.05.c. shall be submitted within thirty (30) days after the Director notifies the applicant that the application or permit is being reviewed for decision. The Director may extend the time within which to submit the information upon request by the applicant and upon a showing of good cause. Failure to submit the required information within the time period allowed will be cause for the Director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late. The Director will provide opportunity for hearing as provided in Section 42-1701A, Idaho Code. ()

b. For protested applications or protested permits being reprocessed, the information required by Subsection 040.05.c. may be requested by the Director to be submitted within thirty (30) days after notification by the Director, may be made a part of the record of the hearing held to consider the protest, or may be made available in accordance with any pre-hearing discovery procedures. Failure to submit the required information within the time period allowed will be cause for the Director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late. ()

c. The following information shall be submitted for applications to appropriate unappropriated water or trust water and for permits being reprocessed for trust water. The additional information submittal requirements of this rule are waived for filings which seek to appropriate five (5) cfs or less or storage of five hundred acre-feet (500 AF) or less and for filings seeking reallocation of trust water which the Director determines will reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. However, the Director may specifically request submittal of any of the following information for any filing, as he determines necessary. Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows: ()

i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted. ()

ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well. ()

iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights. ()

d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows: ()

i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be

diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year. ()

ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source. ()

e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows: ()

i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code. ()

ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials. ()

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows: ()

i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed. ()

ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications. ()

g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows: The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the Director. ()

h. The following information Relative to the Public Interest Criteria of Section 42-203C(2), Idaho Code, shall be submitted by an applicant seeking reallocation of trust water for a project which the Director determines will reduce the flow of the Snake River by more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. The Director may request any or all of the following information for any filing seeking the reallocation of trust water. ()

i. A project design and estimate of cost of development shall be submitted. For applications appropriating more than twenty-five (25) cfs, or ten thousand (10,000) AF of storage, or generating more than five (5) megawatts, the information shall be prepared and submitted by a qualified engineer licensed under the provisions of Chapter 12, Title 54, Idaho Code, unless waived by the Director. The design shall be definite enough to reflect the project's impacts and implications as required in subsequent rules. ()

ii. If the project proposes development for irrigation purposes, information shall be submitted on crop rotation, including acreages, for lands when newly developed. ()

iii. Information shall be submitted concerning the number and kinds of jobs that will be created or eliminated as a direct result of project development including both the construction and operating phases of the project. If jobs are seasonal, the estimated number of months per year of employment shall be submitted. ()

iv. For applications or permits being reprocessed for more than twenty-five (25) cfs, or more than ten thousand (10,000) AF of storage, or more than five (5) megawatts, information shall be submitted concerning the changes to community services that will be required during the construction and operation phases of the project including, but not limited to, changes to schools, roads, housing, public utilities and public health and safety facilities, if any. ()

v. Information shall be submitted concerning the source of energy for diverting and using water for the project, the estimated instantaneous demand and total amount of energy that will be used, the efficiency of use, and energy conservation methods. ()

vi. Information shall be submitted concerning the location, amount, and quality of return flow water, and any water conservation features of the proposed project. ()

vii. If the project proposes irrigation as a use, information shall be submitted concerning the kinship, if any, of the operator of the land to be irrigated by the project to the applicant, the location and acreage of other irrigated lands owned, leased, or rented by the applicant, the names, addresses and number of shares held by each shareholder if the applicant is a corporation, evidence of tax-exempt status if a corporation is so claiming, a soil survey prepared in accordance with the U.S. Soil Conservation Service irrigatable land classification system, and a schedule for bringing into production the project lands. ()

041. -- 044. (RESERVED)

045. EVALUATION CRITERIA (RULE 45).

01. Criteria for Evaluating All Applications to Appropriate Water. The Director will use the following criteria in evaluating whether an application to appropriate unappropriated water or trust water should be approved, denied, approved for a smaller amount of water or approved with conditions. ()

a. Criteria for determining whether the proposed use will reduce the quantity of water under existing water rights. A proposed use will be determined to reduce the quantity of water under an existing water right (i.e., injure another water right) if: ()

i. The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less. ()

ii. The holder of an existing water right will be forced to an unreasonable effort or expense to divert his existing water right. Protection of existing groundwater rights are subject to reasonable pumping level provisions of Section 42-226, Idaho Code; or ()

iii. The quality of the water available to the holder of an existing water right is made unusable for the purposes of the existing user's right, and the water cannot be restored to usable quality without unreasonable effort or expense. ()

iv. An application that would otherwise be denied because of injury to another water right may be approved upon conditions which will mitigate losses of water to the holder of an existing water right, as determined by the Director. ()

v. The provisions of Subsection 045.01.a.v. are not intended to require compensation or mitigation for loss of flow to holders of subordinated hydropower rights or those from which trust water is reallocated. ()

b. Criteria for determining whether the water supply is insufficient for the proposed use. The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval

in quantities sufficient to make the project economically feasible (direct benefits to applicant must exceed direct costs to applicant), unless there are noneconomic factors that justify application approval. In assessing such noneconomic factors, the Director will also consider the impact on other water rights if the project is abandoned during construction or after completion, the impact on public resource values, and the cost to local, state and federal governments of such an abandonment. ()

c. Criteria for determining whether the application is made in good faith. The criteria requiring that the Director evaluate whether an application is made in good faith or whether it is made for delay or speculative purposes requires an analysis of the intentions of the applicant with respect to the filing and diligent pursuit of application requirements. The judgment of another person's intent can only be based upon the substantive actions that encompass the proposed project. Speculation for the purpose of this rule is an intention to obtain a permit to appropriate water without the intention of applying the water to beneficial use with reasonable diligence. Speculation does not prevent an applicant from subsequently selling the developed project for a profit or from making a profit from the use of the water. An application will be found to have been made in good faith if: ()

i. The applicant shall have legal access to the property necessary to construct and operate the proposed project, has the authority to exercise eminent domain authority to obtain such access, or in the instance of a project diverting water from or conveying water across land in state or federal ownership, has filed all applications for a right-of-way. Approval of applications involving Desert Land Entry or Carey Act filings will not be issued until the United States Department of Interior, Bureau of Land Management has issued a notice classifying the lands suitable for entry; and ()

ii. The applicant is in the process of obtaining other permits needed to construct and operate the project; and ()

iii. There are no obvious impediments that prevent the successful completion of the project. ()

d. Criteria for determining whether the applicant has sufficient financial resources to complete the project. ()

i. An applicant will be found to have sufficient financial resources upon a showing that it is reasonably probable that funding is or will be available for project construction or upon a financial commitment letter acceptable to the Director. This showing is required as described in Subsection 040.05.c. or at the time the hearing provided by Subsection 040.05.c. is conducted. ()

ii. A governmental entity will be determined to have satisfied this requirement if it has the taxing, bonding or contracting authority necessary to raise the funds needed to commence and pursue project construction in accordance with the construction schedule. ()

e. Criteria for determining whether the project conflicts with the local public interest. The Director will consider the following, along with any other factors he finds to be appropriate, in determining whether the project will conflict with the local public interest: ()

i. The effect the project will have on the economy of the local area affected by the proposed use as determined by the employment opportunities, both short and long term, revenue changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains; ()

ii. The effect the project will have on recreation, fish and wildlife resources in the local area affected by the proposed use; and ()

iii. An application which the Director determines will conflict with the local public interest will be denied unless the Director determines that an over-riding state or national need exists for the project or that the project can be approved with conditions to resolve the conflict with the local public interest. ()

02. Criteria for Evaluating Whether a Proposed Use of Trust Water Will Cause a Significant Reduction. Reference: Section 42-203C(1), Idaho Code and Subsection 025.02.b. For purposes of reallocating trust water made available by the Snake River water rights agreement, an application for permit or a permit being

reprocessed, will be presumed to not cause a significant reduction if the Director determines that it complies with both the individual and cumulative tests for evaluating significant reduction as provided in Subsections 045.02.a. and 045.02.b. ()

a. Individual test for evaluating significant reduction. A proposed use will be presumed to not cause a significant reduction if when fully developed and its impact is fully felt, the use will individually reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. An irrigation project of two hundred (200) acres or less located anywhere in the Snake River Basin above Murphy Gauge proposing to use trust water is presumed to not reduce the flow at Murphy Gauge by more than two (2) acre-feet per day. The presumption of this section is not applicable to applications or permits to be reprocessed which the Director determines to be part of a larger development. ()

b. Cumulative test for evaluating significant reduction. A proposed use will be presumed to not cause a significant reduction, if the use, when fully developed and its impact is fully felt and when considered cumulatively with other existing uses and other uses reasonably likely to exist within twelve (12) months of the proposed use, will not deplete the flow of Snake River measured at Murphy Gauge by more than: ()

i. Forty thousand (40,000) acre-feet per calendar year when considered with all other uses approved for development of trust water during that calendar year; ()

ii. Forty thousand (40,000) acre-feet per calendar year using a four (4) year moving average when considered with all other uses approved for development of trust water during that four (4) year period; and ()

iii. Twenty thousand (20,000) acre-feet per calendar year from filings approved for reallocation of trust water which meet the criteria of Subsection 045.02.a. ()

c. The Director will determine on a case-by-case basis from available information whether a permit to be reprocessed or an application for trust water which exceeds the flow depletion limits of Subsection 045.02, or one which meets the flow depletion limits but has been protested, will cause a significant reduction. In making this determination, the Director will consider: ()

i. The amount of the reduction in hydropower generation that the proposed use will cause individually and cumulatively with other uses expected to be developed within twelve (12) months of the proposed use as compared to the existing hydropower generation output of the affected facility or facilities. ()

ii. The relative importance of the affected hydropower facility or facilities to other sources of electrical power generation available to the holder of the facility or facilities. ()

iii. The timing of the reduction in hydropower generation both on an annual basis and on a long-term basis considering the lag time between the beginning of diversion by the proposed use and the resulting reduction in hydropower generation. ()

iv. The effect of the reduction in hydropower generation on the unit cost of hydropower from the facility or facilities and the average cost of electrical power offered by the holder of the facility. ()

v. The terms of contracts, mortgages, or regulatory permits and licenses which require the holder of the hydropower generation facility to retain the capability to produce hydroelectric power at a specific level. ()

d. Other provisions of these rules notwithstanding, applications or permits to be reprocessed proposing a direct diversion of water for irrigation purposes from the Snake River between Milner Dam and Swan Falls Dam or from tributary springs in this reach are presumed to cause a significant reduction. ()

e. Other provisions of these rules notwithstanding, applications or permits to be reprocessed for DCMCI purposes are presumed to not cause a significant reduction. ()

03. Criteria for Evaluating Public Interest. If the Director determines that a proposed use of trust water held by the state pursuant to Section 42-203B(5), Idaho Code, will cause a significant reduction, the Director

will consider the criteria of Section 42-203C(2), Idaho Code, before acting on the application or permit being reprocessed. The Director shall consider and balance the relative benefits and detriments for each factor required to be weighed under Section 42-203C(2), Idaho Code, to determine whether a proposed reduction of the amount of water available for power production serves the greater public interest. The Director shall evaluate whether the proposed use sought in the permit being reprocessed or the application will provide the greater benefit to the people of the state of Idaho when balanced against other uses for the same water resource. In evaluating the public interest criteria, the Director will use the following guidelines: ()

a. The Director will consider the potential benefits both direct and indirect, and that the proposed use would provide to the state and local economy. The economic appraisal shall be based upon generally accepted economic analysis procedures which uniformly evaluate the following factors within the state of Idaho and the county or counties directly affected by the project: ()

i. Direct project benefits. ()

ii. Indirect benefits including net revenues to the processing, transportation, supply, service and government sectors of the economy. ()

iii. Direct project costs, to include the opportunity cost of previous land use. ()

iv. Indirect project costs, including verifiable costs to government in net lost revenue and increased regulation costs, verifiable reductions in net revenue resulting from losses to other existing instream uses, and the increased cost of replacing reduced hydropower generation from unsubordinated hydropower generating facilities. ()

b. The Director will consider the impact the proposed use would have upon the electric utility rates in the state of Idaho, and the availability, foreseeability and cost of alternative energy sources to ameliorate such impact. These evaluations will include the following considerations: ()

i. Projections of electrical supply and demand for Idaho and the Pacific Northwest made by the Bonneville Power Administration and the Northwest Power Planning Council and information available from the Idaho Public Utilities Commission or from the electric utility from whose water right trust water is being reallocated. ()

ii. The long term reliability of the substitute source and the cost of alternatives including the resulting impact on electrical rates. ()

c. The Director will consider whether the proposed use will promote the family farming tradition in the state of Idaho. For purposes of this evaluation, the Director will use the following factors. ()

d. If the total land to be irrigated by the applicant, including currently owned and leased irrigated land and land proposed to be irrigated in the application and other applications and permits of the applicant, do not exceed nine hundred sixty (960) acres, the application will be presumed to promote the family farming tradition. ()

e. If the requirement of Subsection 045.03.c.i. is not met, the Director will consider the extent the applicant conforms to the following characteristics: ()

i. The farming operation developed or expanded as a result of the application is operated by the applicant or a member of his family (spouse, parents or grandparents, lineal descendants, including those that are adopted, lineal descendants of parents; and spouse of lineal descendants); ()

ii. In the event the application is filed in the name of a partnership, one or more of the partners shall operate the farming operation; and ()

iii. If the application is in the name of a corporation, the number of stockholders does not exceed fifteen (15) persons, and one or more of the stockholders operates the farming operation unless the application is submitted by an irrigation district, drainage district, canal company or other water entity authorized to appropriate

water for landowners within the district or for stockholders of the company all of whom shall meet the family farming criteria. ()

f. The Director will consider the promotion of full economic and multiple use development of the water resources of the state of Idaho. In this regard, the extent to which the project proposed complies with the following factors will be considered: ()

- i. Promotes and conforms with the adopted State Water Plan; ()
- ii. Provides for coordination of proposed and existing uses of water to maximize the beneficial use of available water supplies; ()
- iii. Utilizes technology economically available to enhance water and energy use efficiency; ()
- iv. Provides multiple use of the water, including multipurpose storage; ()
- v. Allows opportunity for reuse of return flows; ()
- vi. Preserves or enhances water quality, fish, wildlife, recreation and aesthetic values; ()
- vii. Provides supplemental water supplies for existing uses with inadequate supplies. ()

g. The Director will consider whether a proposed use, which includes irrigation, will conform to a staged development policy of up to twenty thousand (20,000) acres per year or eighty thousand (80,000) acres in any four (4) year period in the Snake River drainage above Murphy Gauge. In applying this criteria, the Director will consider the following: ()

i. “Above Murphy gauge” means the Snake River and any of its surface or groundwater tributaries upstream from Murphy gauge which gauge is located on the Snake River approximately four (4) miles downstream from Swan Falls Dam from which trust water is to be reallocated; ()

ii. Twenty thousand (20,000) acres per year or eighty thousand (80,000) acres per four (4) year period is a four (4) year moving average of Twenty thousand (20,000) acres/year of permits issued during a calendar year for irrigation development. If permits for development of less than twenty-thousand (20,000) acres are issued in a year, additional development in excess of twenty-thousand (20,000) acres can be permitted in succeeding years. Likewise, if more than twenty thousand (20,000) acres is permitted in one year (recognizing that a single large project could exceed twenty thousand (20,000) acres) the permitted development in succeeding years must be correspondingly less to maintain no greater than a twenty thousand (20,000) acres/year average for any four (4) year period; ()

iii. The criteria of Subsection 045.03.g. applies to multiple-use projects with irrigation as a principal purpose. Projects which use irrigation as only an incidental purpose, such as the land treatment of waste, shall not be included within this policy; and ()

iv. An application determined by the Director to be otherwise approvable but found to exceed the acreage limitations, when considered with other applications approved for development, may be approved with conditions providing for the construction of project works and beneficial use of water to be commenced in a future year. ()

h. No single public interest criterion will be entitled to greater weight than any other public interest criterion. ()

i. Until such time as the studies prescribed in Policy 32 I of the State Water Plan are completed and accepted by the Idaho Water Resource Board, applications and permits reprocessed which propose to divert water to surface storage from the Snake River and surface tributaries upstream from Murphy Gauging Station shall be presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code. Applications or reprocessed permits which are approved prior to completion of the studies, will not be subject to additional reprocessing. ()

j. Applications for permit for trust water sources filed prior to July 1, 1985, for projects for which diversion and beneficial use was complete prior to October 1, 1984, are presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code. ()

k. Applications or permits to be reprocessed proposing a direct diversion of water for irrigation purposes from the Snake River between Milner Dam and Swan Falls Dam or from tributary springs in this reach are presumed not to be in the public interest as defined by Section 42-203C, Idaho Code. Such proposals, are presumed to prevent the full economic and multiple use of water in the Snake River Basin and to adversely affect hydropower availability and electrical energy rates in the state of Idaho. ()

l. Proposed DCMI uses which individually do not have a maximum consumptive use of more than two acre-feet/day are presumed to meet the public interest criteria of Section 42-203C(2), Idaho Code, unless protested. ()

046. -- 049. (RESERVED)

050. CONDITIONS OF APPROVAL (RULE 50).

01. Issuance of Permits with Conditions. The Director may issue permits with conditions to insure compliance with the provisions of Title 42, Chapter 2, Idaho Code, other statutory duties, the public interest, and specifically to meet the criteria of Section 42-203A, Idaho Code, and to meet the requirements of Section 42-203C, Idaho Code, to the fullest extent possible including conditions to promote efficient use and conservation of energy and water. ()

02. Requirements to Mitigate Impact of Flow Depletion. Permits to be reprocessed or applications approved to appropriate water from the main stem of the Snake River between Milner and Murphy gauging station for diversion to off-stream storage during the period November 1 to March 31 shall include requirements to mitigate, in accordance with the State Water Plan, the impact of flow depletions on downstream generation of hydropower. ()

03. Applications and Existing Permits That Are Junior and Subordinate. Applications and existing permits approved for hydropower generation shall be junior and subordinate to all rights to the use of water, other than hydropower, within the state of Idaho that are initiated later in time than the priority of the application or existing hydropower permit. A subordinated permit shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the state of Idaho initiated later in time than the priority of the application or existing hydropower permit. A permit issued for hydropower purposes shall contain a term condition on the hydropower use in accordance with Section 42-203B(6), Idaho Code. ()

04. Permanent Flow Measuring Device Requirement. Applications approved for on-stream storage reservoirs will, unless specifically waived by the Director, require permanent flow measuring devices both upstream and downstream from the reservoir. ()

05. Well Spacing and Well Construction Requirements. Applications approved for diversion of groundwater may include conditions requiring well spacing and well construction requirements. ()

06. Reprocessed Permits. Permits reprocessed pursuant to Section 42-203D, Idaho Code, may be cancelled, modified or conditioned by the Director to make the permit comply in every way with any permit that would be issued for the same purpose based upon a new application processed under these rules. ()

07. Voiding Approval of Permit. Permits may be conditioned to authorize the Director to void the approval of the permit if he determines that the applicant submitted false or misleading information on the application or supporting documents. ()

08. Retention of Jurisdiction. The Director may condition permits to retain jurisdiction to insure compliance with the design, construction and operation provisions of the permit. ()

09. Insuring Minimum Stream Flows and Prior Rights. The Director may condition permits to

insure that established minimum stream flows and prior rights including prior rights reserved by federal law are not injured. ()

10. Insuring Compliance with Water Quality Standards. The Director may condition permits to insure compliance with Idaho's water quality standards. ()

11. Insuring Assignment of Interest. The Director may condition a permit issued for trust water to require that any amendment (Section 42-211, Idaho Code), transfer (Section 42-222, Idaho Code), or assignment of interest in the permit by any method whatsoever shall not result in the project failing to meet the public interest criteria of Section 42-203C, Idaho Code except, however, lenders obtaining title to the project through default will have a reasonable period of time, as determined by the Director, to meet such criteria or to convey the project to a person or entity that does meet the criteria. ()

051. -- 054. (RESERVED)

055. MORATORIUM (RULE 55).

01. Applications for Permit. ()

a. The Director may cease to approve applications for permit in a designated geographical area upon finding a need to: ()

i. Protect existing water rights; ()

ii. Insure compliance with the provisions of Chapter 2, Title 42, Idaho Code; and ()

iii. Prevent reduction of flows below a minimum stream flow which has been established by the Director or the board pursuant to applicable law. ()

b. Notice of the Director's action to cease application approval will be by: ()

i. Summary Order served by certified mail upon the then existing affected applicants; and ()

ii. Publication of the order for three (3) consecutive weeks in a newspaper or newspapers of general circulation in the area affected. ()

c. Objections to the Director's action shall be considered under the department's adopted Rules of Procedure and applicable law. ()

02. Permits. ()

a. To the extent a permit has not been developed, the Director may cancel, or modify permits for which proof of beneficial use has not been submitted in a designated geographical area as an extension of Subsection 055.01. ()

b. Notice of the Director's action to cancel or modify permits shall be by: ()

i. Summary Order served by certified mail upon the affected permit holders in the designated area. ()



ii. Publication of the order for three (3) consecutive weeks in a newspaper or newspapers of general circulation in the area. ()

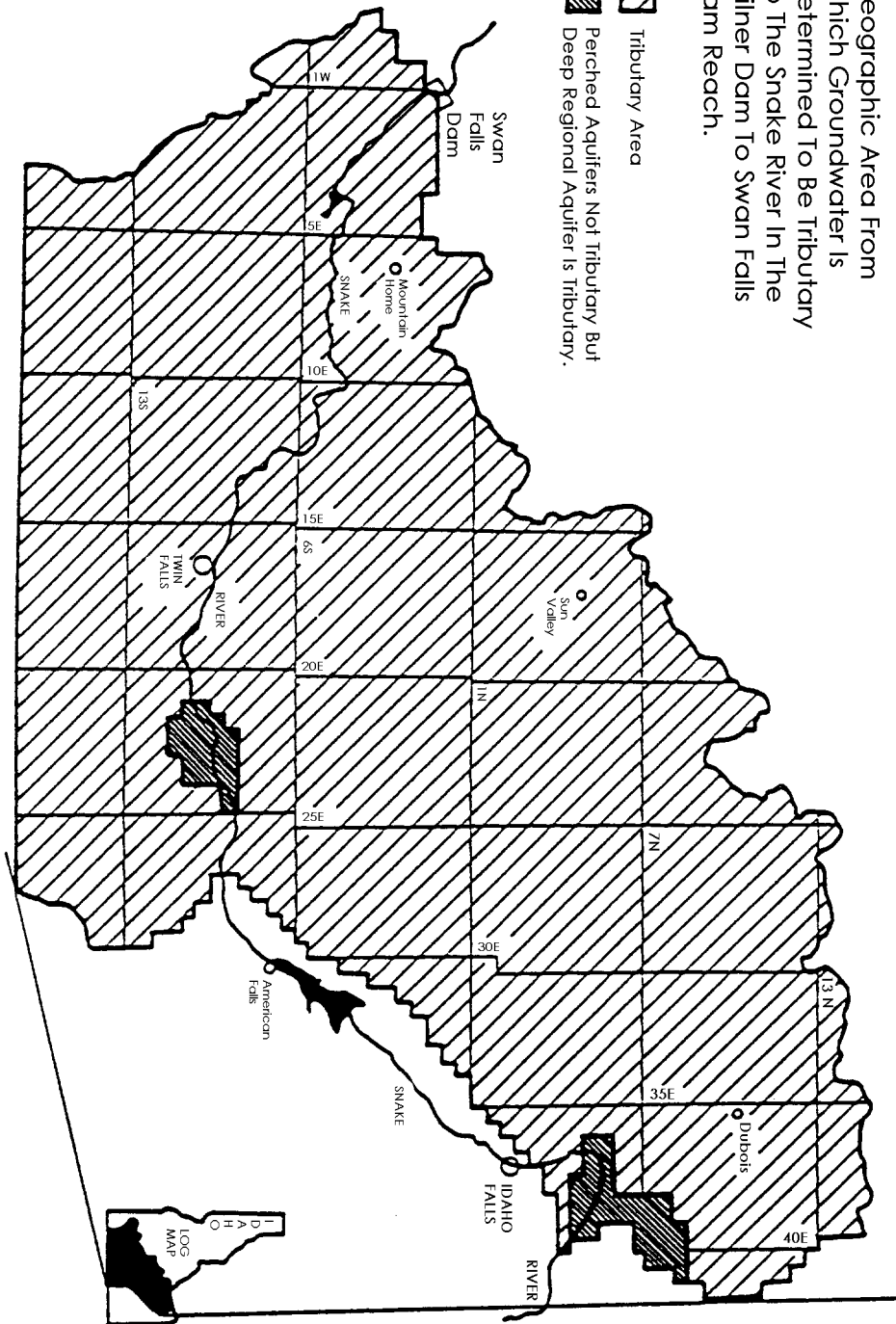
c. Objections to the Director's action shall be considered under the department's adopted Rules of Procedure and applicable law. ()

056. -- 999. (RESERVED)

APPENDIX A

Geographic Area From Which Groundwater Is Determined To Be Tributary To The Snake River In The Milner Dam To Swan Falls Dam Reach.

-  Tributary Area
-  Perched Aquifers Not Tributary But Deep Regional Aquifer Is Tributary.

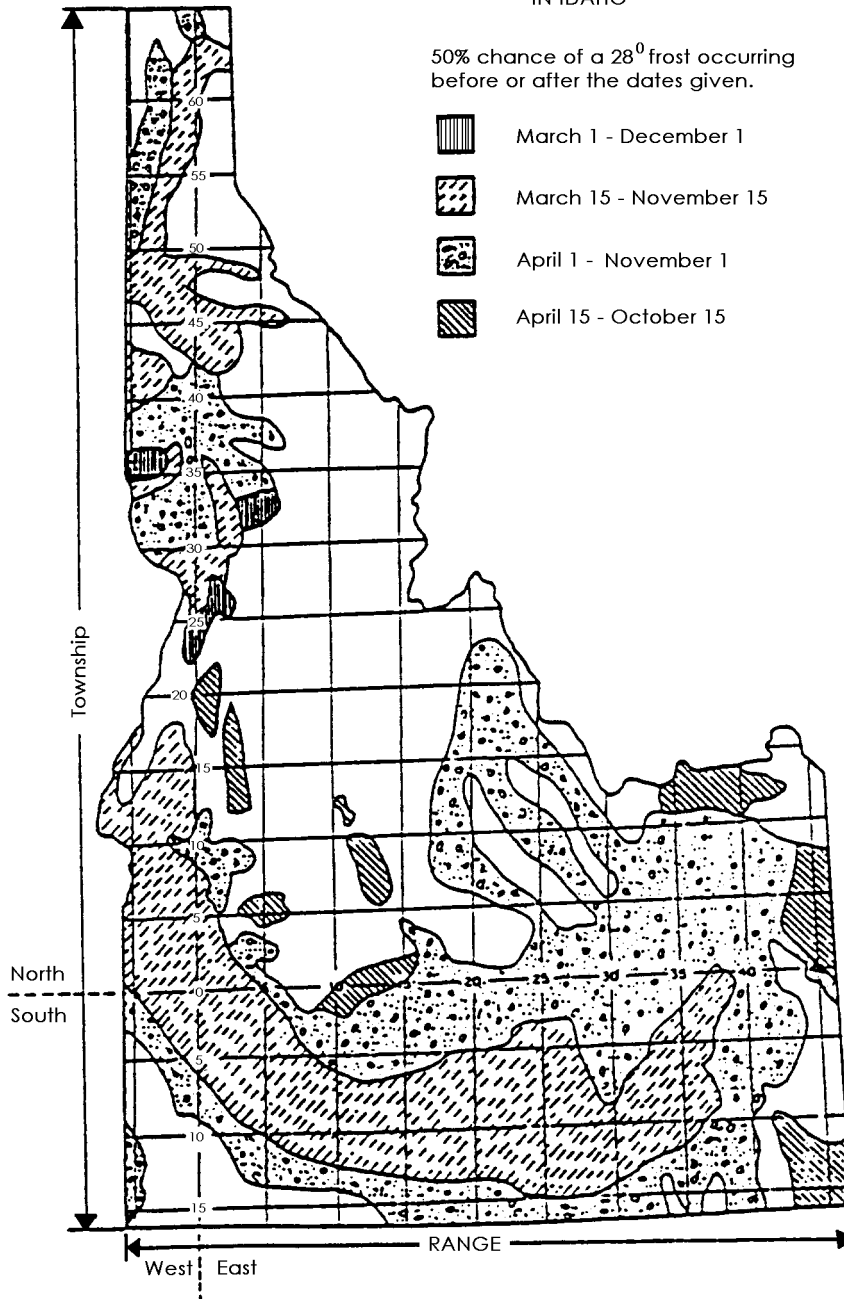


APPENDIX B

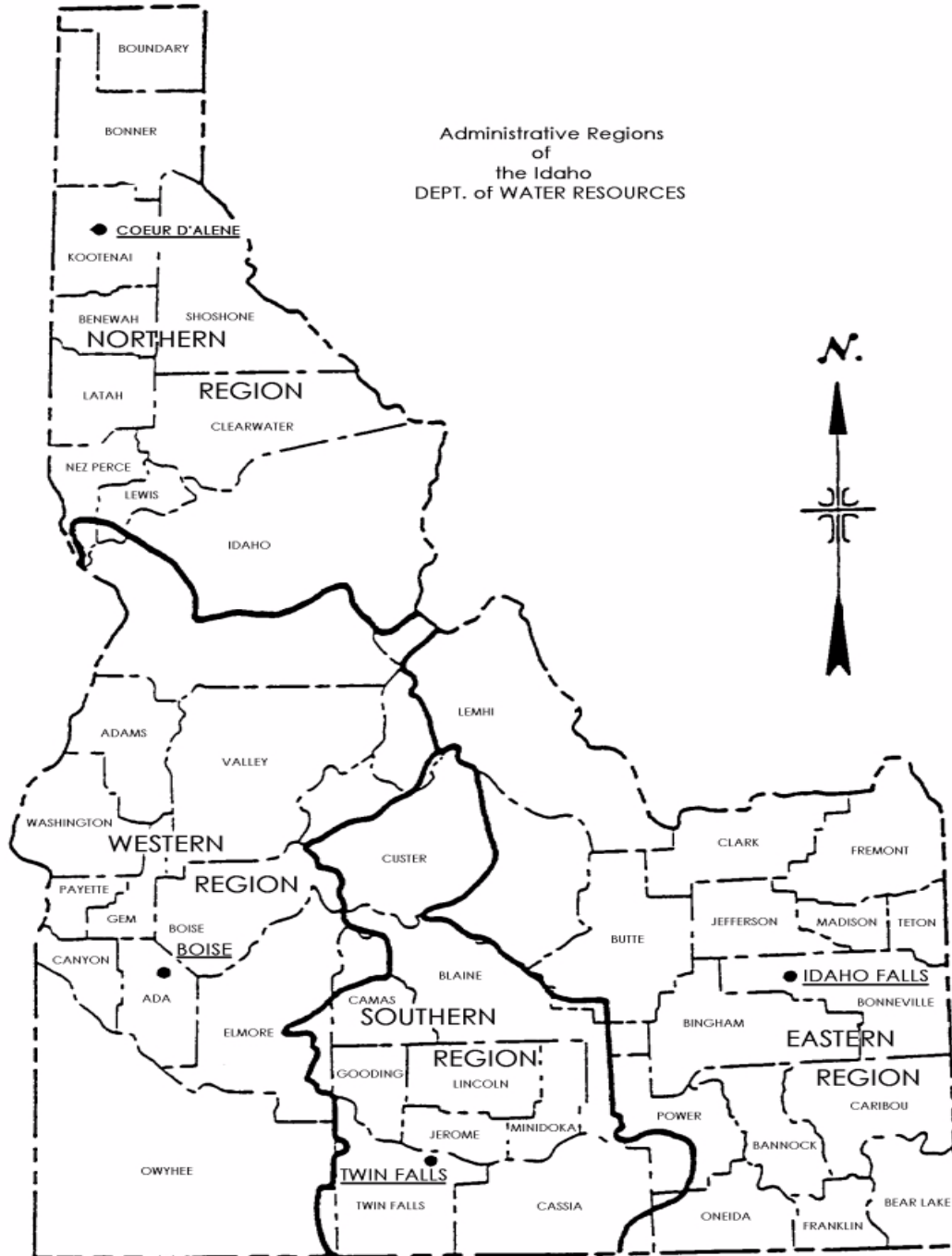
SUGGESTED IRRIGATION SEASONS
IN IDAHO

50% chance of a 28⁰ frost occurring
before or after the dates given.

-  March 1 - December 1
-  March 15 - November 15
-  April 1 - November 1
-  April 15 - October 15



APPENDIX C



37.03.09 – WELL CONSTRUCTION STANDARDS RULES

000. LEGAL AUTHORITY (RULE 0).

The Idaho Water Resource Board adopts these administrative rules with the authority provided by Section 42-238(12), Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules are cited as IDAPA 37.03.09, “Well Construction Standards Rules.” ()

02. Scope. The Department of Water Resources has statutory responsibility for the statewide administration of the rules governing well construction. These rules establish minimum standards for the construction of all new wells and the modification and decommissioning (abandonment) of existing wells. The intent of the rules is to protect the ground water resources of the state against waste and contamination. These rules are applicable to all water wells, monitoring wells, low temperature geothermal wells, injection wells, cathodic protection wells, closed loop heat exchange wells, and other artificial openings and excavations in the ground that are more than eighteen (18) feet in vertical depth below land surface as described in these rules pursuant to Section 42-230 Idaho Code. Some artificial openings and excavations do not constitute a well. For the purposes of these rules, artificial openings and excavations not defined as wells are described in Subsection 045.03 of these rules. Any time that such an artificial opening or excavation is constructed, modified, or decommissioned (abandoned) the intent of these rules must be observed. If waste or contamination is attributable to this type of artificial opening or excavation, the artificial opening or excavation must be modified, or decommissioned (abandoned) as determined by the Director. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

Unless the context otherwise requires, the following definitions apply to these rules. ()

01. Approved Seal or Seal Material. Seal material must consist of bentonite chips, pellets, or granules, bentonite grout, neat cement, or neat cement grout as defined by these rules. No other materials may be used unless specifically authorized by the Director ()

02. Annular Space. The space, measured as one-half (1/2) the difference in diameter between two (2) concentric cylindrical objects, one of which surrounds the other, such as the space between the walls of a drilled hole (borehole) and a casing or the space between two (2) strings of casing. ()

03. Aquifer. Any geologic formation(s) that will yield water to a well in sufficient quantities to make the production of water from the formation feasible for beneficial use. ()

04. Area of Drilling Concern. An area designated by the Director in which drillers must comply with additional standards to prevent waste or contamination of ground or surface water due to such factors as aquifer pressure, vertical depth of the aquifer, warm or hot ground water, or contaminated ground or surface waters, in accordance with Section 42-238(7), Idaho Code. ()

05. Artesian Water. Any water that is confined in an aquifer under pressure so that the water will rise in the well casing or drilled hole above the elevation where it was first encountered. This term includes water of flowing and non-flowing wells. ()

06. Artificial Filter Pack. Clean, rounded, smooth, uniform, sand or gravel placed in the annular space around a perforated well casing or well screen. A filter pack is frequently used to prevent the movement of finer material into the well casing and to increase well efficiency. ()

07. Bentonite. A commercially processed and packaged, low permeability, sodium montmorillonite clay certified by the NSF International for use in well construction, sealing, plugging, and decommissioning (abandonment). All bentonite products used in the construction or decommissioning (abandoning) of wells must have a permeability rating not greater than 10^{-7} (ten to the minus seven) cm/sec. ()

a. Chips. Bentonite composed of pieces ranging in size from one-quarter (1/4)-inch to one (1) inch on their greatest dimension. ()

b. Granules (also Granular). Bentonite composed of pieces ranging in size from one thirty-seconds (1/32) inch (#20 standard mesh) to seven thirty-seconds (7/32) inch (#3 standard mesh) on their greatest dimension. ()

- c.** Bentonite Grout. A mixture of bentonite specifically manufactured for use as a well sealing or plugging material and potable water to produce a grout with an active solids content not less than twenty-five percent (25%) by weight e.g., (twenty-five percent (25%) solids content by weight = fifty (50) pounds bentonite per eighteen (18) gallons of water). ()
- d.** Pellets. Bentonite manufactured for a specific purpose and composed of uniform sized, one-quarter (1/4) inch, three-eighths (3/8) inch, or one-half (1/2) inch pieces on their greatest dimension. ()
- 08. Board.** The Idaho Water Resource Board. ()
- 09. Bore Diameter.** The diameter of the hole in the formation made by the drill bit or reamer. ()
- 10. Borehole (also Well Bore).** The subsurface hole created during the drilling process. ()
- 11. Bottom Hole Temperature of an Existing or Proposed Well.** The temperature of the ground water encountered in the bottom of a well or borehole. ()
- 12. Casing.** The permanent conduit installed in a well to provide physical stabilization, prevent caving or collapse of the borehole, maintain the well opening and serve as a solid inner barrier to allow for the installation of an annular seal. Casing does not include temporary surface casing, well screens, liners, or perforated casing as otherwise defined by these rules. ()
- 13. Cathodic Protection Well.** Any artificial excavation in excess of eighteen (18) feet in vertical depth constructed for the purpose of protecting certain metallic equipment in contact with the ground. Commonly referred to as cathodic protection. ()
- 14. Closed Loop Heat Exchange Well.** A ground source thermal exchange well constructed for the purpose of installing any underground system through which fluids are circulated but remain isolated from direct contact with the subsurface or ground water. ()
- 15. Conductor Pipe.** The first and largest diameter string of permanent casing to be installed in a low temperature geothermal resource well. ()
- 16. Confining Layer.** A subsurface zone of low-permeability earth material that naturally acts to restrict or retard the movement of water or contaminants from one zone to another. The term does not include topsoil. ()
- 17. Consolidated Formations.** Naturally-occurring geologic formations that have been lithified (turned to stone) such as sandstone and limestone, or igneous rocks such as basalt and rhyolite, and metamorphic rocks such as gneiss and slate. ()
- 18. Contaminant.** Any physical, chemical, ion, radionuclide, synthetic organic compound, microorganism, waste, or other substance that does not occur naturally in ground water or that naturally occurs at a lower concentration. ()
- 19. Contamination.** The introduction into the natural ground water of any physical, chemical, biological or radioactive material that may: ()
- a.** Cause a violation of Idaho Ground Water Quality Standards; or ()
- b.** Adversely affect the health of the public; or ()
- c.** Adversely affect a designated or beneficial use of the State's ground water. Contamination includes the introduction of heated or cooled water into the subsurface that will alter the ground water temperature and render the local ground water less suitable for beneficial use, or the introduction of any contaminant that may cause a violation of IDAPA 58.01.11, "Ground Water Quality Rule." ()

- 20. Decommissioned (Abandoned) Well.** Any well that has been permanently removed from service and filled or plugged in accordance with these rules so as to meet the intent of these rules. A properly decommissioned well will not: ()
- a. Produce or accept fluids; ()
 - b. Serve as a conduit for the movement of contaminants inside or outside the well casing; or ()
 - c. Allow the movement of surface or ground water into unsaturated zones, into another aquifer, or between aquifers. ()
- 21. Decontamination.** The process of cleaning equipment intended for use in a well in order to prevent the introduction of contaminants into the subsurface and contamination of natural ground water. ()
- 22. Department.** The Idaho Department of Water Resources. ()
- 23. Dewatering Well.** A well constructed for the purpose of improving slope stability, drying up borrow pits, or intercepting seepage that would otherwise enter an excavation. ()
- 24. Director.** The Director of the Idaho Department of Water Resources or his duly authorized representatives. ()
- 25. Disinfection.** The introduction of chlorine or other agent or process approved by the Director in sufficient concentration and for the time required to inactivate or kill fecal and Coliform bacteria, indicator organisms, and other potentially harmful pathogens. ()
- 26. Draw Down.** The difference in vertical distance between the static water level and the pumping water level. ()
- 27. Drive Point (also known as a Sand Point).** A conduit pipe or casing through which ground water of any temperature is sought or encountered created by joining a “drive point unit” to a length of pipe and driving the assembly into the ground. ()
- 28. Exploratory Well.** A well drilled for the purpose of discovering or locating new resources in unproven areas. They are used to extract geological, hydrological, or geophysical information about an area. ()
- 29. Global Positioning System (GPS).** A global navigational receiver unit and satellite system used to triangulate a geographic position. ()
- 30. Hydraulic Conductivity.** A measurement of permeability. ()
- 31. Hydraulic Fracturing.** A process whereby water or other fluid is pumped under high pressure into a well to further fracture the reservoir rock or aquifer surrounding the production zone of a well to increase well yield. ()
- 32. Injection Well.** Any excavation or artificial opening into the ground which meets the following three (3) criteria: ()
- a. It is a bored, drilled or dug hole, or is a driven mine shaft or driven well point; and ()
 - b. It is deeper than its largest straight-line surface dimension; and ()
 - c. It is used for or intended to be used for subsurface placement of fluids. ()
- 33. Intermediate String or Casing.** The casing installed and sealed below the surface casing within a low temperature geothermal resource well to isolate undesirable water or zones below the bottom of the surface

casing. Such strings may either be lapped into the surface casing or extend to land surface. ()

34. Liner. ()

a. A conduit pipe that can be removed from the borehole or well that is used to serve as access and protective housing for pumping equipment and provide a pathway for the upward flow of water within the well. ()

b. Liner does not include casing required to prevent caving or collapse, or both, of the borehole or serve as a solid inner barrier to allow for the installation of an annular seal. ()

35. Mineralized Water. Any naturally-occurring ground water that has an unusually high amount of chemical constituents dissolved within the water. Water with five thousand (5000) mg/L or greater total dissolved solids is considered mineralized. ()

36. Modify. To deepen a well, increase or decrease the diameter of the casing or the well bore, install a liner, place a screen, perforate existing casing or liner, alter the seal between the casing and well bore, or alter the well to not meet well construction standards. ()

37. Monitoring Well. Any well more than eighteen (18) feet in vertical depth constructed to evaluate, observe or determine the quality, quantity, temperature, pressure or other characteristics of the ground water or aquifer. ()

38. Neat Cement. A mixture of water and cement in the ratio of not more than six (6) gallons of water to ninety-four (94) pounds of Portland cement (neat cement). Other cement grout mixes may be used if specifically approved by the Director. ()

39. Neat Cement Grout. Up to five percent (5%) bentonite by dry weight may be added per sack of cement (neat cement grout) and the water increased to not more than six and one-half (6.5) gallons per sack of cement. Other neat cement mixes may be used if specifically approved by the Director. These grouts must be mixed and installed in accordance with the American Petroleum Institute Standards - API Class A through H. As found in API RP10B, "Recommended Practice for Testing Oil Well Cements and Cement Additives," current edition or other approved standards. ()

40. Oxidized Sediments. Sediments, characterized by distinct coloration, typically shades of brown, red, or tan, caused by the alteration of certain minerals in an environment with a relative abundance of oxygen. ()

41. Perforated Well Casing. Well casing that has been modified by the addition of openings created by drilling, torch cutting, saw cutting, mechanical down-hole perforator, or other method. ()

42. Pitless Adaptor or Pitless Unit. An assembly of parts designed for attachment to a well casing which allows buried pipe to convey water from the well or pump and allows access to the interior of the well casing for installation or removal of the pump or pump appurtenances, while maintaining a water tight connection through the well casing and preventing contaminants from entering the well. ()

43. Potable Water. Water of adequate quality for human consumption. ()

44. Pressure Grouting (Grouting). The process of pumping and placing an approved grout mixture into the required annular space, by positive displacement from bottom to top using a tremie pipe, Halliburton method, float shoe, or other method approved by the Director. ()

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

46. Public Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service

connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: ()

a. Any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and ()

b. Any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system. ()

c. Such term does not include any “special irrigation district.” ()

d. A public water system is either a “community water system” or a “non-community water system.” ()

47. Reduced Sediments. Sediments, characterized by distinct coloration, typically shades of blue, black, gray, or green, caused by the alteration of certain minerals in an oxygen poor environment. ()

48. Remediation Well. A well used to inject or withdraw fluids, vapor, or other solutions approved by the Director for the purposes of remediating, enhancing quality, or controlling potential or known contamination. Remediation wells include those used for air sparging, vapor extraction, or injection of chemicals for remediation or in-situ treatment of contaminated sites. ()

49. Sand. Any sediment particle retained on a U.S. standard sieve #200 (Seventy-five hundredths (0.075) mm to two (2) mm). ()

50. Screen (Well Screen). A commercially produced structural tubular retainer with standard sized openings to facilitate production of sand free water. ()

51 Seal or Sealing. The placement of approved seal material in the required annular space between a borehole and casing, between casing strings, or as otherwise required to create a low permeability barrier and prevent movement or exchange of fluids. Seals are required in the construction of new wells, repair of existing wells, and in the decommissioning (abandonment) of wells. Seals are essential to the prevention of waste and contamination of ground water. ()

52. Start Card. An expedited drilling permit process for the construction of cold water, single-family residential wells. ()

53. Static Water Level. The height at which water will rise in a well under non-pumping conditions. ()

54. Surface Casing. The first string of casing in a low temperature geothermal resource well which is set and sealed after the conductor pipe to anchor blow out prevention equipment and to case and seal out all existing cold ground water zones. ()

55. Temporary Surface Casing. Steel pipe used to support the borehole within unstable or unconsolidated formations during construction of a well that will be removed following the installation of the permanent well casing and prior to or during placement of an annular seal. ()

56. Thermoplastic/PVC Casing. Plastic piping material meeting the requirements of ASTM F 480 and specifically designed for use as well casing. ()

57. Transmissivity. The capacity of an aquifer to transmit water through its entire saturated thickness. ()

58. Tremie Pipe. A small-diameter pipe used to convey grout, dry bentonite products, or filter pack materials into the annular space, borehole, or well from the bottom to the top of a borehole or well. ()

59. Unconfined Aquifer. An aquifer in which the water table is in contact with and influenced by atmospheric pressure through pore spaces in the overlying formation(s). ()

60. Unconsolidated Formation. A naturally-occurring earth formation that has not been lithified. Alluvium, soil, sand, gravel, clay, and overburden are some of the terms used to describe this type of formation. ()

61. Unstable Unit. Unconsolidated formations, and those portions of consolidated formations, that are not sufficiently hard or durable enough to sustain an open borehole without caving or producing obstructions without the aid of fluid hydraulics or other means of chemical or physical stabilization. ()

62. Unusable Well. Any well that can not be used for its intended purpose or other beneficial use authorized by law. ()

63. Waiver. Approval in writing by the Director of a written request from the well driller and the well owner proposing specific variance from the minimum well construction standards. ()

64. Waste. The loss, transfer, or subsurface exchange of a ground water resource, thermal characteristic, or natural artesian pressure from any aquifer caused by improper construction, misuse, or failure to properly maintain a well. Waste includes: ()

a. The flow of water from an aquifer into an unsaturated subsurface zone; ()

b. The transfer or mixing, or both, of waters from one aquifer to another (aquifer commingling); or ()

c. The release of ground water to the land surface whenever such release does not comply with an authorized beneficial use. ()

65. Water Table. The height at which water will rise in a well; also the upper surface of the zone of saturation in an unconfined aquifer. This level will change over time due to changes in water supply and aquifer impacts. ()

66. Well. ()

a. An artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water of any temperature is sought or obtained. The depth of a well is determined by measuring the maximum vertical distance between the land surface and the deepest portion of the well. Any water encountered in the well is considered to be obtained for the purpose of these rules; or ()

b. Any waste disposal and injection well, as defined in Section 42-3902, Idaho Code. ()

c. Well does not mean: ()

i. A hole drilled for mineral exploration; or ()

ii. Holes drilled for oil and gas exploration which are subject to the requirements of Section 47-320, Idaho Code; or ()

iii. Holes drilled for the purpose of collecting soil samples above the water table. ()

67. Well Development. The act of bailing, jetting, pumping, or surging water in a well to remove drilling fluids, fines, and suspended materials from within a completed well and production zone in order to establish the optimal hydraulic connection between the well and the aquifer. ()

68. Well Driller or Driller. Any person who operates drilling equipment, or who controls or

supervises the construction of a well, and is licensed under Section 42-238, Idaho Code ()

69. Well Drilling or Drilling. The act of constructing a new well or modifying or changing the construction of an existing well. ()

70. Well Owner. Any person, firm, partnership, co-partnership, corporation, association, or other entity, or any combination of these, who owns the property on which the well is or will be located or has secured ownership of the well by means of a deed, covenant, contract, easement, or other enforceable legal instrument for the purpose of benefiting from the well. ()

71. Well Rig (Drill Rig). Any power driven percussion, rotary, boring, digging, jetting or auguring machine used in the construction of a well. ()

011. -- 024. (RESERVED)

025. CONSTRUCTION OF COLD WATER WELLS (RULE 25).

All persons constructing wells must comply with the requirements of Section 42-238, Idaho Code, and IDAPA 37.03.10, "Well Driller Licensing Rules." The standards specified in Rule 25 apply to all wells with a bottom hole temperature of eighty-five (85) degrees Fahrenheit or less. Wells with a bottom hole temperature greater than eighty-five (85) degrees Fahrenheit, but less than two hundred twelve (212) degrees Fahrenheit, must meet the requirements of Rule 30 in addition to meeting the requirements of Rule 25. These standards also apply to any waste disposal and injection well as defined in Section 42-3902, Idaho Code. ()

01. General. The well driller must construct each well as follows: ()

a. In accordance with these rules and with the conditions of approval of any drilling permit issued pursuant Section 42-235, Idaho Code, and in a manner that will prevent waste and contamination of the ground water resources of the state of Idaho. The adopted standards are minimum standards which must be adhered to in the construction of all new wells, and in the modification or decommissioning (abandonment) of existing wells. The well driller is charged with the responsibility of preventing waste or contamination of the ground water resources during the construction, modification or abandonment of a well. The Director may add conditions of approval to a drilling permit issued pursuant to Rule 45 of these rules to require that a well be constructed, modified, or decommissioned (abandoned) in accordance with additional standards when necessary to protect ground water resources and the public health and safety from existing contamination and waste or contamination during the construction, modification or decommissioning (abandonment) of a well. ()

b. In consideration of the geologic and ground water conditions known to exist or anticipated at the well site. ()

c. Such that it is capable of producing, where obtainable, the quantity of water to support the allowed or approved beneficial use of the well, subject to law; ()

d. Meet the siting and separation distance requirements in the table in this Subsection (025.01.d.). Additional siting and separation distance requirements are set forth by the governing district health department and the Idaho Department of Environmental Quality rules at IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules," and IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems".

| Separation of Well from: | Minimum Separation Distance (feet) |
|---|------------------------------------|
| Existing Public Water Supply well, separate ownership | - 50 |
| Other existing well, separate ownership | - 25 |
| Septic drain field | - 100 |

| Separation of Well from: | Minimum Separation Distance (feet) |
|--|------------------------------------|
| Septic tank | - 50 |
| Drainfield of system with more than 2,500 GPD of sewage inflow | - 300* |
| Sewer line - main line or sub-main, pressurized, from multiple sources | - 100 |
| Sewer line - main line or sub-main, gravity, from multiple sources | - 50 |
| Sewer line - secondary, pressure tested, from a single residence or building | - 25 |
| Effluent pipe | - 50 |
| Property line | - 5 |
| Permanent buildings, other than those to house the well or plumbing apparatus, or both | - 10 |
| Above ground chemical storage tanks | - 20 |
| Permanent (more than six months) or intermittent (more than two months) surface water | - 50 |
| Canals, irrigation ditches or laterals, & other temporary (less than two months) surface water | - 25 |
| *This distance may be less if data from a site investigation demonstrates compliance with IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules," separation distances. | |

()

02. Waivers. In unique cases where the Director concludes that the ground water resources will be protected against waste and contamination and the public health and safety are not compromised, a waiver of specific standards required by these rules may be approved prior to constructing, decommissioning, or modifying a well.

()

a. To request a waiver the well driller and well owner must:

()

i. Jointly submit a detailed plan and written request identifying a specific Rule or Rules proposed to be waived. Additionally, the plan must detail the well construction process that will be employed in lieu of complete Rule compliance:

()

ii. Prior to submittal, the well driller and the well owner must sign the plan and written request acknowledging concurrence with the request; and

()

iii. Submit the plan and request by facsimile, e-mail, or letter.

()

b. The Director will evaluate and respond to the request within ten (10) business days of receiving the request.

()

i. If the request for waiver is approved, the intent of the rules will be served and all standards not waived will apply. Waivers approved by the Director will not supersede requirements of other regulatory agencies without specific concurrence from that agency. Work activity related to a waiver request will not proceed until a written or verbal approval is granted by the Director.

()

ii. Any verbal approval will be followed by a written approval.

()

03. Records. In order to enable a comprehensive survey of the extent and occurrence of the state's ground water resource, the coordinates of every newly constructed, modified or decommissioned (abandoned) well location must be identified by latitude and longitude with a global positioning system (GPS) and recorded on the

driller’s report in degrees and decimal minutes and within the nearest 40 acre parcel using the Public Land Survey System. Every well driller must maintain records as described in IDAPA 37.03.10 “Well Driller Licensing Rules,” pursuant to Section 42-238(11), Idaho Code, and provide the well owner with a copy of the approved well drilling permit and a copy of the well driller’s report when submitted to the Director. ()

04. Casing. The well driller must install casing in every well. Steel or thermoplastic casing may be installed in any well with a bottom hole temperature of eighty-five (85) degrees Fahrenheit or less. Thermoplastic pipe must not be installed in a well with a bottom hole temperature greater than eighty-five (85) degrees Fahrenheit. All casing to be installed must be new or in like-new condition, free of defects, and clearly marked by the manufacturer with all specifications required by these rules. For all wells the casing must extend at least twelve (12) inches above land surface and finished grade and to a minimum depth below land surface as required by these rules. Concrete slabs around a well casing will be considered finished grade (Figure 01, Appendix A). The well driller must install casing of sufficient strength to withstand calculated and anticipated subsurface forces and corrosive effects. The well driller must install casings sufficiently plumb and straight to allow the installation or removal of screens, liners, pumps and pump columns without causing adverse effects on the operation of the installed pumping equipment. ()

a. Steel Casing. When steel casing lengths are joined together, they must be joined by welded joints or screw-couple joints. All connection must be water tight. If steel casing joints are welded, the weld must be at least as thick as the well casing and fully penetrating. Welding rods or flux core wire of at least equal quality to the casing metal must be used. Casing ends to be joined by welding must be properly prepared, beveled and gapped to allow full penetration of the weld. All stick welded joints must have a minimum of two (2) passes including a “root” pass and have minimal undercut when complete. ()

i. In addition to meeting these standards, all wells that are constructed for public water systems must meet all of the casing wall thickness requirements set forth by the Idaho Department of Environmental Quality Rules, IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems.” ()

ii. The well driller must install steel casing that meets or exceeds the American Society of Testing and Materials (ASTM) standard A53, Grade B or American Petroleum Institute (API) 5L Grade B, and that meets the following specifications for wall thickness:

| Minimum Single-Wall Steel Well Casing Thickness¹ for Selected Diameters (inches) | | | | | | | | | | | | | |
|--|---|----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Nominal Diameter (in.)³ | 6² | 8 | 10 | 12 | 14 | 16 | 18 | 20 | 22 | 24 | 26 | 28 | 30 |
| Depth (ft.) | Nominal Wall Thickness (in.)¹ | | | | | | | | | | | | |
| <100 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 |
| 100-200 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 |
| 200-300 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 |
| 300-400 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.375 | 0.375 | 0.375 | 0.375 |
| 400-600 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 |
| 600-800 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.250 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 |
| 800-1000 | 0.250 | 0.250 | 0.250 | 0.250 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 |
| 1000-1500 | 0.280 | 0.322 | 0.365 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 |
| 1500-2000 | 0.280 | 0.322 | 0.365 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 | 0.375 |

| Minimum Single-Wall Steel Well Casing Thickness¹ for Selected Diameters (inches) | | | | | | | | | | | | | |
|--|----------------------|----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Nominal Diameter (in.)³ | 6² | 8 | 10 | 12 | 14 | 16 | 18 | 20 | 22 | 24 | 26 | 28 | 30 |
| <p>1 Compliance with the minimum nominal wall thicknesses listed is required for any depth or location where casing is used to prevent caving or collapse, or both, of the borehole or serves as a solid inner barrier to allow for the installation of an annular seal.</p> <p>2 For nominal casing diameters less than six (6) inches, the minimum nominal wall thickness must be equivalent to ASTM Schedule 40.</p> <p>3 For any other casing diameter not addressed herein, prior approval by the Director is required.</p> | | | | | | | | | | | | | |

()

b. Thermoplastic Casing. Thermoplastic casing may be used in monitoring wells and cold water wells if drilling of the borehole confirms its suitability for use. ()

i. Thermoplastic casing must conform to ASTM F 480 and NSF-WC. The well driller must not use thermoplastic casing under any condition where the manufacturer’s resistance to hydraulic collapse pressure (RHCP) or total depth specifications are exceeded. Thermoplastic casing extending above-ground must be protected from physical and ultraviolet light damage by enclosing it within steel casing extending at least twelve (12) inches above land surface and finished grade and to a minimum depth of eighteen (18) feet below land surface or five (5) feet below land surface for monitoring wells. ()

ii. Thermoplastic pipe used in wells as casing or liner must have a minimum rating of SDR-21. For nominal diameters of four (4) inches or less, a minimum rating of Schedule 40 is required. If used as casing within unconsolidated or unstable consolidated formations, thermoplastic pipe must be centralized and fully supported throughout the unstable zone(s) with filter pack or seal material as required by these rules. ()

iii. All thermoplastic casing and liner must be installed in accordance with the manufacturer’s recommendations and specifications, and as required by these rules. The well driller will not treat thermoplastic pipe in any manner that would adversely affect its structural integrity. The well driller must: ()

(1) Ensure that the weight of the pump assembly, if secured to the thermoplastic pipe, does not exceed the weight limitations per manufacturer’s recommendations or cause damage to the pipe resulting in breaks or leaks. ()

(2) Not use Type III (high-early strength) Portland cement-based seal materials in direct contact with thermoplastic pipe unless approved by the Director. ()

(3) Not drive, drop, force, or jack thermoplastic pipe into place. Thermoplastic pipe must be lowered or floated into an oversized, obstruction-free borehole. ()

c. Perforated Well Casing. Perforated well casing may be used in the construction or decommissioning of a well when such application does not violate any standards required by these rules. ()

05 Liner. In addition to well casing, liners may be installed in wells to prevent damage to pumping equipment. Steel or thermoplastic pipe may be installed as liner in a well with a bottom hole temperature of eighty-five (85) degrees Fahrenheit or less. Thermoplastic liner must conform to ASTM F 480 and NSF-WC. Thermoplastic liners must not be used in unconsolidated formations or unstable units. ()

06. Screen. Well screens must be used in constructing a well when necessary to avoid sand production (see sand production, Rule 25, Subsection 025.24). Well screens must be commercially manufactured, be slotted, louvered or wire wrapped, and be installed according the manufacturers specifications. ()

a. Screens may require a filter pack consisting of sand or gravel to further reduce the quantity of sand produced from the well. ()

b. The well driller will not install well screens, perforated casing or filter pack across a confining layer(s) separating aquifers of different pressure, temperature, or quality. ()

07. Use of Approved Sealing Materials and Required Annular Space. Well casings must be sealed in the required annular space with approved material to prevent the possible downward movement of contaminated surface waters or other fluids in any annular space around the well casing (Figure 02, Appendix A). Proper sealing is also required to prevent the movement of groundwater either upward or downward from zones of different pressure, temperature or quality within the well or outside the casing. The well driller must notify by phone the Department's appropriate Region Office at least four (4) hours in advance of placing any annular seal to provide Department staff the opportunity to observe seal placement. ()

a. All casing to be sealed must be adequately centralized to ensure uniform seal thickness around the well casing. Surface seals must extend to not less than thirty-eight (38) feet below land surface for well depths greater than thirty-eight (38) feet. For well depths less than thirty-eight (38) feet, seals must extend to depths as hereafter required. ()

b. Seals are required at depths greater than thirty-eight (38) feet in artesian wells or to seal through confining layers separating aquifers of differing pressure, temperature, or quality in any well. ()

c. When a well is modified and the existing casing is moved or the original seal is damaged, or a well driller discovers that a seal was not installed or has been damaged, the well driller must repair, replace, or install a seal around the permanent casing that is equal to or better than required when the well was originally constructed. ()

d. Manufactured packers and shale traps may be used as devices to retain approved seal material when installing a required annular seal. Whenever these devices are used to retain seal material, the well driller must comply with the manufacturer's recommendations for installation. ()

e. If a temporary casing has been installed, upon completion of the drilling, the annular space must be filled with approved seal material and kept full while withdrawing the temporary casing. Bentonite chips should be used with caution when the annular space between a temporary casing and permanent casing is filled with water. ()

i. When attempts at removing a temporary casing are unsuccessful, the casing must be sealed in place by a method approved by the department. ()

ii. The well driller must notify the department whenever a temporary casing can not be removed and propose a plan to adequately seal the casing to prevent waste and contamination of the ground water. The plan must detail how the casing will be sealed on the outside to a sufficient depth below land surface in addition to placement of any required formation seals through the interval at which the casing will remain. ()

f. For mixed grout seals the minimum annular space required must provide for a uniform seal thickness not less than one (1) inch on all sides of the casing or a borehole at least two (2) inches larger than the outside diameter (OD) of the casing to be sealed (Figure 02, Appendix A). (Note: a seven and seven-eighths (7 7/8) inch diameter (eight (8) inch nominal) borehole around a six and five-eighths (6 5/8) inch OD (six (6) inch nominal casing does not satisfy the minimum annular space requirements). ()

i. When placing grout seals with a removable tremie pipe between casing strings or between a borehole and casing, the required annular space must be at least one (1) inch or equal to the OD of the tremie pipe whichever is greater. Permanent tremie pipes will be considered as a casing string and subject to minimum annular space requirements in addition to the annular space requirements around the well casing (Figure 03, Appendix A). ()

ii. All grout seals must be placed from the bottom up, by using an approved method. Bentonite grout

must not be used above the water table unless specifically designed and manufactured for such use and approved by the Director in advance. ()

iii. If cement-based grout (neat cement or neat cement grout) is used to create a seal, the casing string sealed must not be moved or driven after the initial set. Construction must not resume for a minimum of twenty-four (24) hours following seal placement; ()

g. For dry bentonite seals the minimum annular space required must provide for a uniform seal thickness not less than one and five-eighths (1 5/8) inches on all sides of the casing or a borehole at least four (4) inches larger than the “nominal diameter” of the casing to be sealed. e.g., (six and five-eighths (6 5/8) inch OD (six (6) inch nominal) casing requires a ten and three fourths (10 3/4) inch OD (ten (10) inch nominal) temporary casing or a nine and seven-eighths (9 7/8) inch (ten (10) inch nominal) minimum borehole). Listed below are additional annular space requirements and limitations for placement of dry bentonite seals: ()

i. All dry bentonite seals must be tagged during placement and consider volumetric calculations to verify placement. ()

ii. Installation of dry bentonite seals must be consistent with the manufacturers’ recommendations and specifications for application and placement. ()

iii. Granular bentonite must not be placed through water. ()

iv. If a granular bentonite seal is placed deeper than two hundred (200) feet, the minimum annular space must be increased by at least one (1) inch e.g., (six and five-eighths (6 5/8) inch OD (six (6) inch nominal) casing requires a twelve and three fourths (12 3/4) inch OD (twelve (12) inch nominal) temporary casing or an eleven and seven eights (11 7/8) inch (twelve (12) inch nominal) minimum borehole). ()

v. Bentonite chips may be placed through water or drilling fluid of appropriate viscosity. Bentonite chip seals placed through more than fifty (50) feet of water or drilling fluid will require the minimum annular space to be increased by at least one (1) inch e.g., (six and five-eighths (6 5/8) inch OD (six (6) inch nominal) casing requires a twelve and three fourths (12 3/4) inch OD (twelve (12) inch nominal) temporary casing or an eleven and seven eights (11 7/8) inch (twelve (12) inch nominal) minimum borehole). ()

08. Sealing of Wells. Sealing requirements described herein are minimum standards that apply to all wells. The Director may establish alternate minimum sealing requirements in specific areas when it can be determined through detailed studies of the local hydrogeology that a specific alternate minimum will provide protection of the ground water from waste and contamination. ()

a. Consolidated Formations. When a water well is drilled into and acquires water from an aquifer that consists of consolidated formations that are above the water table, casing must be installed so that it extends and is sealed to a depth not less than thirty-eight (38) feet (Figure 04, Appendix A). If the well depth is less than thirty-eight (38) feet from land surface, well casing must be installed and sealed five (5) feet into the consolidated formation or to a depth of eighteen (18) feet, whichever is greater. ()

b. Unconsolidated Formations without Confining Layers of Clay. When a water well is drilled into and acquires water from an unconfined aquifer that is overlain with unconsolidated formations, such as sand and gravel without confining layers of clay, well casing must extend to at least five (5) feet below the water table and be sealed to a depth not less than thirty-eight (38) feet (Figure 05, Appendix A). If the well depth is less than thirty-eight (38) feet well casing must extend to at least five (5) feet below the water table or eighteen (18) feet, whichever is greater, and be sealed to a depth of at least eighteen (18) feet. ()

i. The extensive (for example, one hundred fifty (150) feet thick or more) unconsolidated, non-stratified, sand and gravel of the Rathdrum Prairie are characterized by extremely high transmissivity and hydraulic conductivity. Under these conditions, sealing wells to depths greater than eighteen (18) feet may not be additionally protective. When a water well is drilled within the boundaries of the Rathdrum Prairie, (shown in Figure 06, Appendix A of these rules), well casing must extend to at least five (5) feet below the water table and be sealed to a depth not less than eighteen (18) feet (Figure 07, Appendix A). ()

c. Unconsolidated Formations with Confining Layers of Clay. When a well is drilled into and acquires water from an aquifer that is overlain by unconsolidated deposits such as sand and gravel, and there are confining layers of clay above the water table, well casing must be installed from the land surface to the confining layer immediately above and in contact with the production zone and sealed to a depth not less than thirty-eight (38) feet (Figure 08, Appendix A). If the well depth is less than thirty-eight (38) feet from land surface, well casing must extend and be sealed into the first confining layer or to a depth of eighteen (18) feet, whichever is greater. ()

09. Sealing Artesian Wells. ()

a. Unconsolidated Formations. When artesian water is encountered in unconsolidated formations, the production zone or open interval must be limited to zones of like pressure, temperature, and quality. Water encountered in oxidized sediments must not be comingled with water encountered in reduced sediments. Well casing must extend from land surface into the lower most confining layer above the production zone, and must be sealed: ()

i. From land surface to a depth of at least thirty-eight (38) feet; and ()

ii. Through all confining layer(s); and ()

(1) A minimum of five (5) feet of seal material must be placed into or through the lower most confining layer above the production zone (Figure 09, Appendix A); or ()

(2) Five (5) feet into or through the lowermost confining layer above the production zone and continuously to land surface (Figure 09, Appendix A). ()

iii. If the well depth is less than thirty-eight (38) feet, the well must be cased and sealed from land surface to the confining layer in direct contact with the production zone or to a depth of eighteen (18) feet, whichever is greater. ()

b. Consolidated Formations. When artesian water is encountered in a consolidated formation, well casing must be installed and sealed from land surface to a depth of at least thirty-eight (38) feet; and ()

i. If the consolidated formation is overlain by a permeable formation(s) and water will rise above the consolidated formation, well casing must extend and be sealed at least five (5) feet into the confining portion of the consolidated formation (Figure 10, Appendix A). ()

ii. If the well depth is less than thirty-eight (38) feet, the well must be cased and sealed from land surface five (5) feet into the confining consolidated formation or to a depth of eighteen (18) feet, whichever is greater. ()

c. Control Device. Pursuant to Section 42-1603, Idaho Code, if the well flows at land surface, it must be equipped with a control device approved by the Director, so that the flow can be completely stopped. If leaks occur around the well casing or adjacent to the well, the well must be completed with seals, casing or cement grout to eliminate the leakage. ()

i. Flowing artesian wells must be equipped with an approved pressure gage fitting that will allow access for measurement of shut-in pressure of a flowing well. All pressure gage fittings must include control valves such that the pressure gage can be removed without resulting in artesian flow from the well. ()

ii. The well driller must not move his well drilling rig from the site until all requirements have been satisfied. Some mixing of water may be allowed to develop an adequate water well; however, the mixing must be restricted to water zones of similar pressure, temperature and quality. The driller must take precautions to case and seal out zones which may lead to waste or contamination. ()

10. Alternative Methods for Sealing Wells. To accommodate for new technology, and in consideration of the wide variety of drilling equipment used to construct wells, other methods of sealing wells not

specifically addressed in these rules may be allowed. The Director may consider specific proposals for alternative methods of sealing on a case by case basis. Director approval or acceptance of such procedures will not constitute a “waiver” of any requirements of these rules. In such cases, the well driller must provide sufficient information for the Director to determine that the full intent of the sealing requirements will be satisfied if an alternative method is employed. If it is determined that a specific alternate method will provide protection of the ground water from waste and contamination, the Director may issue a statement of acceptance qualifying the use and implementation of such methods. ()

11. Injection Wells. In addition to meeting the requirements of Rule 25 of these rules, the construction, modification, or decommissioning (abandonment) of all injection wells over eighteen (18) feet in vertical depth must also comply with the IDAPA 37.03.03, “Rules for the Construction and Use of Injection Wells,” and the injection well permit. Drillers must obtain from the Director a certified copy of the permit authorizing construction or modification of an injection well before beginning work. ()

12. Cathodic Protection Wells. All cathodic protection wells must be constructed by a licensed well driller in compliance with these rules. A detailed construction plan must be included with the drilling permit application. ()

13. Monitoring and Remediation Wells. All monitoring wells and remediation wells must be constructed and maintained in a manner that will prevent waste or contamination and as otherwise required by these rules. When a monitoring well or a remediation well is no longer useful or needed, the owner or operator of the well must decommission (abandon) the well in accordance with Rule 25, Subsection 025.16 of these rules. No person may divert ground water from a monitoring well or a remediation well for any purpose not authorized by the Director. The application for a permit for all monitoring wells and all remediation wells must include a design proposal prepared by a licensed engineer or registered geologist pursuant to Section 42-235, Idaho Code. Blanket permits for monitoring well and remediation well networks may be approved for site-specific monitoring and remediation programs. The designs and specification for monitoring wells and remediation wells must demonstrate that: ()

- a. The ground water resources are protected against waste and contamination; ()
- b. The well(s) will inject or withdraw only fluids, gases or solutions approved by the Director; ()
- c. The well(s) will be constructed so as to prevent aquifer commingling; and ()
- d. The well(s) will be properly decommissioned (abandoned) upon project completion and in accordance with these rules. ()

14. Closed Loop Heat Exchange Wells. The well driller must construct closed loop heat exchange wells consistent with these rules. The well driller is not required to install steel casing in such wells. When constructing a closed loop heat exchange well, the well driller must: ()

- a. Construct each borehole of sufficient size to provide the annular space required by these rules. ()
- b. Seal the annular space of each borehole with approved seal material in accordance with these rules; ()
- c. Install fluid-tight circulating pipe, composed of high-density polyethylene, grade PE3408, minimum cell classifications PE355434C or PE345434C conforming to ASTM Standard D3350, or other Director-approved pipe; ()
- d. Join pipe using thermal fusion techniques according to ASTM Standards D-3261 or D-2683. All personnel creating such system joints must be trained in the appropriate thermal fusion technologies; ()
- e. Use only propylene glycol, or other circulating fluid approved by the Director; ()
- f. Ensure that any other system additive is NSF approved and has prior approval from the Director; ()

- ()

g. Pressure test each loop with potable water prior to grout installation; ()
- h. Pressure test the system with potable water prior to installation of the circulating fluid at one hundred percent (100%) of the designed system operating pressure for a minimum duration of twenty-four (24) hours; and ()
- i. Properly repair or decommission (abandon) all loops failing the test by pressure pumping approved seal material through the entire length of each failed loop. After grouting, loop ends must be fused together or capped. ()

15. Access Port or Pressure Gage. Upon completion of a well and before removal of the well rig from the site, the well must be equipped with an access port that will allow for measurement of the depth to water or an approved pressure gage fitting that will allow access for measurement of shut-in pressure of an artesian flowing well. All pressure gage fittings must include control valves such that the pressure gage can be removed. Approved access ports are illustrated in Figure 11, APPENDIX A, together with approved locations for pressure gage fittings. Air lines are not a satisfactory substitution for an access port. Nonflowing domestic and stock water wells that are to be equipped with a sanitary seal with a built-in access port are exempt from this requirement. ()

16. Decommissioning (Abandoning) of Wells. ()

a. The well owner is charged with maintaining and properly decommissioning (abandoning) a well in a manner that will prevent waste or contamination, or both, of the ground water. No person is allowed to decommission a well in Idaho without first obtaining a driller's license or receiving a waiver of the license requirement from the Director of the Department of Water Resources. Authorization is required from the Director prior to decommissioning any well. Upon decommissioning, the person who decommissioned the well must submit to the Director a report describing the procedure. ()

b. The Director may require decommissioning of a well in compliance with the provisions of these rules, if the well: ()

- i. Does not meet minimum well construction standards; ()
- ii. Meets the definition of an unusable well; ()
- iii. Poses a threat to human health and safety; ()
- iv. Is in violation of IDAPA 58.01.11, "Ground Water Quality Rule"; or ()
- v. Has no valid water right or other authorization acceptable to the Director for use of the well. ()

c. When required by the Director, decommissioning must be done in accordance with the following: ()

i. Cased wells and boreholes without a continuous seal from the top of the intakes or screen to the surface. The well driller must use one (1) of the following methods as applicable: ()

(1) The Director may require that well casing be perforated every five (5) feet from the bottom of the casing to within five (5) feet of the surface. Perforations made must be adequate to allow the free flow of seal material into any voids outside the well casing. There must be at least four equally spaced perforations per section circumference. Approved grout must be pressure pumped to fill any voids outside of the casing. A sufficient volume must be used to completely fill the well and annular space; or ()

(2) Fill the borehole with approved seal material as the casing is being removed. ()

ii. Cased wells and boreholes with full-depth seals. If the well is cased and sealed from the top of the screen or production zone to the land surface, the well must be completely filled with approved seal material. ()

iii. Uncased wells must be completely filled with approved seal material. ()

iv. Dry hole wells or wells from which the quantity of water to meet a beneficial use cannot be obtained must be decommissioned with cement grout, concrete or other approved seal material in accordance with these rules. ()

17. Completion of a Well. The Director will consider that every well is completed when the well drilling equipment has been removed, unless written notice has been given to the Director by the well driller that he intends to return and do additional work on the well within a specified period of time. Upon completion of the well, the well must meet all of the required standards. ()

a. Upon completion of drilling and prior to removal of well drilling equipment from a water well site, the top of the casing must be completely covered with: ()

i. A one-fourth inch (1/4") thick solid, new or like-new steel plate with a three-fourths inch (3/4) threaded and plugged access port, welded to and completely covering the casing (Figure 12, Appendix A); or ()

ii. A threaded cap, or a commercially manufactured watertight sanitary well cap (Figure 12, Appendix A); or ()

iii. A commercially manufactured water-tight, snorkel-vented or non-vented well cap on any well susceptible to submergence; or ()

iv. A control device approved by the Director per Section 42-1603, Idaho Code, on any well that flows at land surface (Figure 11, Appendix A). ()

b. Upon the completion of every well, the well driller must permanently affix the stainless steel well tag to the steel surface casing in a manner and location that maintains tag legibility. For closed loop heat exchange wells, the well driller must obtain approval for the well tag placement and method of attachment. The well driller must secure each tag by: ()

i. A full-length weld across the top and down each side of the tag; or ()

ii. Using one (1) stainless steel, closed-end domed rivet near each of the four (4) corners of the tag. ()

iii. Prior to welding or riveting, the tag must be pre-shaped to fit the casing such that both sides to be welded or riveted touch the casing and no gaps exist between the tag and casing. ()

18. Pitless Adapters. When a pitless adaptor is used (Figure 12, Appendix A), the adaptor should be of the type approved by the NSF International testing laboratory or the approval code adopted by the Pitless Adaptor Division of the Water Systems Council. The pitless adaptor, including the cap or cover, casing extension, and other attachments, must be so designed and constructed to be water tight and to prevent contamination of the potable water supply from external sources. If a permanent surface or outer casing is installed and is cut off or breached to install the pitless adaptor on an inner well casing or liner, the space between the permanent outer casing and the liner or inner casing must be sealed. The well owner or person installing the pitless adaptor must then seal the excavation surrounding the pitless adaptor using an approved seal material. ()

19. Pump Installation. No person is allowed to install a pump into any well that would cause a violation of Rule 25, of these rules or other applicable rules or state law. ()

20. Explosives. Explosives used in well construction must never be detonated inside the required well

casing. Approved explosive casing perforators may be exempted by the Director. ()

21. Hydraulic Fracturing. Hydraulic fracturing must be performed only by well drillers licensed in Idaho. The pressure must be transmitted through a drill string and must not be transmitted to the well casing. The driller must provide a report to the Director of the fracturing work which must include well location, fracturing depth, fracturing pressures and other data as requested by the Director. ()

22. Drilling Fluids or Drilling Additives. The well driller must use only potable water and drilling fluids or drilling additives that are manufactured for use in water wells, are NSF International, American Petroleum Institute (API), or ASTM/ANSI approved; and do not contain a concentration of any substance in excess of Primary Drinking Water Standards, as set forth in IDAPA 58.01.08, "Rules for Public Drinking Water Systems," according to manufacturer's specifications. The well driller may seek approval from the Director to use specific, non-certified products on a case-by-case basis. In addition, the well driller must ensure the containment of all drilling fluids and materials used or produced to the immediate drilling site, and will not dispose of such fluids or materials into any streams, canals, boreholes, wells, or other subsurface pathways. ()

23. Disinfection and Decontamination. Upon completion of a well, the driller is responsible for adding the appropriate amount of disinfecting chemical compound and distributing it throughout the well to achieve a uniform concentration for "in place" disinfection of the well. Chlorine compounds used in accordance with the table listed below will satisfy this requirement. Other methods may be used if approved by the Director in advance.

| Amount of Chlorine Needed Per 100 Feet of Water in Well | | | |
|--|--|---|---|
| Casing Diameter (in.) | Gallons of water in casing per 100 ft. of water depth | Amount of 5.25% Sodium Hypochlorite (Unscented Laundry Bleach) | Amount of 65% Calcium Hypochlorite (Chlorine Granules) |
| 6 | 147 | 2 ¼ cups | 3 tbsp |
| 8 | 261 | 4 cups | 5 tbsp |
| 10 | 408 | 6 ¼ cups | ½ cup |
| 12 | 588 | 9 cups | ¾ cup |
| 16 | 1044 | 1 gal | 1 ¼ cup |
| Note: 1 gal = 4 qt = 8 pt = 16 cups; 1 cup = 16 tbsp | | | |
| Chlorine granules or tablets must be dissolved and placed into the well as a solution. | | | |
| If another concentration of hypochlorite solution is used, the following equation should be used for calculating amounts. | | | |
| $(\text{Volume of water in gallons}) \times (0.08) / \% \text{ Hypochlorite (e.g. } 50\% = 50) = \text{cups of hypochlorite}$ | | | |
| Example: To treat 147 gallons of water using a 50% concentration of hypochlorite solution: $(147 \text{ gallons water}) \times (0.08) / 50 = .23$ (or approximately 1/4) cup of 50% Hypochlorite solution | | | |

()

24. Sand Production. The maximum sand content produced from a well after initial well development must not exceed fifteen (15) ppm. For the purpose of this rule, sand is considered to be any sediment particle retained on a U.S. standard sieve #200 (seventy-five hundredths (0.075) mm to two (2) mm). ()

a. When necessary to mitigate sand production the well driller must: ()

i. Construct each well with properly sized casing, screen(s) or perforated intake(s); and ()

- ii. Install properly sized filter pack(s); or ()
 - iii. Install pre-packed well screens; or ()
 - iv. Employ other methods approved by the Director. ()
- b.** The Director may grant a waiver exempting a well producing water that exceeds the maximum sand content only if the well driller has met the requirements of Rule 25, Subsection 025.24.a. ()
- c.** Sand production in public water system wells. Wells used in connection with a public water system have more stringent requirements. See IDAPA 58.01.08, "Idaho Rules for Public Water Systems." ()

25. Well Development and Testing. For each well the well driller must measure and record the static (non-pumping) water level and the pumping water level, and the production rate. The production rate will be determined by a pump, bailer, air-lift, or other industry approved test of sufficient duration to establish production from the well. For wells with no returns the driller must report no returns and the static water level. This information must be documented on the well driller's report. ()

026. -- 029. (RESERVED)

030. CONSTRUCTION OF LOW TEMPERATURE GEOTHERMAL RESOURCE WELLS AND BONDING (RULE 30).

01. General. Drillers constructing low temperature geothermal resource wells (bottom hole temperature more than eighty-five (85) degrees Fahrenheit and less than two hundred twelve (212) degrees Fahrenheit) must be qualified under the Well Driller Licensing Rules. All low temperature geothermal resource wells must be constructed in such a manner that the resource will be protected from waste due to lost artesian pressure and temperature. The owner or well driller is required to provide bottom hole temperature data, but the Director may make the final determination of bottom hole temperature, based upon information available to him. ()

a. All standards and guidelines for construction and decommissioning (abandonment) of cold water wells apply to low temperature geothermal resource wells except as modified by Rule 30, Subsections 030.03, 030.04, and 030.06. ()

b. A drilling prospectus must be submitted to and approved by the Director prior to the construction, modification, deepening or decommissioning (abandonment) of any low temperature geothermal resource well. The well owner and the well driller are responsible for the prospectus and subsequent well construction. ()

02. Well Owner Bonding. The owner of any low temperature geothermal resource well must file a surety bond or cash bond as required by Section 42-233, Idaho Code, with the Director in an amount not less than five thousand dollars (\$5,000) nor more than twenty thousand dollars (\$20,000) payable to the Director prior to constructing, modifying or deepening the well after July 1, 1987. The bond amount will be determined by the Director within the following guidelines. The bond will be kept in force for one (1) year following completion of the well or until released in writing by the Director, whichever occurs first. ()

a. Any well less than three-hundred (300) feet deep with a bottom hole temperature of less than one hundred twenty (120) degrees Fahrenheit and a shut-in pressure of less than ten (10) pounds per square inch gage (psig) at land surface must maintain a bond of five thousand dollars (\$5,000). ()

b. The owner of any well three hundred (300) feet to one thousand (1,000) feet deep with a bottom hole temperature of less than one hundred fifty (150) degrees Fahrenheit and a shut-in pressure of less than fifty (50) psig at land surface must maintain a bond of ten thousand dollars (\$10,000). ()

c. The owner of any low temperature geothermal resource well not covered by Rule 30, Subsections 030.02.a. and 030.02.b. must maintain a bond of twenty thousand dollars (\$20,000). ()

d. The Director may decrease or increase the bonds required if it is shown to his satisfaction that well

construction or other conditions merit an increase or decrease. ()

e. The bond requirements of Section 42-233, Idaho Code, are applicable to wells authorized by water right permits or licenses having a priority date earlier than July 1, 1987, if the well authorized by the permit or license was not constructed prior to July 1, 1987 or if an existing well constructed within the terms of the permit or license is modified, deepened or enlarged on or after July 1, 1987. ()

03. Casing. Low temperature geothermal resource wells must be properly cased and sealed to protect from cooling by preventing intermingling with cold water aquifers. ()

a. Steel casing which meets or exceeds the minimum specifications for permanent steel casing of Rule 25, Subsection 025.04 must be installed in every well. The Director may require a more rigid standard for collapse and burst strength as depths or pressures may dictate. Every low temperature geothermal resource well which flows at land surface must have a minimum of forty (40) feet of conductor pipe set and cemented its entire length. ()

b. Casing must be installed from twelve (12) inches above land surface into the overlying confining strata of the thermal aquifer. The casing schedule may consist of several different casing strings (i.e. conductor pipe, surface casing, intermediate casing, production casing) which may all extend to land surface or may be overlapped and sealed or packed to prevent fluid migration out of the casing at any depth (Figure 13, Appendix A). ()

i. Low temperature geothermal resource wells less than one thousand (1,000) feet deep and which encounter a shut-in pressure of less than fifty (50) psig at land surface must have two (2) strings of casing set and cemented to land surface. Conductor pipe must be a minimum of forty (40) feet in length or ten percent (10%) of the total depth of the well whichever is greater. Surface casing must extend into the confining stratum overlying the aquifer. ()

ii. Low temperature geothermal resource wells one thousand (1,000) feet or more in depth or which will likely encounter a shut-in pressure of fifty (50) psig or more at land surface require prior approval of the drilling plan by the Director and must have three strings of casing cemented their total length to land surface. Conductor pipe must be a minimum length of forty (40) feet. Surface casing must be a minimum of two hundred (200) feet in length or ten percent (10%) of the total depth of the well, whichever is greater. Intermediate casing must extend into the confining stratum overlying the aquifer. ()

c. Subsection 030.03.b. may be waived if it can be demonstrated to the Director through the lithology, electrical logs, geophysical logs, injectivity tests or other data that formations encountered below the last casing string set, will neither accept nor yield fluids at anticipated pressure to the borehole. ()

d. A nominal borehole size of two (2) inches in diameter larger than the Outside Diameter (O.D.) of the casing or casing coupler (whichever is larger) must be drilled. All casing designations must be by O.D. and wall thickness and must be shown to meet a given specification of the American Petroleum Institute, the American Society for Testing and Materials, the American Water Works Association or the American National Standards Institute. The last string of casing set during drilling operations must, at the Director's option, be flanged and capable of mounting a valve or blow out prevention equipment to control flows at the surface before drilling resumes. ()

04. Sealing of Casing. All casing must be sealed its entire length with cement or a cement grout mixture unless waived by the Director. The seal material must be placed from the bottom of the casing to land surface either through the casing or tubing or by use of a tremie pipe. The cement or cement grout must be undisturbed for a minimum of twenty-four (24) hours or as needed to allow adequate curing. ()

a. A caliper log may be run for determining the volume of cement to be placed with an additional twenty-five (25%) percent on site ready for mixing. If a caliper log is not run, an additional one hundred (100%) percent of the calculated volume of cement must be on site ready for placement. ()

b. If there is no return of cement or cement grout at the surface after circulating all of the cement mixture on site, the Director will determine whether remedial work should be done to insure no migration of fluids around the well bore. ()

c. The use of additives such as bentonite, accelerators, retarders, and lost circulation material must follow manufacturer's specifications. ()

05. Blow Out Prevention Equipment. The Director may require the installation of gate valves or annular blow out prevention equipment to prevent the uncontrolled blow out of drilling mud and geothermal fluid. ()

06. Repair of Wells. The well driller must submit a drilling prospectus to the Director for review and approval prior to the repair or modification of a low temperature geothermal resource well. ()

07. Decommissioning (Abandoning) of Wells. Proper decommissioning (abandonment) of any low temperature geothermal resource well requires the following: ()

a. All cement plugs must be pumped into the hole through drill pipe or tubing. ()

b. All open annuli must be completely filled with cement. ()

c. A cement plug at least one hundred (100) feet in vertical depth must be placed straddling (fifty (50) feet above and fifty (50) feet below) the zone where the casing or well bore meets the upper boundary of each ground water aquifer. ()

d. A minimum of one hundred (100) feet of cement must be placed straddling each drive shoe or guide shoe on all casing including the bottom of the conductor pipe. ()

e. A surface plug of either cement grout or concrete must be placed from at least fifty (50) feet below the top of the casing to the top of the casing. ()

f. A cement plug must extend at least fifty (50) feet above and fifty (50) feet below the top of any liner installed in the well. The Director may waive this rule upon a showing of good cause. ()

g. Other decommissioning (abandonment) procedures may be approved by the Director if the owner or operator can demonstrate that the low temperature geothermal resource, ground waters, and other natural resources will be protected. ()

h. Approval for decommissioning (abandonment) of any low temperature geothermal well must be in writing by the Director prior to the beginning of any decommissioning (abandonment) procedures. ()

031. -- 034. (RESERVED)

035. HEALTH STANDARDS (RULE 35).

01. Public Water System Wells. In addition to meeting these standards, all wells that are constructed for public supply of domestic water must meet all of the requirements set forth by the Idaho Department of Environmental Quality Rules, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." ()

02. Special Standards for Construction of Wells When Mineralized or Contaminated Water Is Encountered. Any time in the construction of a well that mineralized or contaminated water is encountered, the well driller must take the appropriate steps necessary to prevent the poor quality waters from entering the well or moving up or down the annular space around the well casing. The method employed to case and seal out this water will be determined by the well driller, provided all other minimum standards are met. The well driller will take special precautions in the case of filter-packed wells to prevent water of inferior quality from moving vertically in the filter packed portions of the well. All actions taken will be clearly documented on the well driller's report. ()

03. Distances From Contaminant Sources. All water wells constructed for domestic use must comply with minimum distances from septic tanks, drain fields, drainfield replacement area and other siting requirements as set forth in Rule 25, Subsection 025.01.d. ()

036. OWNERS RESPONSIBILITIES FOR WELL USE AND MAINTENANCE (RULE 36).

After a well is completed the well owner is responsible for water quality testing, properly maintaining the well, and reporting problems with a well to the Director. All wells must be capped, covered and sealed such that debris cannot enter the well, persons or animals cannot fall into the well, and water cannot enter the well around the outside of the casing. Pursuant to Section 42-1603, Idaho Code, the owner of any artesian well that will flow at land surface is required to apply to the Director for approval of a flow control device. ()

01. Use. The well owner must not operate any well in a manner that causes waste or contamination of the ground water resource. Failure to operate, maintain, knowingly allow the construction of any well in a manner that violates these rules, or failure to repair or properly decommission (abandon) any well as herein required will subject the well owner to civil penalties as provided by statute. ()

02. Maintenance. The well owner must: ()

a. Not allow modification to wells under their control without first obtaining an approved Idaho Department of Water Resources (IDWR) permit, pursuant to Section 42-235, Idaho Code; ()

b. Maintain the minimum casing height of twelve (12) inches above land surface and finished grade; ()

c. Maintain the appropriate well cap, and control device if required, according to these Rules; and ()

d. Not install or allow the installation of any well pump that would cause a violation of the sand production requirements in accordance with these Rules or allow the well to pump in excess of that allowed by a valid water right or domestic exemption. ()

e. Maintain the well to prevent waste or contamination of ground waters through leaky casings, pipes, fittings, valves, pumps, seals or through leakage around the outside of the casings, whether the leakage is above or below the land surface. Any person owning or controlling a non-compliant well must have the well repaired by a licensed well driller under a permit issued by the Director in accordance with these Rules. ()

03. New Construction. The well owner must not construct or allow construction of any permanent building, except for buildings to house a well or plumbing apparatus, or both, closer than ten (10) feet from an existing well. ()

04. Maintain All Other Separation Distances. The well owner must not construct or install, or allow the construction or installation of any object listed in a location closer than that allowed by the table of Rule 25, Subsection 025.01.d. ()

05. Unusable Wells. The well owner must have any unusable well repaired or decommissioned (abandoned) by a licensed well driller under a permit issued by the Director in accordance with these Rules. ()

06. Wells Posing a Threat to Human Health and Safety or Causing Contamination of the Ground Water Resource. The well owner must have any well shown to pose a threat to human health and safety or cause contamination of the ground water resource immediately repaired or decommissioned (abandoned) by a licensed well driller under a permit issued by the Director in accordance with these Rules. ()

037. -- 039. (RESERVED)

040. AREAS OF DRILLING CONCERN (RULE 40).

01. General. ()

a. The Director may designate an "area of drilling concern" to protect public health, or to prevent waste and contamination of ground or surface water, or both, because of factors such as aquifer pressure, vertical depth to the aquifer, warm or hot ground water, or contaminated ground or surface waters. ()

b. The designation of an area of drilling concern does not supersede or preclude designation of part or all of an area as a Critical Ground Water Area (Section 42-233a, Idaho Code), Ground Water Management Area (Section 42-233b, Idaho Code), or Geothermal Resource Area (Sections 42-4002 and 42-4003, Idaho Code). ()

c. The designation of an area of drilling concern can include certain aquifers or portions thereof while excluding others. The area of drilling concern may include low temperature geothermal resources while not including the shallower cold ground water systems. ()

02. Bond Requirement. ()

a. The minimum bond to be filed by the well driller with the Director for the construction or modification of any well in an area of drilling concern is ten thousand dollars (\$10,000) unless it can be shown to the satisfaction of the Director that a smaller bond is sufficient. ()

b. The Director may determine on a case-by-case basis if a larger bond is required based on the estimated cost to repair, complete or properly decommission (abandon) a well. ()

03. Additional Requirements. ()

a. A driller must demonstrate to the satisfaction of the Director that he has the experience and knowledge to adequately construct or decommission (abandon) a well which encounters warm water or pressurized aquifers. ()

b. A driller must demonstrate to the satisfaction of the Director that he has, or has immediate access to, specialized equipment or resources needed to adequately construct or decommission (abandon) a well. ()

041. -- 044. (RESERVED)

045. DRILLING PERMIT REQUIREMENTS (RULE 45).

01. General Provisions. ()

a. Drilling permits are required pursuant to Section 42-235, Idaho Code, prior to construction or modification of any well. ()

b. Drilling permits will not be issued for construction of a well which requires another separate approval from the department, such as a water right permit, transfer, amendment or injection well permit, until the other separate permitting requirements have been satisfied. ()

c. The Director may allow the use of a start card permit or give verbal approval to a well driller for the construction of cold water single family domestic wells. Start cards must be received by the Department at least two office hours prior to commencing construction of the well. ()

d. The Director may give verbal approval to a well driller for the construction of a well for which other permitting requirements have been met, provided that the driller or owner has filed the drilling permit application and appropriate fee. ()

e. The Director will not give a verbal approval or allow the use of a start card permit for wells constructed in a designated Area of Drilling Concern, Critical Ground Water Area, or Ground Water Management Area. ()

f. A well driller will not construct, drill or modify any well until a drilling permit has been issued, or verbal approval granted. ()

02. Effect of a Permit. ()

a. A drilling permit authorizes the construction or modification of a well in compliance with these rules and the conditions of approval on the permit. ()

b. A drilling permit does not constitute a water right, injection well permit or other authorization which may be required, authorizing use of water from a well or discharge of fluids into a well. ()

c. A drilling permit may not be assigned from one owner to another or from one driller to another. ()

d. A drilling permit authorizes the construction of one (1) well, except for blanket monitoring well and blanket remediation well drilling permits. ()

03. Exclusions. For the purposes of these Rules, artificial openings and excavations that do not constitute a well and are not subject to the drilling permit requirements must be modified, constructed, or decommissioned (abandoned) in accordance with minimum well construction standards. The Director may require decommissioning (abandonment) of artificial openings and excavations constructed pursuant to Rule 45, Subsection 045.03 of these rules, when the use ceases or if the holes may contribute to waste or contamination of the ground water. The following types of artificial openings and excavations are not considered wells: ()

a. Artificial openings and excavations with total depth less than eighteen (18) feet. ()

b. Artificial openings and excavations for collecting soil or rock samples, determining geologic properties, or mineral exploration or extraction, including gravel pits. ()

c. Artificial openings and excavations for oil and gas exploration for which a permit has been issued pursuant to Section 47-320, Idaho Code. ()

d. Artificial openings and excavations constructed for de-watering building or dam foundation excavations. ()

04. Converting an Artificial Openings or Excavations Not Constructed as a Well for Use as a Well. Artificial openings and excavations that were not constructed as a well pursuant to a drilling permit, if subsequently converted to obtain water, monitor water quantity or quality, or to dispose of water or other fluids, must be reconstructed by a licensed driller in compliance with well construction standards and drilling permit requirements. ()

05. Fees. ()

a. Drilling permit fees are as prescribed by Section 42-235, Idaho Code. ()

b. The difference between the drilling permit fee required by Section 42-235 Idaho Code as applicable, must be paid when an existing well constructed on or after July 1, 1987, for which the lower drilling permit fee was paid, is authorized by the Director for a use which would require the larger drilling permit fee. ()

046. -- 049. (RESERVED)

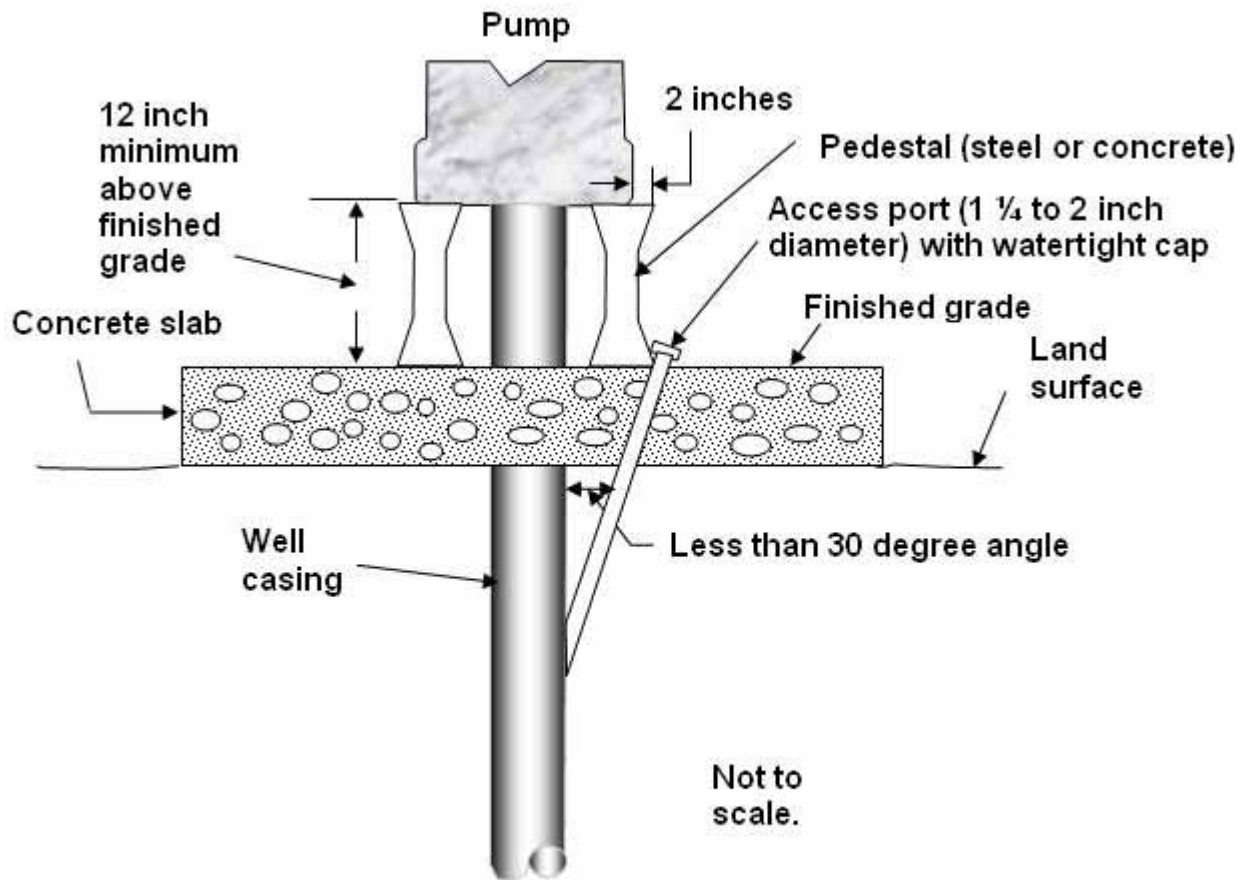
050. PENALTIES (RULE 50).

A person owning or controlling a well that allows waste or contamination of the state's ground water resources or causes a well not to meet the construction standards provided in these Rules is subject to the civil penalties as provided by statute. A driller who violates the foregoing provisions of these well construction standards Rules is subject to enforcement action and the penalties as provided by Statute. ()

051. -- 999. (RESERVED)

APPENDIX A

Figure 01. Concrete Slabs and Finished Grade



Note. Pedestal shall not extend more than two (2) inches past pump base in horizontal direction.

Figure 02. Annular Space and Overbore

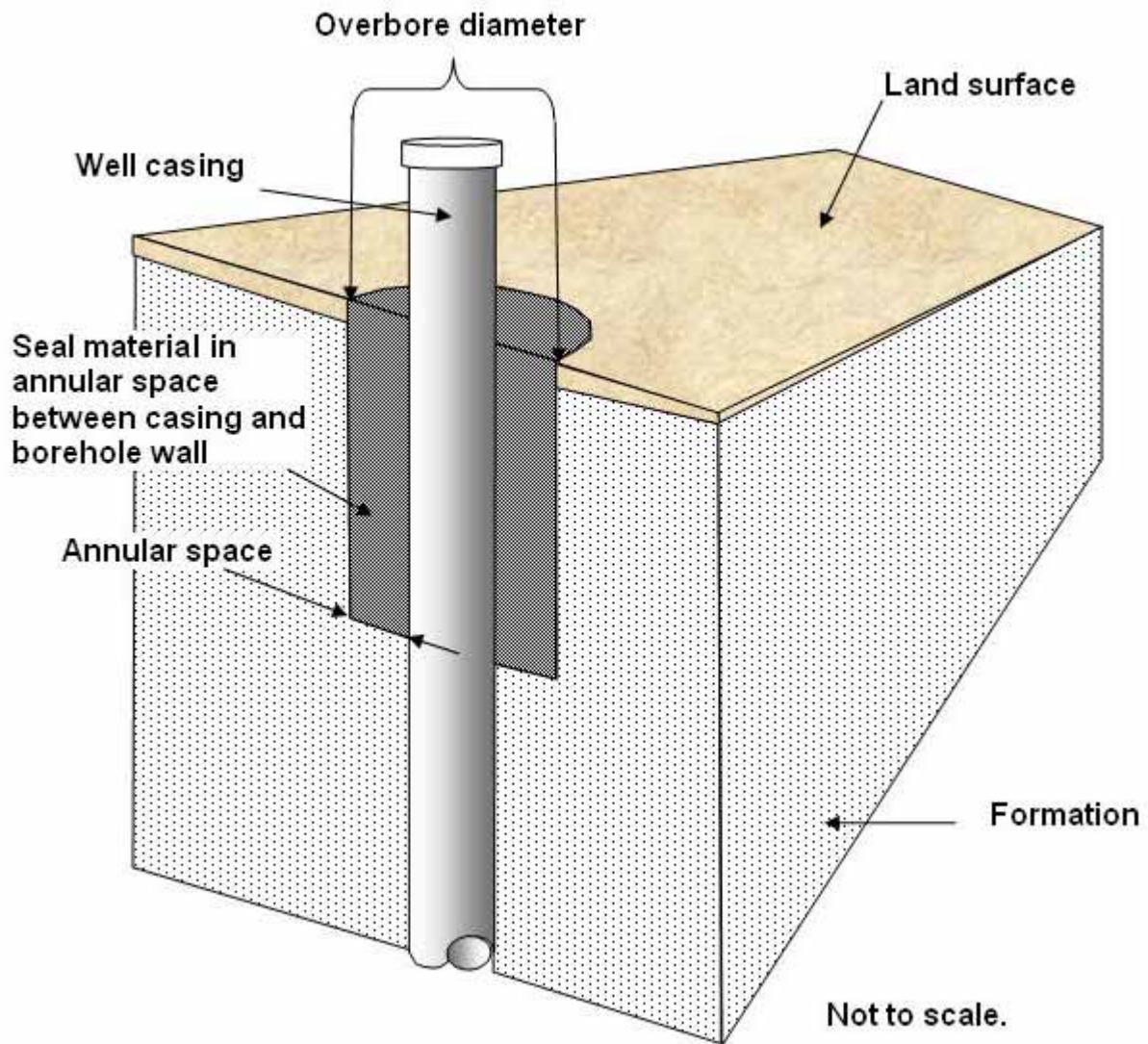


Figure 03. Overbore Requirements When a Tremie Pipe is Left in Place and A Grout Seal Installed

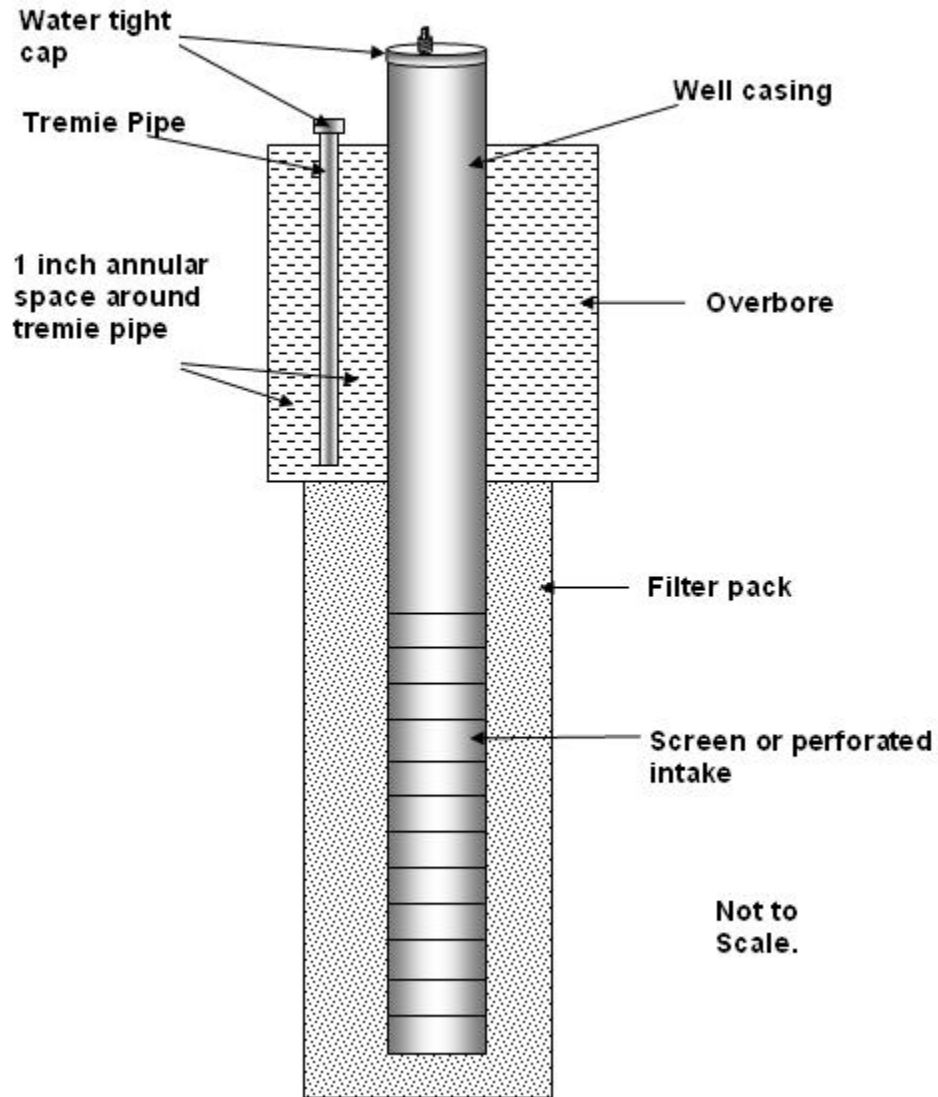


Figure 04. Sealing Requirements in Consolidated Formations

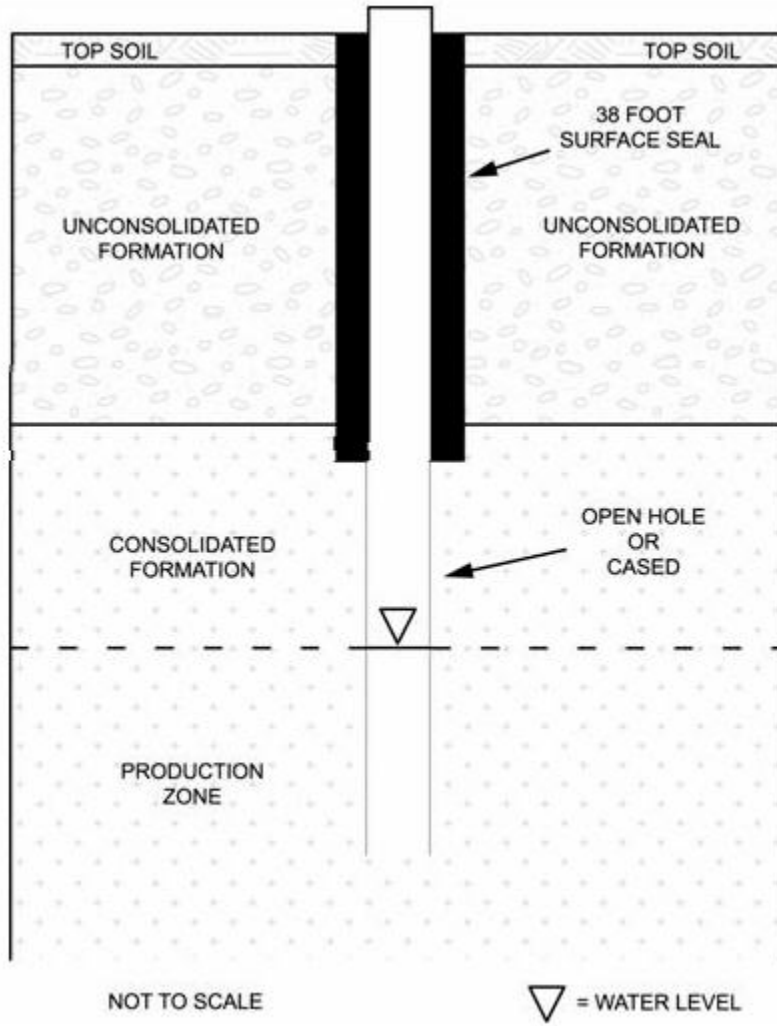


Figure 05. Sealing Requirements in Unconsolidated Formation without Confining Layers

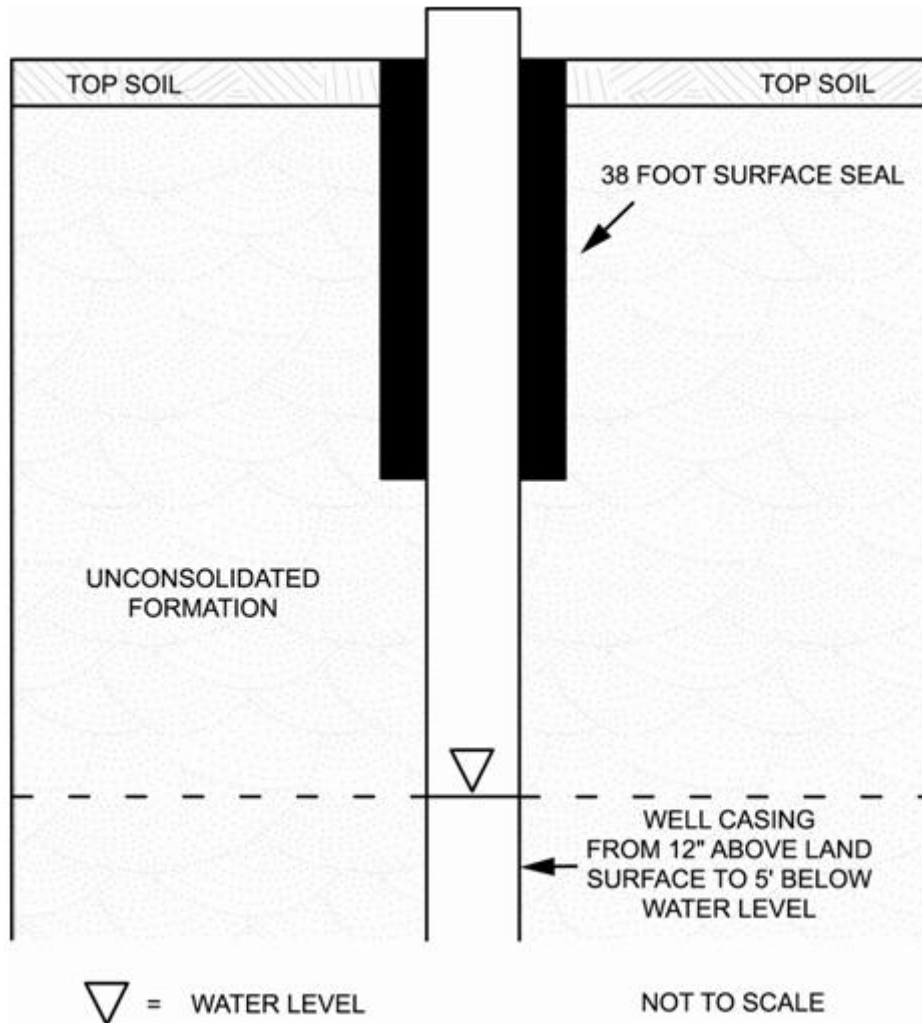


Figure 06. Rathdrum Prairie Boundary

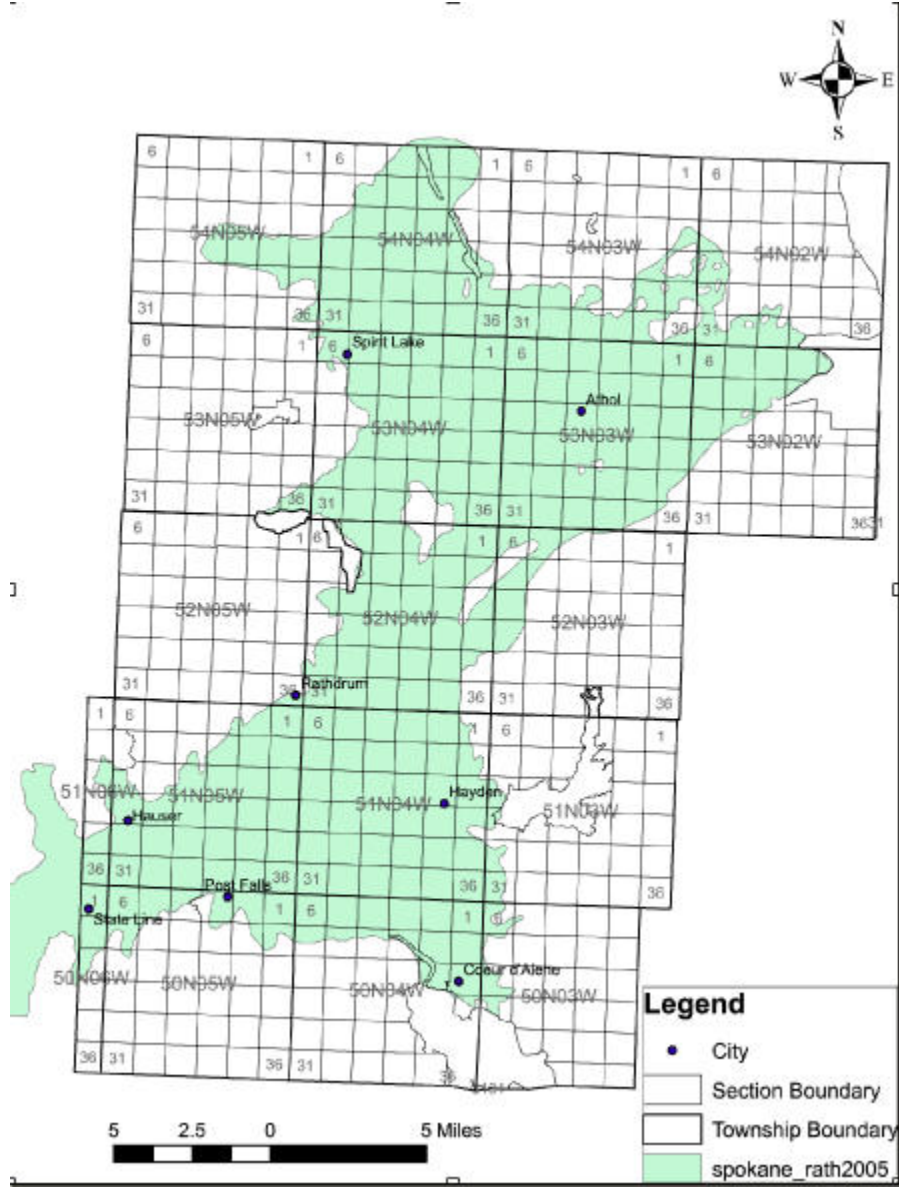


Figure 07. Sealing Requirements in the Rathdrum Prairie

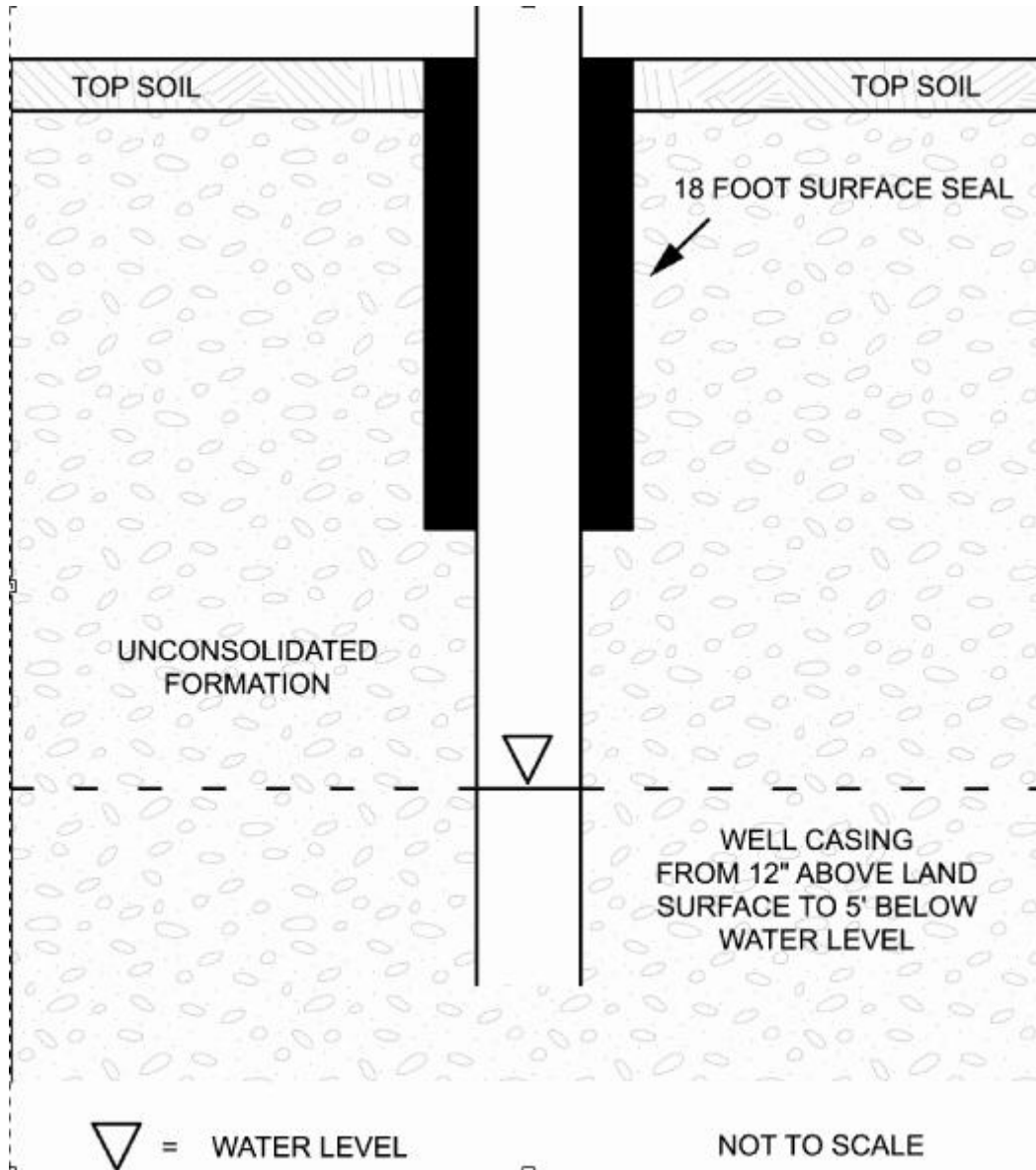


Figure 08. Sealing Requirements in Unconsolidated Formations with Confining Layers

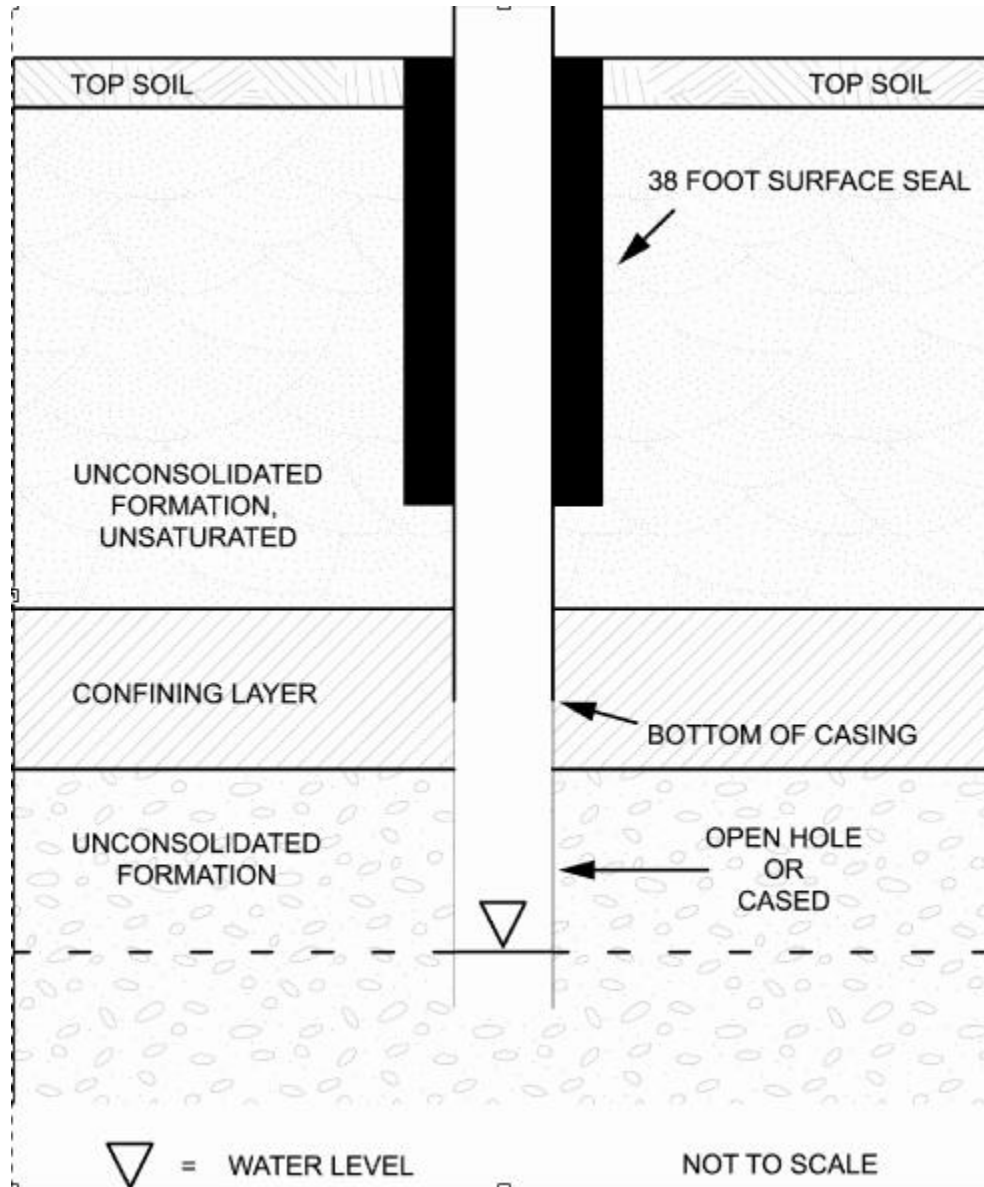


Figure 09. Sealing Requirements for Artesian Wells in Unconsolidated Formations

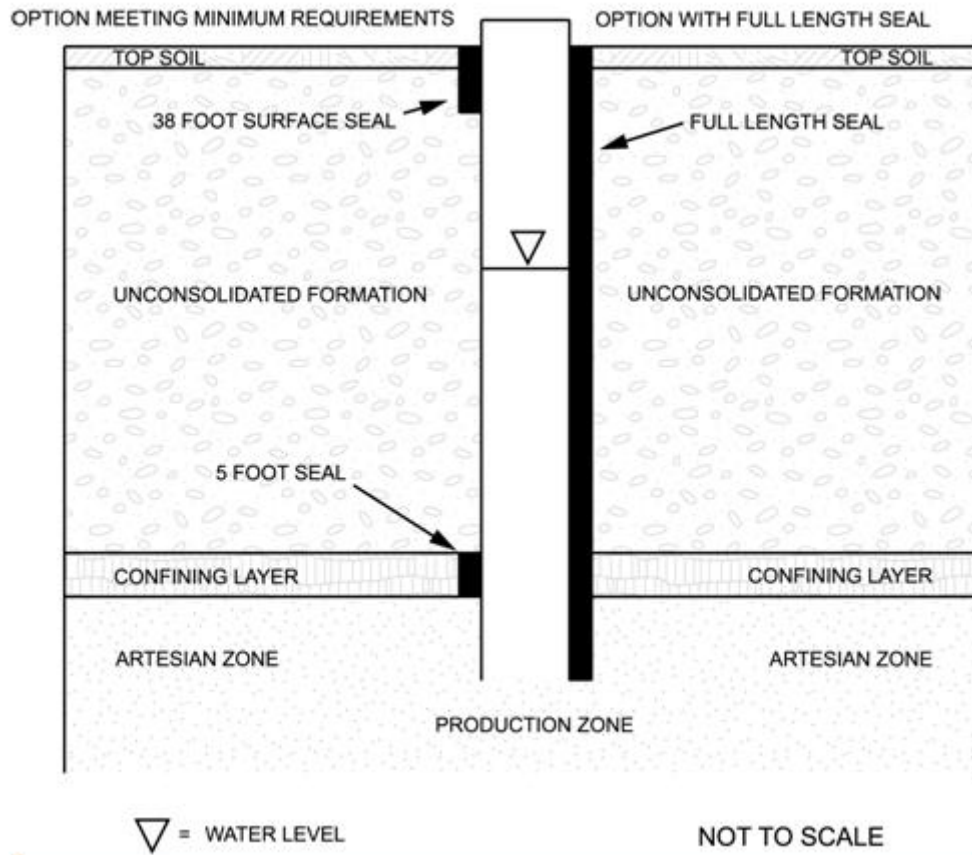


Figure 10. Sealing Requirements for Artesian Wells in Consolidated Formations

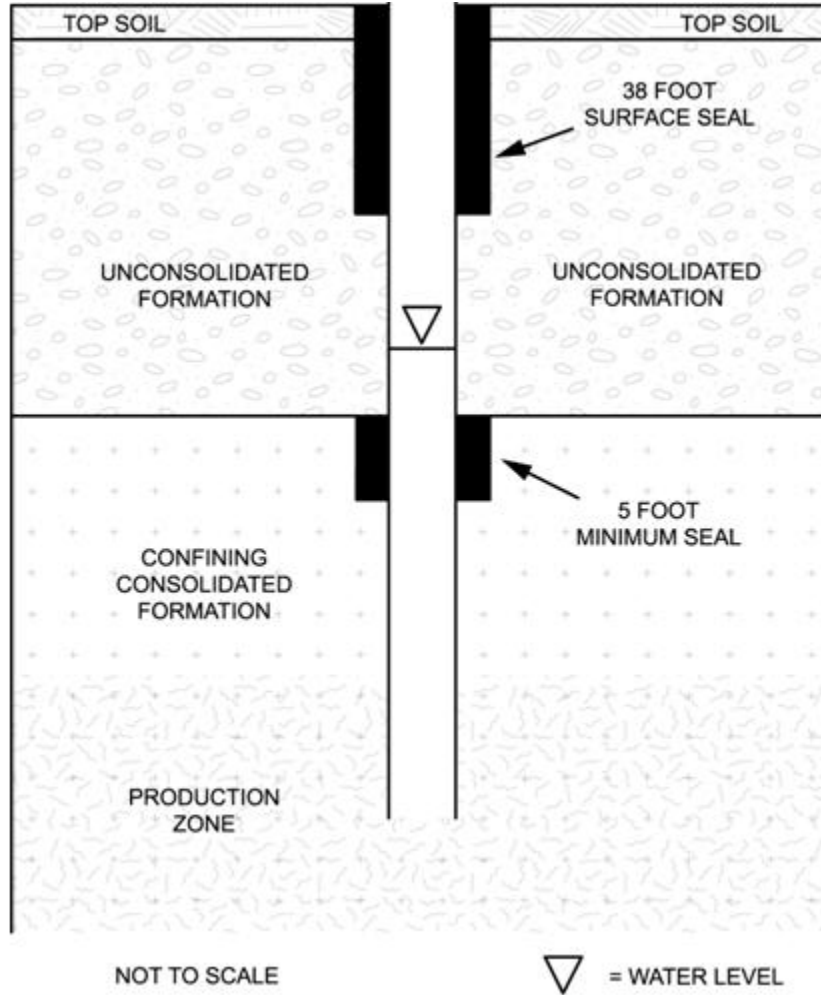
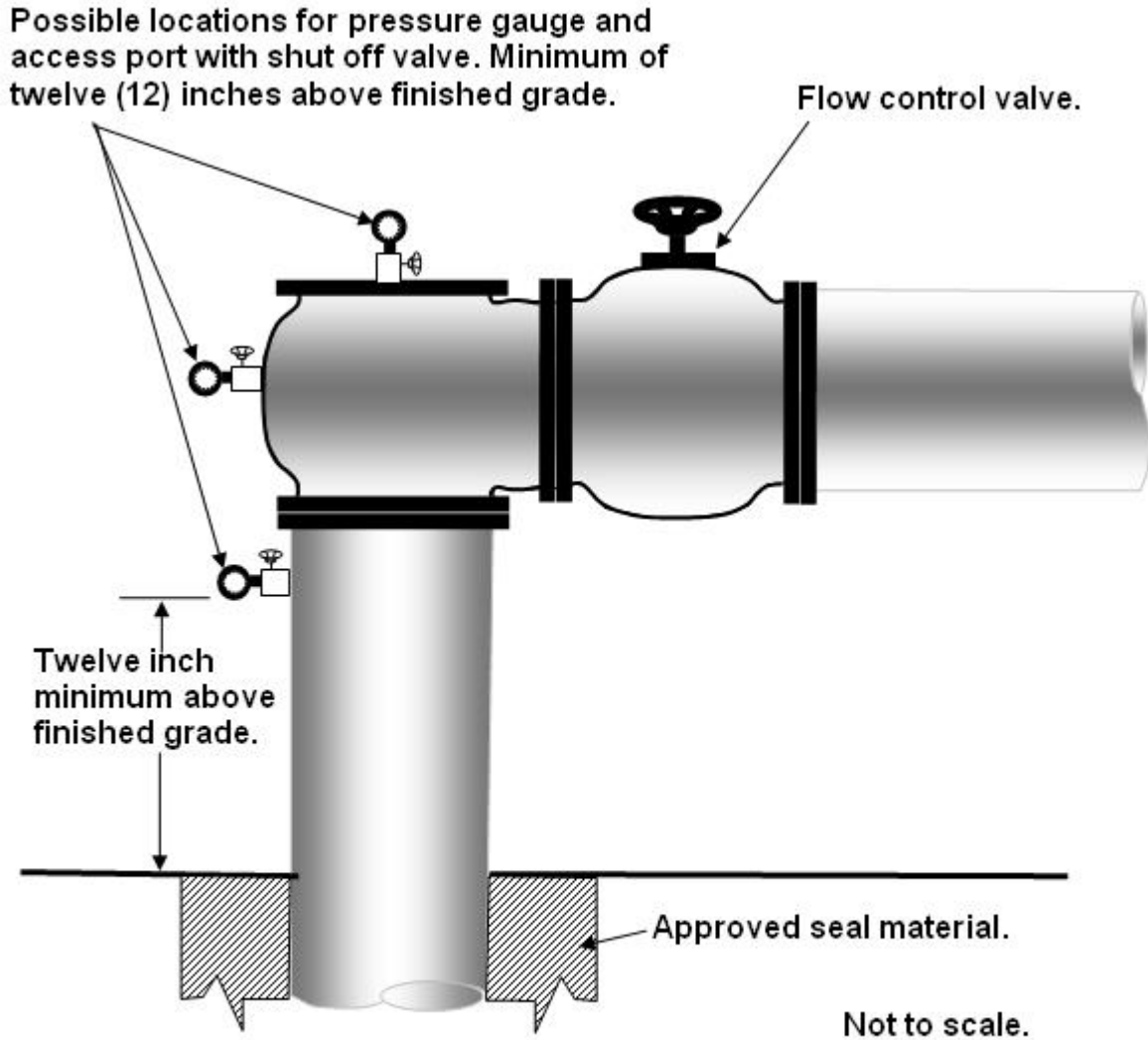


Figure 11. Access Ports, Pressure Gauges, and Control Valves



Note. Application and approval of control device is required on any flowing artesian well per Section 42-1603, Idaho Code.

Figure 12. Well Cap and Access Port

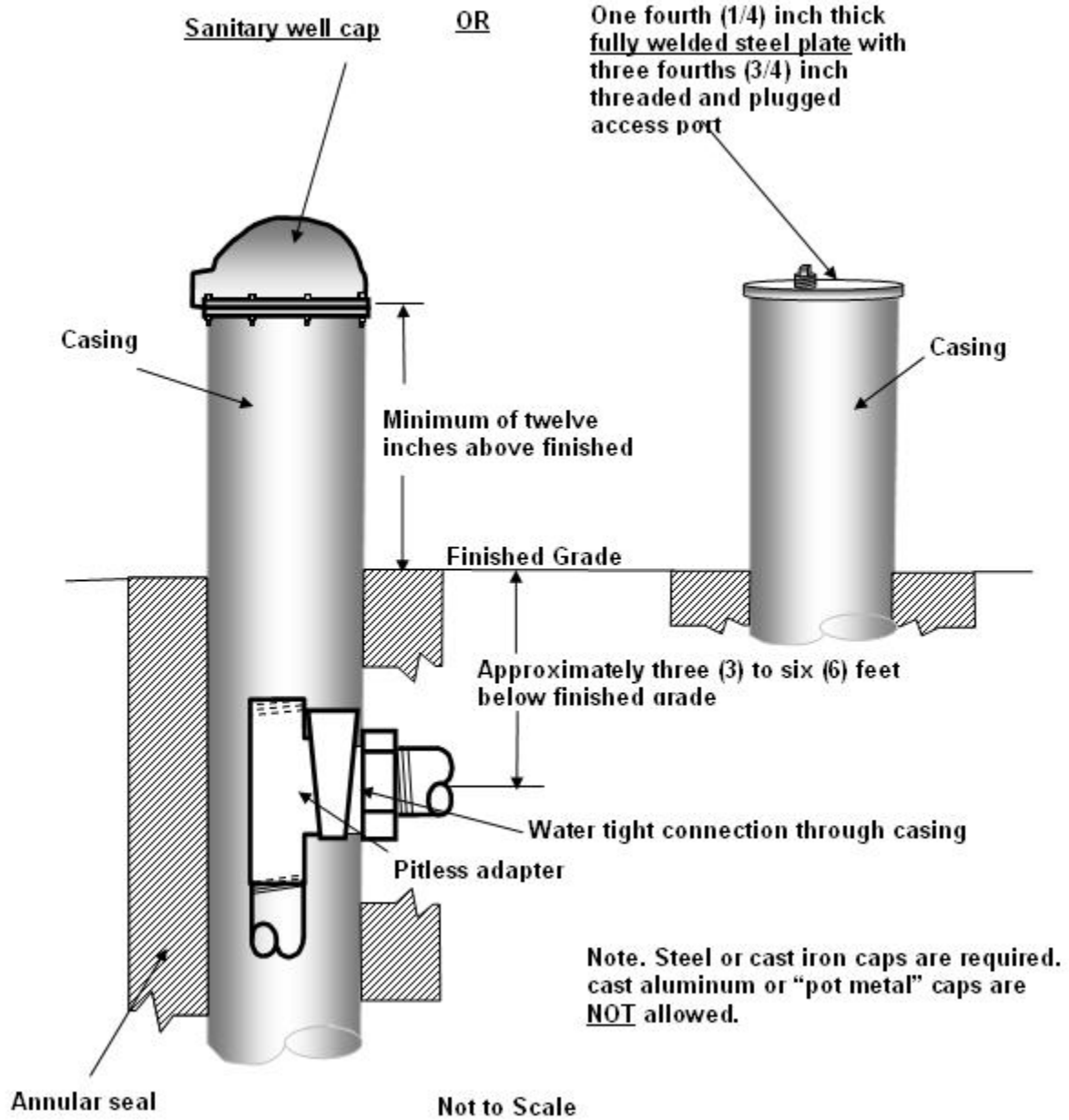
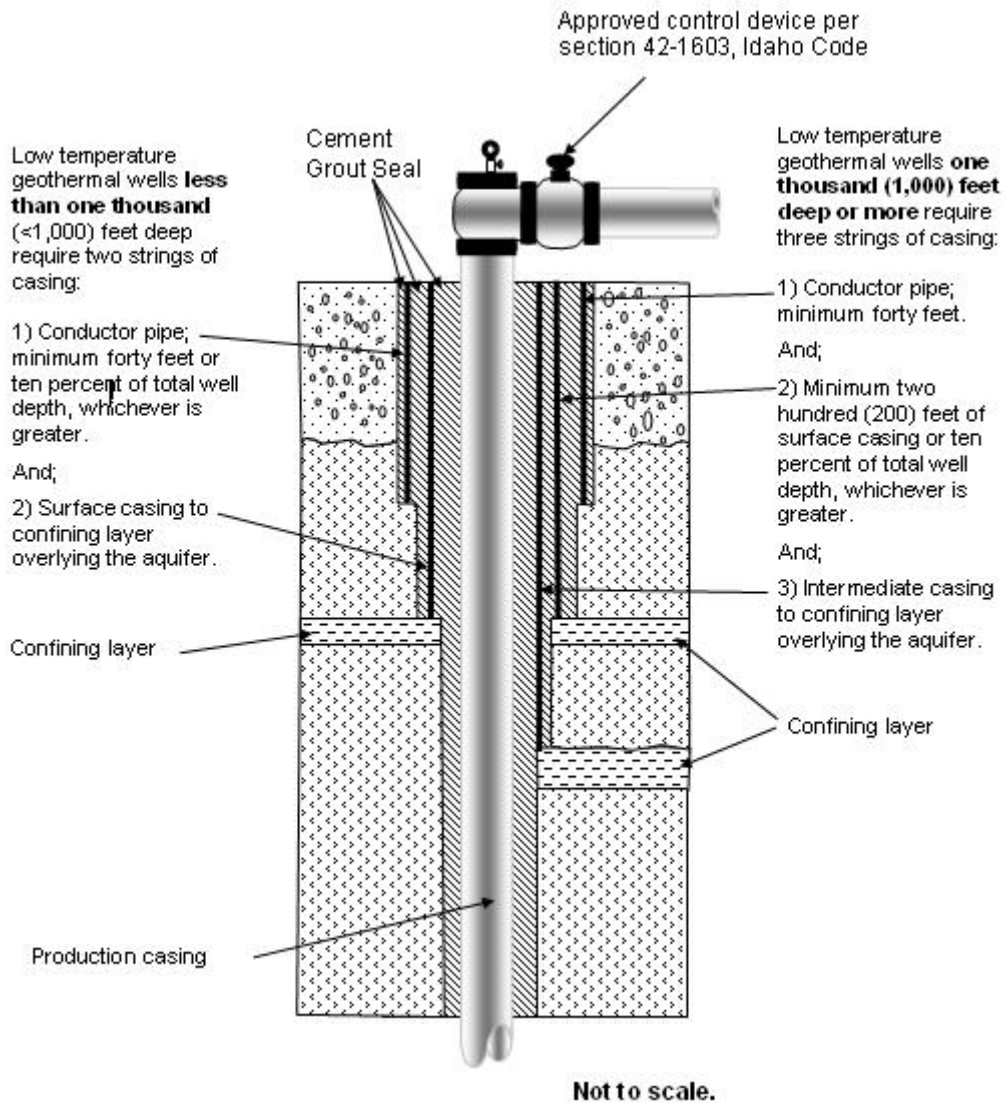


Figure 13. Casing Requirements for Low Temperature Geothermal Wells



37.03.10 – WELL DRILLER LICENSING RULES

000. LEGAL AUTHORITY (RULE 0).

The Idaho Water Resource Board adopts these rules under the authority provided by Section 42-238, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

01. **Title.** The title of this chapter is “Well Driller Licensing Rules.” ()

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

002. OTHER AUTHORITIES REMAIN APPLICABLE (RULE 2).

Nothing in these rules limits the director’s authority to take alternative or additional actions relating to the licensing of well drillers and permitting of operators as provided by Idaho law. ()

003. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

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

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

02. **Adequate Supervision.** Inspection and observation of each drilling operation and the associated drilling site by the licensed driller that has responsible charge during the critical phases of drilling to assure compliance with well construction standards and drilling permit conditions. ()

03. **Applicant.** An individual that submits to the department a complete application for a license or operator’s permit or a company that submits a complete application for a license. ()

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

05. **Auxiliary Equipment.** Powered equipment, other than the drill rig, used for grouting, installing or advancing casing, welding casings and screens, and other tasks necessary for drilling a well. ()

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

07. **Bond.** A cash or surety bond obtained by a licensed driller or company payable to the director to provide funding for abandonment or repair should the driller fail to comply with well construction standards, and to allow information to be collected concerning the drilling of the well if the driller fails to submit a timely, accurate driller’s report. ()

08. **Bottom Hole Temperature of an Existing or Proposed Well.** The temperature of the ground water encountered in the bottom of a well or borehole. ()

09. **Company.** A firm, co-partnership, corporation or association licensed in accordance with these rules to drill or contract to drill wells. ()

10. **Compliance History.** An applicant’s record of compliance with the laws and rules of Idaho and other states relating to drilling of wells. The record includes, but is not limited to, the applicant’s record of obtaining and complying with drilling permits; filing accurate and complete well driller’s reports on time; adhering to well construction standards and other rules relating to drilling; and the number, nature and resolution of violations of laws, rules and conditions on licenses, operator’s permits and drilling permits. ()

11. **Continuing Education.** Education or training pertinent to the drilling industry and the construction, modification or decommissioning of wells. ()

12. **Continuing Education Committee (CEC).** A committee whose purpose is to review and approve

- activities related to continuing education credit. ()
- 13. Credit Unit.** The unit of measurement for continuing education requirements. ()
- 14. Critical Phases of Drilling.** Drilling tasks that require the added experience of a licensed driller to assure completion of the well in accordance with the well construction standards and conditions of drilling permits. These tasks include, but are not limited to, placement of required casings and seals, testing of casings and seals, and resolving problems such as casing or joint failures, heaving formations, lost circulation, and encountering high pressure or high temperature water. ()
- 15. Decommissioned (Abandoned) Well.** Any well which has been permanently removed from service and filled or plugged in accordance with these rules so as to meet the intent of these rules. A properly decommissioned well will not: ()
- a.** Produce or accept fluids; ()
 - b.** Serve as a conduit for the movement of contaminants inside or outside the well casing; or ()
 - c.** Allow the movement of surface or ground water into unsaturated zones, into another aquifer, or between aquifers. ()
- 16. Department.** The Idaho Department of Water Resources. ()
- 17. Director.** The director of the Idaho Department of Water Resources or his duly authorized representative. ()
- 18. Drilling or Well Drilling.** The act of constructing a new well, or modifying, changing the construction, or decommissioning an existing well. ()
- 19. Drilling Permit.** Authorization by the department to drill a well as provided in Section 42-235, Idaho Code. ()
- 20. Drilling Site.** The location of the drill rig and immediate area where the drill rig and auxiliary equipment are set up to drill a well. ()
- 21. Global Positioning System (GPS).** A global navigational receiver unit and satellite system used to triangulate a geographic position. ()
- 22. License.** A certificate issued by the director to an individual or a company upon meeting the requirements of Section 42-238, Idaho Code, and these rules authorizing the drilling of wells permitted in accordance with Section 42-235, Idaho Code. ()
- 23. Licensed Driller.** An individual having a license to drill wells and is authorized and required to supervise operators in the state of Idaho. ()
- 24. Modify.** To deepen a well, increase or decrease the diameter of the casing or the well bore, install a liner, place a screen, perforate existing casing or liners, alter the seal between the casing and the well bore, or alter the well to not meet well construction standards. ()
- 25. Operator.** An individual holding either a class I or class II operator's permit issued in accordance with these rules. ()
- 26. Operator's Permit.** A certificate issued by the director upon meeting the requirements of Section 42-238, Idaho Code, and these rules allowing the holder to operate a drill rig as provided in these rules. ()
- 27. Principal Driller.** A licensed driller in responsible charge of a company's drilling activities, which has been designated the principal driller by the company with the department. ()

28. Responsible Charge. The responsibility for direction and control of a drilling operation to meet the requirements of these rules including, but not limited to, the following activities: ()

- a.** Contracting to drill a well; ()
- b.** Coordinate with property owner to locate a well to comply with applicable well construction standards; ()
- c.** Setting up drilling equipment at the drilling site; ()
- d.** Drilling operations; and ()
- e.** Testing the adequacy of casing and seal; ()
- f.** Properly completing the well. ()

29. Start Card. An expedited drilling permit process for the construction of cold water Single Family residential wells. ()

30. Well. An artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water of any temperature is sought or obtained. The depth of a well is determined by measuring the maximum vertical distance between the land surface and the deepest portion of the well. Any water encountered in the well is considered to be obtained for the purpose of these rules. Well also means any waste disposal and injection well as defined by Section 42-3902, Idaho Code. ()

31. Well Construction Standards. IDAPA 37.03.09, "Well Construction Standards Rules," adopted by the board. ()

32. Well Driller's Report or Driller's Report. A report required by Section 42-238, Idaho Code, describing drilling of the well and supplying information required on forms provided by the department. ()

33. Well Log. A diary maintained at the drilling site consistent with Section 42-238, Idaho Code. ()

34. Well Rig or Drill Rig. Any power-driven percussion, rotary, boring, digging, jetting, or augering machine used in the drilling of a well. ()

011. -- 019. (RESERVED)

020. APPLICABILITY OF LICENSING REQUIREMENTS (RULE 20).

01. Licensing Requirements. A well shall only be drilled by or under the responsible charge of a licensed driller except that a property owner, who is not licensed, can construct a well on his property for his own use without the aid of power-driven mechanical equipment. ()

02. Driller to Have Responsible Charge of Other Workers. A licensed driller shall have responsible charge of all others engaged in a well drilling operation. ()

03. Operators to Have Permits. An individual assisting a licensed driller whose duties include operation of a drill rig or auxiliary equipment shall possess an operator's permit as provided in these rules. If the driller is not present at the well site at all times that drilling operations are being conducted, one or more of those operating the equipment in the driller's absence shall have a class II operator's permit. The driller shall provide adequate supervision of class II operators. An individual having a class I operator permit shall be supervised by a licensed driller or a class II operator at all times when operating the drill rig or auxiliary equipment. ()

04. Laborer Exempted. An individual whose duties at the drilling site do not include operation of the drill rig or auxiliary equipment at any time is not required to have either a driller's license or an operator's permit.

()

05. Company to be Licensed. No company shall drill or contract to drill a well or wells unless the company has been issued a license and has employed a principal driller as described in accordance with these rules.

()

06. Drillers to Decommission (Abandon) Wells. Only licensed drillers may decommission (abandon) wells, except that wells may be decommissioned (abandoned) by the owner after receiving a specific waiver from the Director.

()

021. CONSTRUCTION AND USE OF HOLES THAT ARE NOT WELLS (RULE 21).

01. When a License Is Not Required. A person drilling a hole that does not meet the definition of a well does not need a driller's license or operator's permit.

()

02. Holes Not Defined as Wells. The following list describes the types of holes that are not wells for purposes of these rules:

()

a. Holes with total depth less than eighteen (18) feet.

()

b. Holes for collecting soil or rock samples, determining geologic properties, or mineral exploration or extraction, including gravel pits.

()

c. Holes for oil and gas exploration for which a permit has been issued pursuant to Section 47-320, Idaho Code.

()

d. Holes for constructing building foundations or de-watering building or dam foundation excavations.

()

e. Holes for the installation of standpipes or piezometers to monitor the saturation of dam embankments or foundations or to measure uplift forces on buildings, dams and other structures.

()

03. Converting a Hole Not Constructed as a Well for Use as a Well. A hole that was not constructed as a well by or under the responsible charge of a driller, if subsequently converted to obtain water, to monitor water quantity or quality, or to dispose of water or other fluids, shall be reconstructed by a driller to comply with well construction standards and drilling permit conditions. The owner shall obtain a drilling permit, a water right or other approval if needed, and have the hole inspected and modified by a licensed driller as necessary to meet well construction standards. The driller shall file a driller's report for the well.

()

022. -- 029. (RESERVED)

030. OBTAINING A LICENSE FOR AN INDIVIDUAL DRILLER (RULE 30).

01. Application Requirements. An individual desiring a license shall file with the department a completed application on a form provided by the department accompanied by the following:

()

a. The application fee required by Section 42-238, Idaho Code.

()

b. Written documentation of drilling experience, compliance history, and the names and addresses of three (3) references to confirm the applicant's drilling experience.

()

c. A list of all drill rigs used by or under the responsible charge of the applicant providing the make, model, and type.

()

d. The names and addresses of all licensed drillers and permitted operators that will work under the responsible charge of the applicant.

()

02. Experience Requirements. ()

a. An applicant shall have a minimum of twenty-four (24) months of drilling experience. An applicant will be credited with one (1) month of drilling experience for each one hundred sixty (160) hours of employment as a driller or operator, or the equivalent, as determined by the director. Experience drilling monitoring wells, geothermal wells or other cased wells will be credited as experience by the Director if the equipment and drilling methods are applicable to water well construction. ()

b. An applicant for driller's license shall submit evidence to establish that the applicant, as an operator or driller, has successfully constructed a sufficient number of wells within the preceding twenty-four (24) months to demonstrate competency. Evidence of this experience can be demonstrated by the submission of driller's reports bearing the applicant's signature, well reports upon which the driller having responsible charge attests that the applicant drilled the wells or other documentation acceptable to the director. ()

c. Twelve (12) of the twenty-four (24) months drilling experience must have occurred within the five (5) year period immediately preceding the filing of the application. ()

d. Successful completion of classroom study in geology, well drilling, map reading, and other related subjects may be substituted for up to, but not exceeding, twelve (12) months of drilling experience. The director will determine the number of months of classroom study, up to twelve (12), to be credited as experience. ()

03. Examination. An applicant determined by the director to have adequate experience and an acceptable compliance history, as confirmed by references acceptable to the director, is eligible to take a written examination. The examination may include separate sections and shall test the applicant's knowledge of the following: ()

a. Idaho statutes and rules relating to appropriation and use of ground water, well drilling, construction and use of injection wells and geothermal wells, and well driller licensing under the provisions of Title 42, Idaho Code. ()

b. Land description by government lot, quarter-quarter, section, township and range, and the use of portable GPS units. ()

c. Geologic material identification including the use of correct terminology in describing the geologic material. ()

d. Well construction principles relating to the proper design, construction, development, and abandonment of wells. ()

e. The occurrence, nature, and movement of ground water. ()

f. The use of various types of drill rigs and auxiliary equipment. ()

031. OBTAINING A LICENSE FOR A COMPANY (RULE 31).

01. Application Requirements. A company shall file with the department a complete application for a company license upon a form provided by the department to be accompanied by the following: ()

a. The names and addresses of three (3) persons not affiliated with the company, whom the department can contact for information regarding the company's past well drilling operations, if any, and related business activities. ()

b. A complete record of the compliance history of the company and the owners and employees of the company. ()

c. Designation of a principal driller who shall be a full time employee of the company and shall drill wells only for the company. A licensed driller who renders only occasional, part-time or consulting drilling services to or for a company may not be designated as the principal driller. ()

- d. The names and addresses of drillers and operators presently employed. ()
 - e. A list of all drill rigs and other related equipment owned or used by the company providing the make, model, and type. ()
- 02. Application Processing.** Applications received under this rule will be processed in accordance with Rule 33. ()

032. OBTAINING AN OPERATOR'S PERMIT (RULE 32).

01. Application for Class I Operator's Permit. A licensed driller or company proposing to employ a class I operator shall submit a completed application on a form provided by the director. The application shall: ()

- a. Be accompanied by the fee required by Section 42-238, Idaho Code. ()
- b. Be signed by the individual seeking the operator's permit and the licensed driller or principal driller of the company proposing to employ the operator. ()

02. Application for Class II Operator's Permit. A licensed driller or company proposing to employ an individual who does not currently hold a class II operator's permit shall submit the following: ()

- a. A completed application on a form provided by the department. ()
- b. The fee required by Section 42-238, Idaho Code. No fee is required if the applicant is presently permitted as a class I operator, but the expiration date of the permit when converted to a class II operator's permit will remain as originally issued. ()
- c. Documentation that the operator has successfully constructed a sufficient number of wells, or has constructed wells for a sufficient length of time, or a combination of both to demonstrate competency. ()

03. Written Examination. An examination is not required for a class I operator's permit. An otherwise qualified applicant for a class II operator's permit shall obtain a satisfactory score on an examination as provided in Rule 34. The examination may be comprised of separate sections and shall test the applicant's knowledge of the following: ()

- a. Idaho statutes and rules relating to appropriation and use of ground water, well drilling, construction and use of injection wells and geothermal wells, and well driller licensing under the provisions of Title 42, Idaho Code. ()
- b. Land description by government lot, quarter-quarter, section, township, and range, and the use of portable GPS units. ()
- c. Geologic material identification including the use of correct terminology in describing geologic material. ()
- d. Well drilling principles relating to proper design, construction, development, and abandonment of wells. ()
- e. The occurrence, nature, and movement of ground water. ()

04. Operator Drills Only for Licensed Driller or Company. An operator shall only drill for the licensed driller or company approved by the director. If an operator changes employment to another licensed driller or company, an application for an operator's permit shall be filed as provided in this rule. ()

05. Processing an Application for Operator's Permit. The department will process an application

for operator's permit in accordance with Rule 33. ()

033. PROCESSING APPLICATION FOR A DRILLER'S LICENSE OR OPERATOR'S PERMIT (RULE 33).

01. Incomplete Application. If an application is incomplete, not properly signed, or does not include the information required by these rules, the department will advise the applicant in writing of the deficiency. If the deficiencies are not satisfied within ninety (90) days of sending the notice of the deficiency, the application will be void. The application fee is not refundable. ()

02. Issuance of License. If the director, upon review of the application, determines that an applicant for license is qualified and the driller has subsequently taken and passed an examination, a notice will be sent to the applicant requesting a bond in an amount determined in accordance with Rule 60 be filed with the department. Upon receipt of a satisfactory bond, the director will issue a license to the applicant. ()

03. Issuance of Operator's Permits. If the director determines that an applicant is qualified and has passed an examination, if required, the department will mail a notice and operator's permit card to the principal driller on behalf of the applicant. ()

04. Driller's License or Operator's Permit Issued With Conditions or Denial of License or Operator's Permit. The Director may issue a license or operator's permit with specific conditions or limitations based on the applicant's experience and compliance history. The Director may refuse to issue or renew a driller's license permanently or for a designated period of time if the driller has previously constructed wells improperly or constructed a well without a valid driller's license. If the Director determines that the applicant is not qualified, the Director will deny the application. Notice of a denied application or a conditioned license or operator's permit will be given to the applicant in accordance with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." ()

034. EXAMINATION PROCEDURES (RULE 34).

01. Written Examination. Written examinations will be offered at department offices on the first Monday of each quarter. If the first Monday is a legal holiday, written examination will be offered on the first Tuesday. Re-examination may be taken at a regularly scheduled examination date during a following quarter and shall be scheduled with the department office originally testing the applicant. ()

02. Oral Examination. Successful passage of an oral examination may satisfy all or a part of the written testing requirements under the following circumstances: ()

a. The applicant requests an oral rather than a written examination and shows cause acceptable to the director why the examination should be oral rather than written. Applicants desiring to take the examination orally shall request that an oral examination be scheduled allowing at least fifteen (15) days to set an examination date. ()

b. The director determines that because of the applicant's compliance history, additional testing is needed to determine the applicant's qualifications. ()

03. Examination Scoring. The applicant shall pass each section of the examination with a score of seventy percent (70%) or higher. ()

04. Assistance Must Be Authorized. The use of written materials, equipment or other individuals to assist an applicant during an examination is prohibited unless specifically authorized by the department. An applicant receiving unauthorized assistance during an examination may be disqualified and the application may be rejected. An application filed by a disqualified applicant will not be processed for a period of up to one (1) year from the time of disqualification. ()

035. EXPIRATION AND RENEWAL OF LICENSE (RULE 35).

01. Expiration of Licenses. All licenses expire at the end of the licensing period for which they are issued. The licensing period begins April 1 and ends March 31 of the second year following issuance. ()

02. Renewal Application. A license may be renewed by submitting a license renewal application including the following: ()

a. A completed application on a form provided by the department. An application to renew a license for an individual licensed driller shall be signed by the individual and an application to renew a license for a company shall be signed by the principal driller. ()

b. The renewal fee required by Section 42-238, Idaho Code. ()

c. A new bond or continuation certificate for an existing bond covering the licensed driller or company. ()

d. If the application is for renewal of a license held by an individual, the application shall include verification that the applicant has obtained the required continuing education credits. ()

03. Continuing Education Requirements. Fourteen (14) credit units are required for renewal of a license for an individual for any licensing period beginning on or after April 1, 2011. ()

04. Welding Competency. A driller that has been issued a Notice of Violation for welding that does not comply with the well construction standards may be required to obtain a certificate of welding competency from the American Welding Society or similar organization. ()

036. EXPIRATION AND RENEWAL OF AN OPERATOR'S PERMIT (RULE 36).

01. Expiration of Operator's Permits. Class I and class II operator's permits shall expire on March 31 of the same year that the license of the licensed driller and company employing the operator expires. ()

02. Renewal Application. An operator's permit may be renewed by submitting to the department an application for renewal including the following: ()

a. A completed application on a form provided by the department. The operator seeking renewal and the driller under whose responsible charge the operator works shall sign the form. ()

b. The renewal fee required by Section 42-238, Idaho Code. ()

c. For renewal of a class II operator's permit, verification of the required continuing education credit units. ()

03. Continuing Education Required for Renewals. Fourteen (14) credit units are required for renewal of a class II operator's permit for a licensing period beginning on or after April 1, 2011. ()

04. Welding Competency. An operator's work that has resulted in a Notice of Violation for welding that does not comply with the Well Construction Standards may be required to obtain a certificate of welding competency from the American Welding Society or similar organization. ()

037. PROCESSING APPLICATION TO RENEW LICENSE OR OPERATOR'S PERMIT (RULE 37).

01. Processing Applications for Renewal. Applications for renewal will be processed in the order received by the department. The department shall receive a complete application for renewal no later than March 15 to assure that the license or operator's permit will remain in force without interruption. If the director determines that the application is complete and the applicant is qualified, the license or operator's permit will be renewed for the period ending on March 31 of the second year after approval of the renewal. ()

02. Regulatory Compliance Required for Renewals. A license or operator's permit will not be renewed if the applicant has not submitted all required driller's reports, applications for drilling permits, fees, agreed

civil penalties, has not complied with all orders requiring repair or abandonment of improperly constructed wells or is not otherwise in compliance with Sections 42-235 and 42-238, Idaho Code, and the applicable rules. ()

03. Compliance History. If the Director determines that the applicant has exhibited an unacceptable compliance history, the Director may deny renewal, refuse renewal for a specified time, or renew with conditions, including but not limited to an increased bond amount. ()

04. Renewal of Expired Licenses or Operator's Permits. A license or an operator's permit which has expired or otherwise not been in effect for a period not exceeding three (3) years shall be renewed in accordance with the requirements of Rule 35 or Rule 36 as appropriate. An applicant for renewal shall provide verification of earned credit units required for the entire period since the license or class II operator's permit was last issued. If a license or operator's permit has been expired or otherwise not effective for a period of more than three (3) years, an application for a new license shall be submitted in accordance with Rule 30 for an individual license, Rule 31 for a company or Rule 32 for an operator's permit. The director may waive the examination requirement if the applicant has been previously licensed or permitted in the state of Idaho. ()

05. Reuse of Identification Numbers. The identification number assigned to a license by the department will not be reused if the license has been expired or otherwise not in effect for three (3) years or more except, at the director's discretion, the number may be reissued to the original owner. ()

06. Condition or Denial of an Application for Renewal. If the Director determines that the applicant has not or cannot fully comply with these rules, a license or operator's permit may be issued with conditions. If the Director determines that the applicant is not qualified, the Director will deny the application. When there are documented violations of well drilling laws and/or rules, including well construction standards, the Director may consult with the Driller's Advisory Committee, created in accordance with Rule 80, prior to making a decision to issue a conditional license or operator's permit or to deny an application based on the applicant's compliance history. Notice of a denied application or a conditioned license will be given as provided in IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." ()

038. -- 049. (RESERVED)

050. DUTIES AND RESPONSIBILITIES OF DRILLERS, COMPANIES AND OPERATORS (RULE 50).

01. Licensed Drillers and Principal Drillers. All licensed drillers and principal drillers shall: ()

a. Allow drilling only by those authorized by and under the supervision required by these rules and according to any conditions of the license or permit. ()

b. Complete each well in compliance with IDAPA 37.03.09, "Well Construction Standards Rules," and drilling permit conditions. ()

c. Have a valid cash or surety bond in effect, as defined in Rule 60. ()

d. Have the license number displayed in a conspicuous place on the drill rig using a metal identification plate provided by the department or other permanent marking approved by the director. The displayed license number shall represent the company or individual driller license under which the well is being drilled. One plate will be issued upon initial licensure with replacement and additional plates available for a fee. ()

e. Keep current the department's list of operators and drillers employed by the licensed driller or company, including current addresses for the company, drillers, and operators. The licensed driller or principal driller shall be held responsible for all drilling activity of a driller or operator under their supervision until such notification has been submitted in writing to the department that the driller or operator is no longer employed by the licensed driller or company. ()

f. Have at the drilling site the driller's license and drilling permit or other written authorization from the director to drill the well. ()

g. Only drill wells in contaminated areas identified by the department or in areas of drilling concern so designated by the department with specific written authorization of the director. Verbal authorizations to drill and pre-approved drilling permits (start cards) do not authorize drilling in these areas. ()

h. Only drill a public drinking water supply well, as defined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," low temperature geothermal resource or geothermal resource well with specific written authorization from the director. Verbal authorizations and start card permits (start cards) are not authorized for these uses. ()

i. Monitor and record bottom-hole temperature in areas where low temperature geothermal resources are known or suspected or when the well is being constructed pursuant to IDAPA 37.03.09, Rule 30, as a low temperature geothermal resource well. Bottom-hole temperature of every well being constructed pursuant to IDAPA 37.03.09, Rule 30, must be measured, recorded, and reported on the well drillers report. ()

j. Maintain a daily well log at the drilling site acceptable to the department and as required by Section 42-238(11), Idaho Code. Pertinent data required to be recorded on the daily log must include information sufficient to complete a well drillers report acceptable to the Director. The driller shall retain the well log for at least one (1) year after the driller's report is submitted to the department. ()

k. Submit driller's reports, acceptable to the Director, on forms approved by the department within thirty (30) days following removal of the drill rig from the drilling site at completion of the well. Driller's reports shall be prepared from information recorded on the daily well log. Driller's reports returned to the driller due to deficiencies must be corrected and returned to the department within thirty (30) days of mailing by the department. ()

l. Attach a well tag supplied by the department to every well drilled for which a drilling permit is required. The tag shall be affixed permanently to the casing, or other permanent object attached to the well, by a method approved by the Director prior to removing the well rig from the drilling site. ()

m. Cause all drilling activity under the supervision of the driller to cease when the driller's license expires, becomes invalid, or is suspended or revoked. ()

02. Companies. Companies shall: ()

a. Have a principal driller designated with the department at all times. ()

b. Notify the department within ten (10) days of the principal driller leaving employment with the company. The company's license shall immediately become void and of no effect when the principal driller leaves employment with the company and shall remain so until the department has been notified in writing that a new principal driller has been employed and designated by the company. Failure to designate a principal driller within ninety (90) days of the departure of the designated principal driller is cause for the director to take action to cancel the company's license. ()

c. Maintain a bond in force at all time as required in Rule 60. ()

03. Operators. Operators shall: ()

a. Have in their possession a valid operator's permit while drilling wells. ()

b. Only drill wells as authorized by the operator's permit. ()

c. Maintain a complete and accurate well log at the drilling site. ()

d. Co-sign with the driller a driller's report upon completion of the well. ()

051. -- 059. (RESERVED)

060. BONDING (RULE 60).

01. Bonding Requirements. Each licensed driller or company shall submit a surety bond or cash bond in an amount determined by the director, within the limits of 42-238, Idaho Code, for each driller employed by the company, payable to the director for the licensing period. ()

a. A company shall have a bond, which covers the drilling activities of each driller and operator employed by the company. If the licensed driller drills wells as an individual and not for a company, a separate bond must be filed with the director. ()

b. Drillers proposing to drill wells in an area of drilling concern, monitoring wells, public water supply wells, or wells to obtain or likely to encounter water with a bottom hole temperature greater than eighty-five (85) degrees Fahrenheit, shall submit an upgraded bond, in an amount determined by the director, at the time the drilling permit application is processed. Drillers anticipating drilling such wells may, instead, submit adequate bonding at the time of driller license application or renewal. ()

c. The amount of the bond, within the limits prescribed in Section 42-238, Idaho Code, will be determined by the director based on the applicant's compliance history, the size and depth of wells the applicant proposes to construct and is authorized to drill, the complexity of the wells, the resource to be recovered, the area of operation of the applicant, the number of drillers and operators employed by a company, and other relevant factors. ()

d. All bonds and continuation certificates must be on forms provided or approved by the department. ()

02. Cash Bonds. ()

a. Acceptable Cash Bonds. Cash bonds shall be in a separate account readily accessible to the director for use as provided in these rules. The director will review cash bond proposals made by an applicant. Cash bonds shall be retained in financial institutions within the state of Idaho unless waived by the director. ()

b. Retention. The director will hold cash bonds for two (2) years from the date the driller requests that the bond be released unless replaced by another bond or the director determines that all wells drilled by the driller satisfy well construction standards. The release of a cash bond must be requested in writing. ()

03. License Void Without Bond. If the issuing company cancels a bond, the bond expires or otherwise becomes non-effective during the term of a license, the license shall immediately become void and of no further effect until an adequate replacement bond is received by the department. ()

061. -- 069. (RESERVED)

070. CONTINUING EDUCATION (RULE 70).

01. Requirements. Every licensed driller or permitted operator must have earned at the time of renewal the applicable number of credit units required by these rules. The credit units shall have been obtained during the licensing period preceding the application for renewal. ()

02. Earning Credit Units. Credit units may be earned for time spent in attendance at workshops, seminars, short courses, and other educational opportunities devoted to drilling or related subjects acceptable to the Director and approved by the continuing education committee (CEC) and in compliance with the CEC guidelines. These may include completion of college courses, correspondence courses, videotaped courses, and other endeavors such as authoring appropriate publications. ()

03. Documentation. Documentation to support credit units claimed is the responsibility of the licensed driller and permitted operator. Records required include but are not limited to: ()

a. A log showing the type of activity claimed, sponsoring organization, duration, instructor's name,

and credit units. ()

b. Attendance verification records in the form of completion certificates or other official documents providing evidence of attendance and completion. ()

04. Submittal and Maintenance of Records. Copies of continuing education records for the preceding license period shall be submitted with applications to renew licenses or permits. These records shall be maintained for a period of three (3) years and shall be available for review by the department at the request of the director. ()

05. Insufficient Credit Units. If at the time of renewal, the applicant is unable to provide verification of the required credit units, the director will deny renewal of the driller's license or operator's permit, except as otherwise provided in the following: ()

a. The director may withhold action on an application for renewal for a period not to exceed ninety (90) days to allow the applicant to provide verification of the required credit units. The applicant is not authorized to drill until the verification is provided and the renewal is issued. ()

b. The director may exempt an applicant from all or part of the continuing education requirements if the applicant served on active duty in the armed forces of the United States for one hundred twenty (120) consecutive days or more during the licensing period prior to filing the application for renewal; or the applicant suffered physical disability, serious illness, or other extenuating circumstances that prevented the applicant from earning the required units. ()

c. A licensed driller or operator who has chosen to allow his license or permit to expire or otherwise become of no effect shall be exempt from continuing education requirements unless an application for renewal is filed less than three (3) years after the license or permit expired or otherwise became of no effect. ()

06. Out-of-State Residents. The continuing education requirements for a non-resident applicant for a license or operator's permit shall be the same as for resident applicants. ()

07. Responsibility for Education Development and Implementation. The Idaho Ground Water Association (IGWA) is delegated responsibility to develop and implement a program for continuing education for review and approval by the director. ()

071. CONTINUING EDUCATION COMMITTEE CONTINGENCY PLAN (RULE 71). Should the memorandum of understanding (MOU) and/or the contract between the department and the IGWA be breached, revoked, or not renewed, the CEC shall be organized and administered by the department. ()

072. -- 079. (RESERVED)

080. DRILLER'S ADVISORY COMMITTEE (RULE 80).

01. Selection and Duties. The Director may appoint a driller's advisory committee from the list of drillers holding valid licenses. The Director will solicit appointment recommendations from the IGWA and other licensed drillers. The Director will determine the term of appointment for members of the committee. The committee shall provide recommendations and suggestions concerning revision of these rules, the minimum standards for well construction, significant violations and other matters regarding well drilling. The committee members shall serve on a voluntary basis without compensation. The department will hold meetings at the discretion of the Director. ()

02. Reimbursement. Travel costs shall be paid to members of the advisory committee for travel and per diem and for costs associated with attendance of advisory committee meetings held by the department. Reimbursement shall be based on existing department policy covering travel and per diem expenses. ()

081. -- 089. (RESERVED)

090. ENFORCEMENT (RULE 90).

01. Violations. Violations of these rules or Sections 42-235 or 42-238, Idaho Code, will be enforced as provided in Sections 42-238 and 42-1701B, Idaho Code. ()

02. Enforcement Policy. An administrative policy providing guidelines for enforcement shall be published and maintained by department staff. A copy of the enforcement guidelines is available upon request at no charge. ()

091. -- 999. (RESERVED)

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0000-2000F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: These rules have been adopted by the Idaho Board of Environmental Quality (Board) and are now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, the pending fee rules will not become final and effective until they have been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected. Fee rule chapter IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, has been adopted as both a pending fee rule and as a temporary fee rule with an effective date of November 6, 2020. The November 6, 2020, temporary fee rule supersedes the March 20, 2020, temporary fee rule chapter IDAPA 58.01.13 adopted under Docket No. 58-0000-2000F.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted pending fee rules. This action is authorized by the following Idaho Code provisions. Citations to any federal statutes that provide the basis of authority or requirement for the rulemaking are also included.

- **IDAPA 58.01.01** – Sections 39-105, 39-107, 39-114(4), 39-115(3), and 39-116B, Idaho Code; Clean Air Act, 42 U.S.C. § 7401 *et seq.*
- **IDAPA 58.01.05** – Chapters 44 and 58, Title 39, Idaho Code; Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*
- **IDAPA 58.01.06** – Sections 39-105, 39-107, and 39-7408C, Idaho Code; Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*
- **IDAPA 58.01.07** – Chapters 1 and 88, Title 39, Idaho Code; Solid Waste Disposal Act, 42 U.S.C. §§ 6991 – 6991m
- **IDAPA 58.01.08** – Chapter 1, Title 39, Idaho Code; Chapter 21, Title 37, Idaho Code; Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*
- **IDAPA 58.01.09** – Sections 39-104A, 39-105, and 39-107, Idaho Code
- **IDAPA 58.01.11** – Sections 39-105, 39-107, 39-120, and 39-126, Idaho Code
- **IDAPA 58.01.12** – Chapters 1 and 36, Title 39, Idaho Code; Clean Water Act, 33 U.S.C. § 1251 *et seq.*
- **IDAPA 58.01.13** – Chapter 1, Title 39, Idaho Code
- **IDAPA 58.01.14** – Sections 39-105, 39-107, and 39-119, Idaho Code
- **IDAPA 58.01.18** – Sections 39-105, 39-107, 39-4405, and 39-7210, Idaho Code
- **IDAPA 58.01.25** – Chapter 1, Title 39, Idaho Code; Clean Water Act, 33 U.S.C. §§ 1342 and 1345

DESCRIPTIVE SUMMARY: In February 2020, the Board adopted as temporary fee rules the IDAPA 58 rule chapters as they were presented in the pending rule dockets adopted by the Board in 2019 and submitted to the Second Regular Session of the 65th Idaho Legislature for review. These temporary fee rules were effective March 20, 2020. The 2019 pending rule dockets are posted in the [2020 Legislative Review Books](#).

In September 2020, DEQ published the temporary rules, along with revisions to several of the rule chapters, as proposed rules inviting the public to submit comments. September 16, 2020, Idaho Administrative Bulletin, [Vol. 20-9SE, pages 2321-2909](#). After consideration of public comments, and in accordance with Section 67-5227, Idaho Code, IDAPA 58.01.13, Sections 007, 200, and 203 have been revised. The remaining rules have been adopted as initially proposed. All rule chapters in the rule docket have been adopted as pending fee rules. IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, has been adopted as both a pending fee rule and a temporary fee rule with an effective date of November 6, 2020, and supersedes the March 20, 2020, temporary fee rule chapter IDAPA 58.01.13 adopted under Docket No. 58-0000-2000F. The board meeting documents can be obtained at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/omnibus-rulemaking-docket-no-58-0000-2000f/> or by contacting the undersigned.

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

A temporary rule will bridge any gap between a pending rule being adopted by the Board in November 2020, and the approval of the pending rule by the Legislature upon the adjournment of the 2021 legislative session. In this regard, the temporary rule will ‘confer a benefit’ to companies in a position to submit a cyanidation permit application under the revised Rules for Ore Processing by Cyanidation in the interim period prior to the end of the 2021 legislative session. The existing Rules, which were approved during the 2006 legislative session by concurrent resolution, include a fee structure and option for entering into an agreement with the Department for reimbursement of actual costs incurred. The proposed Rules eliminated the fee structure but retain that the applicant enter into an agreement with the Department for reimbursement of actual costs incurred. Therefore, there is no new fee that requires justification of its imposition. This fee is specifically authorized by the legislature in Idaho Code Section 39-118A(2)(c).

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. A description of each fee category is provided below.

Listed below are the DEQ fee rule chapters, fee categories, and the statutory authority for imposition of the fees.

IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho - crop residue burn fee, Idaho Code § 39-114(4); application fee for industrial or commercial air pollution source permits, Idaho Code § 39-115(3); motor vehicle inspection fee, Idaho Code § 39-116B

IDAPA 58.01.05, Rules and Standards for Hazardous Waste - hazardous waste siting license fee, Idaho Code § 39-5813(3)

IDAPA 58.01.06, Solid Waste Management Rules - commercial solid waste siting license fee, Idaho Code § 39-7408(C)

IDAPA 58.01.07, Rules Regulating Underground Storage Tank Systems – annual UST program fee, Idaho Code §§ 39-119, 39-8802(d)

IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems – annual drinking water system fee, Idaho Code § 39-119

IDAPA 58.01.09, Rules Regulating Swine Facilities - permit application fee, Idaho Code § 39-119

IDAPA 58.01.11, Ground Water Quality Rule - point of compliance application fee, Idaho Code § 39-119

IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans – loan fee to offset costs of administering loan program, Idaho Code §§ 39-119, 39-3627(4)

IDAPA 58.01.13, Rules for Ore Processing by Cyanidation – fee for processing permit applications, Idaho Code § 39-118A(2)(c)

Fee Summary - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901:

The existing rule requires applicants to submit a fee ranging from \$5,000 for a pilot facility not processing more than 10,000 tons of ore to \$20,000 for a facility processing more than 120,000 tons of ore during the life of the facility. The existing rule also includes the option for the applicant to enter into an agreement with the Department for reimbursement of actual costs incurred to process an application and issue a final permit in lieu of paying a fee. This pending/temporary rule eliminates the fee structure but retains that the applicant enter into an agreement with the Department for reimbursement of actual costs incurred to process an application and issue a final permit. Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications.

IDAPA 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services – fees for environmental operating permits, licenses, inspection services and waiver application processing, Idaho Code § 39-119

IDAPA 58.01.18, Idaho Land Remediation Rules – voluntary remediation program application fee, Idaho Code § 39-7210(5)

IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program – application fee and/or annual fee, Idaho Code § 39-175C

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:

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

Fiscal Impact - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901:

Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications. The rule includes a fee for processing a permit application but does not include any fees following issuance of the permit. As facilities are permitted, there will be an impact to the state general fund for administration of a cyanidation permit program; however, it would vary based on the number and size of permitted facilities operating in Idaho. The estimated average annual general fund impact is \$6,000 per permitted facility.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the rulemaking, contact the undersigned.

Dated this 5th day of November, 2020.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE OMNIBUS PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to the following Idaho Code provisions. Citations to any federal statutes that provide the basis of authority or requirement for the rulemaking are also included.

- IDAPA 58.01.01 – Sections 39-105, 39-107, 39-114(4), 39-115(3), and 39-116B, Idaho Code; Clean Air Act, 42 U.S.C. § 7401 *et seq.*
- IDAPA 58.01.05 – Chapters 44 and 58, Title 39, Idaho Code; Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*

- IDAPA 58.01.06 – Sections 39-105, 39-107, and 39-7408C, Idaho Code;
Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*
- IDAPA 58.01.07 – Chapters 1 and 88, Title 39, Idaho Code;
Solid Waste Disposal Act, 42 U.S.C. §§ 6991 – 6991m
- IDAPA 58.01.08 – Chapter 1, Title 39, Idaho Code; Chapter 21, Title 37, Idaho Code;
Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*
- IDAPA 58.01.09 – Sections 39-104A, 39-105, and 39-107, Idaho Code
- IDAPA 58.01.11 – Sections 39-105, 39-107, 39-120, and 39-126, Idaho Code
- IDAPA 58.01.12 – Chapters 1 and 36, Title 39, Idaho Code;
Clean Water Act, 33 U.S.C. § 1251 *et seq.*
- IDAPA 58.01.13 – Chapter 1, Title 39, Idaho Code
- IDAPA 58.01.14 – Sections 39-105, 39-107, and 39-119, Idaho Code
- IDAPA 58.01.18 – Sections 39-105, 39-107, 39-4405, and 39-7210, Idaho Code
- IDAPA 58.01.20 – Chapters 1 and 76, Title 39, Idaho Code;
Safe Drinking Water Act, 42 U.S.C. § 300j *et seq.*
- IDAPA 58.01.25 – Chapter 1, Title 39, Idaho Code;
Clean Water Act, 33 U.S.C. §§ 1342 and 1345

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222, Idaho Code, a public hearing has been scheduled and will be held as follows:

PUBLIC HEARING

Contingent upon COVID 19 safety protocols, the public may attend in person or remotely via telephone and video conferencing. Remote attendance is encouraged. Information for signing up is provided below.

Wednesday, October 7, 2020 – 9:30 a.m. (MDT)

**In Person:
DEQ State Office
1410 N. Hilton Street
Conference Center
Boise, Idaho 83706**

All attendees must comply with current COVID-19 safety protocols for public gatherings.

Via Telephone and Video Conferencing:

To sign up for remote attendance via telephone and video conferencing, contact [Paula Wilson](#) by September 30, 2020.

The hearing location will be accessible to persons with disabilities, and language translators will be made available upon request. To request accommodations for language translation, contact the undersigned by September 30, 2020.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the purpose of the proposed rulemaking:

On February 13, 2020, the Board adopted as temporary fee rules the IDAPA 58 rule chapters as they were presented in the pending rule dockets adopted by the Board in 2019 and submitted to the Second Regular Session of

the 65th Idaho Legislature for review (2019 pending rule dockets). The 2019 pending rule dockets are posted in the [2020 Legislative Rules Review Books](#). The IDAPA 58 fee rule chapters and the 2019 pending rule dockets are listed below.

This proposed rule includes 1) the temporary fee rules adopted by the Board in February 2020, and 2) revisions to several fee rule chapters as described below.

Revisions made to the February 2020 temporary fee rules are not considered changes to existing rules and, therefore, are not shown in strike-out/underline format. For revisions that were negotiated, the strike-out/underline format proposed revisions are available for viewing in the latest posted negotiated rule drafts. The negotiated rulemaking records, including negotiated rulemaking summaries and negotiated rule drafts, are available on the web page links provided below.

More information regarding this rule docket is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/omnibus-rulemaking-docket-no-58-0000-2000f/>.

▪ **IDAPA 58.01.01, *Rules for the Control of Air Pollution in Idaho***

- Docket No. 58-0101-1903
- Docket No. 58-0101-1904
- Docket No. 58-0101-1905
- Revisions Updating Federal Regulations Incorporated by Reference:

These proposed revisions are to ensure that the state rules remain consistent with federal regulations. The Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01, are updated annually to maintain consistency with federal regulations implementing the Clean Air Act. This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date.

▪ **IDAPA 58.01.05, *Rules and Standards for Hazardous Waste***

- Docket No. 58-0000-1900F
- Docket No. 58-0105-1901
- Revisions Updating Federal Regulations Incorporated by Reference:

These proposed revisions are to ensure that the state rules remain consistent with federal regulations. Idaho's Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date. The proposed rule also includes minor non-substantive corrections.

▪ **IDAPA 58.01.06, *Solid Waste Management Rules***

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0106-1901:

These revisions are proposed in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that certain rules are outdated, unnecessary, or redundant. Various sections throughout IDAPA 58.01.06, Solid Waste Management Rules, have been identified for deletion, simplification, or consolidation with other sections. The negotiated rulemaking record is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/solid-waste-docket-no-58-0106-1901/>.

▪ **IDAPA 58.01.07, *Rules Regulating Underground Storage Tank Systems***

- Docket No. 58-0000-1900F

▪ **IDAPA 58.01.08, *Idaho Rules for Public Drinking Water Systems***

- Docket No. 58-0000-1900F

▪ **IDAPA 58.01.09, *Rules Regulating Swine Facilities***

- Docket No. 58-0109-1901

▪ **IDAPA 58.01.11, *Ground Water Quality Rule***

- Docket No. 58-0111-1901

▪ **IDAPA 58.01.12, *Rules for Administration of Water Pollution Control Loans***

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0112-1901:

These revisions are proposed in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.20 (Docket No. 58-0120-1901). The negotiated rulemaking record is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/water-pollution-control-loans-docket-no-58-0112-1901/>.

▪ **IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation***

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0113-1901:

The Idaho Mining Association (IMA) requested, via letter submitted to the Director on March 18, 2019, that DEQ revise the rules to move away from prescriptive design and construction requirements to performance-based outcomes for design, construction and closure. IMA's letter is posted at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/ore-processing-by-cyanidation-docket-no-58-0113-1901/>. The current rules, adopted by the Board in 2005 and approved by the Idaho Legislature in 2006, adopted minimum design and construction criteria for all cyanidation facilities. IMA's letter to DEQ states that technologies and industry best practices for cyanidation facilities have changed since 2006. DEQ initiated negotiated rulemaking to evaluate such changes and to determine if the rules should be updated.

The proposed rule includes revisions to account for current best available technologies or best practices for design, construction and closure of cyanidation facilities that can achieve necessary regulatory goals of protecting human health and the environment and addresses the following:

- (1) applicability of the design criteria to different types of cyanidation facilities;
- (2) consideration of a broader range of acceptable materials included in the design;
- (3) broader interpretation of performance and compliance regarding constructability of leak detection systems;
- (4) variability in design approach based on the physical characteristics of impounded materials; and
- (5) variability in design approach based on the chemical characteristics of impounded materials and process water; and
- (6) cyanidation permit application and administration, including recovery of costs incurred by DEQ in processing permit applications and administering issued permits.

The negotiated rulemaking record is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/ore-processing-by-cyanidation-docket-no-58-0113-1901/>.

▪ **IDAPA 58.01.14, *Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services***

- Docket No. 58-0000-1900F

▪ **IDAPA 58.01.18, *Idaho Land Remediation Rules***

- Docket No. 58-0000-1900F

▪ **IDAPA 58.01.20, *Rules for Administration of Drinking Water Loan Program***

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0120-1901 (Chapter Repeal):

These revisions are proposed in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20,

Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the revisions to IDAPA 58.01.12 (Docket No. 58-0112-1901). The negotiated rulemaking record is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/drinking-water-loan-program-docket-no-58-0120-1901/>.

▪ **IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program**

- Docket No. 58-0000-1900F
- Revisions Negotiated Under Docket No. 58-0125-2001:

To maintain delegated authority for the IPDES program, state rules need to be updated routinely to maintain consistency with federal regulations implementing the Clean Water Act. The purpose of this rulemaking is to ensure the Rules Regulating the Idaho Pollutant Discharge Elimination System (IPDES) Program, IDAPA 58.01.25, remain consistent with federal regulations and to make clarifications in response to ambiguities identified during DEQ's administration of the IPDES program.

In 2015, 2017, 2019, and 2020, updated federal regulations became effective for National Pollutant Discharge Elimination System (NPDES) permitting authorities. These regulations require commensurate changes to portions of the IPDES rules with regard to updating definitions, applications, and reporting requirements for the state and facilities permitted under the program. DEQ is proposing to update those items incorporated by reference impacted by the federal changes. DEQ also proposes changes to the IPDES rules to clarify requirements related to fee payment, public comments, appeals, and other ambiguities identified since implementation of the program in July 2018.

This proposed rule updates federal regulations incorporated by reference with the July 1, 2020 Code of Federal Regulations (CFR) effective date. To maintain consistency for all federal regulations listed in IDAPA 58.01.25.003, this update includes the regulations that have not been revised since the initial incorporation by reference. DEQ negotiated the original rule language and incorporated by reference federal regulations affecting the program.

The negotiated rulemaking record is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/idaho-pollutant-discharge-elimination-system-program-docket-no-58-0125-2001/>.

After consideration of public comments, DEQ intends to present the final proposal to the Board in November 2020 for adoption as pending rules. With respect to IDAPA 58.01.13, Ore Processing by Cyanidation, DEQ intends to present the final proposal to the Board for adoption as both an amendment to the temporary rules and as pending rules.

FEE SUMMARY: With the exception of revisions to IDAPA 58.01.13, Rules for Ore Processing by Cyanidation, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. A description of each fee category is provided below.

Listed below are the DEQ fee rule chapters, fee categories, and the statutory authority for imposition of the fees.

IDAPA 58.01.01, *Rules for the Control of Air Pollution* in Idaho - crop residue burn fee, Idaho Code § 39-114(4); application fee for industrial or commercial air pollution source permits, Idaho Code § 39-115(3); motor vehicle inspection fee, Idaho Code § 39-116B

IDAPA 58.01.05, *Rules and Standards for Hazardous Waste* - hazardous waste siting license fee, Idaho Code § 39-5813(3)

IDAPA 58.01.06, *Solid Waste Management Rules* - commercial solid waste siting license fee, Idaho Code § 39-7408(C)

IDAPA 58.01.07, *Rules Regulating Underground Storage Tank Systems* – annual UST program fee, Idaho Code §§ 39-119, 39-8802(d)

IDAPA 58.01.08, *Idaho Rules for Public Drinking Water Systems* – annual drinking water system fee, Idaho Code § 39-119

IDAPA 58.01.09, *Rules Regulating Swine Facilities* - permit application fee, Idaho Code § 39-119
IDAPA 58.01.11, *Ground Water Quality Rule* - point of compliance application fee, Idaho Code § 39-119

IDAPA 58.01.12, *Rules for Administration of Water Pollution Control Loans* – loan fee to offset costs of administering loan program, Idaho Code §§ 39-119, 39-3627(4)

IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation* – fee for processing permit applications, Idaho Code § 39-118A(2)(c)

Fee Summary - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901:

The current rule requires applicants to submit a fee ranging from \$5,000 for a pilot facility not processing more than 10,000 tons of ore to \$20,000 for a facility processing more than 120,000 tons of ore during the life of the facility. The current rule also includes the option for the applicant to enter into an agreement with the Department for actual costs incurred to process an application and issue a final permit in lieu of paying a fee. This proposed rule eliminates the fee schedule and requires the applicant to enter into an agreement with the Department for actual costs incurred to process an application and issue a final permit. Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications.

IDAPA 58.01.14, *Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services* – fees for environmental operating permits, licenses, inspection services and waiver application processing, Idaho Code § 39-119

IDAPA 58.01.18, *Idaho Land Remediation Rules* – voluntary remediation program application fee, Idaho Code § 39-7210(5)

IDAPA 58.01.20, *Rules for Administration of Drinking Water Loan Program* – loan fee to offset costs of administering loan program, Idaho Code §§ 39-119, 39-3627(4)

IDAPA 58.01.25, *Rules Regulating the Idaho Pollutant Discharge Elimination System Program* – application fee and/or annual fee, Idaho Code § 39-175C

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:

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2021 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

Fiscal Impact - Revisions in IDAPA 58.01.13 Negotiated Under Docket No. 58-0113-1901:

Section 39-118A(2)(c), Idaho Code, authorizes the Director of DEQ to require a reasonable fee for processing permit applications. The proposed rule includes a fee for processing a permit application but does not include any fees following issuance of the permit. As facilities are permitted, there will be an impact to the state general fund for administration of a cyanidation permit program; however, it would vary based on the number and size of permitted facilities operating in Idaho. The estimated average annual general fund impact is \$6,000 per permitted facility.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, agencies shall proceed through negotiated rulemaking whenever it is feasible to do so. DEQ made the following determinations regarding feasibility to conduct negotiated rulemaking:

Negotiated rulemaking was not feasible for the temporary fee rules adopted by the Board in February 2020 because engaging in negotiated rulemaking for the previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

Negotiated rulemaking was not feasible for the revisions updating federal regulations incorporated by reference in IDAPA 58.01.01, *Rules for the Control of Air Pollution in Idaho*, and IDAPA 58.01.05, *Rules and Standards for Hazardous Waste*, due to the simple nature and because DEQ has no discretion with respect to adopting federal regulations necessary to maintain state primacy of the federal programs. Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

Negotiated rulemaking was feasible for revisions in the following rule chapters. These revisions were negotiated with stakeholders and members of the public. The negotiated rulemaking record for each docket is available on the listed web pages.

IDAPA 58.01.06, Solid Waste Management Rules

Docket No. 58-0106-1901 - <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/solid-waste-docket-no-58-0106-1901/>

IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans

Docket No. 58-0112-1901 - <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/water-pollution-control-loans-docket-no-58-0112-1901/>

IDAPA 58.01.13, Rules for Ore Processing by Cyanidation

Docket No. 58-0113-1901 - <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/ore-processing-by-cyanidation-docket-no-58-0113-1901/>

IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program (Chapter Repeal)

Docket No. 58-0120-1901 - <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/drinking-water-loan-program-docket-no-58-0120-1901/>

IDAPA 58.01.25, Rules Regulating the Idaho Pollutant Discharge Elimination System Program

Docket No. 58-0125-2001 - <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/idaho-pollutant-discharge-elimination-system-program-docket-no-58-0125-2001/>

INCORPORATION BY REFERENCE: The following rule chapters include revisions updating federal regulations incorporated by reference:

IDAPA 58.01.01, *Rules for the Control of Air Pollution in Idaho*

IDAPA 58.01.05, *Rules and Standards for Hazardous Waste*

IDAPA 58.01.25, *Rules Regulating the Idaho Pollutant Discharge Elimination System Program*

Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief summary of why the incorporation by reference is necessary:

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rules.

In compliance with Idaho Code 67-5223(4), for each fee rule chapter with updates to federal regulations incorporated by reference, DEQ prepared a brief synopsis detailing the substantive differences between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference documents are available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/omnibus-rulemaking-docket-no-58-0000-2000f/>.

IDAHO CODE SECTION 39-107D STATEMENT: With the exception of revisions to IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation*, these rules are either (1) not broader in scope or more stringent than federal law nor propose to regulate an activity not regulated by the federal government, or (2) have previously been approved as meeting the requirements of Section 39-107D, Idaho Code.

IDAHO CODE SECTION 39-107D STATEMENT FOR REVISIONS IN IDAPA 58.01.13 NEGOTIATED UNDER DOCKET NO. 58-0113-1901: IDAPA 58.01.13, *Rules for Ore Processing by Cyanidation*, regulates activities not regulated by the federal government. The following is a summary of additional information required by Sections 39-107D(2) through (3), Idaho Code, supporting the adoption of these rules. These rules establish the procedures and requirements for the issuance and maintenance of a permit to construct, operate, and close that portion of a cyanidation facility that is intended to contain, treat, or dispose of process water or process-contaminated water containing cyanide.

Section 107D(2)(a), Idaho Code. To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize the best available peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices.

The requirements set forth in this proposed rule are based upon best available peer reviewed science provided by participants in the negotiated rulemaking conducted pursuant to Section 67-5220, Idaho Code. In addition, the requirements set forth in this proposed rule are industry accepted standards and proven regulatory requirements shown to be generally protective of human health and the environment.

To the extent practicable, the proposed rule reflects derivations of the standards and evaluation criteria used in the state of Nevada to regulate cyanidation facilities. Nevada's rules more broadly address mining facilities, not cyanidation facilities specifically. The standards specific to cyanidation facilities were developed based on numerous references providing the best available peer reviewed science. These references are included in the rulemaking record and available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/ore-processing-by-cyanidation-docket-no-58-0113-1901/>.

Section 39-107D(2)(b), Idaho Code. To the degree that a department action is based on science, in proposing any rule or portions of any rule subject to this section, the department shall utilize data collected by accepted methods or best available methods if the reliability of the method and the nature of the decision justifies use of the data.

Data was not collected or analyzed as part of this rulemaking process.

Section 39-107D(3)(a), Idaho Code. Identification of each population or receptor addressed by an estimate of public health effects or environmental effects.

The release of contaminants from cyanidation facilities may adversely impact beneficial uses in both surface and ground water. The populations and receptors of contaminants generated by these facilities potentially include, depending on a facility's location, domestic and community drinking water systems, recreationists, agriculture, and wildlife. Contaminants of concern with the potential of release from cyanidation facilities include, but are not limited to, cyanide, nitrates, chlorine, heavy metals, and sediment.

In Idaho, ground water supplies drinking water to approximately 95% of Idaho's citizens. Of these consumers, approximately one million rely on regulated public water systems for drinking water. Another 500,000 Idahoans utilize ground water from private wells for drinking water. Protection of this resource is critical to the health of the citizens of Idaho.

Ground water also replenishes surface water supplies throughout Idaho. In areas with degraded ground water, the quality of the interconnected surface water can be negatively impacted. The release of contaminants to surface water either directly or indirectly through the ground water can have adverse environmental effects on aquatic habitats, such as increased algal blooms and systemic or neurological effects in susceptible species. The release of contaminants to surface water may also affect communities or individuals who use surface water as a drinking water source by, for example, making the water unfit for consumption or increasing treatment costs.

Section 107D(3)(b) through (e), Idaho Code. Identification of the expected risk or central estimate of risk for the specific population or receptor and identification of each appropriate upper bound or lower bound estimate of risk, of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty, and studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effect or environmental effects and the methodology used to reconcile inconsistencies in the data.

The proposed rule includes permitting process requirements and criteria for the design, construction, operation, and closure of a cyanidation facility. The design criteria are intended to ensure that cyanidation facilities are constructed, operated, and closed in a manner that complies with Idaho's existing standards for protection of human health and the environment, including surface and ground water quality standards. Because specific standards for protecting of human health and the environment already exist in other rules, there is no need to duplicate them in this proposed rule. The criteria included as part of this proposed rule are not based on any express estimate or analysis of risk to public health or the environment. Instead, the criteria are based on best available peer reviewed science and generally accepted design principles used by engineers and regulators to safely contain, control, and treat pollutants associated with ore processing by cyanidation consistent with other existing standards. Application of the criteria in

this proposed rule and other rules administered by the Department or other state agencies will result in minimal risk of release of contaminants from the cyanidation facility into the environment and appropriate response in the event of a release.

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

SUBMISSION OF WRITTEN COMMENTS: Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before October 16, 2020.

Dated this 19th day of August, 2020.

THE FOLLOWING IS THE TEXT OF OMNIBUS FEE DOCKET NO. 58-0000-2000F

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 – RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

000. LEGAL AUTHORITY.

The Board of Environmental Quality is authorized to promulgate rules for the Department of Environmental Quality governing air pollution pursuant to Sections 39-105 and 39-107, Idaho Code. ()

001. TITLE AND SCOPE.

These rules are titled IDAPA 58.01.01, Rules of the Department of Environmental Quality, IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho.” These rules provide for the control of air pollution in Idaho. ()

002. WRITTEN INTERPRETATIONS.

The Department of Environmental Quality has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. The written statements are available for public inspection and copying at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. ()

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ()

004. (RESERVED)

005. DEFINITIONS.

The purpose of Sections 005 through 008 is to assemble definitions used throughout this chapter. ()

006. GENERAL DEFINITIONS.

01. Accountable. Any SIP emission trading program must account for the aggregate effect of the emissions trades in the demonstration of reasonable further progress, attainment, or maintenance. ()

02. Act. The Environmental Protection and Health Act of 1972 as amended (Sections 39-101 through 39-130, Idaho Code). ()

03. Actual Emissions. The actual rate of emissions of a pollutant from an emissions unit as determined in accordance with the following: ()

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. ()

b. The Department may presume that the source-specific allowable emissions for the unit are equivalent to actual emissions of the unit. ()

c. For any emissions unit (other than an electric utility steam generating unit as specified below) which has not yet begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date. ()

d. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Department, on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years may be required by the Department if it determines such a period to be more representative of normal source post-change operations. ()

04. Adverse Impact on Visibility. Visibility impairment which interferes with the management, ()

protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I Area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with: ()

- a. Times of visitor use of the Federal Class I Area; and ()
- b. The frequency and timing of natural conditions that reduce visibility. ()
- c. This term does not include affects on integral vistas when applied to 40 CFR 51.307. ()

05. Air Pollutant/Air Contaminant. Any substance, including but not limited to, dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon or particulate matter or any combination thereof. ()

06. Air Pollution. The presence in the outdoor atmosphere of any air pollutant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property. ()

07. Air Quality. The specific measurement in the ambient air of a particular air pollutant at any given time. ()

08. Air Quality Criterion. The information used as guidelines for decisions when establishing air quality goals and air quality standards. ()

09. Allowable Emissions. The allowable emissions rate of a stationary source or facility calculated using the maximum rated capacity of the source or facility (unless the source or facility is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following: ()

- a. The applicable standards set forth in 40 CFR part 60 and 61; ()
- b. Any applicable State Implementation Plan emissions limitation including those with a future compliance date; or ()
- c. The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date. ()

10. Ambient Air. That portion of the atmosphere, external to buildings, to which the general public has access. ()

11. Ambient Air Quality Violation. Any ambient concentration that causes or contributes to an exceedance of a national ambient air quality standard as determined by 40 CFR Part 50. ()

12. Atmospheric Stagnation Advisory. An air pollution alert declared by the Department when air pollutant impacts have been observed and/or meteorological conditions are conducive to additional air pollutant buildup. ()

13. Attainment Area. Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as having ambient concentrations equal to or less than national primary or secondary ambient air quality standards for a particular air pollutant or air pollutants. ()

14. BART-Eligible Source. Any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit two hundred fifty (250) tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted. ()

- a. Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour

- heat input; ()
- b. Coal cleaning plants (thermal dryers); ()
 - c. Kraft pulp mills; ()
 - d. Portland cement plants; ()
 - e. Primary zinc smelters; ()
 - f. Iron and steel mill plants; ()
 - g. Primary aluminum ore reduction plants; ()
 - h. Primary copper smelters; ()
- day;
- i. Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per ()
 - j. Hydrofluoric, sulfuric, and nitric acid plants; ()
 - k. Petroleum refineries; ()
 - l. Lime plants; ()
 - m. Phosphate rock processing plants; ()
 - n. Coke oven batteries; ()
 - o. Sulfur recovery plants; ()
 - p. Carbon black plants (furnace process); ()
 - q. Primary lead smelters; ()
 - r. Fuel conversion plants; ()
 - s. Sintering plants; ()
 - t. Secondary metal production facilities; ()
 - u. Chemical process plants; ()
 - v. Fossil-fuel boilers of more than two hundred fifty (250) million BTU's per hour heat input; ()
 - w. Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; ()
 - x. Taconite ore processing facilities; ()
 - y. Glass fiber processing plants; and ()
 - z. Charcoal production facilities. ()
- 15. Baseline (Area, Concentration, Date).** See Section 579. ()

16. **Best Available Retrofit Technology (BART).** Means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. ()
17. **Board.** Idaho Board of Environmental Quality. ()
18. **Breakdown.** An unplanned failure of any equipment or emissions unit which may cause excess emissions. ()
19. **BTU.** British thermal unit. ()
20. **Clean Air Act.** The federal Clean Air Act, 42 U.S.C. Sections 7401 through 7671q. ()
21. **Collection Efficiency.** The overall performance of the air cleaning device in terms of ratio of materials collected to total input to the collector unless specific size fractions of the contaminant are stated or required. ()
22. **Commence Construction or Modification.** In general, this means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change. ()
23. **Complete.** A determination made by the Department that all information needed to process a permit application has been submitted for review. ()
24. **Construction.** Fabrication, erection, installation, or modification of a stationary source or facility. ()
25. **Control Equipment.** Any method, process or equipment which removes, reduces or renders less noxious, air pollutants discharged into the atmosphere. ()
26. **Controlled Emission.** An emission which has been treated by control equipment to remove all or part of an air pollutant before release to the atmosphere. ()
27. **Criteria Air Pollutant.** Any of the following: PM₁₀; PM_{2.5}; sulfur oxides; ozone, nitrogen dioxide; carbon monoxide; lead. ()
28. **Deciview.** A measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements): Deciview Haze Index = $10 \ln_e (b_{\text{ext}}/10\text{Mm}^{-1})$ where b_{ext} = the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}). ()
29. **Department.** The Department of Environmental Quality. ()
30. **Designated Facility.** Any of the following facilities: ()
- a. Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; ()
- b. Coal cleaning plants (thermal dryers); ()

- c. Kraft pulp mills; ()
- d. Portland cement plants; ()
- e. Primary zinc smelters; ()
- f. Iron and steel mill plants; ()
- g. Primary aluminum ore reduction plants; ()
- h. Primary copper smelters; ()
- i. Municipal incinerators capable of charging more than two hundred and fifty (250) tons of refuse per day; ()
- j. Hydrofluoric, sulfuric, and nitric acid plants; ()
- k. Petroleum refineries; ()
- l. Lime plants; ()
- m. Phosphate rock processing plants; ()
- n. Coke oven batteries; ()
- o. Sulfur recovery plants; ()
- p. Carbon black plants (furnace process); ()
- q. Primary lead smelters; ()
- r. Fuel conversion plants; ()
- s. Sintering plants; ()
- t. Secondary metal production facilities; ()
- u. Chemical process plants; ()
- v. Fossil-fuel boilers (or combination thereof) of more than two hundred and fifty (250) million BTU's per hour heat input; ()
- w. Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; ()
- x. Taconite ore processing facilities; ()
- y. Glass fiber processing plants; and ()
- z. Charcoal production facilities. ()
- 31. **Director.** The Director of the Department of Environmental Quality or his designee. ()
- 32. **Effective Dose Equivalent.** The sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. It is generally calculated as an annual dose. ()
- 33. **Emission.** Any controlled or uncontrolled release or discharge into the outdoor atmosphere of any

air pollutants or combination thereof. Emission also includes any release or discharge of any air pollutant from a stack, vent, or other means into the outdoor atmosphere that originates from an emission unit. ()

34. Emission Standard. A permit or regulatory requirement established by the Department or EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction. ()

35. Emissions Unit. An identifiable piece of process equipment or other part of a facility which emits or may emit any air pollutant. This definition does not alter or affect the term "unit" for the purposes of 42 U.S.C. Sections 7651 through 7651o. ()

36. EPA. The United States Environmental Protection Agency and its Administrator or designee. ()

37. Environmental Remediation Source. A stationary source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product or petroleum substance, any hazardous waste or hazardous substance from any soil, ground water or surface water, and shall have an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. Nothing in this definition shall be construed so as to actually limit remediation projects to five (5) years or less of total operation. ()

38. Excess Emissions. Emissions that exceed an applicable emissions standard established for any facility, source or emissions unit by statute, regulation, rule, permit, or order. ()

39. Existing Stationary Source or Facility. Any stationary source or facility that exists, is installed, or is under construction on the original effective date of any applicable provision of this chapter. ()

40. Facility. All of the pollutant-emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual. The fugitive emissions shall not be considered in determining whether a permit is required unless required by federal law. ()

41. Federal Class I Area. Any federal land that is classified or reclassified "Class I." ()

42. Federal Land Manager. The Secretary of the department with authority over the Federal Class I Area (or the Secretary's designee). ()

43. Federally Enforceable. All limitations and conditions which are enforceable by EPA and the Department under the Clean Air Act, including those requirements developed pursuant to 40 CFR Parts 60 and 61 requirements within any applicable State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Parts 51, 52, 60, or 63. ()

44. Fire Hazard. The presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare or adjacent lands. ()

45. Fuel-Burning Equipment. Any furnace, boiler, apparatus, stack and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer. ()

46. Fugitive Dust. Fugitive emissions composed of particulate matter. ()

47. Fugitive Emissions. Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. ()

48. Garbage. Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food including, but not limited to, waste materials from households, markets, storage facilities, handling and sale of produce and other food products. ()

49. Gasoline. Any mixture of volatile hydrocarbons suitable as a fuel for the propulsion of motor vehicles or motor boats. Gasoline also means aircraft engine fuels when used for the operation or propulsion of motor vehicles or motor boats and includes gasohol, but does not include special fuels. ()

50. Gasoline Cargo Tank. Any tank or trailer used for the transport of gasoline from sources of supply to underground gasoline storage tanks. ()

51. Gasoline Dispensing Facility (GDF). Any facility with underground gasoline storage tanks used for dispensing gasoline. ()

52. Grain Elevator. Any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded. ()

53. Grain Storage Elevator. Any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean extraction plant which has a permanent grain storage capacity of thirty five thousand two hundred (35,200) cubic meters (ca. 1 million bushels). ()

54. Grain Terminal Elevator. Any grain elevator which has a permanent storage capacity of more than eighty-eight thousand one hundred (88,100) cubic meters (ca. 2.5 million bushels), except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. ()

55. Hazardous Air Pollutant (HAP). Any air pollutant listed pursuant to Section 112(b) of the Clean Air Act. Hazardous Air Pollutants are regulated air pollutants. ()

56. Hazardous Waste. Any waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may: ()

a. Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible, or incapacitating reversible illnesses; or ()

b. Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties; provided that such wastes do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are allowed under a national pollution discharge elimination system permit, or source, special nuclear, or by-product material as defined by 42 U.S.C. Sections 2014(e),(z) or (aa). ()

57. Hot-Mix Asphalt Plant. Those facilities conveying proportioned quantities or batch loading of cold aggregate to a drier, and heating, drying, screening, classifying, measuring and mixing the aggregate and asphalt for the purpose of paving, construction, industrial, residential or commercial use. ()

58. Incinerator. Any source consisting of a furnace and all appurtenances thereto designed for the destruction of refuse by burning. "Open Burning" is not considered incineration. For purposes of these rules, the destruction of any combustible liquid or gaseous material by burning in a flare stack shall be considered incineration. ()

59. Indian Governing Body. The governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government. ()

60. Integral Vista. A view perceived from within the mandatory Class I Federal Area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal Area. ()

61. Kraft Pulping. Any pulping process which uses, for a cooking liquor, an alkaline sulfide solution containing sodium hydroxide and sodium sulfide. ()

62. Least Impaired Days. The average visibility impairment (measured in deciviews) for the twenty percent (20%) of monitored days in a calendar year with the lowest amount of visibility impairment. ()

63. Lowest Achievable Emission Rate (LAER). For any source, the more stringent rate of emissions based on the following: ()

a. The most stringent emissions limitation which is contained in any State Implementation Plan for such class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or ()

b. The most stringent emissions limitation which is achieved in practice by such class or category of facilities. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the facility. In no event shall the application of the term permit a proposed new or modified facility to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance. ()

64. Mandatory Class I Federal Area. Any area identified in 40 CFR 81.400 through 81.437. ()

65. Member of the Public. For purposes of Subsection 006.108.a.xvi., a person located at any off-site point where there is a residence, school, business or office. ()

66. Mercury. Total mercury including elemental mercury and mercury compounds. ()

67. Mercury Best Available Control Technology (MBACT). An emission standard for mercury based on the maximum degree of reduction practically achievable as specified by the Department on an individual case-by-case basis taking into account energy, economic and environmental impacts, and other relevant impacts specific to the source. A Department approved MBACT shall be valid until the source subject to the MBACT is modified. If the proposed modification to the source subject to MBACT occurs within ten (10) years of the MBACT determination, a new MBACT review shall not be triggered as long as the source can meet the existing MBACT requirements. If the proposed modification occurs more than ten (10) years after the MBACT determination, then the proposed modification shall be subject to a new MBACT review. ()

68. Modification. ()

a. Any physical change in, or change in the method of operation of, a stationary source or facility which results in an emission increase as defined in Section 007 or which results in the emission of any regulated air pollutant not previously emitted. ()

b. Any physical change in, or change in the method of operation of, a stationary source or facility which results in an increase in the emissions rate of any state only toxic air pollutant, or emissions of any state only toxic air pollutant not previously emitted. ()

c. Fugitive emissions shall not be considered in determining whether a permit is required for a modification unless required by federal law. ()

d. For purposes of this definition of modification, routine maintenance, repair and replacement shall not be considered physical changes and the following shall not be considered a change in the method of operation: ()

i. An increase in the production rate if such increase does not exceed the operating design capacity of the affected stationary source, and if a more restrictive production rate is not specified in a permit; ()

ii. An increase in hours of operation if more restrictive hours of operation are not specified in a permit; and ()

iii. Use of an alternative fuel or raw material if the stationary source is specifically designed to accommodate such fuel or raw material before January 6, 1975 and use of such fuel or raw material is not specifically prohibited in a permit. ()

69. Monitoring. Sampling and analysis, in a continuous or noncontinuous sequence, using techniques which will adequately measure emission levels and/or ambient air concentrations of air pollutants. ()

70. Most Impaired Days. The average visibility impairment (measured in deciviews) for the twenty percent (20%) of monitored days in a calendar year with the highest amount of visibility impairment. ()

71. Multiple Chamber Incinerator. Any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning, consisting of three (3) or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned. ()

72. Natural Conditions. Includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration. ()

73. New Stationary Source or Facility. ()

a. Any stationary source or facility, the construction or modification of which is commenced after the original effective date of any applicable provision of this chapter; or ()

b. The restart of a nonoperating facility shall be considered a new stationary source or facility if: ()

i. The restart involves a modification to the facility; or ()

ii. After the facility has been in a nonoperating status for a period of two (2) years, and the Department receives an application for a Permit to Construct in the area affected by the existing nonoperating facility, the Department will, within five (5) working days of receipt of the application notify the nonoperating facility of receipt of the application for a Permit to Construct. Upon receipt of this Departmental notification, the nonoperating facility will comply with the following restart schedule or be considered a new stationary source or facility when it does restart: Within thirty (30) working days after receipt of the Department's notification of the application for a Permit to Construct, the nonoperating facility shall provide the Department with a schedule detailing the restart of the facility. The restart must begin within sixty (60) days of the date the Department receives the restart schedule. ()

74. Nonattainment Area. Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as not meeting (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant. ()

75. Noncondensibles. Gases and vapors from processes that are not condensed at standard temperature and pressure unless otherwise specified. ()

76. Odor. The sensation resulting from stimulation of the human sense of smell. ()

77. Opacity. A state which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view, expressed as percent. ()

78. Open Burning. The burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through a stack, duct or chimney. ()

79. **Operating Permit.** A permit issued by the Director pursuant to Sections 300 through 386 and/or 400 through 461. ()
80. **Particulate Matter.** Any material, except water in uncombined form, that exists as a liquid or a solid at standard conditions. ()
81. **Particulate Matter Emissions.** All particulate matter emitted to the ambient air as measured by an applicable reference method, or any equivalent or alternative method in accordance with Section 157. ()
82. **Permit to Construct.** A permit issued by the Director pursuant to Sections 200 through 228. ()
83. **Person.** Any individual, association, corporation, firm, partnership or any federal, state or local governmental entity. ()
84. **PM₁₀.** All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. ()
85. **PM₁₀ Emissions.** All particulate matter, including condensible particulates, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method in accordance with Section 157. ()
86. **PM_{2.5}.** All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal two point five (2.5) micrometers measured by a reference method based on Appendix L of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. ()
87. **PM_{2.5} Emissions.** All particulate matter, including condensible particulates, with an aerodynamic diameter less than or equal to a nominal two point five (2.5) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method in accordance with Section 157. ()
88. **Potential to Emit/Potential Emissions.** The maximum capacity of a facility or stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the facility or source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state or federally enforceable. Secondary emissions do not count in determining the potential to emit of a facility or stationary source. ()
89. **Portable Equipment.** Equipment which is designed to be dismantled and transported from one (1) job site to another job site. ()
90. **PPM (parts per million).** Parts of a gaseous contaminant per million parts of gas by volume. ()
91. **Prescribed Fire Management Burning.** The controlled application of fire to wildland fuels in either their natural or modified state under such conditions of weather, fuel moisture, soil moisture, etc., as will allow the fire to be confined to a predetermined area and at the same time produce the intensity of heat and rate of spread required to accomplish planned objectives, including: ()
- a. Fire hazard reduction; ()
 - b. The control of pests, insects, or diseases; ()
 - c. The promotion of range forage improvements; ()

- d. The perpetuation of natural ecosystems; ()
- e. The disposal of woody debris resulting from a logging operation, the clearing of rights of way, a land clearing operation, or a driftwood collection system; ()
- f. The preparation of planting and seeding sites for forest regeneration; and ()
- g. Other accepted natural resource management purposes. ()
- 92. Primary Ambient Air Quality Standard.** That ambient air quality which, allowing an adequate margin of safety, is requisite to protect the public health. ()
- 93. Process or Process Equipment.** Any equipment, device or contrivance for changing any materials whatever or for storage or handling of any materials, and all appurtenances thereto, including ducts, stack, etc., the use of which may cause any discharge of an air pollutant into the ambient air but not including that equipment specifically defined as fuel-burning equipment or refuse-burning equipment. ()
- 94. Process Weight.** The total weight of all materials introduced into any source operation which may cause any emissions of particulate matter. Process weight includes solid fuels charged, but does not include liquid and gaseous fuels charged or combustion air. Water which occurs naturally in the feed material shall be considered part of the process weight. ()
- 95. Process Weight Rate.** The rate established as follows: ()
- a. For continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; ()
- b. For cyclical or batch source operations, the total process weight for a period that covers a complete cycle of operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one (1) interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply. ()
- 96. Quantifiable.** The Department must be able to determine the emissions impact of any SIP trading programs requirement(s) or emission limit(s). ()
- 97. Radionuclide.** A type of atom which spontaneously undergoes radioactive decay. ()
- 98. Regional Haze.** Visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources. ()
- 99. Regulated Air Pollutant.** ()
- a. For purposes of determining applicability of major source permit to operate requirements, issuing, and modifying permits pursuant to Sections 300 through 397, and in accordance with Title V of the federal Clean Air Act amendments of 1990, 42 U.S.C. Section 7661 et seq., "regulated air pollutant" shall have the same meaning as in Title V of the federal Clean Air Act amendments of 1990, and any applicable federal regulations promulgated pursuant to Title V of the federal Clean Air Act amendments of 1990, 40 CFR Part 70; ()
- b. For purposes of determining applicability of any other operating permit requirements, issuing, and modifying permits pursuant to Sections 400 through 410, the federal definition of "regulated air pollutant" as defined in Subsection 006.99.a. shall also apply; ()
- c. For purposes of determining applicability of permit to construct requirements, issuing, and

modifying permits pursuant to Sections 200 through 228, except Section 214, and in accordance with Part D of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7501 et seq., “regulated air pollutant” shall mean those air contaminants that are regulated in non-attainment areas pursuant to Part D of Subchapter I of the federal Clean Air Act and applicable federal regulations promulgated pursuant to Part D of Subchapter I of the federal Clean Air Act, 40 CFR 51.165; and ()

d. For purposes of determining applicability of any other major or minor permit to construct requirements, issuing, and modifying permits pursuant to 200 through 228, except Section 214, “regulated air pollutant” shall mean those air contaminants that are regulated in attainment and unclassifiable areas pursuant to Part C of Subchapter I of the federal Clean Air Act, 40 CFR 52.21, and any applicable federal regulations promulgated pursuant to Part C of Subchapter I of the federal Clean Air Act, 42 U.S.C. Section 7470 et seq. ()

100. Replicable. Any SIP procedures for applying emission trading shall be structured so that two (2) independent entities would obtain the same result when determining compliance with the emission trading provisions. ()

101. Responsible Official. One (1) of the following: ()

a. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either: ()

i. The facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars); or ()

ii. The delegation of authority to such representative is approved in advance by the Department. ()

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively. ()

c. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of Section 123, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA). ()

d. For Phase II sources: ()

i. The designated representative in so far as actions, standards, requirements, or prohibitions under 42 U.S.C. Sections 7651 through 7651o or the regulations promulgated thereunder are concerned; and ()

ii. The designated representative for any other purposes under 40 CFR Part 70. ()

102. Safety Measure. Any shutdown (and related startup) or bypass of equipment or processes undertaken to prevent imminent injury or death or severe damage to equipment or property which may cause excess emissions. ()

103. Salvage Operation. Any source consisting of any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards. ()

104. Scheduled Maintenance. Planned upkeep, repair activities and preventative maintenance on any air pollution control equipment or emissions unit, including process equipment, and including shutdown and startup of such equipment. ()

105. Secondary Ambient Air Quality Standard. That ambient air quality which is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air. ()

106. Secondary Emissions. Emissions which would occur as a result of the construction, modification, or operation of a stationary source or facility, but do not come from the stationary source or facility itself. Secondary emissions must be specific, well defined, quantifiable, and affect the same general area as the stationary source, facility, or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the primary stationary source, facility or modification. Secondary emissions do not include any emissions which come directly from a mobile source regulated under 42 U.S.C. Sections 7521 through 7590. ()

107. Shutdown. The normal and customary time period required to cease operations of air pollution control equipment or an emissions unit beginning with the initiation of procedures to terminate normal operation and continuing until the termination is completed. ()

108. Significant. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following: ()

- a. Pollutant and emissions rate: ()
 - i. Carbon monoxide, one hundred (100) tons per year; ()
 - ii. Nitrogen oxides, forty (40) tons per year; ()
 - iii. Sulfur dioxide, forty (40) tons per year; ()
 - iv. Particulate matter: ()
 - (1) Twenty-five (25) tons per year of particulate matter emissions; ()
 - (2) Fifteen (15) tons per year of PM₁₀ emissions; or ()
 - (3) Ten (10) tons per year of direct PM_{2.5} emissions; or forty (40) tons per year of sulfur dioxide emissions; or forty (40) tons per year of nitrogen oxide emissions; ()
 - v. Ozone, forty (40) tons per year of volatile organic compounds; ()
 - vi. Lead, six-tenths (0.6) of a ton per year; ()
 - vii. Fluorides, three (3) tons per year; ()
 - viii. Sulfuric acid mist, seven (7) tons per year; ()
 - ix. Hydrogen sulfide (H₂S), ten (10) tons per year; ()
 - x. Total reduced sulfur (including H₂S), ten (10) tons per year; ()
 - xi. Reduced sulfur compounds (including H₂S), ten (10) tons per year; ()
 - xii. Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans), thirty-five ten-millionths (0.0000035) tons per year; ()
 - xiii. Municipal waste combustor metals (measured as particulate matter), fifteen (15) tons per year; ()
 - xiv. Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride), forty (40) tons per year; or ()

xv. Municipal solid waste landfill emissions (measured as nonmethane organic compounds), fifty (50) tons per year. ()

b. In reference to a net emissions increase or the potential of a source or facility to emit a regulated air pollutant not listed in Subsection 006.108.a. above and not a toxic air pollutant, any emission rate; or ()

c. For a major facility or major modification which would be constructed within ten (10) kilometers of a Class I area, the emissions rate which would increase the ambient concentration of an emitted regulated air pollutant in the Class I area by one (1) microgram per cubic meter, twenty-four (24) hour average, or more. ()

109. Significant Contribution. Any increase in ambient concentrations which would exceed the following: ()

a. Sulfur dioxide: ()

i. One (1.0) microgram per cubic meter, annual average; ()

ii. Five (5) micrograms per cubic meter, twenty-four (24) hour average; ()

iii. Twenty-five (25) micrograms per cubic meter, three (3) hour average; ()

b. Nitrogen dioxide, one (1.0) microgram per cubic meter, annual average; ()

c. Carbon monoxide: ()

i. One-half (0.5) milligrams per cubic meter, eight (8) hour average; ()

ii. Two (2) milligrams per cubic meter, one (1) hour average; ()

d. PM₁₀: ()

i. One (1.0) microgram per cubic meter, annual average; ()

ii. Five (5.0) micrograms per cubic meter, twenty-four (24) hour average; ()

e. PM_{2.5}: ()

i. Three-tenths (0.3) microgram per cubic meter, annual average; ()

ii. One point two (1.2) micrograms per cubic meter, twenty-four (24) hour average. ()

110. Small Fire. A fire in which the material to be burned is not more than four (4) feet in diameter nor more than three (3) feet high. ()

111. Smoke. Small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon and other combustible material. ()

112. Smoke Management Plan. A document issued by the Director to implement Sections 606 through 616, Categories of Allowable Burning. ()

113. Smoke Management Program. A program whereby meteorological information, fuel conditions, fire behavior, smoke movement and atmospheric dispersal conditions are used as a basis for scheduling the location, amount and timing of open burning operations so as to minimize the impact of such burning on identified smoke sensitive areas. ()

114. Source. A stationary source. ()

- 115. Source Operation.** The last operation preceding the emission of air pollutants, when this operation: ()
- a.** Results in the separation of the air pollutants from the process materials or in the conversion of the process materials into air pollutants, as in the case of fuel combustion; and ()
 - b.** Is not an air cleaning device. ()
- 116. Special Fuels.** All fuel suitable as fuel for diesel engines; a compressed or liquefied gas obtained as a by-product in petroleum refining or natural gasoline manufacture, such as butane, isobutane, propane, propylene, butylenes, and their mixtures; and natural gas, either liquid or gas, and hydrogen, used for the generation of power for the operation or propulsion of motor vehicles. ()
- 117. Stack.** Any point in a source arranged to conduct emissions to the ambient air, including a chimney, flue, conduit, or duct but not including flares. ()
- 118. Stage 1 Vapor Collection.** Used during the refueling of underground gasoline storage tanks to reduce hydrocarbon emissions. Vapors in the tank, which are displaced by the incoming gasoline, are routed through a hose into the gasoline cargo tank and returned to the terminal for processing. Two (2) types of Stage 1 systems exist: coaxial and dual point. ()
- a.** Coaxial System. A Stage 1 vapor collection system that requires only one (1) tank opening. The tank opening is usually four (4) inches in diameter with a three (3) inch diameter product fill tube inserted into the opening. Fuel flows through the inner tube while vapors are displaced through the annular space between the inner and outer tubes. ()
 - b.** Dual Point System. A Stage 1 vapor collection system that consists of two (2) separate tank openings, one (1) for delivery of the product and the other for the recovery of vapors. ()
- 119. Standard Conditions.** Except as specified in Subsection 576.02 for ambient air quality standards, a dry gas temperature of twenty degrees Celsius (20C) sixty-eight degrees Fahrenheit (68F) and a gas pressure of seven hundred sixty (760) millimeters of mercury (14.7 pounds per square inch) absolute. ()
- 120. Startup.** The normal and customary time period required to bring air pollution control equipment or an emissions unit, including process equipment, from a nonoperational status into normal operation. ()
- 121. Stationary Source.** Any building, structure, facility, emissions unit, or installation which emits or may emit any air pollutant. The fugitive emissions shall not be considered in determining whether a permit is required unless required by federal law. ()
- 122. Tier I Source.** Any of the following: ()
- a.** Any source located at any major facility as defined in Section 008; ()
 - b.** Any source, including an area source, subject to a standard, limitation, or other requirement under 42 U.S.C. Section 7411 or 40 CFR Part 60, and required by EPA to obtain a Part 70 permit; ()
 - c.** Any source, including an area source, subject to a standard or other requirement under 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63, and required by EPA to obtain a Part 70 permit, except that a source is not required to obtain a permit solely because it is subject to requirements under 42 U.S.C. Section 7412(r); ()
 - d.** Any Phase II source; and ()
 - e.** Any source in a source category designated by the Department. ()
- 123. Total Suspended Particulates.** Particulate matter as measured by the method described in 40 CFR

50 Appendix B. ()

124. Toxic Air Pollutant. An air pollutant that has been determined by the Department to be by its nature, toxic to human or animal life or vegetation and listed in Section 585 or 586. ()

125. Toxic Air Pollutant Carcinogenic Increments. Those ambient air quality increments based on the probability of developing excess cancers over a seventy (70) year lifetime exposure to one (1) microgram per cubic meter (1 ug/m³) of a given carcinogen and expressed in terms of a screening emission level or an acceptable ambient concentration for a carcinogenic toxic air pollutant. They are listed in Section 586. ()

126. Toxic Air Pollutant Non-carcinogenic Increments. Those ambient air quality increments based on occupational exposure limits for airborne toxic chemicals expressed in terms of a screening emission level or an acceptable ambient concentration for a non-carcinogenic toxic air pollutant. They are listed in Section 585. ()

127. Toxic Substance. Any air pollutant that is determined by the Department to be by its nature, toxic to human or animal life or vegetation. ()

128. Trade Waste. Any solid, liquid or gaseous material resulting from the construction or demolition of any structure, or the operation of any business, trade or industry including, but not limited to, wood product industry waste such as sawdust, bark, peelings, chips, shavings and cull wood. ()

129. TRS (Total Reduced Sulfur). Hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide and any other organic sulfide present. ()

130. Unclassifiable Area. An area which, because of a lack of adequate data, is unable to be classified pursuant to 42 U.S.C. Section 7407(d) as either an attainment or a nonattainment area. ()

131. Uncontrolled Emission. An emission which has not been treated by control equipment. ()

132. Upset. An unplanned disruption in the normal operations of any equipment or emissions unit which may cause excess emissions. ()

133. Visibility Impairment. Any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions. ()

134. Visibility in Any Mandatory Class I Federal Area. Includes any integral vista associated with that area. ()

135. Wigwam Burner. Wood waste burning devices commonly called teepee burners, silos, truncated cones, and other such burners commonly used by the wood product industry for the disposal by burning of wood wastes. ()

136. Wood Stove Curtailment Advisory. An air pollution alert issued through local authorities and/or the Department to limit wood stove emissions during air pollution episodes. ()

007. DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 228 AND 400 THROUGH 461.

01. Agricultural Activities and Services. For the purposes of Subsection 222.02.f., the usual and customary activities of cultivating the soil, producing crops and raising livestock for use and consumption. Agricultural activities and services do not include manufacturing, bulk storage, handling for resale or the formulation of any agricultural chemical listed in Sections 585 or 586. ()

02. Baseline Actual Emissions. The rate of emissions, in tons per year, of a regulated air pollutant as determined by the following provisions: ()

a. For any existing electric utility steam generating unit, baseline actual emissions means the average

rate, in tons per year, at which the unit actually emitted the regulated air pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding when the owner or operator begins actual construction of the project. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. ()

i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions. ()

ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four (24) month period. ()

iii. For a regulated air pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated air pollutant. ()

iv. The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subsection 007.02.a.ii. ()

b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the regulated air pollutant during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Director for a permit required under these rules, whichever is earlier, except that the ten (10) year period shall not include any period earlier than November 15, 1990. ()

i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions. ()

ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period. ()

iii. The average rate shall be adjusted downward to exclude any emission limitation with which the source must currently comply, had such source been required to comply with such limitations during the consecutive twenty-four (24) month period; however, if an emission limitation is part of a standard or other requirement under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the Department has taken credit for such emissions reductions in an attainment demonstration or maintenance plan. ()

iv. For a regulated air pollutant, when a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive twenty-four (24) month period can be used for each regulated air pollutant. ()

v. The average rate shall not be based on any consecutive twenty-four (24) month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subsections 007.02.b.ii. and 007.02.b.iii. ()

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero (0); and, thereafter, for all other purposes, shall equal the unit's potential to emit. ()

d. For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Subsection 007.02.a, for other existing emissions units in accordance with the procedures contained in Subsection

007.02.b, and for a new emissions unit in accordance with the procedures contained in Subsection 007.02.c. ()

03. Begin Actual Construction. Commence construction. ()

04. Emissions Increase. The amount by which projected actual emissions exceed baseline actual emissions of an emissions unit. ()

05. Innovative Control Technology. Any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice, or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental effects. ()

06. Net Emissions Increase. For purposes of Sections 204 and 205, a net emissions increase shall be defined by the federal regulations incorporated by reference. For purposes of Section 210, a net emissions increase shall be an emissions increase from a particular modification plus any other increases and decreases in actual emissions at the facility that are creditable and contemporaneous with the particular modification, where: ()

a. A creditable increase or decrease in actual emissions is contemporaneous with a particular modification if it occurs between the date five (5) years before the commencement of construction or modification on the particular change and the date that the increase from the particular modification occurs. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred and eighty (180) days; ()

b. A decrease in actual emissions is creditable only if it satisfies the requirements for emission reduction credits (Section 460) and has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular modification, and is federally enforceable at and after the time that construction of the modification commences. ()

c. The increase in toxic air pollutant emissions from an already operating or permitted source is not included in the calculation of the net emissions increase for a proposed new source or modification if: ()

i. The already operating or permitted source commenced construction or modification prior to July 1, 1995; or ()

ii. The uncontrolled emission rate from the already operating or permitted source is ten per cent (10%) or less of the applicable screening emissions level listed in Section 585 or 586; or ()

iii. The already operating or permitted source is an environmental remediation source subject to or regulated by the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901-6992k) and IDAPA 58.01.05, "Idaho Rules and Standards for Hazardous Waste," (IDAPA 58.01.05.000 et seq.) or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 6901-6992k) or a consent order. ()

07. Pilot Plant. A stationary source located at least one quarter (1/4) mile from any sensitive receptor that functions to test processing, mechanical, or pollution control equipment to determine full-scale feasibility and which does not produce products that are offered for sale except in developmental quantities. ()

08. Projected Actual Emissions. ()

a. The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated air pollutant in any one (1) of the five (5) years (twelve (12) month period) following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated air pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at an existing major stationary source. ()

b. In determining the projected actual emissions, the owner or operator of the stationary source: ()

i. Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with state or federal regulatory authorities, and compliance plans under the approved state implementation plan; and ()

ii. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and ()

iii. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or ()

iv. In lieu of using the method set out in Subsections 007.08.b.i. through 007.08.b.iii., may elect to use the emissions unit's potential to emit, in tons per year. ()

09. Reasonable Further Progress (RFP). Annual incremental reductions in emissions of the applicable air pollutant as identified in the SIP which are sufficient to provide for attainment of the applicable ambient air quality standard by the required date. ()

10. Sensitive Receptor. Any residence, building or location occupied or frequented by persons who, due to age, infirmity or other health based criteria, may be more susceptible to the deleterious effects of a toxic air pollutant than the general population including, but not limited to, elementary and secondary schools, day care centers, playgrounds and parks, hospitals, clinics and nursing homes. ()

11. Short Term Source. Any new stationary source or modification to an existing source, with an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. ()

12. Toxic Air Pollutant Reasonably Available Control Technology (T-RACT). An emission standard based on the lowest emission of toxic air pollutants that a particular source is capable of meeting by the application of control technology that is reasonably available, as determined by the Department, considering technological and economic feasibility. If control technology is not feasible, the emission standard may be based on the application of a design, equipment, work practice or operational requirement, or combination thereof. ()

008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.

01. Affected States. All States: ()

a. Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or ()

b. That are within fifty (50) miles of the Tier I source. ()

02. Allowance. An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. ()

03. Applicable Requirement. All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the time of permit issuance but which have future-effective compliance dates): ()

a. Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. ()

b. Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions

relevant only to toxic air pollutants are not applicable requirements. ()

- c. Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; ()
- d. Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; ()
- e. Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; ()
- f. Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b) or Sections 120 through 128 of these rules; ()
- g. Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; ()
- h. Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and ()
- i. Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. ()
- j. Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. ()

04. Designated Representative. A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. ()

05. Draft Permit. The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. ()

06. Emergency. For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. ()

07. Final Permit. The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. ()

08. General Permit. A Tier I permit issued pursuant to Section 335. ()

09. Insignificant Activity. Those activities that qualify as insignificant in accordance with Section 317. ()

10. Major Facility. A facility (as defined in Section 006) is major if the facility meets any of the following criteria: ()

a. For hazardous air pollutants: ()

i. The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that

emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. ()

ii. The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. ()

b. For non-attainment areas: ()

i. The facility is located in a “serious” particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. ()

ii. The facility is located in a “serious” carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. ()

iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. ()

iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is “marginal” or “moderate,” one hundred (100) tpy or more, if the area is “serious,” fifty (50) tpy or more, if the area is “severe,” twenty-five (25) tpy or more, and if the area is “extreme,” ten (10) tpy or more. ()

c. The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: ()

i. Designated facilities. ()

ii. All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. ()

009. DEFINITIONS FOR THE PURPOSES OF 40 CFR PART 60.

Notwithstanding the definitions listed in Sections 006 through 008, the definitions in 40 CFR Part 60 shall have the meaning given in that Part, except that the term “Administrator” shall mean “Department.” ()

010. DEFINITIONS FOR THE PURPOSES OF 40 CFR PART 61 AND 40 CFR PART 63.

Notwithstanding the definitions listed in Sections 006 through 008, the definitions in 40 CFR Part 61 and 40 CFR Part 63 shall have the meaning given in those Parts, except that the term “Administrator” shall mean “Department.” ()

011. DEFINITIONS FOR THE PURPOSES OF SECTIONS 790 THROUGH 799.

01. Best Management Practice. The best management practice (BMP) employed within an industry to control fugitive emissions. ()

02. Control Strategy Trigger. An event or condition that indicates that a control action is needed to prevent violation of a standard or a provision of the rule. ()

03. Nonmetallic Mineral Processing Plant. Any combination of equipment that is used to crush or

grind any nonmetallic mineral or rock wherever it may be located, including equipment located at lime plants, power plants, steel mills, asphalt concrete plants, Portland cement plants, or any other facility or location processing nonmetallic minerals. ()

04. NSPS Regulated Facility or Plant. A facility or processing plant that is subject to a standard, limitation, or other requirement of 40 CFR 60, Standards for the Performance of New Stationary Sources. ()

05. Permit by Rule. A provision of the rules under which a facility or source registers with the Department and meets the specific requirements for that type of source. The source is then deemed to have a permit, thereby authorizing construction and operation without first obtaining a "Permit to Construct" as required in Section 201. Operating in accordance with a "Permit by Rule" (PBR) does not relieve the owner or operator from complying with all applicable federal, state, and local rules and regulations. ()

06. Progressive Control Strategy. A sequence of control actions that when progressively employed can reduce the potential for violation of a standard or a provision of the rules. Control actions, beginning with those early in the sequence, shall be progressively applied until an adequate level of control is achieved. ()

07. Site of Operations. The specific operating location of a nonmetallic mineral processing plant. ()

012. -- 105. (RESERVED)

106. ABBREVIATIONS.

- 01. AAC.** Acceptable Ambient Concentration. ()
- 02. AACC.** Acceptable Ambient Concentration for a Carcinogen. ()
- 03. ACGIH.** American Conference of Government Industrial Hygienists. ()
- 04. CAS.** Chemical Abstract Service. ()
- 05. CL.** Derived from ACGIH ceiling Limit UF = 10. ()
- 06. EL.** Emissions Screening Level. ()
- 07. ID.** Idaho Division of Environmental Quality. Not OEL based. ()
- 08. LA.** From LA Dept. of Environmental Quality. Not OEL based eight (8) hour TWA. ()
- 09. MA.** From MA Dept. of Environmental Protection, Div. of Air Quality Control. Not OEL based, annual averaging time, no uf. ()
- 10. MI.** From MI Dept. of Natural Resources, Air Quality Div. Based on toxicological data, annual av. time, no uf. ()
- 11. NY.** From New York Dept. of Conservation, Div. of Air Quality. Not OEL based, one (1) yr. Av. time no uncertainty factor (uf). ()
- 12. OEL.** Reference Occupational Exposure Level. ()
- 13. PL.** From Phil. Dept. of Air Management Services. Not OEL based, one (1) yr. averaging time no uf. ()
- 14. PL1.** From Phil. Dept. of Air Management Services. Unspecified OEL based, one (1) yr. averaging time, uf=10. ()

- 15. **PL2.** From Phil. Dept. of Air Management Services. Not OEL based one (1) yr. Av. time, uf=10. ()
- 16. **PL3.** From Phil. Dept. of Air Management Services. Not OEL based, one (1) yr. av. time, uf=1000. ()
- 17. **TWA.** Time Weighted Average. ()
- 18. **UF.** Uncertainty Factor. ()
- 19. **URF.** Unit Risk Factor from the US Environmental Protection Agency. ()
- 20. **WA.** From Washington Dept. of Ecology, Air Programs. Acceptable Source Impact Level based. ()

107. INCORPORATIONS BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 constitutes the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. ()

02. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: ()

- a. All federal publications: U.S. Government Printing Office at <http://www.ecfr.gov/cgi-bin/ECFR>; and; ()
- b. Statutes of the state of Idaho: <http://legislature.idaho.gov/idstat/TOC/IDStatutesTOC.htm>; and ()
- c. All documents herein incorporated by reference: ()
- i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. ()
- ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. ()

03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: ()

- a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, [40 CFR Part 51](#) revised as of July 1, 2020. The following portions of 40 CFR Part 51 are expressly excluded from any incorporation by reference into these rules: ()
 - i. All sections included in 40 CFR Part 51, Subpart P, Protection of Visibility, except that 40 CFR 51.301, 51.304(a), 51.307, and 51.308 are incorporated by reference into these rules; and ()
 - ii. Appendix Y to Part 51, Guidelines for BART Determinations Under the Regional Haze Rule. ()
- b. National Primary and Secondary Ambient Air Quality Standards, [40 CFR Part 50](#), revised as of July 1, 2020. ()
- c. Approval and Promulgation of Implementation Plans, [40 CFR Part 52](#), Subparts A and N and

- Appendices D and E, revised as of July 1, 2020. ()
- d. Ambient Air Monitoring Reference and Equivalent Methods, [40 CFR Part 53](#), revised as of July 1, 2020. ()
 - e. Ambient Air Quality Surveillance, [40 CFR Part 58](#), revised as of July 1, 2020. ()
 - f. Standards of Performance for New Stationary Sources, [40 CFR Part 60](#), revised as of July 1, 2020. ()
 - g. National Emission Standards for Hazardous Air Pollutants, [40 CFR Part 61](#), revised as of July 1, 2020. ()
 - h. Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or Before December 1, 2008, [40 CFR Part 62, Subpart HHH](#), revised as of July 1, 2020. ()
 - i. National Emission Standards for Hazardous Air Pollutants for Source Categories, [40 CFR Part 63](#), revised as of July 1, 2020. ()
 - j. Compliance Assurance Monitoring, [40 CFR Part 64](#), revised as of July 1, 2020. ()
 - k. State Operating Permit Programs, [40 CFR Part 70](#), revised as of July 1, 2020. ()
 - l. Permits, [40 CFR Part 72](#), revised as of July 1, 2020. ()
 - m. Sulfur Dioxide Allowance System, [40 CFR Part 73](#), revised as of July 1, 2020. ()
 - n. Protection of Stratospheric Ozone, [40 CFR Part 82](#), revised as of July 1, 2020. ()
 - o. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). ()
 - p. Medical Waste Combustors, [Section 39-128, Idaho Code \(1992\)](#). ()

108. -- 120. (RESERVED)

121. COMPLIANCE REQUIREMENTS BY DEPARTMENT.

Any person engaged in an activity which may violate the air quality provisions of the Act, violate an air quality order issued or entered in accordance with the Act or these rules, or violate any of these rules, may be required by the Department to do any of the following: ()

- 01. Schedule.** Prepare a proposed schedule whereby the unlawful activity will be brought into compliance over a specified period of time. ()
- 02. Report.** Submit periodic reports to the Department indicating progress in achieving compliance. ()
- 03. Records.** Submit, keep and maintain appropriate records. ()
- 04. Monitoring.** Monitor air pollutants at the source, in the ambient air, or in vegetation to demonstrate compliance. ()
- 05. Episode Plans.** Develop emergency episode plans to help prevent ambient air pollution concentrations from reaching levels which would cause substantial endangerment to health or the environment. ()

122. INFORMATION ORDERS BY THE DEPARTMENT.

The Department may issue information orders as follows: ()

- 01. Purpose.** For the purpose of: ()
- a.** Developing or assisting in the development of any implementation plan, any standard of performance, any emission standard or any rule; ()
 - b.** Determining whether any person is in violation of any standard of performance, any emission standard, any implementation plan or any rule; or ()
 - c.** Carrying out any air quality provisions of the Act, any air quality order issued or entered in accordance with the Act or rules, or any of these rules. ()
- 02. Persons.** The Department may issue an information order to any person who: ()
- a.** Owns or operates any emission source; ()
 - b.** Manufactures emission control equipment; ()
 - c.** The Department believes may have information necessary to meet the intent of these rules; or ()
 - d.** Is subject to any requirement of these rules. ()
- 03. Requirements.** The information order may require the person to perform the following on a one-time, periodic or continuous basis: ()
- a.** Establish, maintain and submit records; ()
 - b.** Make reports; ()
 - c.** Install, use, and maintain monitoring equipment, and use audit procedures or methods; ()
 - d.** Sample emissions in accordance with procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Department shall prescribe; ()
 - e.** Keep records on control equipment parameters, production variables or other indirect data when the Department determines that direct monitoring of emissions is impractical; ()
 - f.** Submit compliance certifications including: ()
 - i.** Identification of the applicable requirement that is the basis of the certification; ()
 - ii.** The method(s) or other means used by the owner or operator for determining the compliance status for each applicable requirement, and whether such methods or other means provide continuous or intermittent data; and ()
 - iii.** The status of compliance with each applicable requirement, based on the method or means designated in Subsection 122.03.f.ii. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and ()
 - g.** Provide such other information as the Department may require. ()

123. CERTIFICATION OF DOCUMENTS.

All documents, including but not limited to, application forms for permits to construct, application forms for operating permits, progress reports, records, monitoring data, supporting information, requests for confidential

treatment, testing reports or compliance certifications submitted to the Department shall contain a certification by a responsible official. The certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. ()

124. TRUTH, ACCURACY AND COMPLETENESS OF DOCUMENTS.

All documents submitted to the Department shall be truthful, accurate and complete. ()

125. FALSE STATEMENTS.

No person shall knowingly make any false statement, representation, or certification in any form, notice, or report required under any permit, or any applicable rule or order in force pursuant thereto. ()

126. TAMPERING.

No person shall knowingly render inaccurate any monitoring device or method required under any permit, or any applicable rule or order in force pursuant thereto. ()

127. FORMAT OF RESPONSES.

All responses and information submitted to the Department shall be provided in a format approved by the Department. ()

128. CONFIDENTIAL INFORMATION.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code and Section 39-111, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 74-114, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Department of Environmental Quality." If the information for which the person is requesting confidential treatment is submitted to the Department under Sections 300 through 386 or the terms or conditions of a Tier I operating permit, the person shall also submit the same information directly to the EPA. ()

129. (RESERVED)

130. STARTUP, SHUTDOWN, SCHEDULED MAINTENANCE, SAFETY MEASURES, UPSET AND BREAKDOWN.

The purpose of Sections 130 through 136 is to establish procedures and requirements to be implemented in all excess emissions events and to establish criteria to be applied by the Department in determining whether to take enforcement action to impose penalties for an excess emissions event where the excess emissions are caused by startup, shutdown, scheduled maintenance, upset, or breakdown of any emissions unit or which occur as a direct result of the implementation of any safety measure. ()

131. EXCESS EMISSIONS.

01. Applicability. The owner or operator of a facility or emissions unit generating excess emissions shall comply with Sections 131, 132, 133.01, 134.01, 134.02, 134.03, 135, and 136, as applicable. If the owner or operator anticipates requesting consideration under Subsection 131.02, then the owner or operator shall also comply with the applicable provisions of Subsections 133.02, 133.03, 134.04, and 134.05. ()

02. Enforcement Action Criteria. Where an excess emissions event occurs as a direct result of startup, shutdown, or scheduled maintenance, or an unavoidable upset or unavoidable breakdown, or the implementation of a safety measure, the Department shall consider the sufficiency of the information submitted and the following criteria to determine if an enforcement action to impose penalties is warranted: ()

a. Whether prior to the excess emissions event, the owner or operator submitted and implemented procedures pursuant to Subsections 133.02 and 133.03 or Subsections 134.04 and 134.05, as applicable; ()

b. Whether the owner or operator complied with all relevant portions of Subsections 131, 132, 133.01, 134.01, 134.02, 134.03, 135, and 136; ()

c. Whether the excess emissions event was part of a recurring pattern of excess emissions events

indicative of inadequate design, operation or maintenance of the facility or emissions unit; and ()

d. Where appropriate, whether the excess emissions event was caused by an activity necessary to prevent loss of life, personal injury or severe property damage. ()

03. Effect of Determination. Any decision by the Department under Subsection 131.02 shall not excuse the owner or operator from compliance with the relevant emission standard and shall not preclude the Department from taking an enforcement action to enjoin the activity causing the excess emissions. Any decision made by the Department under Subsection 131.02 shall not preclude the Department from taking an enforcement action for future or other excess emission events. The affirmative defense for emergencies under Section 332 of these Rules may be applied in addition to the provisions of Sections 130 through 136. ()

132. CORRECTION OF CONDITION.

The person responsible for, or in charge of a facility during, an excess emissions event shall, with all practicable speed, initiate and complete appropriate and reasonable action to correct the conditions causing such excess emissions event; to reduce the frequency of occurrence of such events; to minimize the amount by which the emission standard is exceeded; and shall, as provided below or upon request of the Department, submit a full report of such occurrence, including a statement of all known causes, and of the scheduling and nature of the actions to be taken. ()

133. STARTUP, SHUTDOWN AND SCHEDULED MAINTENANCE REQUIREMENTS.

The requirements in Subsection 133.01 shall apply in all cases where startup, shutdown, or scheduled maintenance of any equipment or emissions unit is expected to result or results in an excess emissions event. The owner or operator of the facility or emissions unit generating the excess emissions shall demonstrate compliance with all of the requirements of Subsection 133.01, as well as the development and implementation of procedures pursuant to Subsections 133.02 and 133.03 as a prerequisite to any consideration under Subsection 131.02. ()

01. General Provisions. The following shall pertain to all startup, shutdown, and scheduled maintenance activities expected to result or resulting in excess emissions: ()

a. No scheduled startup, shutdown, or maintenance resulting in excess emissions shall occur during any period in which an Atmospheric Stagnation Advisory and/or a Wood Stove Curtailment Advisory has been declared by the Department within an area designated by the Department as a PM-10 nonattainment area, unless the permittee demonstrates that such is reasonably necessary to facility operations and cannot be reasonably avoided and the Department approves such activity in advance, to the extent advance approval by the Department is feasible. This prohibition on scheduled startup, shutdown or maintenance activities during Advisories does not apply to situations where shutdown is necessitated by urgent situations, such as imminent equipment failure, power curtailment, worker safety concerns or similar situations. ()

b. The owner or operator of a source of excess emissions shall notify the Department of any startup, shutdown, or scheduled maintenance event that is expected to cause an excess emissions event. Such notification shall identify the time of the excess emissions, specific location, equipment involved, and type of excess emissions event (i.e. startup, shutdown, or scheduled maintenance). The notification shall be given as soon as reasonably possible, but no later than two (2) hours prior to the start of the excess emissions event unless the owner or operator demonstrates to the Department's satisfaction that a shorter advanced notice was necessary. The Department may prohibit or postpone any scheduled startup, shutdown, or maintenance activity upon consideration of the factors listed in Subsection 134.03. ()

c. The owner or operator of a source of excess emissions shall report and record the information required pursuant to Sections 135 and 136 for each excess emissions event due to startup, shutdown, or scheduled maintenance. ()

d. The owner or operator of a source of excess emissions must make the maximum reasonable effort, including off-shift labor where practicable to accomplish maintenance during periods of nonoperation of any related source operations or equipment. ()

02. Excess Emissions Procedures. For all equipment or emissions unit from which excess emissions

may occur during startup, shutdown, or scheduled maintenance, the facility owner or operator shall prepare, implement and file with the Department specific procedures which will be used to minimize excess emissions during such events. Specific information for each of the types of excess emissions events (i.e. startup, shutdown and scheduled maintenance) shall be established or documented for each piece of equipment or emissions unit and shall include all of the following (which may be based upon the facility owner or operator's knowledge of the process or emissions where measured data is unavailable): ()

- a. Identification of the specific equipment or emissions unit and the type of event anticipated. ()
- b. Identification of the specific emissions in excess of applicable emission standards during the startup, shutdown, or scheduled maintenance period. ()
- c. The estimated amount of excess emissions expected to be released during each event. ()
- d. The expected duration of each excess emissions event. ()
- e. An explanation of why the excess emissions are reasonably unavoidable for each of the types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance). ()
- f. Specification of the frequency at which each of the types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance) are expected to occur. ()
- g. For scheduled maintenance, the owner or operator shall also document detailed explanations of: ()
 - i. Why the maintenance is needed. ()
 - ii. Why it is impractical to reduce or cease operation of the equipment or emissions unit during the scheduled maintenance period. ()
 - iii. Why the excess emissions are not reasonably avoidable through better scheduling of the maintenance or through better operation and maintenance practices. ()
 - iv. Why, where applicable, it is necessary to by-pass, take off line, or operate equipment or emissions unit at reduced efficiency while the maintenance is being performed. ()
- h. Justification to explain why the piece of equipment or emissions unit cannot be modified or redesigned to eliminate or reduce the excess emissions which occur during startup, shutdown, and scheduled maintenance. ()
- i. Detailed specification of the procedures to be followed by the owner or operator which will minimize excess emissions at all times during startup, shutdown, and scheduled maintenance. These procedures may include such measures as preheating or otherwise conditioning the emissions unit prior to its use or the application of auxiliary equipment or emissions unit to reduce the excess emissions. ()

03. Amendments to Procedures. The owner or operator shall amend, and the Department may require amendments to, the procedures established pursuant to Section 133 from time to time and as deemed reasonably necessary to ensure that the procedures are and remain consistent with good pollution control practices. ()

04. Filing of Excess Emissions Procedures. ()

a. Unless otherwise required by the Department, the failure to prepare or file procedures pursuant to Subsection 133.02 shall not be a violation of these Rules in and of itself. ()

b. To the extent procedures or plans for excess emissions resulting from startup, shutdown, or scheduled maintenance are required to be or are otherwise submitted to the Department with any permit application,

such submission, if deemed adequate by the Department, shall fulfill the requirement under this Section to file plans and procedures with the Department. ()

134. UPSET, BREAKDOWN AND SAFETY REQUIREMENTS.

The requirements in Subsections 134.01, 134.02, and 134.03 shall apply in all cases where upset or breakdown of equipment or an emissions unit, or the initiation of safety measures, result or may result in an excess emissions event. The owner or operator of the facility or emissions unit generating the excess emissions shall demonstrate compliance with all of the requirements of Subsections 134.01, 134.02 and 134.03 as well as the development and implementation of procedures pursuant to Subsections 134.04 and 134.05 as a prerequisite to any consideration under Subsection 131.02. Where the owner or operator demonstrates that because of the unforeseeable nature of the excess emissions event it is impractical to develop procedures pursuant to Subsection 134.04, the Department shall exercise its enforcement discretion on a case by case basis. ()

01. Routine Maintenance and Repairs. For all equipment or emissions units from which excess emissions may occur during upset conditions or breakdowns or implementation of safety measures, the facility owner or operator shall: ()

a. Implement routine preventative maintenance and operating procedures consistent with good pollution control practices for minimizing upsets and breakdowns or events requiring implementation of safety measures, and ()

b. Make routine repairs in an expeditious fashion when the owner or operator knew or should have known that an excess emissions event was likely to occur. Off-shift labor and overtime shall be utilized, to the extent practicable, to ensure that such repairs are made expeditiously. ()

02. Excess Emissions Minimization and Notification. For all equipment or emissions units from which excess emissions result during upset or breakdown conditions, or for other situations that may necessitate the implementation of safety measures which cause excess emissions, the facility owner or operator shall comply with the following: ()

a. The owner or operator shall immediately undertake all appropriate measures to reduce and, to the extent possible, eliminate excess emissions resulting from the event and to minimize the impact of such excess emissions on the ambient air quality and public health. ()

b. The owner or operator shall notify the Department of any upset/breakdown/safety event that results in excess emissions. Such notification shall identify the time, specific location, equipment or emissions unit involved, and (to the extent known) the cause(s) of the occurrence. The notification shall be given as soon as reasonably possible, but no later than twenty-four (24) hours after the event, unless the owner or operator demonstrates to the Department's satisfaction that the longer reporting period was necessary. ()

c. The owner or operator shall report and record the information required pursuant to Sections 135 and 136 for each excess emissions event caused by an upset, breakdown, or safety measure. ()

03. Discretionary Reduction or Cessation Provisions. During any period of excess emissions caused by upset, breakdown, or operation under facility safety measures, the Department may require the owner or operator to immediately reduce or cease operation of the equipment or emissions unit causing the excess emissions until such time as the condition causing the excess emissions has been corrected or brought under control. Such action by the Department shall be taken upon consideration of the following factors and after consultation with the facility owner or operator: ()

a. Potential risk to the public or the environment. ()

b. Whether ceasing operations could result in physical damage to the equipment, emissions unit or facility, or cause injury to employees. ()

c. Whether continued excess emissions were reasonably unavoidable as determined by the Department. ()

d. The effect of the increase in pollution resulting from the shutdown and subsequent restart of the equipment or emissions unit or facility. ()

e. The owner or operator shall not be required to reduce or cease operations at the entire facility if reducing or ceasing operations at a portion of the facility eliminates or adequately reduces the excess emissions. ()

04. Excess Emissions Procedures. For equipment or emissions units and process upsets and breakdowns and situations that require implementation of safety measures, which events can reasonably be anticipated to occur periodically but which cannot be reasonably avoided or predicted with certainty, the owner or operator shall prepare, implement, and file with the Department specific procedures which will be used to minimize such events and excess emissions during such events. To the extent possible and reasonably practicable (and based upon knowledge of the process or emissions where measured data is not available), specify the following information for each type of anticipated upset/ breakdown/safety event: ()

a. The specific air pollution control equipment or emissions unit and the type of event anticipated. ()

b. The specific emissions in excess of applicable emission standards during the event. ()

c. The estimated amount of excess emissions expected to be released during each event. ()

d. The expected duration of each excess emissions event. ()

e. An explanation of why the excess emissions are reasonably unavoidable. ()

f. The frequency of the type of event, based on historic occurrences. ()

g. Justification to explain why the piece of control equipment or emissions unit cannot be modified or redesigned to eliminate or reduce the particular type of event. ()

h. Detailed specification of the procedures to be followed by the owner or operator which will minimize excess emissions at all times during such events, including without limitation those procedures listed under Subsection 134.05. ()

05. Amendments to Procedures. The owner or operator shall amend, and the Department may require amendments to, the procedures established pursuant to Section 134 from time to time and as deemed reasonably necessary to ensure that the procedures are and remain consistent with good pollution control practices. ()

06. Filing of Excess Emissions Procedures. ()

a. Failure to follow procedures filed with the Department shall not preclude the Department from making a determination under Subsection 131.02 if the owner or operator demonstrates to the Department's satisfaction that alternate and equivalent procedures were used and were necessitated by the exigency of the circumstances. ()

b. Unless otherwise required by the Department, the failure to prepare or file procedures pursuant to Subsection 134.04 shall not be a violation of these Rules in and of itself. ()

c. To the extent procedures or plans for excess emissions resulting from upsets, breakdowns or safety measures are required to be or are otherwise submitted to the Department with any permit application, such submission, if deemed adequate by the Department, shall fulfill the requirement under this Section to file plans and procedures with the Department. ()

135. EXCESS EMISSIONS REPORTS.

01. Deadline for Excess Emissions Reports. A written report for each excess emissions event shall be submitted to the Department by the owner or operator no later than fifteen (15) days after the beginning of each such event. ()

02. Contents of Excess Emissions Reports. Each report shall contain the following information: ()

a. The time period during which the excess emissions occurred; ()

b. Identification of the specific equipment or emissions unit which caused the excess emissions; ()

c. An explanation of the cause, or causes, of the excess emissions and whether the excess emissions occurred as a result of startup, shutdown, scheduled maintenance, upset, breakdown or a safety measure; ()

d. An estimate of the emissions in excess of any applicable emission standard (based on knowledge of the process and facility where emissions data is unavailable); ()

e. A description of the activities carried out to eliminate the excess emissions; and ()

f. Certify compliance status with the requirements of Sections 131, 132, 133.01, 134.01 through 134.03, 135, and 136. ()

g. If requesting consideration under Subsection 131.02, certify compliance status with Sections 131, 132, 133.01 through 133.03, 134.01 through 134.05, 135, and 136. ()

136. EXCESS EMISSIONS RECORDS.

01. Maintenance of Excess Emissions Records. The owner or operator shall maintain excess emissions records at the facility for the most recent five (5) calendar year period. ()

02. Availability of Excess Emissions Records. The excess emissions records shall be made available to the Department upon request. ()

03. Contents of Excess Emissions Records. The excess emissions records shall include the following: ()

a. An excess emissions log book for each emissions unit or piece of equipment containing copies of all reports that have been submitted to the Department pursuant to Section 135 for the particular emissions unit or equipment; and ()

b. Copies of all startup, shutdown, and scheduled maintenance procedures and upset/breakdown/safety preventative maintenance plans which have been developed by the owner or operator in accordance with Sections 133 and 134, and facility records as necessary to demonstrate compliance with such procedures and plans. ()

04. Protections Under Section 128. The protections under Section 128 for confidential information shall be available for excess emissions reports and records upon proper request of the owner or operator in accordance with Section 128. ()

137. -- 139. (RESERVED)

140. VARIANCES.
The purpose of Sections 140 through 149 is to establish procedures for obtaining variances. ()

141. PETITION.
A variance proceeding shall be commenced by filing three (3) copies of a petition for variance with the Department.

The complaint may be accompanied by such affidavits or other proof as the petitioner may submit in order to make it possible for the Department, if it so desires, to dispose of the matter without a hearing. The petition shall contain the following: ()

01. Statement of Facts. A concise statement of the facts upon which the variance is requested, including a description of the business or activity in question; the quantity and type of raw materials processed; an estimate of the quantity and type of contaminants discharged; a description of existing and proposed equipment for the control of discharges; and a time schedule for bringing the activity into compliance. ()

02. Statement of Reasons. A concise statement of why the petitioner believes that compliance with the provision from which variance is sought would impose an arbitrary or unreasonable hardship, including a description of the costs that compliance would impose on the petitioner and others, and of the injury that the grant of the variance would impose on the public. ()

03. Requested Relief. A clear statement of the precise extent of the relief sought. ()

142. NOTICE.

The Department shall give notice of all variance petitions as required by law. ()

143. INVESTIGATION AND RECOMMENDATION.

After investigating the variance petition and considering the views of persons who might be adversely affected by the grant of the variance, the Department staff shall, within twenty-one (21) days after the filing of the petition, make a recommendation to the Department as to the disposition of the petition. The recommendation, a copy of which shall be served on the petitioner, shall include: ()

01. Efforts. A description of the efforts made by the staff to investigate the facts as alleged and to ascertain the views of persons who might be affected, and a summary of the views so ascertained. ()

02. Disputed Facts. A statement of the degree to which, if at all, the staff disagrees with the facts as alleged in the petition. ()

03. Other Facts. Allegations of any other facts the staff believes relevant to the disposition of the petition. ()

04. Costs. The staff's assessment of the costs that compliance would impose on the petitioner and on others and of the injury that the grant of the variance would impose on the public. ()

05. Recommendations. The staff's reasoned recommendations as to what disposition should be made of the petition. ()

144. OBJECTIONS TO PETITION.

Any person may file with the Department, within twenty-one (21) days after the filing of the petition, a written objection to the grant of the variance. A copy of such objection shall be provided by the Department to the petitioner. ()

145. AUTHORIZATION OF HEARING.

01. No Objection. If no objection is made by the staff or by any other person to the grant of the variance within twenty-one (21) days after the filing of the petition, the Department shall authorize a hearing unless it determines either: ()

a. That even if all the facts alleged in the petition are true, the petitioner is not entitled to variance; or ()

b. That the petitioner has shown from affidavits or other proof that compliance with the provision from which variance is sought would impose an arbitrary or unreasonable hardship. ()

02. No Hearing. If the Department decides not to hold a hearing, it shall pass upon the petition and shall prepare an opinion stating its reasons both for the grant or denial of the petition and for its decision not to hold a hearing. ()

03. Early Hearing. The Department may authorize a hearing without waiting for the expiration of the twenty-one (21) days during which objections may be filed; provided that if a hearing is not held the Department shall not rule upon the petition until the twenty-one (21) days have elapsed. ()

146. NOTICE OF HEARING.

The Hearing Officer, after appropriate consultation with the parties, shall set a time and place for hearing and give notice to the petitioner, the EPA, and anyone who has filed an objection to the petition at least twenty-one (21) days prior to the date of the hearing. The hearing shall be set for a date no later than sixty (60) days after the filing of the petition. Any request by the petitioner for a continuance shall constitute a waiver of the right to a decision within ninety (90) days for the period of the continuance. ()

147. DECISION.

The Department shall render a final decision upon the petition within ninety (90) days after the filing of the petition, except that time included in a continuance granted at the request of the petitioner shall not be counted. When exigencies of time require, the Department may delay the filing of an opinion until not more than thirty (30) days after the filing of its final order. ()

148. PROOF OF HARDSHIP.

No variance shall be granted, with or without hearing, without adequate proof by the petitioner that compliance would impose an arbitrary or unreasonable hardship. ()

149. VARIANCE FROM NEW RULE.

If any person files a petition for variance from a rule within twenty (20) days after the original effective date of such a rule, the operation of such rule shall be stayed as to such person, pending the disposition of the petition. The Department may hold a hearing upon said petition within five (5) days from the notice of such hearing, but in all other respects, the rules in Sections 140 through 149 shall apply to the extent they are consistent with the hearing date set by the hearing officer. ()

150. -- 154. (RESERVED)

155. CIRCUMVENTION.

No person shall willfully cause or permit the installation or use of any device or use of any means that conceals emissions of pollutants that would otherwise violate the provisions of this chapter without resulting in a reduction in the total amount of emissions. ()

156. TOTAL COMPLIANCE.

Where more than one (1) section of these rules applies to a particular situation, all such rules must be met for total compliance, unless otherwise provided for in these rules. ()

157. TEST METHODS AND PROCEDURES.

The purpose of this Section is to establish procedures and requirements for test methods and results. Unless otherwise specified in these rules, permit, order, consent decree, or prior written approval by the Department: ()

01. General Requirements. If a source test is performed to satisfy a performance test requirement or a compliance test requirement imposed by state or federal regulation, rule, permit, order or consent decree, then the test methods and procedures shall be conducted in accordance with the requirements of Section 157. ()

a. Prior to conducting any emission test, owners or operators are strongly encouraged to submit to the Department in writing, at least thirty (30) days in advance, the following for approval: ()

i. The type of method to be used; ()

ii. Any extenuating or unusual circumstances regarding the proposed test; and ()

- iii. The proposed schedule for conducting and reporting the test. ()
- b. Without prior Department approval, any alternative testing is conducted solely at the owner's or operator's risk. If the owner or operator fails to obtain prior written approval by the Department for any testing deviations, the Department may determine the test does not satisfy the testing requirements. ()
- 02. Test Requirements.** Tests shall be conducted in accordance with the following requirements. ()
- a. The test must be conducted under operational conditions specified in the applicable state or federal regulation, rule, permit, order, consent decree or by Department approval. If the operational requirements are not specified, the source should test at worst-case normal operating conditions. Worst-case normal conditions are those conditions of fuel type, and moisture, process material makeup and moisture and process procedures which are changeable or which could reasonably be expected to be encountered during the operation of the facility and which would result in the highest pollutant emissions from the facility. ()
- b. The Department may impose operational limitations or require additional testing in a permit, order or consent decree if the test is conducted under conditions other than worst-case normal. ()
- c. The Department will accept the methods approved for the applicable pollutants, source type and operating conditions found in 40 CFR Parts 51, 60, 61, and 63 in determining the appropriate test method for an emission limit where one is not otherwise specified. ()
- d. The following requirements apply to owners or operators requesting minor changes in the test method. As stated in Subsection 157.01 above, without prior Department approval, other changes may result in rejection of the test results by the Department. ()
- i. For federal emission standards codified at 40 CFR Parts 60, 61, and 63, the Department will accept those minor changes which have received written approval of the U.S. EPA Administrator so long as the Department determines they are appropriate for the specific application. ()
- ii. For all other emission standards in these rules or for permit requirements, the Department will accept those minor changes that the Department determines are appropriate for the specific application. ()
- e. An owner or operator proposing to use an alternative test method not considered a minor change in Subsection 157.02.d. above, must: ()
- i. Demonstrate to the Department by comparative testing or sufficient analysis, that the alternative method is comparable and equivalent to the designated test method. ()
- ii. Submit the request for approval to use an alternative test method to the Department at least thirty (30) days in advance of a scheduled test. ()
- iii. Obtain, and submit to the Department, EPA approval for use of the alternative test method for emission standards in these rules (except for state only toxic air pollutant standards) or for federal emission standards codified at 40 CFR Parts 60, 61, and 63. ()
- iv. Obtain verification that any prior approval of an alternative test method by the Department continues to be acceptable. Alternative methods may cease to be acceptable if new or different information indicates that the alternative test method is less accurate, less reliable, or not comparable with any current state or federal regulation, rule order, permit, or consent decree. ()
- f. Prior approval by the Department may not constitute Department approval for subsequent tests if new or different information indicates that a previously Department approved test method is less accurate, less reliable or not comparable with any current state or federal regulation, rule, order, permit or consent decree. ()

03. Observation of Tests by Department Staff. The owner or operator shall provide notice of intent to test to the Department at least fifteen (15) days prior to the scheduled test, or shorter time period as provided in a permit, order, consent decree or by Department approval. The Department may, at its option, have an observer present at any emissions tests conducted on a source. ()

04. Reporting Requirements. If the source test is performed to satisfy a performance test requirement imposed by state or federal regulation, rule, permit, order, or consent decree, a written report shall be submitted to the Department within sixty (60) days of the completion of the test. The written report shall: ()

a. Meet the format and content requirements specified by the Department in any applicable rule, regulation, guidance, permit, order, or consent decree. Any deviations from the format and contents specified require prior written approval from the Department. Failure to obtain such approval may result in the rejection of the test results. ()

b. Include all data required to be noted or recorded in any referenced test method. ()

05. Test Results Review Criteria. The Department will make every effort to review test results within a reasonable time. The Department may reject tests as invalid for: ()

a. Failure to adhere to the approved/required method; ()

b. Using a method inappropriate for the source type or operating conditions; ()

c. An incomplete written report; ()

d. Computational or data entry errors; ()

e. Clearly unreasonable results; ()

f. Failure to comply with the certification requirements of Section 123 of these rules; or ()

g. Failure of the source to conform to operational requirements in orders, permits, or consent decrees at the time of the test. ()

158. -- 159. (RESERVED)

160. PROVISIONS GOVERNING SPECIFIC ACTIVITIES AND CONDITIONS.
Sections 160 through 164 establish provisions governing specific activities and conditions. Test methods and procedures shall comply with Section 157. ()

161. TOXIC SUBSTANCES.
Any contaminant which is by its nature toxic to human or animal life or vegetation shall not be emitted in such quantities or concentrations as to alone, or in combination with other contaminants, injure or unreasonably affect human or animal life or vegetation. ()

162. MODIFYING PHYSICAL CONDITIONS.
When physical conditions such as tall adjacent buildings, valley and mountain terrain, etc., are such as to limit the normal dispersion of air pollutants, the Board may set more restrictive emission limitations on those sources affected by the unusual conditions when air quality standards would reasonably be expected to be exceeded. ()

163. SOURCE DENSITY.
Should areas develop where each individual source is meeting the requirements of this chapter, yet the ambient air quality standards are being exceeded or might reasonably be expected to be exceeded, the Board may set more restrictive emission limits than are contained in this chapter. ()

164. POLYCHLORINATED BIPHENYLS (PCBS).

01. Prohibition on Burning. Burning any material containing greater than five (5) parts per million of polychlorinated biphenyls (PCBs) is prohibited, except for incineration for the purpose of disposal. Incineration for disposal shall comply with the following provisions: ()

a. No person shall commence construction or modification of a PCB incinerator without a permit issued according to Sections 200 through 225. ()

b. The Department must provide opportunity for public comments prior to a final decision for a permit to construct or modify a new PCB incinerator. ()

c. A permit issued according to Sections 200 through 225 for construction or modification of a PCB incinerator shall require, as a minimum, best available control technology and monitoring instrumentation. ()

d. No permit to operate, construct or modify a PCB incinerator shall be processed or issued prior to March 16, 1987, or such earlier date as shall be determined by the State Board of Environmental Quality. ()

02. Prohibition on Sales. No person shall sell, distribute or provide any materials containing greater than five (5) parts per million PCBs for home or commercial heating equipment. ()

165. -- 174. (RESERVED)

175. PROCEDURES AND REQUIREMENTS FOR PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.

The purpose of Sections 176 through 181 is to establish uniform procedures to obtain a Facility Emissions Cap (FEC) for stationary sources or facilities (hereinafter referred to as facility or facilities). A permit establishing a FEC will be issued pursuant to Sections 200 through 228 or Sections 400 through 410. ()

176. FACILITY EMISSIONS CAP.

01. Optional Facility Emissions Cap. An owner or operator of a facility may request a FEC to establish an enforceable facility-wide emission limitation. ()

02. Applicability. ()

a. The owner or operator of any facility, which is not a major facility as defined in Sections 204 or 205, may apply to the Department for a permit to establish a FEC. ()

b. FECs are available for new and existing facilities that are not major as defined in Section 204 or 205 or existing facilities undergoing a modification that does not make the facility a major facility as defined in Section 204 or 205. ()

c. Facilities that become major facilities as defined in Section 204 or 205 are no longer eligible for a FEC under Section 176. ()

03. Definitions. For the purposes of Sections 175 through 181, the following terms shall be defined as below. ()

a. Baseline actual emissions. As defined in Section 007. ()

b. Design concentration. The ambient concentration used in establishing the FEC. ()

c. Facility emissions cap (FEC). A facility-wide emission limitation expressed in tons per year, for any criteria pollutant or hazardous air pollutant established in accordance with Sections 176 through 181. A FEC is calculated using baseline actual emissions plus an operational variability component and a growth component. A FEC, which is defined in tons per year on a twelve (12) month rolling basis, must be set below major facility thresholds as defined in Sections 204 and 205. ()

- d. FEC pollutant. The pollutant for which a FEC is established. ()
- e. Growth component. The level of emissions requested by the applicant and approved by the Department to allow for potential future business growth or facility changes that may increase emissions above baseline actual emissions plus the operational variability component. ()
- f. Operational variability component. The level of emissions up to the significant emission rate (SER) minus one (1) ton per year but no more than the facility's potential to emit (PTE). If the proposed FEC pollutant does not have a SER listed in Section 006 or has a SER less than or equal to ten (10) tons per year, the operational variability component is the level of emissions requested by the applicant and approved by the Department. The operational variability component cannot be more than the facility's PTE. ()

177. APPLICATION PROCEDURES.

In addition to the information required pursuant to Sections 202 or 402, whichever is applicable, applications requesting a FEC must include the information required under Sections 176 through 181 and Subsections 177.01 through 177.03. ()

01. Estimates of Emissions. A proposed FEC for each pollutant requested by the facility, including the basis for calculating the FEC. ()

02. Estimates of Ambient Concentrations. ()

a. Estimates of ambient concentrations will be determined as described in Subsection 202.02. ()

b. Estimates of ambient concentrations may include projections of alternative future changes within the proposed FEC. ()

c. For a new, existing, or modified facility, a demonstration that for each FEC pollutant, the FEC will not cause or significantly contribute to a violation of any ambient air quality standard. ()

d. For renewal of terms and conditions establishing a FEC, it is presumed that the previous permitting analysis is satisfactory, unless the Department determines otherwise. ()

03. Monitoring and Recordkeeping. The application must include proposed means for the facility to determine facility emissions on a rolling twelve (12) month consecutive basis. ()

178. STANDARD CONTENTS OF PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.

In addition to the elements required by Sections 203 and 211 or Sections 403 and 405, whichever is applicable, the Department shall have the authority to impose, implement and enforce the terms in Subsections 178.01 through 178.05 and conditions establishing a FEC. ()

01. Emission Limitations and Standards. All permits establishing use of a FEC shall contain annual facility wide emissions limitations for each FEC pollutant. ()

02. Monitoring. All permits establishing a FEC shall contain sufficient monitoring to ensure compliance with the FEC on a rolling twelve (12) month consecutive basis. ()

03. Recordkeeping. All permits establishing a FEC shall include the following: ()

a. Sufficient recordkeeping to assure compliance with the FEC. ()

b. Retention of required monitoring records and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report or application. Supporting information includes, but is not limited to, calibration and maintenance records and original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit. ()

- 04. Reporting.** All permits establishing a FEC shall include the following: ()
- a.** Sufficient reporting to assure compliance with the permit establishing the FEC. ()
 - b.** Submittal of an annual report each year on or before the anniversary date of permit issuance. All required reports must be certified in accordance with Section 123. ()
- 05. Duration.** Each permit establishing a FEC shall state that the terms and conditions establishing the FEC are effective for a fixed term of five (5) years. ()

179. PROCEDURES FOR ISSUING PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.

01. General Procedures. Procedures for issuing permits establishing a FEC will follow Sections 209 or 404, whichever is applicable. ()

02. Renewal. The renewal of the terms and conditions establishing a FEC are subject to the same procedural requirements for issuing permits (Subsection 179.01) and Subsections 179.02.a. through 179.02.d.: ()

a. The permittee shall submit a complete application to the Department for a renewal of the terms and conditions establishing the FEC at least six (6) months before, but no earlier than eighteen (18) months before, the expiration date of the existing permit. To ensure that the term of the permit does not expire before the terms and conditions are renewed, the permittee is encouraged to submit the application nine (9) months prior to expiration. ()

b. If a timely and complete application for a renewal of the terms and conditions establishing the FEC is submitted, but the Department fails to issue or deny the renewal permit before the end of the term of the previous permit, then all the terms and conditions of the previous permit shall remain in effect until the renewal permit has been issued or denied. ()

c. Expiration of the terms and conditions establishing a FEC may be grounds to terminate the facility's right to operate pursuant to Sections 176 through 181, unless a timely and complete renewal application has been submitted. ()

d. On renewal, the Department may adjust a FEC with an unused growth component in accordance with the Idaho Environmental Protection and Health Act, Chapter 1, Title 39, Idaho Code, and these rules. ()

03. Reopening the FEC. The Department may reopen a FEC to: ()

a. Reduce the FEC to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the issuance of the permit establishing the FEC. ()

b. Reduce the FEC consistent with any other requirement that is enforceable as a practical matter, and that the state may impose on the facility under the Idaho Environmental Protection and Health Act, Chapter 1, Title 39, Idaho Code, and these rules. ()

04. FEC Termination. The Director may approve a revision of a permit establishing a FEC to terminate the FEC, provided the permittee complies with Subsections 209.04 or 404.04, as applicable, and Subsections 179.04.a. through 179.04.c.: ()

a. The permittee may request a revision of the permit establishing the FEC to terminate the FEC at anytime prior to the expiration of the permit. The permittee is encouraged to submit an application for a permit to construct or Tier I operating permit, as applicable, six (6) months prior to the time the permittee wishes to terminate the FEC. ()

b. The FEC established in the permit shall remain in effect until the Department issues a new permit to construct or Tier I operating permit, as applicable. ()

c. Nothing in Section 179 prohibits a permittee from requesting a permit revision to terminate the FEC during the permit renewal process. ()

180. REVISIONS TO PERMITS ESTABLISHING A FACILITY EMISSIONS CAP.

Section 180 requires revisions to terms and conditions establishing a FEC. The permittee is exempt from Sections 200 through 228 unless the permittee chooses to use those rules to process any change to the permit, except as provided in Subsection 180.02. ()

01. Criteria. A permit revision is required for the following: ()

a. A change to existing monitoring, reporting or recordkeeping requirements in the permit establishing the FEC; ()

b. A change to the FEC; or ()

c. A change to the facility that would impose new requirements not included in the permit establishing the FEC. ()

02. Permit Revision Application Procedures. A permittee may initiate a permit revision by submitting a permit revision application to the Department or by complying with other applicable sections (Sections 200 or 400). For revision of terms and conditions establishing the FEC, it is presumed that the previous permitting analysis is satisfactory unless the Department determines otherwise. A permit revision application shall: ()

a. Meet the standard application requirements of Section 177; ()

b. Describe the proposed permit revision; ()

c. Describe and quantify the change in emissions above the FEC permit limit; and ()

d. Identify new requirements resulting from the change. ()

03. Permit Revisions. The Department will process permit revisions pursuant to Section 209 or Section 404. ()

181. NOTICE AND RECORD-KEEPING OF ESTIMATES OF AMBIENT CONCENTRATIONS.

Section 181 authorizes facility changes that comply with the terms and conditions establishing the FEC, but that are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC. No permit revision shall be required for facility changes implemented in accordance with Section 181. ()

01. Notice. For facility changes that comply with the terms and conditions establishing the FEC, but are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall review the estimate of ambient concentration analysis. ()

a. In the event that the facility change would result in a significant contribution above the design concentration determined by the estimate of ambient concentration analysis approved for the permit establishing the FEC, but does not cause or significantly contribute to a violation to any ambient air quality standard, the permittee shall provide notice to the Department in accordance with Subsection 181.01.b. ()

b. Notice procedures. The permittee may make a facility change under Section 181 if the permittee provides written notification to the Department so that the notification is received at least seven (7) days in advance of the proposed change or, in the event of an emergency, the permittee provides the notification so that it is received at least twenty-four (24) hours in advance of the proposed change. For each such change, the written notification shall: ()

i. Describe the proposed change; ()

- ii. Describe and quantify expected emissions; and ()
- iii. Provide the estimated ambient concentration analysis. ()

02. Recordkeeping. For facility changes that comply with the terms and conditions establishing the FEC, but are not included in the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall review the estimate of ambient concentration analysis. In the event the facility change would not result in a significant contribution above the design concentration determined by the estimate of ambient concentration analysis approved for the permit establishing the FEC, the permittee shall record and maintain documentation on-site of the review. ()

03. Estimates of Ambient Concentrations. Estimates of ambient concentrations shall be determined during the term of this permit using the same model and model parameters as used with the estimate of ambient concentration analysis approved for the permit establishing the FEC. The permittee shall include any changes to the facility that are not included in the originally approved estimate of ambient concentration analysis. ()

182. -- 199. (RESERVED)

200. PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT.

The purposes of Sections 200 through 228 is to establish uniform procedures and requirements for the issuance of "Permits to Construct." As used throughout Sections 200 through 228 and 578 through 581, major facility shall be defined as major stationary source in 40 CFR 52.21(b) and 40 CFR 51.165, incorporated by reference into these rules at Section 107, and major modification shall be defined as in 40 CFR 52.21(b) and 40 CFR 51.165, incorporated by reference into these rules at Section 107. These CFR sections have been codified in the electronic CFR which is available at www.ecfr.gov. ()

201. PERMIT TO CONSTRUCT REQUIRED.

No owner or operator may commence construction or modification of any stationary source, facility, major facility, or major modification without first obtaining a permit to construct from the Department which satisfies the requirements of Sections 200 through 228 unless the source is exempted in any of Sections 220 through 223, or the owner or operator complies with Section 213 and obtains the required permit to construct, or the owner or operator complies with Sections 175 through 181, or the source operates in accordance with all of the applicable provisions of a permit by rule. ()

202. APPLICATION PROCEDURES.

Application for a permit to construct must be made using forms furnished by the Department, or by other means prescribed by the Department. The application shall be certified by the responsible official in accordance with Section 123 and shall be accompanied by all information necessary to perform any analysis or make any determination required under Sections 200 through 228. ()

01. Required Information. Depending upon the proposed size and location of the new or modified stationary source or facility, the application for a permit to construct shall include all of the information required by one or more of the following provisions: ()

- a.** For any new or modified stationary source or facility: ()
 - i. Site information, plans, descriptions, specifications, and drawings showing the design of the stationary source, facility, or modification, the nature and amount of emissions (including secondary emissions), and the manner in which it will be operated and controlled. ()
 - ii. A schedule for construction of the stationary source, facility, or modification. ()
- b.** For any new major facility or major modification in a nonattainment area which would be major for the nonattainment regulated air pollutant(s): ()
 - i. A description of the system of continuous emission control proposed for the new major facility or ()

major modification, emission estimates, and other information as necessary to determine that the lowest achievable emission rate would be applied. ()

ii. A description of the emission offsets proposed for the new major facility or major modification, including information on the stationary sources, mobile sources, or facilities providing the offsets, emission estimates, and other information necessary to determine that a net air quality benefit would result. ()

iii. Certification that all other facilities in Idaho, owned or operated by (or under common ownership of) the proposed new major facility or major modification, are in compliance with all local, state or federal requirements or are on a schedule for compliance with such. ()

iv. An analysis of alternative sites, sizes, production processes, and environmental control techniques which demonstrates that the benefits of the proposed major facility or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. ()

v. An analysis of the impairment to visibility of any federal Class I area, Class I area designated by the Department, or integral vista of any mandatory federal Class I area that the new major facility or major modification would impact (including the monitoring of visibility in any Class I area near the new major facility or major modification, if requested by the Department). ()

c. For any new major facility or major modification in an attainment or unclassifiable area for any regulated air pollutant. ()

i. A description of the system of continuous emission control proposed for the new major facility or major modification, emission estimates, and other information as necessary to determine that the best available control technology would be applied. ()

ii. An analysis of the effect on air quality by the new major facility or major modification, including meteorological and topographical data necessary to estimate such effects. ()

iii. An analysis of the effect on air quality projected for the area as a result of general commercial, residential, industrial, and other growth associated with the new major facility or major modification. ()

iv. A description of the nature, extent, and air quality effects of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the new major facility or major modification would affect. ()

v. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the new major facility or major modification and general commercial, residential, industrial, and other growth associated with establishment of the new major facility or major modification. The owner or operator need not provide an analysis of the impact on vegetation or soils having no significant commercial or recreational value. ()

vi. An analysis of the impairment to visibility of any federal Class I area, Class I area designated by the Department, or integral vista of any mandatory federal Class I area that the new major facility or major modification would affect. ()

vii. An analysis of the existing ambient air quality in the area that the new major facility or major modification would affect for each regulated air pollutant that a new major facility would emit in significant amounts or for which a major modification would result in a significant net emissions increase. ()

viii. Ambient analyses as specified in Subsections 202.01c.vii., 202.01c.ix., 202.01c.x., and 202.01c.xii., may not be required if the projected increases in ambient concentrations or existing ambient concentrations of a particular regulated air pollutant in any area that the new major facility or major modification would affect are less than the amounts listed under 40 CFR 52.21(i)(5)(i), or the regulated air pollutant is not listed therein. ()

ix. For any regulated air pollutant which has an ambient air quality standard, the analysis shall include

continuous air monitoring data, gathered over the year preceding the submittal of the application, unless the Department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year, but not less than four (4) months, which is adequate for determining whether the emissions of that regulated air pollutant would cause or contribute to a violation of the ambient air quality standard or any prevention of significant deterioration (PSD) increment. ()

x. For any regulated air pollutant which does not have an ambient air quality standard, the analysis shall contain such air quality monitoring data that the Department determines is necessary to assess ambient air quality for that air pollutant in any area that the emissions of that air pollutant would affect. ()

xi. If requested by the Department, monitoring of visibility in any Class I area the proposed new major facility or major modification would affect. ()

xii. Operation of monitoring stations shall meet the requirements of Appendix B to 40 CFR Part 58 or such other requirements as extensive as those set forth in Appendix B as may be approved by the Department. ()

02. Estimates of Ambient Concentrations. All estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR 51, Appendix W (Guideline on Air Quality Models). ()

a. Where an air quality model specified in the "Guideline on Air Quality Models," is inappropriate, the model may be modified or another model substituted, subject to written approval of the Administrator of the U.S. Environmental Protection Agency and public comment pursuant to Subsection 209.01.c.; provided that modifications and substitutions of models used for toxic air pollutants will be reviewed by the Department. ()

b. Methods like those outlined in the U.S. Environmental Protection Agency's "Interim Procedures for Evaluating Air Quality Models (Revised)" (September 1984) should be used to determine the comparability of air quality models. ()

03. Additional Information. Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections 200 through 225 shall be furnished upon request. ()

203. PERMIT REQUIREMENTS FOR NEW AND MODIFIED STATIONARY SOURCES.
No permit to construct shall be granted for a new or modified stationary source unless the applicant shows to the satisfaction of the Department all of the following: ()

01. Emission Standards. The stationary source or modification would comply with all applicable local, state or federal emission standards. ()

02. NAAQS. The stationary source or modification would not cause or significantly contribute to a violation of any ambient air quality standard. ()

03. Toxic Air Pollutants. Using the methods provided in Section 210, the emissions of toxic air pollutants from the stationary source or modification would not injure or unreasonably affect human or animal life or vegetation as required by Section 161. Compliance with all applicable toxic air pollutant carcinogenic increments and toxic air pollutant non-carcinogenic increments will also demonstrate preconstruction compliance with Section 161 with regards to the pollutants listed in Sections 585 and 586. ()

204. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN NONATTAINMENT AREAS.

New major facilities or major modifications proposed for location in a nonattainment area and which would be major for the nonattainment regulated air pollutant are considered nonattainment new source review (NSR) actions and are subject to the requirements in Section 204. Section 202 contains application requirements and Section 209 contains processing requirements for nonattainment NSR permitting actions. The intent of Section 204 is to incorporate the

federal nonattainment NSR rule requirements. ()

01. Incorporated Federal Program Requirements. Requirements contained in the following subparts of 40 CFR 51.165 are incorporated by reference into these rules at Section 107. Requirements contained in the following subparts of 40 CFR 52.21, are incorporated by reference at Section 107 of these rules. These CFR sections have been codified in the electronic CFR at www.ecfr.gov.

| 40 CFR Reference | 40 CFR Reference Title |
|--|-------------------------------|
| 40 CFR 51.165(a)(1) | Definitions |
| 40 CFR 51.165(a)(2)(ii) - 51.165(a)(3) | Applicability Provisions |
| 40 CFR 51.165(a)(6)(i) - (v) | Applicability Provisions |
| 40 CFR 52.21(aa) | Actual PALs |

()

02. Additional Requirements. The applicant must demonstrate to the satisfaction of the Department the following: ()

a. LAER. Except as otherwise provided in Section 204, the new major facility or major modification would be operated at the lowest achievable emission rate (LAER) for the nonattainment regulated air pollutant, specifically: ()

i. A new major facility would meet the lowest achievable emission rate at each new emissions unit which emits the nonattainment regulated air pollutant; and ()

ii. A major modification would meet the lowest achievable emission rate at each new or modified emissions unit which has a net emissions increase of the nonattainment regulated air pollutant. ()

b. Required offsets. Allowable emissions from the new major facility or major modification are offset by reductions in actual emissions from stationary sources, facilities, and/or mobile sources in the nonattainment area so as to represent reasonable further progress. All offsetting emission reductions must satisfy the requirements for emission reduction credits (Section 460) and provide for a net air quality benefit which satisfies the requirements of Section 208. If the offsets are provided by other stationary sources or facilities, a permit to construct shall not be issued for the new major facility or major modification until the offsetting reductions are made enforceable through the issuance of operating permits. The new major facility or major modification may not commence operation, and an operating permit for the new major facility or major modification shall not be effective before the date the offsetting reductions are achieved. ()

c. Compliance status. All other sources in the State owned or operated by the applicant, or by any entity controlling, controlled by or under common control with such person, are in compliance with all applicable emission limitations and standards or subject to an enforceable compliance schedule. ()

d. Effect on visibility. The effect on visibility of any federal Class I area, Class I area designated by the Department, or integral vista of a mandatory Class I Federal Area, by the new major facility or major modification, is consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR 51.300(a). The Department may take into account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance and the useful life of the source. Any integral vista which the Federal Land Manager has not identified at least six (6) months prior to the submittal of a complete application, or which the Department determines was not identified in accordance with the criteria adopted pursuant to 40 CFR 51.304(a), may be exempted from Section 204 by the Department. ()

03. Nonmajor Requirements. If the proposed action meets the requirements of an exemption or exclusion under the provisions of 40 CFR 51.165 or 40 CFR 52.21 incorporated in Section 204, the nonmajor facility or stationary source permitting requirements of Sections 200 through 228 apply, including the exemptions in Sections

220 through 223. ()

205. PERMIT REQUIREMENTS FOR NEW MAJOR FACILITIES OR MAJOR MODIFICATIONS IN ATTAINMENT OR UNCLASSIFIABLE AREAS.

The prevention of significant deterioration (PSD) program is a construction permitting program for new major facilities and major modifications to existing major facilities located in areas in attainment or in areas that are unclassifiable for any criteria air pollutant. Section 202 contains application requirements and Section 209 contains processing requirements for PSD permit actions. The intent of Section 205 is to incorporate the federal PSD rule requirements. ()

01. Incorporated Federal Program Requirements. Requirements contained in the following subparts of 40 CFR 52.21 are incorporated by reference into these rules at Section 107. These CFR sections have been codified in the electronic CFR which is available at www.ecfr.gov.

| 40 CFR Reference | 40 CFR Reference Title |
|-------------------------|---|
| 40 CFR 52.21(a)(2) | Applicability Procedures |
| 40 CFR 52.21(b) | Definitions |
| 40 CFR 52.21(i) | Review of Major Stationary Sources and Major Modifications - Source Applicability and Exempting |
| 40 CFR 52.21(j) | Control Technology Review |
| 40 CFR 52.21(k) | Source Impact Analysis |
| 40 CFR 52.21(r) | Source Obligation |
| 40 CFR 52.21(v) | Innovative Control Technology |
| 40 CFR 52.21(w) | Permit Rescission |
| 40 CFR 52.21(aa) | Actual PALS |

()

02. Effect on Visibility. The applicant must demonstrate that the effect on visibility of any federal Class I area, Class I area designated by the Department, or integral vista of a mandatory Class I Federal Area, by the new major facility or major modification, is consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR 51.300(a). The Department may take into account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance and the useful life of the source. Any integral vista which the Federal Land Manager has not identified at least six (6) months prior to the submittal of a complete application, or which the Department determines was not identified in accordance with the criteria adopted pursuant to 40 CFR 51.304(a), may be exempted from this requirement by the Department. ()

03. Exception to Incorporation by Reference of 40 CFR 52.21. Every use of the word Administrator in 40 CFR 52.21 means the Department except for the following: ()

a. In 40 CFR 52.21(b)(17), the definition of federally enforceable, Administrator means the EPA Administrator. ()

b. In 40 CFR 52.21(l)(2), air quality models, Administrator means the EPA Administrator. ()

c. In 40 CFR 52.21(b)(43), permit program approved by the Administrator, Administrator means the EPA Administrator. ()

d. In 40 CFR 52.21(b)(48)(ii)(c), MACT standard that is proposed or promulgated by the Administrator, Administrator means the EPA Administrator. ()

e. In 40 CFR 52.21(b)(50)(i), regulated NSR pollutant as defined by Administrator, Administrator means the EPA Administrator. ()

04. Nonmajor Requirements. If the proposed action meets the requirements of an exemption or exclusion under the provisions of 40 CFR 52.21 incorporated in Section 205, the nonmajor facility or stationary source permitting requirements of Sections 200 through 228 apply, including the exemptions in Sections 220 through 223. ()

206. OPTIONAL OFFSETS FOR PERMITS TO CONSTRUCT.

The owner or operator of any proposed new or modified stationary source, new major facility, or major modification, which cannot meet the requirements of Subsections 202.01.c.vi., 203.02, 203.03, 204.02.d., 205.01 (40 CFR 52.21(k)), and 209.02.b.vi., may propose the use of an emission offset in order to meet those requirements and thereby obtain a permit to construct. Any proposed emission offset must satisfy the requirements for emission reduction credits, Section 460, and demonstrate, through appropriate dispersion modeling, that the offset will reduce ambient concentrations sufficiently to meet the requirements at all modeled receptors which could not otherwise have met the requirements. ()

207. REQUIREMENTS FOR EMISSION REDUCTION CREDIT.

In order to be credited in a permit to construct, any emission reduction credit must satisfy the requirements of Section 460. ()

208. DEMONSTRATION OF NET AIR QUALITY BENEFIT.

The demonstration of net air quality benefit shall: ()

01. VOCs. For trades involving volatile organic compounds, show that total emissions are reduced for the air basin in which the stationary source or facility is located; ()

02. Other Regulated Air Pollutants. For trades involving any other regulated air pollutant, show through appropriate dispersion modeling that the trade will not cause an increase in ambient concentrations at any modeled receptor; ()

03. Mobile Sources. For trades involving mobile sources, show a reduction in the ambient impact of emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for adverse ambient impact where the major facility or major modification would otherwise cause or significantly contribute to a violation of any national ambient air quality standard. ()

209. PROCEDURE FOR ISSUING PERMITS.

01. General Procedures. General procedures for permits to construct. ()

a. Within thirty (30) days after receipt of the application for a permit to construct, the Department shall determine whether the application is complete or whether more information must be submitted and shall notify the applicant of its findings in writing. ()

b. Within sixty (60) days after the application is determined to be complete the Department shall: ()

i. Upon written request of the applicant, provide a draft permit for applicant review. Agency action on the permit under this Section may be delayed if deemed necessary to respond to applicant comments. ()

ii. Notify the applicant in writing of the approval, conditional approval, or denial of the application if an opportunity for public comment is not required pursuant to Subsection 209.01.c. The Department shall set forth reasons for any denial; or ()

iii. Issue a proposed approval, proposed conditional approval, or proposed denial. ()

c. An opportunity for public comment will be provided on all applications requiring a permit to ()

construct. Public comment shall be provided on an application for any new major facility or major modification, any new facility or modification which would affect any Class I area, any application which uses fluid modeling or a field study to establish a good engineering practice stack height pursuant to Sections 510 through 516, any application which uses an interpollutant trade pursuant to Subsection 210.17, any application which the Director determines an opportunity for public comment should be provided, and any application upon which the applicant so requests. ()

i. The Department's proposed action, together with the information submitted by the applicant and the Department's analysis of the information, shall be made available to the public in at least one (1) location in the region in which the stationary source or facility is to be located. ()

ii. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located. ()

iii. A copy of such notice shall be sent to the applicant and to appropriate federal, state and local agencies. ()

iv. There shall be a thirty (30) day period after initial publication for comment on the Department's proposed action, such comment to be made in writing to the Department. ()

v. After consideration of comments and any additional information submitted during the comment period, and within forty-five (45) days after initial publication of the notice, or notice of public hearing if one is requested under Subsections 209.02.b.iv. or 209.02.a.ii., unless the Director deems that additional time is required to evaluate comments and information received, the Department shall notify the applicant in writing of approval, conditional approval, or denial of the permit. The Department shall set forth the reasons for any denial. ()

vi. All comments and additional information received during the comment period, together with the Department's final determination, shall be made available to the public at the same location as the preliminary determination. ()

d. A copy of each permit will be sent to the U.S. Environmental Protection Agency. ()

02. Additional Procedures for Specified Sources. ()

a. For any new major facility or major modification in an attainment or unclassifiable area for any regulated air pollutant. ()

i. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the degree of increment consumption that is expected from the new major facility or major modification; and ()

ii. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effects of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations. All requests for public hearings during a comment period with an opportunity for a hearing must be requested in writing by interested persons within fourteen (14) days of the publication of the legal notice of the proposed permit to construct or within fourteen (14) days prior to the end of the comment period, whichever is later. ()

b. For any new major facility or major modification which would affect a federal Class I area or an integral vista of a mandatory federal Class I area. ()

i. If the Department is notified of the intent to apply for a permit to construct, it shall notify the appropriate Federal Land Manager within thirty (30) days; ()

ii. A copy of the permit application and all relevant information, including an analysis of the anticipated effects on visibility in any federal Class I area, shall be sent to the Administrator of the U.S. Environmental Protection Agency and the Federal Land Manager within thirty (30) days of receipt of a complete

application and at least sixty (60) days prior to any public hearing on the application; ()

iii. Notice of every action related to the consideration of the permit shall be sent to the Administrator of the U.S. Environmental Protection Agency; ()

iv. The public notice issued pursuant to Subsection 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effect of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations. All requests for public hearings during a comment period with an opportunity for a hearing must be requested in writing by interested persons within fourteen (14) days of the publication of the legal notice of the proposed permit to construct or within fourteen (14) days prior to the end of the comment period, whichever is later. ()

v. The notice of public hearing, if required, shall explain any differences between the Department's preliminary determination and any visibility analysis performed by the Federal Land Manager and provided to the Department within thirty (30) days of the notification pursuant to Subsection 209.02.b.ii. ()

vi. Upon a sufficient showing by the Federal Land Manager that a proposed new major facility or major modification will have an adverse impact upon the air quality related values (including visibility) of any federal mandatory Class I area, the Director may deny the application notwithstanding the fact that the concentrations of regulated air pollutants would not exceed the maximum allowable increases for a Class I area. ()

03. Establishing a Good Engineering Stack Height. The Department will notify the public of the availability of any fluid model or field study used to establish a good engineering practice stack height and provide an opportunity for a public hearing before issuing a permit or setting an emission standard based thereon. ()

04. Revisions of Permits to Construct. The Director may approve a revision of any permit to construct provided the stationary source or facility continues to meet all applicable requirements of Sections 200 through 228. Revised permits will be issued pursuant to procedures for issuing permits (Section 209), except that the requirements of Subsections 209.01.c., 209.02.a., and 209.02.b., shall only apply if the permit revision results in an increase in emissions authorized by the permit or if deemed appropriate by the Director. ()

05. Permit to Construct Procedures for Tier I Sources. For Tier I sources that require a permit to construct, the owner or operator shall either: ()

a. Submit only the information required by Sections 200 through 219 for a permit to construct, in which case: ()

i. A permit to construct or denial will be issued in accordance with Subsections 209.01.a. and 209.01.b. ()

ii. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. ()

iii. The owner or operator may operate the source after permit to construct issuance so long as it does not violate any terms or conditions of the existing Tier I operating permit and complies with Subsection 380.02. ()

iv. Unless a different time is prescribed by these rules, the applicable requirements contained in a permit to construct will be incorporated into the Tier I operating permit during renewal (Section 369). Where an existing Tier I permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation. Tier I sources required to meet the requirements under Section 112(g) of the Clean Air Act (Section 214), or to have a permit under the preconstruction review program approved into the applicable implementation plan under Part C (Section 205) or Part D (Section 204) of Title I of the Clean Air Act, shall file a complete application to obtain a Tier I permit revision within twelve (12) months after commencing operation. ()

- v. The application or minor or significant permit modification request shall be processed in accordance with timelines: Section 361 and Subsections 367.02 through 367.05. ()
- vi. The final Tier I operating permit action shall incorporate the relevant terms and conditions from the permit to construct; or ()
- b.** Submit all information required by Sections 200 through 219 for a permit to construct and Sections 300 through 386 for a Tier I operating permit, or Tier I operating permit modification, in which case: ()
- i. Completeness of the application shall be determined within thirty (30) days. ()
- ii. The Department shall prepare a proposed permit to construct or denial in accordance with Sections 200 through 219 and a draft Tier I operating permit or Tier I operating permit modification in accordance with Sections 300 through 386 within sixty (60) days. ()
- iii. The Department shall provide for public comment and affected state review in accordance with Sections 209, 364 and 365 on the proposed permit to construct or denial and draft Tier I operating permit or Tier I operating permit modification. ()
- iv. Except as otherwise provided by these rules, the Department shall prepare and issue to the owner or operator a final permit to construct or denial within fifteen (15) days of the close of the public comment period. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. ()
- v. The final permit to construct will be sent to EPA, along with the proposed Tier I operating permit or modification. The proposed Tier I operating permit or modification shall be sent for review in accordance with Section 366. ()
- vi. The Tier I operating permit, or Tier I operating permit modification, will be issued in accordance with Section 367. The owner or operator may operate the source after permit to construct issuance so long as it does not violate any terms or conditions of the existing Tier I operating permit and complies with Subsection 380.02; or ()
- c.** Submit all information required by Sections 200 through 219 for a permit to construct and Sections 300 through 381 for a Tier I operating permit, or Tier I operating permit modification, in which case: ()
- i. Completeness of the application shall be determined within thirty (30) days. ()
- ii. The Department shall prepare a draft permit to construct or denial in accordance with Sections 200 through 219 and that also meets the requirements of Sections 300 through 381 within sixty (60) days. ()
- iii. The Department shall provide for public comment and affected state review in accordance with Sections 209, 364, and 365 on the draft permit to construct or denial. ()
- iv. The Department shall prepare and send a proposed permit to construct or denial to EPA for review in accordance with Section 366. EPA review of the proposed permit to construct or denial in accordance with Section 366 can occur concurrently with public comment and affected state review of the draft permit, as provided in Subsection 209.05.c.iii. above, except that if the draft permit or denial is revised in response to public comment or affected state review, the Department must send the revised proposed permit to construct or denial to EPA for review in accordance with Section 366. ()
- v. Except as otherwise provided by these rules, the Department shall prepare and issue to the owner or operator a final permit to construct or denial in accordance with Section 367. The owner or operator may construct the source after permit to construct issuance or in accordance with Subsection 213.02.c. ()
- vi. The permittee may, at any time after issuance, request that the permit to construct requirements be incorporated into the Tier I operating permit through an administrative amendment in accordance with Section 381.

The owner or operator may operate the source or modification upon submittal of the request for an administrative amendment. ()

06. Transfer of Permits to Construct. ()

a. Transfers by Revision. A permit to construct may be transferred to a new owner or operator in accordance with Subsection 209.04. ()

b. Automatic Transfers. Any permit to construct, with or without transfer prohibition language, may be automatically transferred if: ()

i. The current permittee notifies the Department at least thirty (30) days in advance of the proposed transfer date; ()

ii. The notice provides written documentation signed by the current and proposed permittees containing a date for transfer of permit responsibility, designation of the proposed permittee's responsible official, and certification that the proposed permittee has reviewed and intends to operate in accordance with the permit terms and conditions; and ()

iii. The Department does not notify the current permittee and the proposed permittee within thirty (30) days of receipt of the notice of the Department's determination that the permit must be revised pursuant to Subsection 209.04. If the Department does not issue such notice, the transfer is effective on the date provided in the notice described in Subsection 209.06.b.ii. ()

210. DEMONSTRATION OF PRECONSTRUCTION COMPLIANCE WITH TOXIC STANDARDS.

In accordance with Subsection 203.03, the applicant shall demonstrate preconstruction compliance with Section 161 to the satisfaction of the Department. The accuracy, completeness, execution and results of the demonstration are all subject to review and approval by the Department. ()

01. Identification of Toxic Air Pollutants. The applicant may use process knowledge, raw materials inputs, EPA and Department references and commonly available references approved by EPA or the Department to identify the toxic air pollutants emitted by the stationary source or modification. ()

02. Quantification of Emission Rates. ()

a. The applicant may use standard scientific and engineering principles and practices to estimate the emission rate of any toxic air pollutant at the point(s) of emission. ()

i. Screening engineering analyses use unrefined conservative data. ()

ii. Refined engineering analyses utilize refined and less conservative data including, but not limited to, emission factors requiring detailed input and actual emissions testing at a comparable emissions unit using EPA or Department approved methods. ()

b. The uncontrolled emissions rate of a toxic air pollutant from a source or modification is calculated using the maximum capacity of the source or modification under its physical and operational design without the effect of any physical or operational limitations. ()

i. Examples of physical and operational design include but are not limited to: the amount of time equipment operates during batch operations and the quantity of raw materials utilized in a batch process. ()

ii. Examples of physical or operational limitations include but are not limited to: shortened hours of operation, use of control equipment, and restrictions on production which are less than design capacity. ()

c. The controlled emissions rate of a toxic air pollutant from a source or modification is calculated using the maximum capacity of the source or modification under its physical and operational design with the effect of any physical or operational limitation that has been specifically described in a written and certified submission to the ()

Department. ()

d. The T-RACT emissions rate of a toxic air pollutant from a source or modification is calculated using the maximum capacity of the source or modification under its physical and operational design with the effect of: ()

i. Any physical or operational limitation other than control equipment that has been specifically described in a written and certified submission to the Department; and ()

ii. An emission standard that is T-RACT. ()

03. Quantification of Ambient Concentrations. ()

a. The applicant may use the modeling methods provided in Subsection 202.02 to estimate the ambient concentrations at specified receptor sites for any toxic air pollutant emitted from the point(s) of emission. ()

b. The point of compliance is the receptor site that is estimated to have the highest ambient concentration of the toxic air pollutant of all the receptor sites that are located either at or beyond the facility property boundary or at a point of public access; provided that, if the toxic air pollutant is listed in Section 586, the receptor site is not considered to be at a point of public access if the receptor site is located on or within a road, highway or other transportation corridor transecting the facility. ()

c. The uncontrolled ambient concentration of the source or modification is estimated by modeling the uncontrolled emission rate. ()

d. The controlled ambient concentration of the source or modification is estimated by modeling the controlled emission rate. ()

e. The approved net ambient concentration from a modification for a toxic air pollutant at each receptor is calculated by subtracting the estimated decreases in ambient concentrations for all sources at the facility contributing an approved creditable decrease at the receptor site from the estimated ambient concentration from the modification at the receptor. ()

f. The approved offset ambient concentration from a source or modification for a toxic air pollutant at each receptor is calculated by subtracting the estimated decreases in ambient concentrations for all sources contributing an approved offset at the receptor from the estimated ambient concentration for the source or modification at the receptor. ()

g. The T-RACT ambient concentration of the source or modification is estimated by using refined modeling and the T-RACT emission rate. ()

h. The approved interpollutant ambient concentration from a source or modification for a toxic air pollutant at each receptor is calculated as follows: ()

i. Step 1: Calculate the estimated decrease in ambient concentrations for each toxic air pollutant from each source contributing an approved interpollutant trade at the receptor by multiplying the approved interpollutant ratio by the overall decrease in the ambient concentration of the toxic air pollutant at the receptor site. ()

ii. Step 2: Calculate the total estimated decrease at the receptor by summing all of the individual estimated decreases calculated in Subsection 210.03.h.i. for that receptor. ()

iii. Step 3: Calculate the approved interpollutant ambient concentration by subtracting the total estimated decrease at the receptor from the estimated ambient concentration for the source or modification at the receptor. ()

04. Preconstruction Compliance Demonstration. The applicant may use any of the Department

approved standard methods described in Subsections 210.05 through 210.08, and may use any applicable specialized method described in Subsections 210.09 through 210.12 to demonstrate preconstruction compliance for each identified toxic air pollutant. ()

05. Uncontrolled Emissions. ()

a. Compare the source's or modification's uncontrolled emissions rate for the toxic air pollutant to the applicable screening emission level listed in Sections 585 or 586. ()

b. If the source's or modification's uncontrolled emission rate is less than or equal to the applicable screening emission level, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. ()

06. Uncontrolled Ambient Concentration. ()

a. Compare the source's or modification's uncontrolled ambient concentration at the point of compliance for the toxic air pollutant to the applicable acceptable ambient concentration listed in Sections 585 or 586. ()

b. If the source's or modification's uncontrolled ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. ()

07. Controlled Emissions. ()

a. Compare the source's or modification's controlled emissions rate for the toxic air pollutant to the applicable screening emission level listed in Sections 585 or 586. ()

b. If the source's or modification's controlled emission rate is less than or equal to the applicable screening emission level, no further procedure for demonstrating preconstruction compliance is required for that toxic air pollutant as part of the application process. ()

08. Controlled Ambient Concentration. ()

a. Compare the source's or modification's controlled ambient concentration at the point of compliance for the toxic air pollutant to the applicable acceptable ambient concentration listed in Sections 585 or 586. ()

b. If the source's or modification's controlled ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. ()

c. The Department shall include an emission limit for the toxic air pollutant in the permit to construct that is equal to or, if requested by the applicant, less than the emission rate that was used in the modeling. ()

09. Net Emissions. ()

a. As provided in Section 007 (definition of net emissions increase) and Sections 460 and 461, the owner or operator may net emissions to demonstrate preconstruction compliance. ()

b. Compare the modification's approved net emissions increase (expressed as an emission rate) for the toxic air pollutant to the applicable screening emission level listed in Sections 585 or 586. ()

c. If the modification's approved net emissions increase is less than or equal to the applicable screening emission level, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. ()

d. The Department shall include emission limits and other permit terms for the toxic air pollutant in

the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. ()

10. Net Ambient Concentration. ()

a. As provided in Section 007 (definition of net emission increase) and Sections 460 and 461, the owner or operator may net ambient concentrations to demonstrate preconstruction compliance. ()

b. Compare the modification's approved net ambient concentration at the point of compliance for the toxic air pollutant to the applicable acceptable ambient concentration listed in Sections 585 or 586. ()

c. If the modification's approved net ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. ()

d. The Department shall include emission limits and other permit terms for the toxic air pollutant in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. ()

11. Toxic Air Pollutant Offset Ambient Concentration. ()

a. As provided in Sections 206 and 460, the owner or operator may use offsets to demonstrate preconstruction compliance. ()

b. Compare the source's or modification's approved offset ambient concentration at the point of compliance for the toxic air pollutant to the applicable acceptable ambient concentration listed in Sections 585 or 586. ()

c. If the source's or modification's approved offset ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. ()

d. The Department shall include emission limits and other permit terms for the toxic air pollutant in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. ()

12. T-RACT Ambient Concentration for Carcinogens. ()

a. As provided in Subsections 210.12 and 210.13, the owner or operator may use T-RACT to demonstrate preconstruction compliance for toxic air pollutants listed in Section 586. ()

i. This method may be used in conjunction with netting (Subsection 210.09), and offsets (Subsection 210.11). ()

ii. This method is not to be used to demonstrate preconstruction compliance for toxic air pollutants listed in Section 585. ()

b. Compare the source's or modification's approved T-RACT ambient concentration at the point of compliance for the toxic air pollutant to the amount of the toxic air pollutant that would contribute an ambient air cancer risk probability of less than one to one hundred thousand (1:100,000) (which amount is equivalent to ten (10) times the applicable acceptable ambient concentration listed in Section 586). ()

c. If the source's or modification's approved T-RACT ambient concentration at the point of compliance is less than or equal to the amount of the toxic air pollutant that would contribute an ambient air cancer risk probability of less than one to one hundred thousand (1:100,000), no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. ()

d. The Department shall include emission limits and other permit terms for the toxic air pollutant in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. ()

13. T-RACT Determination Processing. ()

a. The applicant may submit all information necessary to the demonstration at the time the applicant submits the complete initial application or the applicant may request the Department to review a complete initial application to determine if Subsection 210.12 may be applicable to the source or modification. ()

b. Notwithstanding Subsections 209.01.a. and 209.01.b., if the applicant requests the Department to review a complete initial application and Subsection 210.12 is determined to be applicable, the completeness determination for the initial application will be revoked until a supplemental application is submitted and determined complete. When the supplemental application is determined complete, the timeline for agency action shall be reinitiated. ()

14. T-RACT Determination. T-RACT shall be determined on a case-by-case basis by the Department as follows: ()

a. The applicant shall submit information to the Department identifying and documenting which control technologies or other requirements the applicant believes to be T-RACT. ()

b. The Department shall review the information submitted by the applicant and determine whether the applicant has proposed T-RACT. ()

c. The technological feasibility of a control technology or other requirements for a particular source shall be determined considering several factors including, but not limited to: ()

i. Process and operating procedures, raw materials and physical plant layout. ()

ii. The environmental impacts caused by the control technology that cannot be mitigated, including, but not limited to, water pollution and the production of solid wastes. ()

iii. The energy requirements of the control technology. ()

d. The economic feasibility of a control technology or other requirement, including the costs of necessary mitigation measures, for a particular source shall be determined considering several factors including, but not limited to: ()

i. Capital costs. ()

ii. Cost effectiveness, which is the annualized cost of the control technology divided by the amount of emission reduction. ()

iii. The difference in costs between the particular source and other similar sources, if any, that have implemented emissions reductions. ()

e. If the Department determines that the applicant has proposed T-RACT, the Department shall determine which of the options, or combination of options, will result in the lowest emission of toxic air pollutants, develop the emission standards constituting T-RACT and incorporate the emission standards into the permit to construct. ()

f. If the Department determines that the applicant has not proposed T-RACT, the Department shall disapprove the submittal. If the submittal is disapproved, the applicant may supplement its submittal or demonstrate preconstruction compliance through a different method provided in Section 210. If the applicant does not supplement its submittal or demonstrate preconstruction compliance through a different method provided in Section 210, the Department shall deny the permit. ()

15. Short Term Source Factor. For short term sources, the applicant may utilize a short term adjustment factor of ten (10). For a carcinogen, multiply either the applicable acceptable ambient concentration (AACC) or the screening emission rate, but not both, by ten (10), to demonstrate preconstruction compliance. This method may be used for TAPs listed in Section 586 only and may be utilized in conjunction with standard methods for quantification of emission rates (Subsections 210.05 through 210.08). ()

16. Environmental Remediation Source. ()

a. For Remediation sources subject to or regulated by the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901-6992k) and the "Idaho Rules and Standards for Hazardous Waste," (IDAPA 58.01.05.000 et seq.) or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 6901-6992k) or a consent order, if the estimated ambient concentration at the point of impact is greater than the acceptable ambient impacts listed in Sections 585 and 586, Best Available Control Technology shall be applied and operated until the estimated uncontrolled emissions from the remediation source are below the acceptable ambient concentration. ()

b. For Remediation sources not subject to or regulated by the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901-6992k) and the "Idaho Rules and Standards for Hazardous Waste," (IDAPA 58.01.05.000 et seq.) or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 6901-6992k) or a consent order, shall, for the purposes of these rules, be considered the same as any other new or modified source of toxic air pollution. ()

c. For an environmental remediation source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product or petroleum substance, the Department may waive the requirements of Section 513 of these rules. ()

17. Interpollutant Trading Ambient Concentration. ()

a. As provided in Subsections 209.01.c., 210.17 through 210.19, the owner or operator may use interpollutant trading to demonstrate preconstruction compliance. This method may be used in conjunction with netting (Subsection 210.10), and offsets (Subsection 210.11) ()

b. Compare the source's or modification's approved interpollutant ambient concentration at the point of compliance for the toxic air pollutant emitted by the source or modification to the applicable acceptable ambient concentration listed in Sections 585 or 586. ()

c. If the source's or modification's approved interpollutant ambient concentration at the point of compliance is less than or equal to the applicable acceptable ambient concentration listed in Sections 585 or 586, no further procedures for demonstrating preconstruction compliance will be required for that toxic air pollutant as part of the application process. ()

d. The Department shall include emission limits for all of the toxic air pollutants involved in the trade in the permit to construct. The Department shall also include other permit terms in the permit to construct that assure that the facility will be operated in the manner described in the preconstruction compliance demonstration. ()

18. Interpollutant Trading Determination Processing. ()

a. The applicant may submit all information necessary to the demonstration at the time the applicant submits the complete initial application or the applicant may request the Department to review a complete initial application to determine if Subsection 210.17 may be applicable to the source or modification. ()

b. Notwithstanding Subsections 209.01.a. and 209.01.b., if the applicant requests the Department to review a complete initial application and Subsection 210.17 is determined to be applicable, the completeness determination for the initial application will be revoked until a supplemental application is submitted and determined complete. When the supplemental application is determined complete, the timeline for agency action shall be reinitiated. ()

- 19. Interpollutant Determination.** ()
- a.** The applicant may request an interpollutant trade if the Department determines that: ()
- i.** The facility complies with an emission standard at least as stringent as best available control technology (BACT); and ()
- ii.** The owner or operator has instituted all known and available methods of pollution prevention at the facility to reduce, avoid or eliminate toxic air pollution prior to its generation including, but not limited to, recycling, chemical substitution, and process modification provided that such pollution prevention methods are compatible with each other and the product or service being produced; and ()
- iii.** The owner or operator has taken all available offsets; and ()
- iv.** The owner or operator has identified all geographical areas and populations that may be impacted by the proposed interpollutant trade. ()
- b.** Interpollutant trades shall be approved or denied on a case-by-case basis by the Department. Denials shall be within the discretion of the Department. Approvals shall be granted only if: ()
- i.** The Department of Health and Welfare’s Division of Health approves the interpollutant trade; and ()
- ii.** The Department of Environmental Quality determines that the interpollutant trade will result in a overall benefit to the environment; and ()
- iii.** An EPA approved database or other EPA approved reference provides relative potency factors, or comparable factors, or other data that is sufficient to allow for adequate review and approval of the proposed trade by the Department and the Department of Health and Welfare’s Division of Health is submitted for all of the toxic air pollutants being traded; and ()
- iv.** The reductions occur at the same facility where the proposed source or modification will be constructed; and ()
- v.** The interpollutant trade will not cause an increase in sum of the ambient concentrations of the carcinogenic toxic air pollutants involved in the particular interpollutant trade at any receptor site; and ()
- vi.** The total cancer risk with the interpollutant trade will be less than the total cancer risk without the interpollutant trade; and ()
- vii.** The total non-cancer health risk with the interpollutant trade will be less than the total non-cancer health risk without the interpollutant trade. ()
- 20. NSPS and NESHAP Sources.** No demonstration of compliance with the toxic air pollutant provisions is required to obtain a permit to construct or to demonstrate permit to construct exemption criteria for a new source or for modification of an existing source if the toxic air pollutant is also a listed hazardous air pollutant from: ()
- a.** The equipment or activity covered by a NSPS or NESHAP; or ()
- b.** The source category of equipment or activity addressed by a NSPS or NESHAP even if the equipment or activity is not subject to compliance requirements under the federal rule. ()
- 21. Permit Compliance Demonstration.** Additional procedures and requirements to demonstrate and ensure actual and continuing compliance may be required by the Department in the permit to construct. ()
- 22. Interpretation and Implementation of Other Sections.** Except as specifically provided in other

sections of these rules, the provisions of Section 210 are not to be utilized in the interpretation or implementation of any other section of these rules. ()

211. CONDITIONS FOR PERMITS TO CONSTRUCT.

01. Reasonable Conditions. The Department may impose any reasonable conditions upon an approval, including conditions requiring the stationary source or facility to be provided with: ()

a. Sampling ports of a size, number, and location as the Department may require; ()

b. Safe access to each port; ()

c. Instrumentation to monitor and record emissions data; ()

d. Instrumentation for ambient monitoring to determine the effect emissions from the stationary source or facility may have, or are having, on the air quality in any area affected by the stationary source or facility; and ()

e. Any other sampling and testing facilities as may be deemed reasonably necessary. ()

02. Cancellation. The Department may cancel a permit to construct if the construction is not begun within two (2) years from the date of issuance, or if during the construction, work is suspended for one (1) year. ()

03. Notification to The Department. Any owner or operator of a stationary source or facility subject to a permit to construct shall furnish the Department written notifications as follows: ()

a. A notification of the anticipated date of initial start-up of the stationary source or facility not more than sixty (60) days or less than thirty (30) days prior to such date; and ()

b. A notification of the actual date of initial start-up of the stationary source or facility within fifteen (15) days after such date. ()

04. Performance Test. Within sixty (60) days after achieving the maximum production rate at which the stationary source or facility will be operated but not later than one hundred eighty (180) days after initial start-up of such stationary source or facility, the owner or operator of such stationary source or facility may be required to conduct a performance test in accordance with methods and under operating conditions approved by the Department and furnish the Department a written report of the results of such performance test. ()

a. Such test shall be at the expense of the owner or operator. ()

b. The Department may monitor such test and may also conduct performance tests. ()

c. The owner or operator of a stationary source or facility shall provide the Department fifteen (15) days prior notice of the performance test to afford the Department the opportunity to have an observer present. ()

212. OBLIGATION TO COMPLY.

01. Responsibility to Comply with All Requirements. Receiving a permit to construct shall not relieve any owner or operator of the responsibility to comply with all applicable local, state and federal statutes, rules and regulations. ()

02. Relaxation of Standards or Restrictions. At such time that a particular facility or modification becomes a major facility or major modification solely by virtue of a relaxation in any enforceable emission standard or restriction on the operating rate, hours of operation or on the type or amount of material combusted, stored or processed, which was used to exempt the facility or modification from certain requirements for a permit to construct,

the requirements for new major facilities or major modifications shall apply to the facility or modification as though construction had not yet commenced. ()

213. PRE-PERMIT CONSTRUCTION.

This section describes how owners or operators may commence construction or modification of certain stationary sources before obtaining the required permit to construct. ()

01. Pre-Permit Construction Eligibility. Pre-permit construction approval is available for non-major sources and non-major modifications and for new sources or modifications proposed in accordance with Subsection 213.01.d. Pre-permit construction is not available for any new source or modification that: uses emissions netting to stay below major source levels; uses optional offsets pursuant to Section 206; or would have an adverse impact on the air quality related values of any Class I area. Owners or operators may ask the Department for the ability to commence construction or modification of qualifying sources under Section 213 before receiving the required permit to construct. To obtain the Department's pre-permit construction approval, the owner or operator shall satisfy the following requirements: ()

a. The owner or operator shall apply for a permit to construct in accordance with Subsections 202.01.a., 202.02, and 202.03 of this chapter. ()

b. The owner or operator shall consult with Department representatives prior to submitting a pre-permit construction approval application. ()

c. The owner or operator shall submit a pre-permit construction approval application which must contain, but not be limited to: a letter requesting the ability to construct before obtaining the required permit to construct, a copy of the notice referenced in Subsection 213.02; proof of eligibility; process description(s); equipment list(s); proposed emission limits and modeled ambient concentrations for all regulated air pollutants and toxic air pollutants, such that they demonstrate compliance with all applicable air quality rules and regulations. The models shall be conducted in accordance with Subsection 202.02 and with written Department approved protocol and submitted with sufficient detail so that modeling can be duplicated by the Department. ()

d. Owners or operators seeking limitations on a source's potential to emit such that permitted emissions will be either below major source levels or below a significant increase must describe in detail in the pre-permit construction application the proposed restrictions and certify in accordance with Section 123 that they will comply with the restrictions, including any applicable monitoring and reporting requirements. ()

02. Permit to Construct Procedures for Pre-Permit Construction. ()

a. Within ten (10) days after the submittal of the pre-permit construction approval application, the owner or operator shall hold an informational meeting in at least one (1) location in the region in which the stationary source or facility is to be located. The informational meeting shall be made known by notice published at least ten (10) days before the meeting in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located. A copy of such notice shall be included in the application. ()

b. Within fifteen (15) days after the receipt of the pre-permit construction approval application, the Department shall notify the owner or operator in writing of pre-permit construction approval or denial. The Department may deny the pre-permit construction approval application for any reason it deems valid. ()

c. Upon receipt of the pre-permit construction approval letter issued by the Department, the owner or operator may begin construction at their own risk as identified in Subsection 213.02.d. Upon issuance of the pre-permit construction approval letter, any and all potential to emit limitations addressed in the pre-permit construction application pursuant to Subsection 213.01.d. shall become enforceable. The owner or operator shall not operate those emissions units subject to permit to construct requirements in accordance with Section 200 unless and until issued a permit pursuant to Section 209. ()

d. If the pre-permit construction approval application is determined incomplete or the permit to construct is denied, the Department shall issue an incompleteness or denial letter pursuant to Section 209. If the Department denies the permit to construct, then the owner or operator shall have violated Section 201 on the date it

commenced construction as defined in Section 006. The owner or operator shall not contest the final permit to construct decision based on the fact that they have already begun construction. ()

214. DEMONSTRATION OF PRECONSTRUCTION COMPLIANCE FOR NEW AND RECONSTRUCTED MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS.

01. Permitting Authority. For purposes of this section, Sections 112(g) and (j) of the Clean Air Act, and 40 CFR Part 63, the permitting authority shall be the Department. ()

02. Definitions. Unless specifically provided otherwise, the definitions for terms set forth in this section shall be the definitions set forth in Section 112 of the Clean Air Act and 40 CFR Part 63 as incorporated by reference into these rules at Section 107. For purposes of determining if a source is a major source of hazardous air pollutants, the definition of potential to emit at Section 006 of these rules shall apply. ()

03. Compliance with Federal MACT. All owners or operators of major sources of hazardous air pollutants which are subject to an applicable Maximum Available Control Technology (MACT) standard promulgated by EPA pursuant to Section 112 of the Clean Air Act and 40 CFR Part 63 shall comply with the applicable MACT standard and such owners or operators are not subject to Subsections 214.04 and 214.05. ()

04. Requirement to Obtain Preconstruction MACT Determination from the Director. No owner or operator may construct or reconstruct a major source of hazardous air pollutants unless such owner or operator has obtained a MACT standard determination from the Director. The Director shall make the MACT standard determination on a case by case basis and in accordance with Section 112(g)(2)(B) of the Clean Air Act and 40 CFR 63.40 through 63.44 as incorporated by reference into these rules at Section 107. ()

05. Development of MACT by the Director After EPA Deadline. In the event that EPA fails to promulgate a MACT standard for a category or subcategory of major sources of hazardous air pollutants identified by the EPA under the Clean Air Act by the date established under Section 112(e) of the Clean Air Act, the owner or operator of any major source of hazardous air pollutants in such category or subcategory shall submit an application to the Director for a MACT standard determination. The Director shall make the MACT standard determination on a case by case basis and in accordance with Section 112(j) of the Clean Air Act and 40 CFR 63.50 through 63.56 as incorporated by reference into these rules at Section 107. ()

215. MERCURY EMISSION STANDARD FOR NEW OR MODIFIED SOURCES.

No owner or operator may commence construction or modification of a stationary source or facility that results in an increase in annual potential emissions of mercury of twenty-five (25) pounds or more unless the owner or operator has obtained a permit to construct under Sections 200 through 228 of these rules. The permit to construct application shall include an MBACT analysis for the new or modified source or sources for review and approval by the Department. A determination of applicability under Section 215 shall be based upon the best available information. Fugitive emissions shall not be included in a determination of applicability under Section 215. ()

01. Exemptions. New or modified stationary sources within a source category subject to 40 CFR Part 63 are exempt from the requirements of Section 215. ()

02. Applicability. Except as provided in Subsection 215.01, Section 215 applies to all new or modified sources for which an application for a permit to construct was submitted to the Department on or after July 1, 2011. ()

216. -- 219. (RESERVED)

220. GENERAL EXEMPTION CRITERIA FOR PERMIT TO CONSTRUCT EXEMPTIONS.

01. General Exemption Criteria. Sections 220 through 223 may be used by owners or operators to exempt certain sources from the requirement to obtain a permit to construct. Nothing in these sections shall preclude an owner or operator from choosing to obtain a permit to construct. For purposes of Sections 220 through 223, the term source means the equipment or activity being exempted. For purposes of Sections 220 through 223, fugitive emissions shall not be considered in determining whether a source meets the applicable exemption criteria unless

required by federal law. No permit to construct is required for a source that satisfies all of the following criteria, in addition to the criteria set forth at Sections 221 and 223 or 222 and 223 (as required): ()

a. The maximum capacity of a source to emit an air pollutant under its physical and operational design without consideration of limitations on emission such as air pollution control equipment, restrictions on hours of operation and restrictions on the type and amount of material combusted, stored or processed would not: ()

i. Equal or exceed one hundred (100) tons per year of any regulated air pollutant. ()

ii. Cause an increase in the emissions of a major facility that equals or exceeds the significant emissions rates set out in the definition of significant at Section 006. ()

b. Combination. The source is not part of a proposed new major facility or part of a proposed major modification. ()

02. Record Retention. Unless the source is subject to and the owner or operator complies with Section 385, the owner or operator of the source, except for those sources listed in Subsections 222.02.a. through 222.02.g., shall maintain documentation on site which shall identify the exemption determined to apply to the source and verify that the source qualifies for the identified exemption. The records and documentation shall be kept for a period of time not less than five (5) years from the date the exemption determination has been made or for the life of the source for which the exemption has been determined to apply, whichever is greater, or until such time as a permit to construct or an operating permit is issued which covers the operation of the source. The owner or operator shall submit the documentation to the Department upon request. ()

221. CATEGORY I EXEMPTION.

No permit to construct is required for a source that satisfies the criteria set forth in Section 220 and the following: ()

01. Below Regulatory Concern. The maximum capacity of a source to emit an air pollutant under its physical and operational design considering limitations on emissions such as air pollution control equipment, restrictions on hours of operation and restrictions on the type and amount of material combusted, stored or processed shall be less than ten percent (10%) of the significant emission rates set out in the definition of significant at Section 006. ()

02. Radionuclides. The source is not required to obtain approval to construct in accordance with the applicable radionuclides standard in 40 CFR Part 61, Subpart H. ()

03. Toxic Air Pollutants. The source shall comply with Section 223. ()

04. Mercury. The source shall have potential emissions that are less than twenty-five (25) pounds per year of mercury. Fugitive emissions shall not be included in the calculation of potential mercury emissions. ()

222. CATEGORY II EXEMPTION.

No permit to construct is required for the following sources. ()

01. Exempt Source. A source that satisfies the criteria set forth in Section 220 and that is specified below: ()

a. Laboratory equipment used exclusively for chemical and physical analyses, research or education, including, but not limited to, ventilating and exhaust systems for laboratory hoods. To qualify for this exemption, the source shall: ()

i. Comply with Section 223. ()

ii. Not be required to obtain approval to construct in accordance with the applicable radionuclides standard in 40 CFR Part 61, Subpart H. ()

b. Environmental characterization activities including emplacement and operation of field instruments, drilling of sampling and monitoring wells, sampling activities, and environmental characterization activities. ()

c. Stationary internal combustion engines of less than or equal to six hundred (600) horsepower and which are fueled by natural gas, propane gas, liquefied petroleum gas, distillate fuel oils, residual fuel oils, and diesel fuel; waste oil, gasoline, or refined gasoline shall not be used. To qualify for this exemption, the source must be operated in accordance with the following: ()

i. One hundred (100) horsepower or less -- unlimited hours of operation. ()

ii. One hundred one (101) to two hundred (200) horsepower -- less than four hundred fifty (450) hours per month. ()

iii. Two hundred one (201) to four hundred (400) horsepower -- less than two hundred twenty-five (225) hours per month. ()

iv. Four hundred one (401) to six hundred (600) horsepower -- less than one hundred fifty (150) hours per month. ()

d. Stationary internal combustion engines used exclusively for emergency purposes which are operated less than five hundred (500) hours per year and are fueled by natural gas, propane gas, liquefied petroleum gas, distillate fuel oils, residual fuel oils, and diesel fuel; waste oil, gasoline, or refined gasoline shall not be used. ()

e. A pilot plant that uses a slip stream from an existing process stream not to exceed ten percent (10%) of that existing process stream and which satisfies the following: ()

i. The source shall comply with Section 223. For carcinogen emissions, the owner or operator may utilize a short term adjustment factor of ten (10) by multiplying either the acceptable ambient concentration or the screening emissions level, but not both, by ten (10). ()

ii. The source is not required to obtain approval to construct in accordance with the applicable radionuclides standard in 40 CFR Part 61, Subpart H. ()

iii. The exemption for a pilot plant shall terminate one (1) year after the commencement of operations and shall not be renewed. ()

02. Other Exempt Sources. A source that satisfies the criteria set forth in Section 220 and that is specified below: ()

a. Air conditioning or ventilating equipment not designed to remove air pollutants generated by or released from equipment. ()

b. Air pollutant detectors or recorders, combustion controllers, or combustion shutoffs. ()

c. Fuel burning equipment for indirect heating and for heating and reheating furnaces using natural gas, propane gas, liquefied petroleum gas, or biogas (gas produced by the anaerobic decomposition of organic material through a controlled process) with hydrogen sulfide concentrations less than two hundred (200) ppmv exclusively with a capacity of less than fifty (50) million btu's per hour input. ()

d. Other fuel burning equipment for indirect heating with a capacity of less than one million (1,000,000) btu's per hour input. ()

e. Mobile internal combustion engines, marine installations and locomotives. ()

f. Agricultural activities and services. ()

- g. Retail gasoline, natural gas, propane gas, liquefied petroleum gas, distillate fuel oils and diesel fuel sales. ()
- h. Used Oil Fired Space Heaters which comply with all the following requirements: ()
- i. The used oil fired space heater burns only used oil that the owner or operator generates on site, that is derived from households, such as used oil generated by individuals maintaining their personal vehicles, or on-specification used oil that is derived from commercial generators provided that the generator, transporter and owner or operator burning the oil for energy recovery comply fully with IDAPA 58.01.05.015, "Rules and Standards for Hazardous Waste"; ()
- (1) For the purposes of Subsection 222.02.h., "used oil" refers to any oil that has been refined from crude oil or any synthetic oil that has been used and, as a result of such use, is contaminated by physical or chemical impurities. ()
- (2) For the purposes of Subsection 222.02.h., "used oil fired space heater" refers to any furnace or apparatus and all appurtenances thereto, designed, constructed and used for combusting used oil for energy recovery to directly heat an enclosed space. ()
- ii. Any used oil burned is not contaminated by added toxic substances such as solvents, antifreeze or other household and industrial chemicals; ()
- iii. The used oil fired space heater is designed to have a maximum capacity of not more than one half (0.5) million BTU per hour; ()
- iv. The combustion gases from the used oil fired space heater are vented to the ambient air through a stack equivalent to the type and design specified by the manufacturer of the heater and installed to minimize down wash and maximize dispersion; and ()
- v. The used oil fired space heater is of modern commercial design and manufacture, except that a homemade used oil fired space heater may be used if, prior to the operation of the homemade unit, the owner or operator submits documentation to the Department demonstrating, to the satisfaction of the Department, that emissions from the homemade unit are no greater than those from modern commercially available units. ()
- i. Multiple chamber crematory retorts used to cremate human or animal remains using natural gas exclusively with a maximum average charge capacity of two hundred (200) pounds of remains per hour and a minimum secondary combustion chamber temperature of one thousand five hundred (1500) degrees Fahrenheit while operating. ()
- j. Petroleum environmental remediation source by vapor extraction with an operation life not to exceed five (5) years (except for landfills). The short-term adjustment factor in Subsection 210.15 cannot be used if the remediation is within five hundred (500) feet of a sensitive receptor. Forms are available at the DEQ website at <http://www.deq.idaho.gov>, to help assist sources in this exemption determination. ()
- k. Dry cleaning facilities that are not major under, but subject to, 40 CFR Part 63, Subpart M. ()

223. EXEMPTION CRITERIA AND REPORTING REQUIREMENTS FOR TOXIC AIR POLLUTANT EMISSIONS.

No permit to construct for toxic air pollutants is required for a source that satisfies any of the exemption criteria below, the recordkeeping requirements at Subsection 220.02, and reporting requirements as follows: ()

01. Below Regulatory Concern (BRC) Exemption. The source qualifies for a BRC exemption if the uncontrolled emission rate (refer to Section 210) for all toxic air pollutants emitted by the source is less than or equal to ten percent (10%) of all applicable screening emission levels listed in Sections 585 and 586. ()

02. Level I Exemption. To obtain a Level I exemption, the source shall satisfy the following criteria: ()

a. The uncontrolled emission rate (refer to Section 210) for all toxic air pollutants shall be less than or equal to all applicable screening emission levels listed in Sections 585 and 586; or ()

b. The uncontrolled ambient concentration (refer to Section 210) for all toxic air pollutants at the point of compliance shall be less than or equal to all applicable acceptable ambient concentrations listed in Sections 585 and 586. ()

03. Level II Exemption. To obtain a Level II exemption, the maximum capacity of a source to emit a toxic air pollutant under its physical and operational design considering limitations on emissions such as air pollution control equipment, restrictions on hours of operation and restrictions on the type and amount of material combusted, stored or processed at the point of compliance is less than or equal to ten percent (10%) of all applicable screening emission levels listed in Sections 585 and 586. ()

04. Annual Report for Toxic Air Pollutant Exemption. The owner or operator of a source claiming a Level I or II exemption shall submit a certified report, on or before May 1 for the previous calendar year, to the Department for each Level I or II exemption determination. The owner or operator is not required to annually submit a certified report for a Level I or II exemption determination previously claimed and reported. The report shall be labeled "Toxic Air Pollutant Exemption Report" and shall state the date construction has or will commence and shall include copies of all exemption determinations completed by the owner or operator for each Level I and II exemption. ()

224. PERMIT TO CONSTRUCT APPLICATION FEE.

All applicants for a permit to construct shall submit a permit to construct application fee of one thousand dollars (\$1,000) to the Department at the time of the original submission of the application. The permit to construct application fee is not required to be submitted for: ()

01. Exemption Applicability Determinations. Exemption applicability determinations set forth in Sections 220 through 223; ()

02. Typographical Errors. Changes to correct typographical errors; or ()

03. Name or Ownership Change. A change in the name or ownership of the holder of a permit to construct when the Department determines no other review or analysis is required. ()

225. PERMIT TO CONSTRUCT PROCESSING FEE.

A permit to construct processing fee, calculated by the Department pursuant to the categories provided in the following table, shall be paid to the Department by the person receiving the permit. The applicable processing fee category shall be determined by adding together the amount of increases of regulated pollutant emissions and subtracting any decreases of regulated pollutant emissions as identified in the permit to construct. The fee calculation shall not include fugitive emissions.

| PERMIT TO CONSTRUCT CATEGORY | FEE |
|---|---------|
| General permit, no facility-specific requirements (Defined as a source category specific permit for which the Department has developed standard emission limitations, operating requirements, monitoring and recordkeeping requirements, and that require minimal engineering analysis. General permit facilities may include portable concrete batch plants, portable hot-mix asphalt plants and portable rock crushing plants.) | \$500 |
| New source or modification to existing source with increase of emissions of less than one (1) ton per year | \$1,000 |
| New source or modification to existing source with increase of emissions of one (1) to less than ten (10) tons per year | \$2,500 |

| PERMIT TO CONSTRUCT CATEGORY | FEE |
|--|----------|
| New source or modification to existing source with increase of emissions of ten (10) to less than one hundred (100) tons per year | \$5,000 |
| Nonmajor new source or modification to existing source with increase of emissions of one hundred (100) tons per year or more | \$7,500 |
| New major facility or major modification | \$10,000 |
| Permit modifications where no engineering analysis is required | \$250 |
| Application submittals for exemption applicability determinations, typographical errors, and name and ownership changes as described in Subsections 224.01, 224.02, 224.03 | \$0.00 |

()

226. PAYMENT OF FEES FOR PERMITS TO CONSTRUCT.

01. Fee Submittal. The permit to construct application fee shall be submitted with the application. The permit to construct processing fee shall be payable upon receipt of an assessment sent to the person receiving a permit by the Department. The permit to construct application and processing fees shall be sent to:

Air Quality Permit to Construct Fees
Fiscal Office,
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706-1255

()

02. Delinquency. No application for a permit to construct shall be processed by the Department unless accompanied by a permit to construct application fee. No permit to construct shall be issued by the Department until the Department has received the permit to construct processing fee.

()

227. RECEIPT AND USAGE OF FEES.

Permit to construct application and processing fee receipts shall be deposited by the Department into a stationary source permit account. Monies from this account shall be used solely toward technical, legal and administrative support of the Department's permit to Construct and Tier II permit programs and shall not be used for those activities supported by the fund created for implementing the operating permit program required under Title V of the federal Clean Air Act amendments of 1990. The permit to construct application fee payable under Section 227 shall be retained by the Department regardless of whether a permit to construct is issued by the Department in response to an application. The Department will review the fee schedule at least every two (2) years.

()

228. APPEALS.

A person may be able to file an appeal within thirty-five (35) days of the date the person receives an assessment from the Department under Section 225, in accordance with IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality."

()

229. -- 299. (RESERVED)

300. PROCEDURES AND REQUIREMENTS FOR TIER I OPERATING PERMITS.

The purposes of Sections 300 through 399 are to establish requirements and procedures for the issuance of Tier I operating permits.

()

301. REQUIREMENT TO OBTAIN TIER I OPERATING PERMIT.

01. Prohibition. No owner or operator shall operate, or allow or tolerate the operation of, any Tier I source without an effective Tier I operating permit.

()

02. Exceptions.

()

- a. No Tier I operating permit is required if the owner or operator is in compliance with Sections 311 through 315 and the Department has not taken final action on the application. ()
- b. Tier I sources not located at major facilities do not require a Tier I operating permit until: ()
 - i. December 31, 1997 for Phase II sulfur dioxide sources; ()
 - ii. January 1, 1999 for Phase II nitrogen oxides sources; ()
 - iii. January 1, 2000 for solid waste incineration units required to obtain a permit pursuant to 42 U.S.C. Section 7429(e); and ()
 - iv. The source becomes a Tier I source under Section 006 of this chapter. ()
- c. No Tier I operating permit is required for the following Tier I sources: ()
 - i. All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA; and ()
 - ii. All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61.145. ()

302. OPTIONAL TIER I OPERATING PERMIT.

Any facility listed in Section 301 not required to obtain a Tier I operating permit may opt to apply for a Tier I operating permit. ()

303. -- 310. (RESERVED)

311. STANDARD PERMIT APPLICATIONS.

The purpose of Sections 311 through 315 is to establish standard Tier I operating permit application procedures. ()

312. DUTY TO APPLY.

For each Tier I source, the owner or operator shall submit a timely and complete permit application in accordance with Sections 311 through 315. ()

313. TIMELY APPLICATION.

01. Original Tier I Operating Permits. ()

a. For Tier I sources existing on May 1, 1994, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than June 1, 1996, or within twelve (12) months of EPA approval of the Tier I operating program, whichever is earlier, unless: ()

- i. The Department provides written notification of an earlier date to the owner or operator. ()
- ii. The Tier I source is identified in Subsections 301.02.b. or 301.02.c. ()

b. For sources that become Tier I sources after May 1, 1994, that are located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after becoming a Tier I source or commencing operation, unless: ()

- i. The Department provides written notification of an earlier date to the owner or operator. ()
- ii. The Tier I source is identified in Subsections 301.02.b. or 301.02.c. ()

c. For initial phase II acid rain sources identified in Subsections 301.02.b.i. or 301.02.b.ii., the owner or operator of the initial Phase II acid rain source shall submit to the Department a complete application for an original Tier I operating permit by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides. ()

d. For Tier I sources identified in Subsection 301.02.b.iii.: ()

i. Existing on July 1, 1998, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than January 1, 1999, unless the Department provides written notification of an earlier date to the owner or operator. ()

ii. That become Tier I sources after July 1, 1998, located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after becoming a Tier I source or commencing operation, unless the Department provides written notification of an earlier date to the owner or operator. ()

02. Earlier Dates During Initial Period. Except as otherwise provided in these rules, during the initial period which begins May 1, 1994 and ends three (3) years after EPA approval of the Tier I operating program, the Department may designate Tier I sources for processing as follows: ()

a. The Department may develop a general estimate of the total work load and benefits associated with the Tier I operating permit applications that are predicted to be submitted during the initial period including, but not limited to, original permit applications and significant permit modification applications. ()

b. Considering the complexity of the applications, air quality benefits of permitting and requests for early actions from owners and operators, the Department may divide the applications into three (3) groups each representing approximately one-third (1/3) of the total work load and benefits. ()

c. The Department may prioritize the three (3) groups and the Tier I sources within each group for processing, establish early application deadlines and notify the owners or operators of the Tier I sources in the group in writing of a required submittal date earlier than the general deadlines provided in Subsection 313.01. ()

03. Renewals of Tier I Operating Permits. The owner or operator of the Tier I source shall submit a complete application to the Department for a renewal of the Tier I operating permit at least six (6) months before, but no earlier than eighteen (18) months before, the expiration date of the existing Tier I operating permit. To ensure that the term of the operating permit does not expire before the permit is renewed, the owner or operator is encouraged to submit the application nine (9) months prior to expiration. ()

04. Changes to Tier I Operating Permits. Sections 380 through 386 provide the requirements and procedures for changes at Tier I sources and to Tier I operating permits. ()

314. REQUIRED STANDARD APPLICATION FORM AND REQUIRED INFORMATION.

01. General Requirements. ()

a. Applications shall be submitted on a form or forms provided by the Department or by other means prescribed by these rules or the Department. The application shall be certified by the responsible official in accordance with Section 123. ()

i. If the Tier I source is regulated under 42 U.S.C. Sections 7651 through 7651o, the owner or operator shall also submit nationally-standardized acid rain forms provided by EPA. ()

b. All information shall be in sufficient detail so that the Department may efficiently and effectively determine the applicability of requirements and make all other necessary evaluations and determinations. ()

- 02. General Information for the Facility.** ()
- a.** Provide identifying information, including the name, address and telephone number of: ()
 - i. The owner; ()
 - ii. The operator; ()
 - iii. The facility where the Tier I source is located; ()
 - iv. The registered agent of the owner, if any; ()
 - v. The registered agent of the operator, if any; ()
 - vi. The responsible official, if other than the owner or operator; and ()
 - vii. The contact person. ()
 - b.** Provide a general description of the processes used and products produced by the facility where the Tier I source is located, including any associated with each requested alternative operating scenario and trading scenario. The description shall include narrative and applicable SIC codes. ()
 - c.** Provide a general description of each process line affecting a Tier I source. ()
- 03. Specific Information for Each Emissions Unit.** The owner or operator shall provide, in an itemized format, all of the information identified in Subsections 314.04 through 314.11 for each emissions unit, unless the emissions unit is an insignificant activity. ()
- 04. Emissions.** ()
- a.** Identify and describe all emissions of pollutants for which the source is major and all emissions of regulated air pollutants from each emissions unit. Fugitive emissions shall be included in the application in the same manner as stack emissions, regardless of whether the source category is included in the list of sources contained in the definition of major facility (Section 008). ()
 - b.** Emissions rates shall be quantified in tons per year (tpy) or for radionuclides the effective dose equivalent (EDE) in millirem per year and in such additional terms as are necessary to determine compliance consistent with the applicable test method. ()
 - c.** Identify and describe all points of emissions in sufficient detail to establish the basis for fees and applicability of requirements of the Clean Air Act. ()
 - d.** To the extent it is needed to determine or regulate emissions, identify and quantify all fuels, fuel use, raw materials, production rates, and operating schedules. ()
 - e.** Identify and describe all air pollution control equipment and compliance monitoring devices or activities. ()
 - f.** Identify and describe all limitations on source operation or any work practice standards affecting emissions. ()
 - g.** Provide the calculations on which the information provided under Subsections 314.04.a. through 314.04.e. is based. ()
- 05. Applicable Requirements.** ()
- a.** Cite and describe all applicable requirements affecting the emissions unit; and ()

b. Describe or reference all methods required by each applicable requirement for determining the compliance status of the emissions unit with the applicable requirement, including any applicable monitoring, recordkeeping and reporting requirements or test methods. ()

06. Other Requirements. Other specific information that may be necessary to determine the applicability of, implement or enforce any requirement of the Act, these rules, 42 U.S.C. Sections 7401 through 7671q or federal regulations. ()

07. Proposed Determinations of Nonapplicability. Identify requirements for which the applicant seeks a determination of nonapplicability and provide an explanation of why the requirement is not applicable to the Tier I source. ()

08. Alternative Operating Scenarios. ()

a. Identify all requested alternative operating scenarios. ()

b. Provide a detailed description of all requested alternative operating scenarios. Include all the information required by Section 314 that is relevant to the alternative operating scenario. ()

09. Compliance Certifications. ()

a. Provide a compliance certification regarding the compliance status of each emissions unit at the time the application is submitted to the Department that: ()

i. Identifies all applicable requirements affecting each emissions unit. ()

ii. Certifies the compliance status of each emissions unit with each of the applicable requirements. ()

iii. Provides a detailed description of the method(s) used for determining the compliance status of each emissions unit with each applicable requirement, including a description of any monitoring, recordkeeping, reporting and test methods that were used. Also provide a detailed description of the method(s) required for determining compliance. ()

iv. Certifies the compliance status of the emissions unit with any applicable enhanced monitoring requirements. ()

v. Certifies the compliance status of the emissions unit with any applicable enhanced compliance certification requirements. ()

vi. Provides all other information necessary to determining the compliance status of the emissions unit. ()

b. Provide a schedule for submission of compliance certifications during the term of the Tier I operating permit. The schedule shall require compliance certifications to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department. ()

10. Compliance Plans. ()

a. Provide a compliance description as follows: ()

i. For each applicable requirement with which the emissions unit is in compliance, state that the emissions unit will continue to comply with the applicable requirement. ()

ii. For each applicable requirement that will become effective during the term of the Tier I operating permit that does not contain a more detailed schedule, state that the emissions unit will meet the applicable

requirement on a timely basis. ()

iii. For each applicable requirement that will become effective during the term of the Tier I operating permit that contains a more detailed schedule, state that the emissions unit will comply with the applicable requirement on the schedule provided in the applicable requirement. ()

iv. For each applicable requirement with which the emission unit is not in compliance, state that the emissions unit will be in compliance with the applicable requirement by the time the Tier I operating permit is issued or provide a compliance schedule in accordance with Subsection 314.10.b. ()

b. All compliance schedules shall: ()

i. Include a schedule of remedial measures leading to compliance, including an enforceable sequence of actions and specific dates for achieving milestones and achieving compliance. ()

ii. Incorporate the terms and conditions of any applicable consent order, judicial order, judicial consent decree, administrative order, settlement agreement or judgment. ()

iii. Be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based. ()

c. Provide a schedule for submission to the Department of periodic progress reports no less frequently than every six (6) months or at a more frequent period if one (1) is specified in the underlying applicable requirement or by the Department. ()

11. Trading Scenarios. ()

a. Identify all requested trading scenarios, including alternative emissions limits (bubbles) authorized by Section 440. ()

b. Provide a detailed description of all requested trading scenarios. Include all the information required by Section 314 that is relevant to the trading scenario and all the information required by Section 440, if applicable. Emissions trades must comply with all applicable requirements. ()

c. Provide proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. Emissions trades involving emissions units for which the emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trade shall not be approved. ()

12. Additional Information. Provide all additional information that the Department determines is necessary for the Department to efficiently and effectively perform its functions. Such functions include, but are not limited to, determining the applicability of requirements for all regulated air pollutants, determining compliance with applicable requirements, developing or defining Tier I operating permit terms and conditions, defining all approved alternative operating scenarios, evaluating excess emissions procedures or making all necessary evaluations and determinations. ()

315. DUTY TO SUPPLEMENT OR CORRECT APPLICATION.

01. Failure to Submit. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. ()

02. Necessary Additional Information. If, while processing an application that has been determined or deemed to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, the Department may request such information in writing and set a deadline for a response. The applicant shall submit the requested information on or before the deadline set by the Department. ()

03. Additional Information After Completeness. The applicant shall promptly provide additional information as necessary to address any requirements that become applicable to the Tier I source after the date a complete application was filed but prior to release of a proposed action. ()

316. EFFECT OF INACCURATE INFORMATION IN APPLICATIONS OR FAILURE TO SUBMIT RELEVANT INFORMATION.

Notwithstanding the shield provisions of Section 325, the owner or operator shall be subject to enforcement action for operation of the Tier I source without a Tier I operating permit if the owner or operator submitted an incomplete or inaccurate application or the Tier I source is later determined not to qualify for coverage under the conditions and terms of the Tier I operating permit. ()

317. INSIGNIFICANT ACTIVITIES.

01. Applicability Criteria. This Section contains the criteria for identifying insignificant activities for the purposes of the Tier I operating permit program. Notwithstanding any other provision of this rule, no emission unit or activity subject to an applicable requirement shall qualify as an insignificant emission unit or activity. Applicants may not exclude from Tier I operating permit applications information that is needed to determine whether the facility is major or whether the facility is in compliance with applicable requirements. ()

- a.** Presumptively insignificant emission units. ()
 - i.** Except as provided above, the activities listed in this section may be omitted from the permit application. ()
 - (1) Blacksmith forges. ()
 - (2) Mobile transport tanks on vehicles except for those containing asphalt and not including loading and unloading operations. ()
 - (3) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities. ()
 - (4) Storage tanks, reservoirs and pumping and handling equipment of any size, limited to soaps, lubricants, lubricating oil, treater oil, hydraulic fluid, vegetable oil, grease, animal fat, aqueous salt solutions or other materials and processes using appropriate lids and covers where there is no generation of objectionable odor or airborne particulate matter. ()
 - (5) Pressurized storage of oxygen, nitrogen, carbon dioxide, air, or inert gases. ()
 - (6) Storage of solid material, dust-free handling. ()
 - (7) Boiler water treatment operations, not including cooling towers. ()
 - (8) Vents from continuous emission monitors and other analyzers. ()
 - (9) Vents from rooms, buildings and enclosures that contain permitted emissions units or activities from which local ventilation, controls, and separate exhaust are provided. ()
 - (10) Internal combustion engines for propelling or powering a vehicle. ()
 - (11) Recreational fireplaces including the use of barbecues, campfires and ceremonial fires. ()
 - (12) Brazing, soldering, and welding equipment and cutting torches for use in cutting metal wherein components of the metal do not generate hazardous air pollutants or hazardous air pollutant precursors. ()
 - (13) Atmospheric generators used in connection with metal heat treating processes using non-hazardous air pollutant metals as the primary raw material. ()

- (14) Non-hazardous air pollutant metal finishing or cleaning using tumblers. ()
- (15) Drop hammers or hydraulic presses for forging or metalworking. ()
- (16) Electrolytic deposition, used to deposit brass, bronze, copper, iron, tin, zinc, precious and other metals not listed as the parents of hazardous air pollutants. ()
- (17) Equipment used for surface coating, painting, dipping or spraying operations, except those that will emit volatile organic compound or hazardous air pollutant. ()
- (18) Process water filtration systems. ()
- (19) Portable electrical generators that can be moved by hand from one (1) location to another. Moved by hand means that it can be moved without the assistance of any motorized or non-motorized vehicle, conveyance, or device. ()
- (20) Plastic and resin curing equipment, excluding FRP and provided these activities are not related to the source's primary business activity. ()
- (21) Extrusion equipment, metals, minerals, plastics, grain or wood used without solvents containing hazardous air pollutant. ()
- (22) Presses and vacuum forming, for curing rubber and plastic products or for laminating plastics without solvents containing hazardous air pollutants present. ()
- (23) Roller mills and calendars for use with rubber and plastics without solvents containing hazardous air pollutants. ()
- (24) Conveying and storage of plastic pellets. ()
- (25) Plastic compression, injection, and transfer molding and extrusion, rotocasting, pultrusion, blowmolding, excluding acrylics, PVC, polystyrene and related copolymers and the use of plasticizer. Only oxygen, carbon dioxide, nitrogen, air or inert gas allowed as blowing agent. ()
- (26) Plastic pipe welding. ()
- (27) Wax application in either a molten state or aqueous suspension. ()
- (28) Plant maintenance and upkeep including routine housekeeping, janitorial activities, cleaning and preservation of equipment, preparation for and painting of structures or equipment, retarring roofs, applying insulation to buildings in accordance with applicable environmental and health and safety requirements and lawn, landscaping and groundskeeping activities. Provided these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and not otherwise triggering a permit modification. ()
- (29) Agricultural activities on a facility's property that are not subject to registration or new source review by the permitting authority. ()
- (30) Maintenance of paved streets and parking lots including paving, stripping, salting, sanding, cleaning and sweeping of streets and paved surfaces. Provided these activities are not related to the source's primary business activity, do not otherwise trigger a permit modification, and fugitive emissions are reasonably controlled as required in Section 808. ()
- (31) Ultraviolet curing processes. ()
- (32) Hot melt adhesive application with no volatile organic compounds or hazardous air pollutants in the adhesive formula. ()

- (33) Laundering, dryers, extractors, tumblers for fabrics, using water solutions of bleach and/or detergents except for boilers. ()
- (34) Steam cleaning operations. ()
- (35) Steam sterilizers. ()
- (36) Food service activities including cafeterias, kitchen facilities and barbecues located at a source for providing food service on premises. ()
- (37) Portable drums and totes. ()
- (38) Fluorescent light tube and aerosol can crushing in units designed to reduce emissions from these activities. ()
- (39) Flares used to indicate danger to the public. ()
- (40) General vehicle maintenance including vehicle exhaust from repair facilities provided these activities are not related to the source's primary business activity and do not have applicable requirements under title VI of the Clean Air Act. ()
- (41) Comfort air conditioning or air cooling systems, not used to remove air contaminants from specific equipment. ()
- (42) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves, and storage tanks subject to size and service limitations expressed elsewhere in this section. ()
- (43) Natural and forced air vents for bathroom/toilet facilities. ()
- (44) Office activities. ()
- (45) Equipment used for quality control/assurance or inspection purposes, including sampling equipment used exclusively to withdraw materials for laboratory analyses and testing. ()
- (46) Fire suppression systems and similar safety equipment and equipment used to train firefighters including fire drill pits. ()
- (47) Materials and equipment used by, and activity related to operation of infirmary; infirmary is not the source's business activity except equipment affected by the radionuclide NESHAP. ()
- (48) Satellite Accumulation Areas (SAAs) and Temporary Accumulation Areas (TAAs) managed in compliance with RCRA. ()
- (49) Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, shot blasting, sintering, or polishing: Ceramics, glass, leather, metals, plastics, rubber, concrete, paper stock, or wood provided that these activities are not conducted as part of a manufacturing process. ()
- (50) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment subject to other exemption limitation, e.g., internal and external combustion equipment. ()
- (51) Slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment. ()
- (52) Ozonation equipment. ()

- (53) Temporary construction activities at a facility provided that the installation or modification of emissions units must comply with all applicable federal, state, and local rules and regulations. ()
- (54) Batch loading and unloading of solid phase catalysts. ()
- (55) Pulse capacitors. ()
- (56) Gas cabinets using only gases that are not regulated air pollutants. ()
- (57) CO2 lasers, used only on metals and other materials which do not emit hazardous air pollutants in the process. ()
- (58) Structural changes not having air contaminant emissions. ()
- (59) Equipment used to mix, package, store and handle soaps, lubricants, vegetable oil, grease, animal fat, and non-volatile aqueous salt solutions, provided appropriate lids and covers are utilized. ()
- (60) Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy, e.g., blueprint activity, photocopiers, mimeograph, telefax, photographic developing, and microfiche provided these activities are not related to the source's primary business activity. ()
- (61) Pharmaceutical and cosmetics packaging equipment. ()
- (62) Paper trimmers/binders provided these activities are not related to the source's primary business activity. ()
- (63) Bench-scale laboratory equipment and laboratory equipment used exclusively for physical or chemical analysis, including associated vacuum producing devices but excluding research and development facilities. ()
- (64) Repair and maintenance shop activities not related to the source's primary business activity. ()
- (65) Handling equipment and associated activities for glass and aluminum which is destined for recycling, provided these activities are not related to the source's primary business activity. ()
- (66) Hydraulic and hydrostatic testing equipment. ()
- (67) Batteries and battery charging stations, except at battery manufacturing plants. ()
- (68) Porcelain and vitreous enameling equipment. ()
- (69) Solid waste containers. ()
- (70) Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants. ()
- (71) Shock chambers. ()
- (72) Wire strippers. ()
- (73) Humidity chambers. ()
- (74) Solar simulators. ()
- (75) Environmental chambers not using hazardous air pollutant gases. ()

- (76) Totally enclosed conveyors not including transfer points. ()
- (77) Steam vents and safety relief valves. ()
- (78) Air compressors, pneumatically operated equipment, systems, and hand tools. ()
- (79) Steam leaks. ()
- (80) Boiler blow-down tank. ()
- (81) Salt cake mix tanks at pulp mills. ()
- (82) Digester chip feeders at pulp mills. ()
- (83) Weak liquor and filter tanks at pulp mills. ()
- (84) Process water and white water storage tanks at pulp mills. ()
- (85) Demineralizer water tanks, demineralization, demineralizer vents, and oxygen scavenging (deaeration) of water. ()
- (86) Clean condensate tanks. ()
- (87) Alum tanks. ()
- (88) Broke beaters, repulpers, pulp and repulping tanks, stock chests and pulp handling. ()
- (89) Lime and mud filtrate tanks. ()
- (90) Hydrogen peroxide tanks. ()
- (91) Lime mud washer. ()
- (92) Lime mud filter. ()
- (93) Hydro and liquor clarifiers or filters and storage tanks and associated pumping, piping, and handling. ()
- (94) Lime grits washers, filters, and handing. ()
- (95) Lime silos and feed bins. ()
- (96) Paper forming. ()
- (97) Starch cooking. ()
- (98) Pulp stock cleaning and screening. ()
- (99) Paper winders or other paper converting equipment. ()
- (100) Sludge dewatering and wet sludge handling. ()
- (101) Screw press vents. ()
- (102) Pond dredging. ()
- (103) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids ()

- dewatering and flocculation. ()
- (104) Non-PCB oil filled circuit breakers, oil filled transformers and other equipment that is analogous to, but not considered to be, a tank. ()
- (105) Lab-scale electric or steam-heated drying ovens and autoclaves. ()
- (106) Sewer manholes, junction boxes, sumps and lift stations associated with waste water treatment systems. ()
- (107) Water cooling towers processing exclusively noncontact cooling water. ()
- (108) Paper coating and sizing. ()
- (109) Process waste water and ponds. ()
- (110) Outdoor firearms practice ranges. ()
- b.** Insignificant activities on the basis of size or production rate. ()
- i. This section contains lists of units or activities that are insignificant on the basis of size or production rate. Units and activities listed in this section must be listed in the permit application. The following units and activities are determined to be insignificant based on their size or production rate: ()
- (1) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than two hundred sixty (260) gallon capacity thirty five cubic feet (35cft), heated only to the minimum extend to avoid solidification if necessary. ()
- (2) Operation, loading and unloading of storage tanks, not greater than one thousand one hundred (1,100) gallon capacity, with lids or other appropriate closure, not for use with hazardous air pollutants, maximum (max.) vp five-hundred fifty (550) mm Hg. ()
- (3) Operation, loading and unloading of volatile organic compound storage tanks, ten thousand (10,000) gallons capacity or less, with lids or other appropriate closure, vp not greater than eighty (80) mm Hg at twenty-one (21) degrees C. Operation, loading and unloading of gasoline storage tanks, ten thousand (10,000) gallons capacity or less, with lids or other appropriate closure. ()
- (4) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas (LPG), storage tanks, vessel capacity under forty thousand (40,000) gallons. ()
- (5) Combustion source, less than five million (5,000,000) Btu/hr, exclusively using natural gas, butane, propane, and/or LPG. ()
- (6) Combustion source, less than five hundred thousand (500,000) Btu/hr, using any commercial fuel containing less than four-tenths percent (.4%) by weight sulfur for coal or less than one percent (1%) by weight sulfur for other fuels. ()
- (7) Combustion source, of less than one million (1,000,000) Btu/hr, if using kerosene, No. 1 or No. 2 fuel oil. ()
- (8) Combustion source, not greater than five hundred thousand (500,000) Btu/hr, if burning waste wood, wood waste or waste paper. ()
- (9) Welding using not more than one (1) ton per day of welding rod. ()
- (10) Foundry sand molds, unheated and using binders with less than twenty-five hundredths percent (.25%) free phenol by sand weight. ()

- (11) "Parylene" coaters using less than five hundred (500) gallons of coating per year. ()
- (12) Printing and silkscreening, using less than two (2) gallon/day of any combination of the following: Inks, coatings, adhesives, fountain solutions, thinners, retarders, or nonaqueous cleaning solutions. ()
- (13) Water cooling towers and ponds, not using chromium-based corrosion inhibitors, not used with barometric jets or condensers, not greater than ten thousand (10,000) gpm, not in direct contact with gaseous or liquid process streams containing regulated air pollutants. ()
- (14) Combustion turbines, of less than five hundred (500) HP. ()
- (15) Batch solvent distillation, not greater than fifty-five (55) gallons batch capacity. ()
- (16) Municipal and industrial water chlorination facilities of not greater than twenty million (20,000,000) gallons per day capacity. The exemption does not apply to waste water treatment. ()
- (17) Surface coating, using less than two (2) gallons per day. ()
- (18) Space heaters and hot water heaters using natural gas, propane or kerosene and generating less than five million (5,000,000) Btu/hr. ()
- (19) Tanks, vessels, and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids excluding: ()
- (a) Ninety-nine percent (99%) or greater H₂SO₄ or H₃PO₄. ()
- (b) Seventy percent (70%) or greater HNO₃. ()
- (c) Thirty percent (30%) or greater HCl. ()
- (d) More than one (1) liquid phase where the top phase is more than one percent (1%) volatile organic compounds. ()
- (20) Equipment used exclusively to pump, load, unload, or store high boiling point organic material, material with initial boiling point (IBP) not less than one hundred fifty (150) degrees C or vapor pressure (vp) not more than five (5) mm Hg at twenty-one (21) degrees C with lids or other appropriate closure. ()
- (21) Smokehouses under twenty (20) square feet. ()
- (22) Milling and grinding activities, using paste-form compounds with less than one percent (1%) volatile organic compounds. ()
- (23) Rolling, forging, drawing, stamping, shearing, or spinning hot or cold metals. ()
- (24) Dip-coating operations, using materials with less than one percent (1%) volatile organic compounds. ()
- (25) Surface coating, aqueous solution or suspension containing less than one percent (1%) volatile organic compounds. ()
- (26) Cleaning and stripping activities and equipment, using solutions having less than one percent (1%) volatile organic compounds by weight. On metallic substrates, acid solutions are not considered for listing as insignificant. ()
- (27) Storage and handling of water based lubricants for metal working where the organic content of the lubricant is less than ten percent (10%). ()

(28) Municipal and industrial waste water chlorination facilities of not greater than one million (1,000,000) gallons per day capacity. ()

(29) Domestic sewage treatment ponds with average flowrates less than four hundred (400) gpm or treating waste from less than three thousand (3000) people from non-residential sources. ()

(30) An emission unit or activity with potential emissions less than or equal to the significant emission rate as defined in Section 006 and actual emissions less than or equal to ten percent (10%) of the levels contained in Section 006 of the definition of significant and no more than one (1) ton per year of any hazardous air pollutant. ()

318. -- 320. (RESERVED)

321. TIER I OPERATING PERMIT CONTENT.

The purpose of Sections 321 through 336 is to mandate and authorize the contents of Tier I operating permits. ()

322. STANDARD CONTENTS OF TIER I OPERATING PERMITS.

All Tier I operating permits shall contain and the Department shall have the authority to impose, implement and enforce, the following elements for all permitted operating scenarios and emissions trading scenarios. Fugitive emissions shall be included in the Tier I operating permit in the same manner as stack emissions. ()

01. Emission Limitations and Standards. All Tier I operating permits shall contain emission limitations and standards, including, but not limited to, those operational requirements and limitations that assure compliance with the applicable requirements identified in the application, or determined by the Department to be applicable to the source. ()

02. Authority for and Form of Terms and Conditions. All Tier I operating permits shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based. ()

03. Terms or Conditions for Applicable Requirements. All Tier I operating permits shall contain at least one (1) permit term or condition for every applicable requirement specifically identified in the application or determined by the Department to be applicable to the source. ()

04. Alternative Operating Scenarios. All Tier I operating permits shall contain terms and conditions to ensure compliance with all applicable requirements for each alternative operating scenario that was requested by the applicant and approved by the Department, including, but not limited to, a requirement that the owner or operator of the source, contemporaneously with making a change from one (1) operating scenario to another, record the change in an operating scenario log located and retained at the permitted facility. ()

05. Trading Scenarios. ()

a. All Tier I operating permits shall contain terms and conditions for each trading scenario that was requested by the applicant and approved by the Department including, but not limited to, terms and conditions which ensure that any emission trade is quantifiable, accountable, enforceable and based on replicable procedures. ()

b. The Tier I operating permit shall state that no permit revision shall be required under approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit. ()

c. The Tier I operating permit shall, at a minimum, include a requirement that the owner or operator of the source, contemporaneously with making a change from one (1) trading scenario to another, record the change in a trading scenario log located and retained at the permitted facility and provide notice to the Department in accordance with Section 383. ()

- 06. Monitoring.** All Tier I operating permits shall contain the following with respect to monitoring: ()
- a.** Sufficient monitoring to ensure compliance with all of the terms and conditions of the Tier I operating permit; ()
 - b.** All emissions monitoring and analysis procedures or test methods required under the applicable requirements; ()
 - c.** If the applicable requirement does not require specific periodic testing or monitoring, terms and conditions requiring periodic monitoring, recordkeeping, or both, that is sufficient to yield reliable data for the relevant time periods that are representative of the emissions unit's compliance with the Tier I operating permit, as reported pursuant to Subsection 322.08, and ensuring the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement; and ()
 - d.** Requirements that the Department determines are necessary, concerning the use, maintenance and installation of monitoring equipment or methods. ()
- 07. Recordkeeping.** All Tier I operating permits shall incorporate by reference all applicable requirements regarding recordkeeping and require all of the following: ()
- a.** Sufficient recordkeeping to assure compliance with all of the terms and conditions of the Tier I operating permit. ()
 - b.** Recording of monitoring information including but not limited to the following: ()
 - i.** The date, place (as defined in the Tier I operating permit) and time of sampling or measurements; ()
 - ii.** The date(s) analyses were performed; ()
 - iii.** The company or entity that performed the analyses; ()
 - iv.** The analytical techniques or methods used; ()
 - v.** The results of such analyses; and ()
 - vi.** The operating conditions existing at the time of sampling or measurement. ()
 - c.** Retention of all monitoring records and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report or application. Supporting information includes but is not limited to all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the Tier I operating permit. ()
- 08. Reporting.** All Tier I operating permits shall incorporate by reference all applicable requirements regarding reporting and require all of the following: ()
- a.** Sufficient reporting to assure compliance with all of the terms and conditions of the Tier I operating permit. ()
 - b.** Prompt reporting of deviations from permit requirements including, but not limited to, those attributable to excess emissions. If the deviation is an excess emission, the report shall be submitted in accordance with the requirements of Sections 130 through 136. For all other deviations, the report shall be submitted in accordance with Subsection 322.08.c. unless the permit specifies another time frame. The reports shall describe the probable cause of such deviations and any corrective actions or preventative measures taken. ()
 - c.** Submittal of reports for any required monitoring at least every six (6) months. All instances of

deviations from Tier I operating permit requirements, which include monitoring, recordkeeping, and reporting, must be clearly identified in such reports. All required reports must be certified in accordance with Section 123. ()

09. Testing. All Tier I operating permits shall contain terms and conditions requiring sufficient testing to assure compliance with all of the terms and conditions of the Tier I operating permit. ()

10. Compliance Schedule and Progress Reports. All Tier I operating permits shall contain terms and conditions regarding the compliance plan submitted in the application in accordance with Subsection 314.10 including all of the following: ()

a. For each applicable requirement for which the source is not in compliance at the time of the permit issuance, terms and conditions consistent with the compliance schedule submitted by the applicant including all of the following: ()

i. A schedule of remedial measures leading to compliance including an enforceable sequence of actions and specific dates for achieving the milestones and achieving compliance. ()

ii. A requirement that the permittee submit periodic progress reports to the Department no less frequently than every six (6) months or at a more frequent period if one is specified in the underlying applicable requirement or by the Department. ()

iii. A requirement that any progress report shall include a statement of when the milestones and compliance were or will be achieved, an explanation of why any dates in the compliance schedule submitted by the applicant or in the terms or conditions of the Tier I operating permit were not or will not be met and a detailed description of any preventative or corrective measures undertaken by the permittee. ()

iv. All terms and conditions of any applicable consent order, judicial order, judicial consent decree, administrative order, settlement agreement or judgment. ()

v. A statement that the terms and conditions regarding the compliance schedule are supplemental to, and do not sanction noncompliance with, the underlying applicable requirement. ()

b. For each applicable requirement that will become effective during the term of the Tier I operating permit and that requires a detailed compliance schedule, the permit shall include such compliance schedule. ()

c. For each applicable requirement that will become effective during the term of the Tier I operating permit that does not require a detailed compliance schedule, the permit shall include a statement that the permittee shall meet, on a timely basis, all such applicable requirements. ()

11. Periodic Compliance Certifications. Each Tier I operating permit shall require submittal of compliance certifications during the term of the permit for each emissions unit to the Department and the EPA as follows: ()

a. Compliance certifications for all emissions units shall be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department. ()

b. The compliance certification for each emissions unit shall address all of the terms and conditions contained in the Tier I operating permit that are applicable to such emissions unit including emissions limitations, standards and work practices. ()

c. The compliance certification shall be in an itemized format providing the following information: ()

i. The identification of each term or condition of the Tier I operating permit that is the basis of the certification; ()

ii. The identification of the method(s) or other means used by the owner or operator for determining

the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under Subsections 322.06, 322.07, and 322.08; ()

iii. The status of compliance with the terms and conditions of the Tier I operating permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in Subsection 322.11.c.ii. above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and ()

iv. Such information as the Department may require to determine the compliance status of the emissions unit. ()

d. All original compliance certifications shall be submitted to the Department and a copy of all compliance certifications shall be submitted to the EPA; ()

12. Permit Conditions Regarding Acid Rain Allowances. ()

a. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds. ()

b. No limit shall be placed on the number of allowances held by the source and no permit revisions shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement. ()

c. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement. ()

d. Any such allowance shall be accounted for according to the procedures established in 40 CFR Part 72 and 40 CFR Part 73. ()

13. Permit Duration. Each Tier I operating permit shall state that it is effective for a fixed term of five (5) years; except that during the first four (4) years after EPA approval of the Tier I operating permit program, the permit may be issued with an initial term of three (3) years to five (5) years unless the Tier I source is also a Phase II source. ()

14. Other Specific Requirements. Any terms or conditions determined by the Department to be necessary for approval of the Tier I operating permit. ()

15. General Requirements. Each Tier I operating permit shall contain provisions stating the following: ()

a. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation and is grounds for enforcement action; for permit revocation, termination, revocation and reissuance, or revision; or for denial of a permit renewal application. ()

b. It shall not be a defense in an enforcement action that it would have been necessary to halt or reduce any activity in order to maintain compliance with the terms and conditions of this permit. ()

c. This permit may be revised, revoked, reopened and reissued, or terminated for cause. ()

d. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition. ()

- e.** This permit does not convey any property rights of any sort, or any exclusive privilege. ()
- f.** The permittee shall furnish all information requested by the Department, within a reasonable time, that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing or terminating the permit or to determine compliance with the permit. ()
- g.** Upon request, the permittee shall furnish to the Department copies of records required to be kept by this permit. ()
- h.** The provisions of this permit are severable, and if any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby. ()
- i.** The permittee shall comply with Sections 380 through 386 as applicable. ()
- j.** Unless specifically identified as a “State Only” provision, all terms and conditions in the this permit, including any terms and conditions designed to limit a source's potential to emit, are enforceable: ()
- i.** By the Department in accordance with State law; and ()
- ii.** By the United States or any other person in accordance with Federal law. ()
- k.** Provisions specifically identified as a “State Only” provision are enforceable only in accordance with State law. “State Only” provisions are those that are not required under the Federal Clean Air Act or under any of its applicable requirements or those provisions adopted by the State prior to federal approval. ()
- l.** Upon presentation of credentials, the permittee shall allow the Department or an authorized representative of the Department to do the following: ()
- i.** Enter upon the permittee's premises where a Tier I source is located or emissions-related activity is conducted, or where records are kept under the conditions of this permit; ()
- ii.** Have access to and copy, at reasonable times, any records that are kept under the conditions of this permit; ()
- iii.** Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this permit; and ()
- iv.** Sample or monitor at reasonable times substances or parameters for the purpose of determining or ensuring compliance with this permit or applicable requirements. ()
- m.** Nothing in this permit shall alter or affect the following: ()
- i.** Any administrative authority or judicial remedy available to prevent or terminate emergencies or imminent and substantial dangers; ()
- ii.** The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance; ()
- iii.** The applicable requirements of the acid rain program, consistent with 42 U.S.C. Section 7651g(a); ()
- iv.** The owner or operator's duty to provide information. ()
- n.** The owner or operator of a Tier I source shall pay registration fees to the Department in accordance with Sections 387 through 399, which are hereby incorporated by reference. ()

o. All documents submitted to the Department shall be certified in accordance with Section 123 and comply with Section 124. ()

p. If a timely and complete application for a Tier I operating permit renewal is submitted, but the Department fails to issue or deny the renewal permit before the end of the term of the previous permit, then all the terms and conditions of the previous permit including any permit shield that may have been granted pursuant to Section 325 shall remain in effect until the renewal permit has been issued or denied. ()

q. The permittee shall promptly report deviations from permit requirements including, but not limited to, those attributable to excess emissions. If the deviation is an excess emission, the report shall be submitted in accordance with the requirements of Sections 130 through 136. For all other deviations, the report shall be submitted in accordance with Subsection 322.08.c. unless the permit specifies another time frame. The reports shall describe the probable cause of such deviations and any corrective actions or preventative measures taken. ()

323. -- 324. (RESERVED)

325. ADDITIONAL CONTENTS OF TIER I OPERATING PERMITS -- PERMIT SHIELD.

Each Tier I operating permit shall include provisions stating: ()

01. General Permit Shield. Compliance with the terms and conditions of the Tier I operating permit, including those applicable to all alternative operating scenarios and trading scenarios, shall be deemed compliance with all of the following: ()

a. Applicable requirements as of the date of permit issuance that are specifically identified in the Tier I operating permit and have a corresponding term or condition in the Tier I operating permit. ()

b. Non-applicable requirements. For a requirement to be a non-applicable requirement, all of the following criteria must be met: ()

i. The permittee must have provided the information required by Subsection 314.08.b. in the application. ()

ii. The requirement must be specifically identified in the Tier I operating permit as a non-applicable requirement. ()

iii. The requirement must have been determined by the Department, in writing and in acting on the permit application or revision, to not be applicable to the Tier I source. ()

iv. Tier I operating permit must include the Department's determination or a concise summary thereof. ()

02. Limitation on Permit Shield. Permit revisions and other actions authorized by Sections 300 through 386 may eliminate, modify or suspend the permit shield. ()

326. -- 331. (RESERVED)

332. EMERGENCY AS AN AFFIRMATIVE DEFENSE REGARDING EXCESS EMISSIONS.

01. General. An emergency, as defined in Section 008, constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitation if the conditions of Subsection 332.0f. are met. ()

02. Demonstration of Emergency. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that: ()

a. An emergency occurred and that the permittee can identify the cause(s) of the emergency; ()

- b.** The permitted facility was at the time being properly operated; ()
- c.** During the period of the emergency, the permittee took all reasonable steps, as determined by the Department, to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and ()
- d.** The permittee submitted written notice of the emergency to the Department within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken. Compliance with this section satisfies the written reporting requirements under Section 135 and Subsection 322.15.q. ()

03. Burden of Proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof. ()

04. Applicability. Section 332 is in addition to any emergency or upset provision contained in any applicable requirement. ()

333. -- 334. (RESERVED)

335. GENERAL TIER I OPERATING PERMITS AND AUTHORIZATIONS TO OPERATE.

01. Issuance of General Tier I Operating Permits. The Department may, after notice and opportunity for public participation provided in accordance with Section 364, issue a general Tier I operating permit covering numerous similar sources. ()

02. Contents of General Tier I Operating Permits. Each general Tier I operating permit: ()

- a.** Shall include all terms and conditions identified in Sections 322 and 325. ()
- b.** Shall include specific criteria by which sources may qualify for coverage under the general Tier I operating permit; and ()
- c.** May provide for applications which deviate from the requirements of Sections 311 through 315, provided that such applications meet all other requirements of 42 U.S.C. 7661 through 7661f and include all information necessary to determine qualification for, and to ensure compliance with, the general Tier I operating permit. ()

03. Applications for Authorizations to Operate. The owner or operator of a Tier I source may apply for an authorization to operate under the terms and conditions of a general Tier I operating permit by: ()

a. Stating in the application submitted pursuant to Sections 311 through 315 that the owner or operator has determined that the Tier I source qualifies for coverage under a specifically identified general Tier I operating permit and that the owner or operator requests that operations of the Tier I source be authorized under a specifically identified general Tier I operating permit; or ()

b. Complying with the specific application requirements, if any, provided in the general Tier I operating permit. ()

04. Procedures for Issuing Authorizations to Operate. Without repeating the public participation procedures required under Section 364, the Department shall issue an authorization to operate a Tier I source under a specifically identified general Tier I operating permit if the Department determines that the Tier I source qualifies for coverage. ()

05. Review of Authorizations to Operate. The issuance of an authorization to operate shall be a final agency action for purposes of administrative and judicial review of the authorization. The general Tier I operating permit shall not be subject to administrative or judicial review upon the issuance of an authorization to operate. ()

06. Phase II Sources. General Tier I operating permits shall not be authorized for Phase II sources under the acid rain program unless otherwise provided in 40 CFR Part 72. ()

336. TIER I OPERATING PERMITS FOR TIER I PORTABLE SOURCES.

01. Issuance of Tier I Operating Permits for Portable Tier I Sources. ()

a. The Department may issue a single Tier I operating permit authorizing emissions from similar operations of a portable Tier I source by the owner or operator at multiple temporary locations. ()

b. The operation must be temporary and involve at least one (1) change of location for the portable Tier I source during the term of the Tier I operating permit. ()

02. Phase II Sources. No Phase II source shall be permitted as a portable Tier I source. ()

03. Contents of Tier I Operating Permits for Portable Tier I Sources. Tier I operating permits for portable Tier I sources shall include the following: ()

a. Terms and conditions that will ensure compliance with all applicable requirements at all authorized locations; ()

b. Requirements that the owner or operator notify the Department at least ten (10) days in advance of each change in location in accordance with Section 500; and ()

c. All terms and conditions identified in Sections 322 and 325 through 332. ()

337. -- 359. (RESERVED)

360. STANDARD PROCESSING OF TIER I OPERATING PERMIT APPLICATIONS.

The purposes of Sections 360 through 369 is to establish standard procedures and requirements for processing Tier I operating permits. ()

361. COMPLETENESS OF APPLICATIONS.

01. Criteria for Completeness. Except as otherwise provided by these rules, the application must comply with Section 314 including that the information must be in sufficient detail. ()

02. Timelines for Determinations of Completeness. The Department shall send written notice to the applicant of whether the application is complete within sixty (60) days of receiving the application. If the Department fails to send the written notice to the applicant within sixty (60) days of receipt, the application shall be deemed complete. ()

03. Effects of Completeness Determination. ()

a. The submittal of a complete application activates the application shield provided by Subsection 361.02. ()

b. The submittal of a complete Tier I operating permit application shall not affect the permit to construct requirements of Sections 200 through 225 or 42 U.S.C. Sections 7401 through 7515. ()

c. The timelines for final agency action provided in Subsections 367.02 and 367.03 begin on the date of the completeness determination. ()

362. TECHNICAL MEMORANDUMS FOR TIER I OPERATING PERMITS.

01. Memorandum for Draft Permit. As part of its review of the Tier I operating permit application,

the Department shall prepare a technical memorandum that sets forth the legal and factual basis for the draft Tier I operating permit terms and conditions (including references to the applicable statutory or regulatory provisions) or the draft denial. ()

02. Revised Memorandum for Proposed Permit. If the Department revises its analysis, its conclusions or the terms or conditions of the Tier I operating permit in response to public comment, the Department may revise the technical memorandum for the proposed permit or the proposed denial. ()

03. Release of Memorandum. The technical memorandum(s) shall be made available to the public in accordance with Section 364 and sent to the EPA with the proposed Tier I operating permit or proposed denial. ()

363. PREPARATION OF DRAFT PERMIT OR DRAFT DENIAL.

Except as otherwise provided in these rules, the Department shall prepare a draft permit or draft denial as promptly as practicable or one hundred twenty (120) days before the deadline for final action, whichever is earlier. ()

364. PUBLIC NOTICES, COMMENTS AND HEARINGS.

01. Generally. Except as otherwise provided in these rules, all Tier I operating permit proceedings shall provide for public notice and public comment, including offering an opportunity for a hearing, on a draft permit or on a draft denial. ()

02. Public Comment Package. A public comment package including the draft permit or draft denial, the technical memorandum and the application shall be prepared and distributed to appropriate public locations, the applicant and affected States. ()

03. Giving Notice. Notice shall be given: by publication in a newspaper of general circulation in the area where the Tier I source is located or in a State publication designed to give general public notice; by mailing the notice to persons on a mailing list developed by the Department, including those who request in writing to be on the list; by mailing the notice to all affected States; and by other means if necessary to ensure adequate notice to the affected public. ()

04. Content of the Notice. The notice shall identify the affected facility; provide the name and address of the permittee; provide the name and address of the Department processing the application; identify the draft permit action; identify the emissions change if the permit action is a permit revision or reopening; provide the locations where the public may locate a copy of the public comment package; provide the name, address, and telephone number of a person from whom interested persons may obtain additional information that is relevant to the permit decision by filing a written public documents request and paying any costs; provide a brief description of the comment procedures, including the deadline for comments and the name and address of the person to whom written comments must be delivered; and state the time and place of any hearing that has been scheduled or provide information regarding how a person may request a hearing. ()

05. Public Comment Procedures. ()

a. The Department shall provide at least thirty (30) days for public comment. ()

b. The Department may designate the person to receive written comments. ()

c. The Department shall give notice of any public hearing at least thirty (30) days in advance of the hearing. ()

d. The public hearing, if any, shall be an informal meeting, conducted by a hearing officer designated by the Department and transcribed. Written comments or supporting documents may be submitted during the hearing. ()

e. The public comments and additional information received during the comment period shall be available to the public upon the filing of a written public documents request and the payment of any costs. ()

365. PREPARATION OF PROPOSED PERMIT OR PROPOSED DENIAL.

01. Timeline. Except as otherwise provided by these rules, the Department shall prepare a proposed permit or proposed denial within thirty (30) days after the close of the public comment period, unless the Department determines that additional time is required to evaluate comments and information received. ()

02. Availability. The proposed permit or proposed denial shall be available to the public upon the filing a written public documents request and the payment of any costs. ()

03. Notice to Affected States. If the Department refuses to accept all recommendations that an affected State submitted during the public comment period, the Department shall send a copy of the notice sent to EPA in accordance with Subsection 366.01.d. to the affected State that submitted the recommendation. ()

366. EPA REVIEW PROCEDURES.

01. Submittal of Proposal to EPA. Except as otherwise provided in these rules and unless EPA waives its opportunity to review a proposed permit, the Department will transmit the following to EPA: ()

a. The proposed permit or proposed denial. ()

b. The technical memorandum, as revised if appropriate. ()

c. The application including all supplements and corrections submitted by the applicant, unless the applicant has submitted the information under a claim of confidentiality or unless the Department has entered an agreement with EPA to submit only a summary form and relevant portions of the permit application. ()

d. Notice of any refusal by the Department to accept all recommendations for the proposal that any affected State submitted during the public comment period. The notice shall include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on applicable requirements. ()

02. Opportunity for EPA Objection. ()

a. EPA may submit to the Department a written objection to the proposal within forty-five (45) days of receipt of the transmittal identified in Subsection 366.01. ()

b. The written objection shall state the EPA's reasons for the objection and provide the terms and conditions that the Tier I operating permit must include to respond to the objection or state that the permit must be denied. ()

c. EPA shall provide a copy of the written objection to the applicant. ()

03. Response to EPA Objections. Within ninety (90) days of receiving a written objection from EPA, the Department shall prepare a revised proposal and submit it to EPA in accordance with Subsection 366.01. If EPA determines that the revised proposal is objectionable, the Department will review the permit action taken by EPA and take a comparable final permit action in accordance with Section 367. ()

04. Public Petitions to EPA. ()

a. If the EPA does not object in writing under Subsection 366.02, any person may petition the EPA within sixty (60) days after the expiration of the EPA's forty-five (45) day review period to make such objection. ()

b. Any such petition shall be based only on objections to the draft permit or draft denial that were raised with specificity during the public comment period provided for in Section 364 unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such

objection arose after such period. ()

c. If the EPA objects to the proposal in accordance with Subsection 366.02 as a result of a petition filed under Subsections 366.04.a. and 366.04.b., the Department shall: ()

i. Not issue a permit action until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a Tier I operating permit or its requirements pending EPA's review of the petition and Department review of the objection if the Tier I operating permit was issued by the Department after the end of the forty-five (45) day review period and prior to an EPA objection initiated by a petition. ()

ii. Process the objection in accordance with Subsection 366.03. ()

367. ACTION ON APPLICATION.

01. Issuance Conditions. Except as otherwise provided by these rules, a Tier I operating permit, or any portion thereof, may be issued only if all of the following conditions have been met: ()

a. The owner or operator has submitted a complete application in accordance with Section 361. ()

b. The public has been provided notice and opportunities for comment and a hearing in accordance with Section 364. ()

c. Affected States have been provided notice in accordance with Section 364 and Subsection 365.03. ()

d. The terms and conditions of the Tier I operating permit comply with Sections 321 through 336 including providing for compliance with all applicable requirements. ()

e. The EPA has been provided with the proposal and an opportunity to object and the Department has responded as required by Section 366. ()

02. Deadlines for Final Actions During Initial Period. Except as otherwise provided in these rules, during the initial period beginning May 1, 1994 and ending three (3) years after EPA approval of the Tier I operating program, the Department will prioritize all of the applications predicted to be submitted during the initial period considering the groups established in accordance with Subsection 313.02, if any. The prioritization will result in the Department taking final action on one-third (1/3) of all such permit applications during each of the one (1) year periods following EPA approval of the program. ()

03. Deadlines for Final Actions After Initial Period. Except as otherwise provided in these rules, during the period beginning three (3) years after EPA approval of the Tier I operating program, the Department shall take final action on complete applications within eighteen (18) months. ()

04. Deadline for Tier I Operating Permits with Early Reductions. The Department shall take final action on any complete Tier I operating permit application containing an early reduction demonstration under 42 U.S.C. Section 7412 (i)(5) within nine (9) months of receipt of the complete application. ()

05. Deadline for Tier I Operating Permits for Phase II Sources. The permitting of phase II sources shall occur in accordance with the deadlines in 42 U.S.C. Section 7651 through 7651o. ()

06. Copy to EPA. The Department shall send a copy of the final Tier I operating permit to EPA. ()

07. Original to Permittee. The Department shall send the original Tier I operating permit to the permittee. ()

368. EXPIRATION OF PRECEDING PERMITS.

If a timely and complete Tier I permit application is received by the Department and is not acted upon in a timely manner as prescribed by these rules, the permit to construct, Tier I operating permit or Tier II operating permit, if any, that has been previously issued to the owner or operator of the Tier I source by the Department or EPA shall continue in full force until the Department has completed action of the permit application. No Tier I operating permit will be considered to have expired due solely to the Department's inaction on a timely Tier I operating permit application. ()

369. TIER I OPERATING PERMIT RENEWAL.

01. Renewal Procedures. Tier I operating permits being renewed are subject to the same procedural requirements, including those for public participation, including affected State review, and EPA review, that apply to initial Tier I operating permit issuance. ()

02. Expiration and Renewal Application Shield. Tier I operating permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted. ()

370. -- 379. (RESERVED)

380. CHANGES TO TIER I OPERATING PERMITS.

01. Applicability. Sections 380 through 399 establish procedures and requirements for permit revisions and changes requiring notice. These provisions do not alter the requirements for permits to construct set forth at Sections 200 through 228. ()

02. Changes Requiring Permit Revisions. Sections 381 through 383 establish procedures and requirements for Tier I operating permit revisions. A permit revision is required for changes that are not addressed or prohibited by the Tier I operating permit if such changes are subject to any requirements under Title IV of the Clean Air Act or are modifications under any provision of Title I of the Clean Air Act. ()

03. Changes Requiring Notice. Sections 384 and 385 establish procedures and requirements for providing notice by the permittee to the Department and EPA of certain emission trades and changes that contravene a permit term (Section 384), or certain changes that are not addressed or prohibited by the permit (Section 385). ()

04. Reopening. Section 386 establishes procedures for reopening the permit for cause by the Department, EPA, or the permittee. ()

05. Acid Rain. Changes regulated under Title IV of the Clean Air Act, 42 U.S.C. Sections 7651 through 7651o, shall be governed by regulations promulgated under Title IV of the Act. ()

381. ADMINISTRATIVE PERMIT AMENDMENTS.

01. Criteria. An administrative permit amendment is a permit revision that: ()

a. Corrects typographical errors; ()

b. Identifies a change in the name, address, or phone number of any person identified in the Tier I operating permit, or provides a similar minor administrative change at the Tier I source; ()

c. Requires more frequent monitoring or reporting by the permittee; ()

d. Allows for a change in ownership or operational control of a Tier I source where the Department determines that no other change in the Tier I operating permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department; ()

e. Incorporates into the Tier I operating permit the requirements from a permit to construct that was

issued by the Department in accordance with Subsection 209.05.c.; or ()

f. Is any other type of change that EPA and the Department have determined as part of the Part 70 program to be similar to those in Subsections 381.01.a. through 381.01.d. ()

02. Administrative Permit Amendment Application Procedures. ()

a. If initiated by the permittee, the permittee shall submit a request to the Department. The request shall: ()

i. State at the beginning of the request that it is a "REQUEST FOR ADMINISTRATIVE PERMIT AMENDMENT." ()

ii. Describe the proposed administrative permit amendment including any permit to construct to be incorporated; ()

iii. State the date on which the proposed administrative amendment will occur at the facility; ()

iv. Identify any Tier I operating permit term or condition that is no longer applicable as a result of the change; and ()

v. Identify any applicable requirement that would apply to the Tier I source as a result of the change. ()

b. If initiated by the Department, the Department shall notify the permittee that the Department is initiating an administrative permit amendment and provide a brief summary of the proposed administrative permit amendment including all of the information required by Subsection 381.02.a.i. through 381.02.a.v. ()

c. The Department shall, within sixty (60) days of the receipt of a request for an administrative permit amendment, take final action on the request and may incorporate such changes without providing notice to the public or affected States provided that the Department designates any such administrative permit amendment as having been made pursuant to Section 381. The Department shall submit a copy of the revised permit, or an addendum, to the EPA and send the original to the permittee. ()

03. Implementation Procedures. ()

a. The permittee may implement the changes addressed in the request for an administrative permit amendment under Subsections 381.01.a. through 381.01.f. immediately upon submittal of the request. ()

b. If the permittee obtains a permit to construct under Subsection 209.05.c., then so long as the change does not violate any terms or conditions of the existing Tier I operating permit, the permittee may operate the source described in the permit to construct immediately upon submittal of the request for an administrative permit amendment. ()

04. Permit Shield. Upon final action by the Department, the permit shield described in Section 325 shall extend only to administrative permit amendments identified in Subsection 381.01.e. ()

382. SIGNIFICANT PERMIT MODIFICATION.

01. Criteria. Significant modification procedures shall be used for applications requesting permit revisions that do not qualify as minor permit modifications or as administrative amendments. Nothing herein shall be construed to preclude the permittee from making changes consistent with this chapter that would render existing permit compliance terms and conditions irrelevant. A significant permit modification is a permit revision for changes that: ()

a. Violate an existing Tier I permit term or condition derived from an applicable requirement; ()

b. Involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit. Every significant change in existing monitoring terms or conditions (except more frequent monitoring or reporting under Subsection 381.01.c.) and every relaxation of reporting or recordkeeping terms or conditions shall be considered significant; ()

c. Require or change a case-by-case determination of an emission limitation or other standard; a source-specific determination for temporary sources of ambient impacts; or a visibility or increment analysis; ()

d. Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Clean Air Act or an alternative emissions limit for an early reduction of hazardous air pollutants that was approved pursuant to regulations promulgated under 42 U.S.C. Section 7412(i)(5) of the Clean Air Act; ()

e. Constitute a modification under any provision of Title I of the Clean Air Act; or ()

f. Could be processed as an administrative amendment or as a minor modification, except the permittee has requested the change be processed as a significant modification, including incorporating the requirements of a permit to construct that was issued by the Department in accordance with Subsection 209.05.a. ()

02. Significant Permit Modification Application Procedures. A permittee may initiate a significant permit modification by submitting a complete significant permit modification application to the Department. The application shall: ()

a. Request the use of significant permit modification procedures and state at the beginning of the request that it is a "REQUEST FOR SIGNIFICANT PERMIT MODIFICATION"; ()

b. Meet the standard application requirements of Sections 314 and 315; ()

c. Provide a summary sheet; ()

i. Describing the proposed significant permit modification; ()

ii. Describing and quantifying any change in emissions resulting from the significant permit modification including, but not limited to, an identification of any new regulated air pollutant(s) that will be emitted; ()

iii. Identifying any Tier I operating permit term or condition that will no longer be applicable as a result of the significant permit modification; and ()

iv. Identifying new applicable requirement resulting from the change. ()

d. Significant permit modifications shall be issued in accordance with all procedural requirements as they apply to Tier I operating permit issuance and renewal, including those for applications (Sections 314 and 315), public participation (Section 364), review by affected States (Sections 364 and 365), and review by EPA (Section 366). ()

e. The Department will process the majority of significant permit modifications within nine (9) months of receiving a complete application. The Department shall determine which significant permit modification applications will be processed within nine (9) months. ()

03. Implementation Procedures. The permittee shall comply with Sections 200 through 223 as applicable, including Subsection 209.05 governing permit to construct procedures for Tier I sources. ()

04. Permit Shield. Upon final action by the Department, the permit shield described in Section 325 shall extend to significant permit modifications. ()

383. MINOR PERMIT MODIFICATION.

01. Criteria. ()

a. Minor permit modification procedures may be used for permit modifications involving economic incentives, marketable permits, emissions trading, and other similar approaches explicitly provided for in the SIP or applicable requirements promulgated by EPA. A permittee may not use minor modification procedures for changes described in Subsections 382.01.a. through 382.01.e. ()

b. Any other permit modification that is not required to be processed as a significant permit modification under Section 382. ()

c. Groups of a permittee's applications eligible for processing as minor permit modifications may be processed under minor permit modification procedures if collectively, the changes proposed in the minor modification applications do not exceed the lesser of: ()

i. Ten percent (10%) of the emissions allowed by the existing Tier I operating permit for the emissions unit for which the change is requested; ()

ii. Twenty percent (20%) of the major facility criteria in Section 008; or ()

iii. Five (5) tons per year. ()

02. Minor Permit Modification Application Procedures. A permittee may initiate a minor permit modification by submitting a complete standard application described in Section 314 to the Department. The application shall: ()

a. Request the use of minor permit modification procedures and state at the beginning of the request that it is a "REQUEST FOR MINOR PERMIT MODIFICATION," designate either "INDIVIDUAL" or "GROUP" processing, and provide a summary sheet; ()

i. Describing the proposed minor permit modification; ()

ii. Stating the date on which the proposed minor permit modification will occur at the facility; ()

iii. Describing and quantifying any change in emissions resulting from the minor permit modification including, but not limited to, an identification of any new regulated air pollutant(s) that will be emitted; ()

iv. Identifying any Tier I operating permit term or condition that will no longer be applicable as a result of the minor permit modification; ()

v. Identifying any new applicable requirement that is applicable to the Tier I source as a result of the minor permit modification; ()

vi. Certifying by a responsible official under Section 123 that the proposed permit modification meets the criteria for a minor permit modification and, if applicable, the use of group processing procedures; and ()

vii. Listing the permittee's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with the other applications, equals or exceeds the thresholds under Subsection 383.01.c. above. ()

b. Include completed forms for the Department to use to notify the EPA and affected States as

required under Sections 364 and 366. ()

c. Include the applicant's suggested draft Tier I permit with the minor permit modification. ()

03. EPA and Affected State Notification Procedures. ()

a. Within five (5) working days of receipt of a complete minor permit modification application, the Department shall notify EPA and the affected States of the requested permit modification and forward the forms completed by the applicant and other required information, if any, to the EPA and affected States. Affected States and EPA review shall occur simultaneously. ()

b. On a quarterly basis or within five (5) working days of receiving an application demonstrating that the aggregate of a permittee's pending applications equals or exceeds the threshold level established in Subsection 383.01.c. above, whichever is earlier, the Department shall notify EPA and the affected States of the requested permit modification and forward the forms completed by the applicant and other required information, if any, to the EPA and affected States. Affected States and EPA review shall occur simultaneously. ()

c. The Department shall promptly notify EPA and any affected States in writing including its reasons for not accepting any such recommendation if the Department refuses to accept all the timely recommendations submitted by affected States. ()

d. Timetable for Issuance. The Department may not issue a final permit modification until after EPA's forty-five (45) day review period or until EPA has notified the Department that EPA will not object to issuance of the permit modification, whichever is first; although the Department can approve the permit modification prior to that time. ()

e. Within ninety (90) days of the Department's receipt of a complete minor permit modification application or within fifteen (15) days after the end EPA's forty-five (45) day review period, whichever is later, the Department shall take one (1) of the following actions: ()

i. Issue the minor permit modification as proposed; ()

ii. Deny the minor permit modification application; ()

iii. Determine that the requested minor permit modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or ()

iv. Revise the proposed minor permit modification, transmit the revised proposal to the EPA in accordance with Section 366, and notify the permittee. ()

f. Within one hundred and eighty (180) days of the Department's receipt of a complete application for modifications eligible for group processing or within fifteen (15) days after the end of EPA's forty-five (45) day review period, whichever is later, the Department shall take one (1) of the actions specified in Subsections 383.03.e.i., 383.03.e.ii., 383.03.e.iii., or 383.03.e.iv. ()

04. Implementation Procedures. ()

a. The permittee may make the change proposed in its minor permit modification immediately upon submittal of a complete application to the Department before final action by the Department. ()

b. After the source makes the allowed change and until the Department takes any of the actions specified in Subsections 383.03.e.i., 383.03.e.ii., or 383.03.e.iii., the permittee must comply with both the applicable requirements governing the change and the proposed terms and conditions. ()

c. During this time period, the permittee need not comply with the existing permit terms and conditions it seeks to modify; provided that, if the source fails to comply with the applicable requirements governing the change and the proposed revisions, the existing permit terms and conditions it seeks to modify may be enforced

against it. ()

05. Permit Shield. The permit shield described in Section 325 shall not apply to any minor permit modification. ()

384. SECTION 502(B)(10) CHANGES AND CERTAIN EMISSION TRADES.

01. Criteria. This section authorizes emission changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of the Title I of the Clean Air Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or total emissions). ()

a. Changes authorized are changes that: ()

i. Are Section 502(b)(10) changes; ()

ii. Are changes involving trades of increases and decreases of emissions within the permitted facility where the State Implementation Plan provides for such emissions trades without requiring a permit revision. SIP trades are allowed in compliance with this Section even if the Tier I operating permit does not already provide for such emission trading; or ()

iii. Are changes made under the terms and conditions of the Tier I permit that authorize the trading of emissions increases and decreases within the permitted facility for the purpose of complying with a federally-enforceable emissions cap that is established by the Department in the Tier I operating permit independent of otherwise applicable requirements. ()

b. Changes constituting a modification under Title I of the Clean Air Act or subject to a requirement under Title IV of the Clean Air Act are not authorized by this Section. ()

02. Notice Procedures. The permittee may make a change under this Section if the permittee provides written notification to the Department and EPA so that the notification is received at least seven (7) days in advance of the proposed change; or, in the event of an emergency, the permittee provides the notification so that it is received at least twenty-four (24) hours in advance of the proposed change. The permittee, the Department, and EPA shall attach the notification to their copy of the Tier I operating permit. ()

a. For each such change, the written notification shall: ()

i. State at the beginning of the notification “NOTIFICATION OF SECTION 502(b)(10) CHANGE” or “NOTIFICATION OF EMISSION TRADE”; ()

ii. Describe the proposed change; ()

iii. Provide the date on which the proposed change will occur; ()

iv. Describe and quantify any expected change in emissions including identification of any new regulated air pollutant(s) that will be emitted; ()

v. Identify any permit term or condition that is no longer applicable as a result of the change; ()

vi. Specifically identify and describe the emergency, if any; and ()

vii. Identify any new applicable requirement that would apply to the Tier I source as a result of the change. ()

b. For changes described in Subsection 384.01.a.ii., the written notification shall also include: ()

- i. Identification of the provisions in the SIP that provide for the emissions trade; ()
 - ii. All of the information required by the provision in the SIP authorizing the emissions trade; ()
 - iii. Specific identification of the provisions in the SIP with which the permittee will comply; and ()
 - iv. The pollutants subject to the trade. ()
- c. For changes described in Subsection 384.01.a.iii., the written notification shall also describe how the change will comply with the terms and conditions of the permit. ()

03. Permit Shield. The permit shield described in Section 325 shall only extend to changes made in accordance with Subsection 384.01.a.iii. ()

385. OFF-PERMIT CHANGES AND NOTICE.

01. Criteria. This section authorizes changes that are neither addressed nor prohibited by the Tier I operating permit to be made without a permit revision if each such change meets all applicable requirements and does not violate any existing permit terms or conditions. Changes constituting a modification under Title I of the Clean Air Act, or subject to a requirement under Title IV of the Clean Air Act are not off-permit changes. ()

02. Notice Procedure. Sources must provide written notice to the Department and EPA of each such change except changes that qualify as insignificant under Section 317, within seven (7) days of making the off-permit change. ()

- a. The written notification provided to the Department and EPA shall: ()
 - i. State at the beginning of the notification “NOTIFICATION OF OFF-PERMIT CHANGE”; ()
 - ii. Describe the off-permit change; ()
 - iii. State the date on which the off-permit change will occur or has occurred; ()
 - iv. Describe and quantify any change in emissions resulting from the off-permit change including, but not limited to, an identification of any new regulated air pollutant(s) that will be emitted; and ()
 - v. Identify any new applicable requirement that is applicable to the Tier I source as a result of the off-permit change. ()
- b. The permittee shall keep a record at the facility describing all off-permit changes made at the Tier I source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and identifying the emissions resulting from those changes. ()

03. Permit Shield Applicability. The permit shield described in Section 325 shall not apply to any off-permit change. ()

386. REOPENING FOR CAUSE.

The Department shall reopen a Tier I permit if cause exists. ()

- 01. Criteria.** Cause for reopening exists under any of the following circumstances: ()
 - a. Additional applicable requirements become applicable to a major Tier I source with a remaining permit term of three (3) or more years; provided that no such reopening is required if the original effective date of the

applicable requirement is later than the date on which the Tier I operating permit is due to expire and the original Tier I operating permit or any of its terms and conditions has not been extended pursuant to Section 368; provided further that the permittee must comply with the additional applicable requirement no later than the effective date; ()

b. Whenever additional applicable requirements become applicable to an affected source, as defined for the purposes of the acid rain program; ()

c. The Department or EPA determines that the Tier I operating permit contains a material mistake or inaccurate statements were used or considered in establishing the emissions standards or other terms or conditions of the Tier I operating permit; or ()

d. The Department or EPA determines that the Tier I operating permit does not ensure compliance with the applicable requirements. ()

02. Procedures for Reopenings. ()

a. The Department shall follow the same procedures for reopening as they apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall be made as expeditiously as practicable in accordance with Sections 360 through 379. ()

b. The Department shall notify the permittee in writing of reopening and provide a brief summary of the reason for the reopening at least thirty (30) days prior to the reopening. ()

c. The EPA may initiate reopenings for circumstances listed in Subsections 386.01.a. through 386.01.d. by providing written notification to the Department and the permittee. ()

i. The Department shall within ninety (90) days after receipt of notification from EPA, forward to EPA a proposed determination of termination, revocation, revision, or revocation and reissuance, as appropriate. The Administrator may extend the ninety (90) day period for an additional ninety (90) days if EPA finds that a new or revised permit application is necessary or that the Department must require the permittee to submit additional information. ()

ii. The EPA will review the proposed determination from the Department within ninety (90) days of receipt. ()

iii. The Department shall have ninety (90) days from receipt of an EPA objection to resolve any EPA objection and to terminate, modify, or revoke and reissue the permit. ()

iv. If the Department fails to submit a proposed determination or fails to resolve any EPA objection, the EPA may terminate, modify, revoke and reissue the permit after taking the following actions: ()

(1) Providing at least thirty (30) days' notice to the permittee in writing of the reason for such action, and ()

(2) Providing the permittee an opportunity for comment on the EPA's proposed action and an opportunity for a hearing. ()

387. REGISTRATION AND REGISTRATION FEES.

The purpose of Sections 387 through 397 is to set forth the requirements for the annual registration of Tier I sources, and the annual assessment and payment of fees to support the Tier I permitting program. ()

388. APPLICABILITY.

01. Applicability. Sections 387 through 397 shall apply to all major facilities, as defined in Section 008, including facilities that obtained air quality permits that limited potential emissions below major facility levels during the previous year. Facilities, sources and emissions exempt under Section 301 are not required to register or pay fees. ()

02. Deferred Sources. Certain sources may qualify for and request deferral from the Tier 1 operating permit program under Subsection 301.02.b.iv. and thereby not pay Tier I fees. On or before such time as those deferred sources are required to submit a Tier 1 operating permit application, the Department shall reconsider Sections 387 through 397 to determine whether an alternative basis upon which those sources shall register and be assessed and pay fees should be developed. ()

389. REGISTRATION INFORMATION.

Any person owning or operating a facility or source during the previous calendar year or any portion of the previous calendar year for which Sections 387 through 397 apply shall, by April 1 of each year, register with the Department and submit the following information (submittal forms are located at the DEQ website at <http://www.deq.idaho.gov>): ()

01. Facility Information. The name, address, telephone number and location of the facility; ()

02. Owner/Operator Information. The name, address and telephone numbers of the owners and operators; ()

03. Facility Emission Units. The number and type of emission units present at the facility or the Tier I permit number for the facility; and ()

04. Pollutant Registration. The actual emissions from the previous calendar year for oxides of sulfur (SO_x), oxides of nitrogen (NO_x), particulate matter (PM₁₀), and volatile organic compounds (VOC) calculated using methods to include, but not limited to, continuous emissions monitoring (CEMS), certified source tests, material balances (mass-balance), state/industry emission factors, or AP-42 emission factors applied to throughput, actual operating hours, production rates, in-place control equipment, or the types of materials processed, stored, or combusted. ()

05. Radionuclide Registration. The amount of radionuclides from facilities regulated under 40 CFR Part 61, Subpart H, for which the registrant wishes to be registered to emit from each source in curies per year except that no amount in excess of or less than an existing permit, consent order, or judicial order will be allowed. ()

390. REGISTRATION FEE.

This registration fee structure shall be reviewed at least every two (2) years to assure the funds meet the presumptive minimum as defined by EPA. The annual registration fee as determined in Section 390 shall be paid as provided in Section 393. ()

01. Tier I Annual Fee. The Tier I annual fee schedule shall be as follows: ()

a. A fixed annual fee for Tier I major sources emitting regulated air pollutants listed in Subsection 389.04 as follows: ()

i. Seven thousand (7,000) tons per year and above shall pay seventy-one thousand five hundred dollars (\$71,500); ()

ii. Four thousand five hundred (4,500) tons per year and above shall pay forty-two thousand nine hundred dollars (\$42,900); ()

iii. Three thousand (3,000) tons per year and above shall pay twenty-eight thousand six hundred dollars (\$28,600); ()

iv. One thousand (1,000) tons per year and above shall pay twenty-two thousand seven hundred fifty dollars (\$22,750); ()

v. Five hundred (500) tons per year and above shall pay eleven thousand fifty dollars (\$11,050); ()

vi. Two hundred (200) tons per year and above shall pay seven thousand one hundred fifty dollars (\$7,150); and ()

vii. Less than two hundred (200) tons per year shall pay three thousand five hundred seventy-five dollars (\$3,575); plus ()

b. A per ton annual fee of thirty-nine dollars and forty-eight cents (\$39.48) per ton for all regulated air pollutant emissions listed in Subsection 389.04 as follows: ()

i. Greater than or equal to four thousand five hundred (4,500) tons per year not to exceed one hundred forty-three thousand dollars (\$143,000); ()

ii. Greater than or equal to three thousand (3,000) but less than four thousand five hundred (4,500) tons per year not to exceed seventy-one thousand five hundred dollars (\$71,500); ()

iii. Greater than or equal to one thousand (1,000) but less than three thousand (3,000) tons per year not to exceed thirty-five thousand one hundred dollars (\$35,100); ()

iv. Greater than or equal to five hundred (500) but less than one thousand (1,000) tons per year not to exceed twenty-five thousand twenty-five dollars (\$25,025); ()

v. Greater than or equal to two hundred (200) but less than five hundred (500) tons per year not to exceed ten thousand seven hundred twenty-five dollars (\$10,725); and ()

vi. Less than two hundred (200) tons per year not to exceed three thousand five hundred seventy-five dollars (\$3,575). ()

02. Fee-for-Service. The fee-for-service shall be as follows: Sources requesting Section 300 permit modifications or renewals, or receiving program maintenance services, including but not limited to site visits, response to public inquiries, modeling, responses to site questions and opacity readings by the Department shall be assessed a fee for actual time expended and expenses incurred by the Department in the previous calendar year in an amount not to exceed twenty thousand dollars (\$20,000) per facility per year as a fee-for-service. Service shall be conducted by qualified Department staff or contractors. ()

03. Radionuclide Registration Fee. ()

a. A registration fee of five dollars per curie per year (\$5/curie/year) shall be paid by facilities regulated under 40 CFR Part 61, Subpart H. ()

b. The registration fee may be paid as provided in Section 397. ()

391. REQUEST FOR INFORMATION.

Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections 387 through 397 shall be furnished on request. ()

392. REGISTRATION FEE ASSESSMENT.

All facilities to which Sections 387 through 397 apply shall pay to the Department an annual registration fee as required by Section 390. The Department shall determine the fee based on the information supplied by the registrant and the Department's analysis of information available. In the event of a failure of a facility to submit pertinent registration information, the Department may calculate the fee and shall assess the facility the fee and the costs of calculating the fee. No later than May 15 of each year, or within fifteen (15) days following the adjournment of the regular session of the Idaho State Legislature, whichever is later, the Department shall send to each registrant, to which Sections 387 through 397 apply, by certified mail, an assessment of the annual fee payable by the registrant. ()

393. PAYMENT OF TIER I REGISTRATION FEE.

01. Fee Payment Date. The registration fee shall be paid to and received by the Department no later than July 1 of each year, or within forty-five (45) days following the receipt of the registration fee assessment in Section 392, whichever is later. Checks should be made payable to "Department of Environmental Quality." ()

02. Fee Payments Mailing Address. All fee payments should be sent to:

Air Quality Tier I Registration Fees
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255 ()

394. EFFECT OF DELINQUENCY ON APPLICATIONS.

No permit to construct or operate, other than those issued at the discretion of the Director, shall be accepted for processing, processed, or issued by the Department for any facility or to any person having Tier I operating permit fees delinquent in full or in part. ()

395. APPEALS.

Persons may file an appeal within thirty-five (35) days of the date the person received an assessment issued under Section 392. The appeal shall be filed in accordance with IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ()

396. EXEMPTIONS.

01. Registration Fees. The following facilities or sources are exempt from paying registration fees under Sections 387 through 397: ()

a. Facilities and sources specified by the Department, after public notice, as exempt from the payment of registration fees; and ()

b. Country grain elevators. ()

02. Registering and Paying Fees. The following facilities or sources are exempt from registering and paying registration fees under Sections 387 through 397: ()

a. Facilities and sources specified by the Department, after public notice, as exempt from registration and the payment of registration fees; ()

b. Confined animal feeding operations; and ()

c. Insignificant activities identified in Subsection 317.01. ()

03. Paying Fees. The following emissions are exempt from registering and paying registration fees under Sections 387 through 397: ()

a. Fugitive emissions from wood products. ()

b. Fugitive dust emissions, except facilities listed in Subsections 008.10.c.i. and 008.10.c.ii. Facilities listed in that section shall not be required to pay fees for fugitive dust emission in excess of one hundred (100) tons. ()

397. LUMP SUM PAYMENTS OF REGISTRATION FEES.

01. Agreement. The Department may, in its discretion, enter an agreement with any person for the lump sum payment of all, or any addition to, the registration fees required by Section 390. ()

02. Minimum Amount. The minimum amount for any lump sum agreement shall be three hundred thousand dollars (\$300,000). ()

03. Payment Waiver. Upon the execution and full performance of the agreement by the person, the Department shall waive the payment requirements of Section 390. All other provisions of Sections 387 through 397 shall remain applicable to the person. ()

398. -- 399. (RESERVED)

400. PROCEDURES AND REQUIREMENTS FOR TIER II OPERATING PERMITS.
The purpose of Sections 400 through 410 is to establish uniform procedures for the issuance of "Tier II Operating Permits." ()

401. TIER II OPERATING PERMIT.

01. Optional Tier II Operating Permits. The owner or operator of any stationary source or facility which is not subject to (or wishes to accept limitations on the facility's potential to emit so as to not be subject to) Sections 300 through 399 may apply to the Department for an operating permit to: ()

- a.** Authorize the use of alternative emission limits (bubbles) pursuant to Section 440; ()
- b.** Authorize the use of an emission offset pursuant to Sections 204.02.b. or 206; ()
- c.** Authorize the use of a potential to emit limitation, an emission reduction or netting transaction to exempt a facility or modification from certain requirements for a permit to construct; ()
- d.** Authorize the use of a potential to emit limitation to exempt the facility from Tier I permitting requirements. ()
- e.** Bank an emission reduction credit pursuant to Section 461; ()

02. Required Tier II Operating Permits. ()

- a.** A Tier II operating permit is required for any stationary source or facility which: ()
 - i.** Is not subject to Sections 300 through 399 with a permit to construct which establishes any emission standard different from those in these rules. ()
 - ii.** Has annual actual mercury emissions in excess of sixty-two (62) pounds. Fugitive emissions shall not be included in a determination of the actual mercury emissions. The owner or operator of the stationary source or facility shall submit a Tier II permit application for review and approval by the Department, no later than twelve (12) months after becoming subject to Subsection 401.02.a.ii., that includes an MBACT analysis for all sources that emit mercury. A determination of applicability under Subsection 401.02 shall be based upon best available information. An MBACT analysis for review and approval by the Department shall be included in a Tier II renewal application for any mercury emitting source not otherwise subject to MBACT. ()
- b.** Stationary sources within a source category subject to 40 CFR Part 63 are exempt from the requirements of Subsection 401.02.a.ii. ()

03. Tier II Operating Permits Required by the Department. The Director may require or revise a Tier II operating permit for any stationary source or facility whenever the Department determines that: ()

- a.** Emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment; or ()
- b.** Specific emission standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. ()

04. Multiple Tier II Operating Permits. Subject to approval by EPA, the Director may issue one (1)

or more Tier II operating permits to a facility which allow any specific stationary source or emissions unit within that facility a future compliance date of up to three (3) years beyond the compliance date of any provision of these rules, provided the Director has reasonable cause to believe such a future compliance date is warranted. ()

05. Tier II Operating Permits Establishing a Facility Emissions Cap. The owner or operator of any stationary source or facility may request a Tier II operating permit establishing a Facility Emissions Cap (FEC) pursuant to Sections 175 through 181. ()

402. APPLICATION PROCEDURES.

Application for a Tier II operating permit must be made using forms furnished by the Department, or by other means prescribed by the Department. The application shall be certified by the responsible official and shall be accompanied by all information necessary to perform any analysis or make any determination required under Sections 400 through 410. ()

01. Required Information. Site information, plans, description, specifications, and drawings showing the design of the stationary source, facility, or modification, the nature and amount of emissions (including secondary emissions), and the manner in which it will be operated and controlled. ()

02. Additional Specific Information. ()

a. For emission reduction credits, a description of the emission reduction credits proposed for use, including descriptions of the stationary sources or facilities providing the reductions, a description of the system of continuous emission control which provides the emission reduction credits, emission estimates, and other information necessary to determine that the emission reductions satisfy the requirements for emission reduction credits (Section 460); and ()

b. For alternative emission limits (bubbles) or emission offsets, information on the air quality impacts of the traded emissions as necessary to determine the change in ambient air quality that would occur. ()

c. For restrictions on potential to emit, a description of the proposed potential to emit limitations including the proposed monitoring and recordkeeping requirements that will be used to verify compliance with the limitations. ()

03. Estimates of Ambient Concentrations. All estimates of ambient concentrations shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR 51 Appendix W (Guideline on Air Quality Models). ()

a. Where an air quality model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted, subject to written approval of the Administrator of the U.S. Environmental Protection Agency and public comment pursuant to Subsection 404.01.c. ()

b. Methods like those outlined in the U.S. Environmental Protection Agency's "Interim Procedures for Evaluating Air Quality Models (revised)" (1984) should be used to determine the comparability of air quality models. ()

04. Additional Information. Any additional information, plans, specifications, evidence or documents that the Department may require to make the determinations required under Sections 400 through 410 shall be furnished upon request. ()

403. PERMIT REQUIREMENTS FOR TIER II SOURCES.

No Tier II operating permit shall be granted unless the applicant shows to the satisfaction of the Department that: ()

01. Emission Standards. The stationary source would comply with all applicable local, state or federal emission standards. ()

02. NAAQS. The stationary source would not cause or significantly contribute to a violation of any

ambient air quality standard. ()

404. PROCEDURE FOR ISSUING PERMITS.

01. General Procedures. General procedures for Tier II operating permits. ()

a. Within thirty (30) days after receipt of the application for a Tier II operating permit, the Department shall determine whether the application is complete or whether more information must be submitted and shall notify the applicant of its findings in writing. ()

b. Within sixty (60) days after the application is determined to be complete the Department shall: ()

i. Notify the applicant in writing of the approval, conditional approval, or denial of the application if an opportunity for public comment is not required pursuant to Subsection 404.01.c. The Department shall set forth reasons for any denial; or ()

ii. Issue a proposed approval, proposed conditional approval, or proposed denial. ()

c. An opportunity for public comment shall be provided on an application for any Tier II operating permit pursuant to Subsection 401.01, any application which uses fluid modeling or a field study to establish a good engineering practice stack height pursuant to Sections 510 through 516 and any other application which the Director determines an opportunity for public comment should be provided. ()

i. The Department's proposed action, together with the information submitted by the applicant and the Department's analysis of the information, shall be made available to the public in at least one (1) location in the region in which the stationary source or facility is to be located. ()

ii. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located. ()

iii. A copy of such notice shall be sent to the applicant and to appropriate federal, state and local agencies. ()

iv. There shall be a thirty (30) day period after initial publication for comment on the Department's proposed action, such comment to be made in writing to the Department. ()

v. After consideration of comments and any additional information submitted during the comment period, and within forty-five (45) days after initial publication of the notice, unless the Director deems that additional time is required to evaluate comments and information received, the Department shall notify the applicant in writing of approval, conditional approval, or denial of the permit. The Department shall set forth the reasons for any denial. ()

vi. All comments and additional information received during the comment period, together with the Department's final determination, shall be made available to the public at the same location as the preliminary determination. ()

d. A copy of each proposed and final permit will be sent to the U.S. Environmental Protection Agency. ()

02. Specific Procedures. Procedures for Tier II operating permits required by the Department under Subsection 401.03. ()

a. The Director shall send a notification to the proposed permittee by registered mail of his intention to issue a Tier II operating permit for the facility concerned. The notification shall contain a copy of the proposed permit in draft form stating the proposed emission standards and any required action, with corresponding dates, which must be taken by the proposed permittee in order to achieve or maintain compliance with the proposed Tier II

operating permit. ()

b. The Department's proposed Tier II operating permit shall be made available to the public in at least one (1) location in the region in which the facility is located. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the facility is located. A copy of such notice shall be sent to the applicant. There shall be a thirty (30) day period after publication for comment on the Department's proposed Tier II operating permit. Such comment shall be made in writing to the Department. ()

c. A public hearing will be scheduled to consider the standards and limitations contained in the proposed Tier II operating permit if the proposed permittee files a request therefor with the Department within ten (10) days of receipt of the notification, or if the Director determines that there is good cause to hold a hearing. ()

d. After consideration of comments and any additional information submitted during the comment period or at any public hearing, the Director shall render a final decision upon the proposed Tier II operating permit within thirty (30) days of the close of the comment period or hearing. At this time the Director may adopt the entire Tier II operating permit as originally proposed or any part or modification thereof. ()

e. All comments and additional information received during the comment period, together with the Department's final permit, shall be made available to the public at the same location as the proposed Tier II operating permit. ()

03. Availability of Fluid Models and Field Studies. The Department will notify the public of the availability of any fluid model or field study used to establish a good engineering practice stack height and provide an opportunity for a public hearing before issuing a permit or setting an emission standard based thereon. ()

04. Permit Revision or Renewal. The Director may approve a revision of any Tier II operating permit or renewal of any Tier II operating permit provided the stationary source or facility continues to meet all applicable requirements of Sections 400 through 410. Revised permits will be issued pursuant to procedures for issuing permits (Section 404), except that the requirements of Subsection 404.01.c. shall only apply if the permit revision results in an increase in allowable emissions or if deemed appropriate by the Director. Renewed Tier II operating permits will be issued pursuant to procedures for issuing permits (Section 404), except that the requirements of Subsections 404.01.c., and 404.02.b. through 404.02.e. shall only apply if the permit revision results in an increase in allowable emissions or if deemed appropriate by the Director. The expiration of a permit will not affect the operation of a stationary source or a facility during the administrative procedure period associated with the permit renewal process. The permittee shall submit a complete application to the Department for a renewal of the terms and conditions establishing the Tier II operating permit at least six (6) months before, but no earlier than eighteen (18) months before, the expiration date of the existing permit. To ensure that the term of the permit does not expire before the terms and conditions are renewed, the permittee is encouraged to submit the application nine (9) months prior to expiration. ()

05. Transfer of Tier II Permit. ()

a. Transfers by Revision. A Tier II permit may be transferred to a new owner or operator in accordance with Subsection 404.04. ()

b. Automatic Transfers. Any Tier II permit, with or without transfer prohibition language, may be automatically transferred if: ()

i. The current permittee notifies the Department at least thirty (30) days in advance of the proposed transfer date; ()

ii. The notice provides written documentation signed by the current and proposed permittees containing a date for transfer of permit responsibility, designation of the proposed permittee's responsible official, and certification that the proposed permittee has reviewed and intends to operate in accordance with the permit terms and conditions; and ()

iii. The Department does not notify the current permittee and the proposed permittee within thirty (30) days of receipt of the notice of the Department's determination that the permit must be revised pursuant to Subsection 404.04. If the Department does not issue such notice, the transfer is effective on the date provided in the notice described in Subsection 404.05.b.ii. ()

405. CONDITIONS FOR TIER II OPERATING PERMITS.

01. Reasonable Conditions. The Department may impose any reasonable conditions upon an approval, including conditions requiring the stationary source or facility to be provided with: ()

- a. Sampling ports of a size, number, and location as the Department may require; ()
- b. Safe access to each port; ()
- c. Instrumentation to monitor and record emissions data; ()
- d. Instrumentation for ambient monitoring to determine the effect emissions from the stationary source or facility may have, or are having, on the air quality in any area affected by the stationary source or facility; and ()
- e. Any other sampling and testing facilities as may be deemed reasonably necessary. ()

02. Performance Tests. Any performance tests required by the permit shall be performed in accordance with methods and under operating conditions approved by the Department. The owner or operator shall furnish to the Department a written report of the results of such performance test. ()

- a. Such test shall be at the expense of the owner or operator. ()
- b. The Department may monitor such test and may also conduct performance tests. ()
- c. The owner or operator of a stationary source or facility shall provide the Department fifteen (15) days prior notice of the performance test to afford the Department the opportunity to have an observer present. ()

03. Permit Term. Tier II operating permits shall be issued for a period not to exceed five (5) years. This five (5) year operating permit restriction does not apply to the provisions contained in Section 461.02 (banked emission reduction credits). ()

04. Single Tier II Operating Permit. When a facility includes more than one (1) stationary source or emissions unit, a single Tier II operating permit may be issued including all stationary sources and emissions units located at that facility. Such Tier II operating permit shall separately identify each stationary source and emissions unit to which the Tier II operating permit applies. When a single stationary source or facility is subject to permit modification, suspension or revocation, such action by the Director shall only affect that individual stationary source or emissions unit without thereby affecting any other stationary source or emissions unit subject to that Tier II operating permit. ()

406. OBLIGATION TO COMPLY.

Receiving a Tier II operating permit shall not relieve any owner or operator of the responsibility to comply with all applicable local, state and federal rules and regulations. ()

407. TIER II OPERATING PERMIT PROCESSING FEE.

01. Tier II Operating Permit Processing Fee. A Tier II operating permit processing fee, calculated by the Department pursuant to the categories provided in the following table, shall be paid to the Department by the person receiving a Tier II permit or permit renewal. The fee calculation shall not include fugitive emissions.

| TIER II OPERATING PERMIT CATEGORY | FEE |
|--|----------|
| General permit, no facility specific requirements (Defined as a source category specific permit for which the Department has developed standard emission limitations, operating requirements, monitoring and recordkeeping requirements, and that require minimal engineering analysis.) | \$500 |
| Stationary sources or facilities with permitted emissions of less than one (1) ton per year | \$1,250 |
| Stationary sources or facilities with permitted emissions of one (1) to less than ten (10) tons per year | \$2,500 |
| Stationary sources or facilities with permitted emissions of ten (10) to less than one hundred (100) tons per year | \$5,000 |
| Stationary sources or facilities with permitted emissions of one hundred (100) tons or more per year | \$10,000 |
| Synthetic minor stationary sources with permitted emissions below a major threshold level | \$10,000 |

()

02. Tier II Operating Permit Processing Fee Not Required. So long as the Department determines no other review or analysis is required, the Tier II operating permit processing fee is not required to be submitted when:

()

- a. A permit to construct issued within the last five (5) years is rolled into a Tier II permit; ()
- b. A change to correct typographical errors is requested; ()
- c. A change in the name or ownership of the holder of a Tier II operating permit is requested; or ()

d. A synthetic minor permit is issued and the Department's processing costs can be charged against fees collected from the person receiving the permit under Title V of the federal Clean Air Act amendments of 1990. ()

408. PAYMENT OF TIER II OPERATING PERMIT PROCESSING FEE.

01. Fee Submittal. The Tier II operating permit processing fee shall be payable upon receipt of an assessment sent, along with the final permit or permit renewal, to the person receiving a permit or permit renewal by the Department. The Tier II operating permit fee should be sent to:

Air Quality Tier II Fees
 Fiscal Office
 Idaho Department of Environmental Quality
 1410 N. Hilton, Boise, ID 83706-1255

()

02. Delinquency. Failure to submit a Tier II operating permit processing fee within forty-five (45) days of receipt of an assessment by the Department will result in a monthly accrual of interest in the amount of twelve percent (12%) per annum on the outstanding balance until the fee is paid in full. ()

409. RECEIPT AND USAGE OF FEES.

Tier II operating permit processing fee and delinquency interest receipts shall be deposited by the Department into a stationary source permit account. Monies from this account shall be used solely toward technical, legal and administrative support of the Department's Permit to Construct and Tier II permit programs and shall not be used for those activities supported by the fund created for implementing the operating permit program required under Title V of the federal Clean Air Act amendments of 1990. The Department will review the Tier II fee schedule at least every

two (2) years. ()

410. APPEALS.

A person may be able to file an appeal within thirty-five (35) days of the date the person receives an assessment under Section 407, in accordance with IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ()

411. -- 439. (RESERVED)

440. REQUIREMENTS FOR ALTERNATIVE EMISSION LIMITS (BUBBLES).

The owner or operator of any facility may apply to the Department for a Tier I or Tier II operating permit (or a revision thereto) to authorize an alternative emission limit for any stationary source or emissions unit within the facility. The Department may issue or revise a Tier II operating permit or issue a significant modification to a Tier I operating permit which authorizes an alternative emission limit provided that all of the following are met: ()

01. Actual Emissions. There is no increase in actual emissions of the applicable air pollutant at the facility. ()

02. Emission Reductions. All emission reductions satisfy the requirements for emission reduction credits (Section 460). ()

03. Trade Requirements. All trades involve the same air pollutant and demonstrate ambient equivalence as specified in Subsection 441.02. ()

04. Applicable Requirement Prohibition. No applicable Section of 40 CFR Part 60, 40 CFR Part 61, or 40 CFR Part 63, best available control technology requirement, lowest achievable emission rate requirement, or visual emission standard is exceeded. ()

05. Actual HAP/TAP Emissions. The actual emissions of any hazardous air pollutant or any toxic air pollutant are not increased. ()

06. Fugitive Dust Trades. Where the trade involves fugitive dust, the owner or operator shall undertake an adequate post-approval monitoring program to evaluate the ambient results of the controls. If the monitoring data indicate that the air quality effects are not equivalent, then: ()

a. Further reductions must be proposed by the owner or operator; and/or ()

b. The applicable emission standards in the operating permit will be adjusted by the Department; ()

07. Compliance Schedule Extension. Any compliance schedule extension for a facility in a nonattainment area is consistent with reasonable further progress. ()

08. EPA Approval. Approval of the U.S. Environmental Protection Agency, and where necessary the appropriate court, has been obtained for any individual stationary source or facility which is the subject of a federal enforcement action or outstanding enforcement order. ()

441. DEMONSTRATION OF AMBIENT EQUIVALENCE.

The demonstration of ambient equivalence shall: ()

01. VOC Trades. For trades involving volatile organic compounds, show that total emissions are not increased for the air basin in which the stationary source or facility is located. ()

02. Other Trades. For trades involving any other air pollutant, show through appropriate dispersion modeling that the trade will not cause a significant contribution at any modeled receptor. ()

442. -- 459. (RESERVED)

460. REQUIREMENTS FOR EMISSION REDUCTION CREDIT.

In order to be credited in a permit to construct, Tier I operating permit or Tier II operating permit any emission reduction must satisfy the following: ()

01. Allowable Emissions. The proposed level of allowable emissions must be less than the actual emissions of the stationary source(s) or emission unit(s) providing the emission reduction credit. No emission reduction(s) can be credited for actual emissions which exceed the allowable emissions of the stationary source(s) or emission unit(s). ()

02. Timing of Emission Reduction. In an attainment or unclassifiable area any emission reduction which occurs prior to the minor source baseline date must have been banked with the Department prior to the minor source baseline date in order to be credited; in a nonattainment area the emission reduction must occur after the base year of any control strategy for the particular air pollutant. ()

03. Emission Rate Calculation. The emission rate before and after the reduction must be calculated using the same method and averaging time and the characteristics necessary to evaluate any future use of the emission reduction credit must be described. ()

04. Permit Issuance. A permit to construct, Tier I operating permit or Tier II operating permit shall be issued which establishes a new emission standard for the facility, or restricts the operating rate, hours of operation, or the type or amount of material combusted, stored or processed for the stationary source(s) or emission unit(s) providing the emission reductions. ()

05. Imposed Reductions. Emission reductions imposed by local, state or federal regulations or permits shall not be allowed for emission reduction credits. ()

06. Mobile Sources. The proposed level of allowable emissions must be less than the actual emissions of the mobile sources or stationary sources providing the emission reduction credit. Mobile source emission reduction credits shall be made state or federally enforceable by SIP revision. The form of the SIP revision may be a state or local regulation, operating permit condition, consent or enforcement order, or any mechanism available to the state that is enforceable. ()

461. REQUIREMENTS FOR BANKING EMISSION REDUCTION CREDITS (ERC'S).

01. Application to Bank an ERC. The owner or operator of any facility may apply to the Department for a Tier I or Tier II operating permit (or a revision thereto) to bank an emission reduction credit. An application to bank an emission reduction credit must be received by the Department no later than one (1) year after the reduction occurs. The Department may issue or revise such a Tier I or Tier II operating permit and a "Certificate of Ownership" for an emission reduction credit, provided that all emission reductions satisfy the requirements for emission reduction credits (Section 460). ()

02. Banking Period. Emission reduction credits may be banked with the Department. The banked emission reduction credits may be used for offsets, netting in accordance with the definition of net emissions increase at Section 007, or alternative emission limits (bubbles), or sold to other facilities. The use of banked emission reduction credits must satisfy the applicable requirements of the program in which they are proposed for use, including approval of a permit to construct or a Tier I or Tier II operating permit. ()

03. Certificate of Ownership. Upon issuing or revising a Tier I or Tier II operating permit for an emission reduction credit, the Department will issue a "Certificate of Ownership" which will identify the owner of the credits, quantify the credited emission reduction and describe the characteristics of the emissions which were reduced and emissions unit(s) which previously emitted them. ()

04. Adjustment by Department. If at any time the Department, or the owner or operator of a facility which has produced an emission reduction credit, finds that the actual reduction in emissions differs from that in the certificate of ownership, the Department will adjust the amount of banked emission reduction credits to reflect the actual emission reduction and issue a revised certificate of ownership. ()

05. Proportional Discounts. If at any time the Department finds that additional emission reductions are necessary to attain and maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment, banked emission reduction credits at facilities in the affected area may be proportionally discounted by an amount which will not exceed the percentage of emission reduction required for that area. ()

06. Transfer of Ownership. Whenever the holder of a certificate of ownership for banked emission reduction credits, sells or otherwise transfers ownership of all or part of the banked credits, the holder shall submit the certificate of ownership to the Department. The Department will issue a revised certificate(s) of ownership which reflects the old and new holder(s) and amount(s) of banked emission reduction credits. ()

07. Public Registry. The Department will maintain a public registry of all banked emissions reduction credits, indicating the current holder of each certificate of ownership and the amount and type of credited emissions. ()

462. -- 499. (RESERVED)

500. REGISTRATION PROCEDURES AND REQUIREMENTS FOR PORTABLE EQUIPMENT.

01. Registration Requirements. All existing portable equipment shall be registered within ninety (90) days after the original effective date of this Section 500 and at least ten (10) days prior to relocating, using forms provided by the Department, except that no registration is required for mobile internal combustion engines, marine installations and locomotives. ()

02. Compliance with Rules and Regulations. Possessing a "Certificate of Registration" does not relieve any owner or operator of the responsibility to comply with all applicable local, state and federal rules and regulations. ()

501. -- 509. (RESERVED)

510. STACK HEIGHTS AND DISPERSION TECHNIQUES.

The purpose of Sections 510 through 516 is to establish criteria for good engineering practice for stack heights and dispersion techniques. ()

511. APPLICABILITY.

The provisions of Sections 510 through 516 shall apply to existing, new, and modified stationary sources and facilities. The provisions of Sections 510 through 516 do not apply to stack heights in existence, or dispersion techniques implemented, on or before December 31, 1970, except where regulated or toxic air pollutant(s) are being emitted from such stacks or using such dispersion techniques by sources which were constructed, or reconstructed, or for which major modifications were carried out, after December 31, 1970. ()

512. DEFINITIONS.

For the purpose of Sections 500 through 516: ()

01. Dispersion Technique. Any technique which attempts to affect the concentration of a regulated or toxic air pollutant in the ambient air by: ()

a. Using that portion of a stack which exceeds good engineering practice stack height; ()

b. Varying the rate of emission of a regulated or toxic air pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or ()

c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one (1) stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the

temperature at which it was originally discharged from the facility generating the gas stream; smoke management in agricultural or silvicultural prescribed burning programs; episodic restrictions on residential woodburning and open burning; techniques which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed five thousand (5,000) tons per year; or the merging of exhaust gas streams where: ()

i. The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams; ()

ii. After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a regulated or toxic air pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the regulated or toxic air pollutant affected by such change in operation; or ()

iii. Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source. ()

02. Excessive Concentration. For the purpose of determining good engineering practice stack height in a fluid modeling evaluation or field study as provided for in Subsection 512.03.c. "Excessive Concentration" means: ()

a. For sources seeking credit for stack height exceeding that established under Subsection 512.03.b., a maximum ground level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent (40%) in excess of the maximum concentration experienced in the absence of such effects, and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent (40%) in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under Subsection 512.02.a., shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Department, an alternative emission rate shall be established in consultation with the source owner or operator. ()

b. For sources seeking credit after October 1, 1983, for increases in existing stack heights up to the heights established under Subsection 512.03.b., either: ()

i. A maximum ground-level concentration due in whole or in part to downwash, wakes or eddy effects as provided in Subsection 512.02.a., except that the emission rate specified by any applicable SIP or, in the absence of such a limit, the actual emission rate shall be used; or ()

ii. The actual presence of a local nuisance caused by the existing stack as determined by the authority administering the Department. ()

c. For sources seeking credit after January 12, 1979, for a stack height determined under Subsection 512.03.b., where the Department requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in Subsection 512.03.b., a maximum ground-level

concentration due in whole or in part to downwash, wakes or eddy effects that is at least forty percent (40%) in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects. ()

03. Good Engineering Practice (GEP) Stack Height. The greater of: ()

a. Sixty-five (65) meters, measured from the ground-level elevation at the base of the stack; ()

b. For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable preconstruction permits or approvals required,

$$H = 2.5S$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation. For all other stacks provided that the Department may require the use of a field study or fluid model to verify GEP stack height for the source,

$$H = S + 1.5L$$

where: ()

i. H = good engineering practice stack height measured from the ground-level elevation at the base of the stack. ()

ii. S = height of nearby structure(s) measured from the ground-level elevation at the base of the stack. ()

iii. L = lesser dimension, height or projected width, of nearby structure(s). ()

c. The height demonstrated by a fluid model or a field study approved by the Department which ensures that the emissions from a stack do not result in excessive concentrations of any regulated or toxic air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, structures, or terrain features. ()

04. Nearby Structures or Terrain Features. "Nearby" as applied to a specific structure or terrain feature under the definition of "good engineering practice stack height"; and ()

a. For purposes of applying the formulae provided under Subsection 512.03.b., means that distance up to five (5) times the lesser of the height or the width dimension of a structure, but not greater than one-half (1/2) mile (0.8 km); and ()

b. For conducting demonstrations under Subsection 512.03.c., means not greater than one-half (0.5) mile (0.8 km), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten (10) times the maximum height of the feature, not to exceed two (2) miles if such feature achieves a height one-half (0.5) mile (0.8 km) from the stack that is at least forty percent (40%) of the GEP stack height determined by the formulae provided in Subsection 512.03.b., or twenty-six (26) meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack. ()

05. Stack in Existence. The owner or operator had: ()

a. Begun, or caused to begin, a continuous program of physical on-site construction of the stack; or ()

b. Entered into binding agreements or contractual obligations which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time. ()

513. REQUIREMENTS.

The required degree of emission control of any regulated or toxic air pollutant shall not be affected by the amount of any stack height that exceeds good engineering practice (GEP) or by any other dispersion technique. ()

514. OPPORTUNITY FOR PUBLIC HEARING.

Whenever a new or revised emission limitation is to be based on a good engineering practice stack height that exceeds the height allowed by the formulae in Subsections 512.03.a. and 512.03.b., the Department will notify the public of the availability of the demonstration study submitted under Subsection 512.03.c., and will provide an opportunity for public hearing on the demonstration study. ()

515. APPROVAL OF FIELD STUDIES AND FLUID MODELS.

Any field study or fluid model used to demonstrate GEP stack height under Subsection 512.03.b. or 512.03.c., and any determination of “excessive concentration” under Subsection 512.02 must be approved by the EPA prior to an emission limit being established. The construction of any new stack, or any increase to the height of any existing stack to the height determined by the formulae in Subsection 512.03.b., without completing a fluid model and a field study must be approved by the EPA. ()

516. NO RESTRICTION ON ACTUAL STACK HEIGHT.

The provisions of Sections 510 through 516 do not restrict, in any manner, the actual stack height of any stationary source or facility. ()

517. MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM.

01. Purpose. The purpose of Sections 517 through 527 is to set forth the minimum standards for a motor vehicle inspection and maintenance program, established pursuant to Section 39-116B, Idaho Code, for registered motor vehicles as defined in Section 49-123, Idaho Code. This program is designed to follow the basic inspection and maintenance program defined in 40 CFR 51.352. ()

02. Applicability. Sections 517 through 527 apply only to the counties of Ada and Canyon and the cities of Boise, Eagle, Garden City, Meridian, Kuna, Star, Caldwell, Greenleaf, Melba, Middleton, Nampa, Notus, Parma, and Wilder. ()

03. Options. ()

a. Section 39-116B, Idaho Code, provides the counties and cities listed in Subsection 517.02 with the following implementation options. The counties and cities may: ()

i. Enter into a joint exercise of powers agreement with the Director to implement a motor vehicle inspection and maintenance program; or ()

ii. Obtain Department approval to implement an alternative motor vehicle emissions control strategy that will result in emissions reductions equivalent to that of a motor vehicle inspection and maintenance program. ()

b. If neither of the options listed in Subsection 517.03.a. are selected, the Department shall implement the motor vehicle inspection and maintenance program. ()

04. Governing Authority. For the purpose of Sections 517 through 527, governing authority means the governing entity responsible for the development and implementation of the motor vehicle inspection and maintenance program. The governing entity may be the counties and cities listed in Subsection 517.02 or the Department. The governing authority shall adopt Sections 517 through 527 of these rules. ()

05. Exemptions. Sections 517 through 527 do not apply to the following: ()

a. Electric or hybrid motor vehicles; ()

b. Motor vehicles with a model year less than five (5) years old; ()

c. Motor vehicles with a model year older than 1981; ()

d. Classic automobiles as defined by Section 49-406A, Idaho Code; ()

- e. Motor vehicles with a maximum vehicle gross weight of less than fifteen hundred (1500) pounds; ()
- f. Motor vehicles registered as motor homes as defined by Section 49-114, Idaho Code; ()
- g. Motorized farm equipment; and ()
- h. Registered motor vehicles engaged solely in the business of agriculture. ()

518. REQUIREMENTS FOR LICENSING AUTHORIZED INSPECTION STATIONS OR RETEST STATIONS.

01. General. ()

a. No person or enterprise shall in any manner represent any place as an inspection station or retest station unless such station is operated under a valid license issued by the governing authority. ()

b. No license for any inspection station or retest station may be assigned, transferred or used by other than the original applicant for that specific station. ()

02. Applications for License. Applications for license as an inspection station or retest station shall be made on the forms provided by the governing authority. No license shall be issued unless the governing authority finds that the facilities, tools and equipment of the applicant comply with the requirements set forth in Subsections 518.03 or 518.04. ()

03. Requirements for Licensed Inspection Stations. In order to qualify for issuance and continuance of an inspection station license, an establishment must meet the following requirements: ()

a. Must have a permanent location; ()

b. Must ensure that at least one employee, who has been issued an emissions technician license by the governing authority, is on duty at all times of station operation; ()

c. Must demonstrate the ability to perform the emissions test and comply with reporting and recordkeeping requirements established by the governing authority; ()

d. Must obtain and maintain in force appropriate business liability insurance; and ()

e. Must have the tools, equipment and supplies, as required by the governing authority, available for performance of the emissions test. ()

04. Requirements for Licensed Retest Stations. In order to qualify for issuance and continuance of a retest station license, an establishment must meet the requirements listed in Subsection 518.03. ()

05. Approval Procedure. ()

a. Applications received by the governing authority will be reviewed for completeness and an inspection of the facility will be performed. An inspection report will be prepared for the governing authority's review. ()

b. Stations which meet the requirements of Subsections 518.01 through 518.04 will be granted an inspection station license or retest station license and issued a station sign. The station sign and license shall be posted in a conspicuous place, readily visible to the public. The station sign and license shall remain the property of the governing authority. ()

06. Revocation of Inspection Station or Retest Station License. The governing authority has the

authority to issue warnings and suspend or revoke a station license upon a showing that emission tests are not being performed in accordance with these rules and any other specifications or procedures enacted by the governing authority. ()

519. REQUIREMENTS FOR LICENSING AUTHORIZED EMISSIONS TECHNICIANS.

01. Applications for License. Application for a license as an emissions technician shall be filed with the governing authority. Applications for the emissions technician license shall be completed on forms provided by the governing authority. ()

02. Requirements for Issuance of an Emissions Technician License. An applicant must demonstrate the knowledge and skill necessary to perform an emissions test of motor vehicle engines. The governing authority shall require the minimum standards set forth in 40 CFR 51.367, incorporated by reference into these rules at Section 107. ()

03. Revocation of Emissions Technician License. The governing authority has the authority to issue warnings and suspend or revoke an emissions technician license upon a showing that emission tests are not being performed in accordance with these rules or any other specifications or procedures enacted by the governing authority. ()

520. INSPECTION FREQUENCY.

The inspections shall occur no more than once every two (2) years. If the owner of the motor vehicle obtains a waiver pursuant to Section 526, the motor vehicle must be inspected the following year. ()

521. TEST PROCEDURE REQUIREMENTS.

The governing authority shall require the minimum standards set forth in 40 CFR 51.357(a), incorporated by reference into these rules at Section 107. ()

522. TEST STANDARDS.

The governing authority shall require the minimum standards set forth in 40 CFR 51.357(b), incorporated by reference into these rules at Section 107. ()

523. TEST EQUIPMENT.

The governing authority shall require the minimum standards set forth in 40 CFR 51.358, incorporated by reference into these rules at Section 107. ()

524. INSPECTION FEE.

The fee for a motor vehicle inspection, as established in Section 39-116B(2)(g), Idaho Code, shall not exceed twenty dollars (\$20) per vehicle. This fee is necessary to carry out the provisions of Sections 517 through 527 and to fund an air quality public awareness and outreach program. ()

525. PUBLIC OUTREACH.

The governing authority shall issue a pamphlet for distribution to owners of motor vehicles. The pamphlet shall include, but not be limited to, the reasons for and the methods of the inspection. The governing authority may also establish and operate an informational hotline, website, or any other means of outreach that is deemed to be efficient and effective by the governing authority. ()

526. WAIVERS.

The governing authority shall require the minimum standards set forth in 40 CFR 51.360(a), incorporated by reference into these rules at Section 107. If the owner of the motor vehicle obtains a waiver, the motor vehicle must be inspected the following year. ()

01. Financial Hardship. If repairs required under Section 526 pose a financial hardship on the owner of the motor vehicle, the governing authority shall have the authority to issue a waiver without requiring expenditure of the amounts listed in 40 CFR 51.360(a). Such determination of hardship shall be made on a case-by-case basis by the governing authority. ()

02. Public Service Vehicles Operating Less than 1,000 Miles Per Year. For public service vehicles owned by a governmental entity and operated less than one thousand (1,000) miles per year, the governing authority shall have the authority to issue a waiver without requiring expenditure of the amounts listed in 40 CFR 51.360(a). ()

527. EXTENSIONS.

The governing authority shall have the authority to grant extensions for vehicles or vehicle owners temporarily located outside of a testing area that cannot easily be returned to an area for testing. The extension shall not exceed one (1) year. For active duty military personnel and their families stationed outside the applicable testing area specified in Subsection 517.02, a time extension not to exceed the testing period is available. Military extensions shall be renewed with current military orders. ()

528. -- 549. (RESERVED)

550. AIR POLLUTION EMERGENCY RULE.

The purpose of Sections 550 through 562 is to define criteria for an air pollution emergency, to formulate a plan for preventing or alleviating such an emergency, and to specify rules for carrying out the plan. The procedures for implementing Sections 550 through 562 are delineated in Chapter VI of the SIP. ()

551. EPISODE CRITERIA.

The purpose of Sections 551 through 556 is to establish criteria for stages of atmospheric stagnation and/or degraded air quality. ()

552. STAGES.

The Department has defined four (4) stages of atmospheric stagnation and/or degraded air quality. ()

01. Stage 1 -- Air Pollution Forecast and Caution. An internal watch by the Department shall be actuated by a National Weather Service report that an Atmospheric Stagnation Advisory has been issued, or the equivalent local forecast of stagnant atmospheric conditions. ()

02. Stage 2 -- Alert. This is the first stage at which air pollution control actions by industrial sources are to begin. ()

03. Stage 3 -- Warning. The warning stage indicates that air quality is further degraded and that control actions are necessary to maintain or improve air quality. ()

04. Stage 4 -- Emergency. The emergency stage indicates that air quality has degraded to a level that will substantially endanger the public health and that the most stringent control actions are necessary. ()

553. EFFECT OF STAGES.

Once an episode stage is reached or the Department determines that reaching a particular stage is imminent, emergency action corresponding to that stage will remain in effect until air quality measurements indicate that another stage (either lower or higher) has been attained or the Department determines that reaching another stage (either lower or higher) is imminent. At such time, actions corresponding to the next stage will go into effect. This procedure will continue until the episode is terminated. The air quality criteria used to define each of the episode stages for carbon monoxide, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide are specified in Section 556. The levels will be determined by the Department through its analysis of meteorological and ambient air quality monitoring data. ()

554. -- 555. (RESERVED)

556. CRITERIA FOR DEFINING LEVELS WITHIN STAGES.

The air quality criteria defining each of these levels for carbon monoxide (CO), nitrogen dioxide (NO₂), ozone (O₃), particles with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers (PM-10), particles with an aerodynamic diameter less than or equal to a nominal two point five (2.5) micrometers (PM-2.5), and sulfur dioxide (SO₂) are: ()

01. Stage 1 -- Forecast and Caution. A Stage 1 Forecast and Caution shall be declared by the Department when particulate concentrations reach, or are forecasted to reach, and persist, at or above the levels listed below. The Department may call a Stage 1 Forecast and Caution, if it determines, after evaluating the pertinent meteorology, weather conditions and air quality conditions such as visibility, and source parameters such as source type, strength, location and projected duration, that a Stage 1 Forecast and Caution is required to protect the public health.

| | |
|-----------------|---------------------------------------|
| CO | NA |
| NO ₂ | NA |
| O ₃ | NA |
| SO ₂ | NA |
| PM-2.5 | 80 ug/m ³ 1 hour average |
| PM-2.5 | 50 ug/m ³ 24 hour average |
| PM-10 | 385 ug/m ³ 1 hour average |
| PM-10 | 150 mg/m ³ 24 hour average |

()

02. Stage 2 -- Alert.

| | |
|--|-----------------|
| CO - 17 mg/m ³ (15 ppm) | 8-hour average |
| NO ₂ - 1130 ug/m ³ (0.6 ppm) | 1-hour average |
| - 282 ug/m ³ (0.15 ppm) | 24-hour average |
| O ₃ - 400 ug/m ³ (0.2 ppm) | 1-hour average |
| PM-10 - 350 ug/m ³ | 24-hour average |
| SO ₂ - 800 ug/m ³ (0.3 ppm) | 24-hour average |

()

03. Stage 3 -- Warning.

| | |
|---|-----------------|
| CO - 34 mg/m ³ (30 ppm) | 8-hour average |
| NO ₂ - 2260 ug/m ³ (1.2 ppm), | 1-hour average |
| - 565 ug/m ³ (0.3 ppm) | 24-hour average |
| O ₃ - 800 ug/m ³ (0.4 ppm) | 1-hour average |
| PM-10 - 420 ug/m ³ | 24-hour average |
| SO ₂ - 1600 ug/m ³ (0.6 ppm) | 24-hour average |

()

04. Stage 4 -- Emergency.

| | |
|--|-----------------|
| CO - 46 mg/m ³ (40 ppm) | 8-hour average |
| NO ₂ - 3000 ug/m ³ (1.6 ppm) | 1-hour average |
| - 750 ug/m ³ (0.4 ppm) | 24-hour average |

| | |
|--|-----------------|
| O ₃ - 1000 ug/m ³ (0.5 ppm) | 1-hour average |
| PM-10 - 500 ug/m ³ | 24-hour average |
| SO ₂ - 2100 ug/m ³ (0.8 ppm) | 24-hour average |

()

557. PUBLIC NOTIFICATION.

The purpose of Sections 557 through 560 is to establish requirements for public notification regarding atmospheric stagnation and/or degraded air quality. ()

558. INFORMATION TO BE GIVEN.

01. Information to Be Given. On the basis of degrading air quality as determined by the Director, and the criteria for emergency episode stages as shown in Section 556, the Director will utilize appropriate media and techniques including, but not limited to, print, electronic and internet, to insure that the following information is announced to the public, affected government, and commercial, industrial institutional and agricultural entities as practicable: ()

- a. Definition of the extent of the problem; ()
- b. Indication of the action taken by the Director; ()
- c. Air pollution forecast for next few days; ()
- d. Notice of when the next statement from the Department will be issued; ()
- e. Listing of all general procedures which the public, commercial, institutional and industrial sectors are required to follow; ()
- f. Specific warnings and advice to those persons who because of acute or chronic health problems, may be most susceptible to the effects of the episode. ()
- g. Location and description of the affected area. ()

559. MANNER AND FREQUENCY OF NOTIFICATION.

Such announcements will be made by the news media during regularly scheduled television and radio news broadcasts and in all editions of specified newspapers. In addition, when the stage 4 emergency level is reached, television and radio stations designated by the Department will repeat these announcements at one (1) hour intervals during normal broadcasting hours. ()

560. NOTIFICATION TO SOURCES.

The Department will assure that all significant sources of the applicable air pollutant(s) are notified of the emergency stage by telephone or other appropriate means. ()

561. GENERAL RULES.

All persons in the designated stricken area shall be governed by the following rules for each emergency episode stage. The Director may waive one (1) or more of the required measures at each episode stage if, on the basis of information available to him, he judges that a measure is an inappropriate response to the specific episode conditions which then exist. ()

- 01. Stage 1 -- Air Pollution Forecast and Caution.** There shall be no new ignition of open burning of any kind. The Director may require, if practicable, or in an emergency situation, the cessation of any open burning. ()
- 02. Stage 2 -- Alert.** ()

- a. There shall be no open burning of any kind. ()
- b. The use of burners and incinerators for the disposal of any form of solid waste shall be prohibited. ()
- c. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12:00 pm (noon) and 4:00 p.m. ()
- d. Commercial, industrial and institutional facilities utilizing coal or residual fuel oil are required to switch to natural gas or distillate oil if available. ()
- 03. Stage 3 -- Warning.** ()
- a. There shall be no open burning of any kind. ()
- b. The use of burners and incinerators for the disposal of any form of solid waste or liquid waste shall be prohibited. ()
- c. Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of 12:00 pm (noon) and 4:00 p.m. ()
- d. Commercial, industrial and institutional facilities utilizing coal or residual fuel are required to either:
 - i. Switch completely to natural gas or distillate oil; or ()
 - ii. If these low sulfur fuels are not available, curtail the use of existing fuels to the extent possible without causing injury to persons or damage to equipment. ()
- 04. Stage 4 -- Emergency.** This will be called only with specific concurrence of Governor. ()
- a. There shall be no open burning of any kind. ()
- b. The use of burners and incinerators for the disposal of any form of solid or liquid waste shall be prohibited. ()
- c. All places of employment described below shall immediately cease operations: ()
 - i. All mining and quarrying operations; ()
 - ii. All construction work except that which must proceed to avoid injury to persons; ()
 - iii. All manufacturing establishments except those required to have in force an air pollution emergency plan; ()
 - iv. All wholesale trade establishments, i.e. places of business primarily engaged in selling merchandise to retailers or industrial, commercial, institutional or professional users, or to other wholesalers, or acting as agents in buying merchandise for or selling merchandise to such persons or companies except those engaged in the distribution of drugs, surgical supplies and food; ()
 - v. All offices of local, county and State government including authorities, joint meetings, and other public bodies excepting such agencies which are determined by the chief administrative officer of local, county, or State government authorities, joint meetings and other public bodies to be vital for public safety and welfare and the enforcement of the provisions of this order; ()
 - vi. All retail trade establishments except pharmacies, surgical supply distributors, and stores primarily

engaged in the sale of food; ()

vii. Banks, credit agencies other than banks, securities and commodities brokers, dealers, exchanges and services; offices of insurance carriers, agents and brokers, real estate offices; ()

viii. Wholesale and retail laundries, laundry services and cleaning and dyeing establishments; photographic studios; beauty shops, barber shops, shoe repair shops; ()

ix. Advertising offices, consumer credit reporting, adjustment and collection agencies; duplicating, addressing, blueprinting; photocopying, mailing, mailing list and stenographic services; equipment rental services, commercial testing laboratories; ()

x. Automobile repair, automobile services, garages except those located adjacent to state or interstate highways; ()

xi. Establishments rendering amusement and recreational services including motion picture theaters; ()

xii. Elementary and secondary schools, colleges, universities, professional schools, junior colleges, vocational schools, and public and private libraries. ()

d. All commercial and manufacturing establishments not included in this order will institute such actions as will result in maximum reduction of the applicable air pollutant(s) from their operation by ceasing, curtailing, or postponing operations which emit the applicable air pollutants to the extent possible without causing injury to persons or damage to equipment. These actions include limiting boiler lancing or soot blowing operations for fuel burning equipment to between the hours of 12:00 pm (noon) and 4:00 p.m. ()

e. When the emergency episode is declared for carbon monoxide, the use of motor vehicles is prohibited except in emergencies or with the approval of local or state police or the Department. ()

562. SPECIFIC EMERGENCY EPISODE ABATEMENT PLANS FOR POINT SOURCES.

In addition to the general rules presented in Section 561, the Department shall require that specific point sources adopt and implement their own Emergency Episode Abatement Plans in accordance with the criteria set forth in Sections 551 through 556. An individual plan can be revised periodically by the Department after consultation between the Department and the owners and/or operators of the source. ()

563. TRANSPORTATION CONFORMITY.

The purpose of Sections 563 through 574 is to adopt and implement Section 176(c) of the Clean Air Act (CAA), as amended [42 U.S.C. 7401 et seq.], and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects developed, funded, or approved by the United States Department of Transportation (USDOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). These sections set forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to Section 110 and Part D of the CAA. The publications referred to in Sections 563 through 574 are available from the IDEQ. ()

564. (RESERVED)

565. ABBREVIATIONS.

01. CAA. Clean Air Act, as amended. ()

02. CFR. Code of Federal Regulations. ()

03. CO. Carbon Monoxide. ()

04. EPA. Environmental Protection Agency. ()

- 05. FHWA. Federal Highway Administration of USDOT. ()
- 06. FTA. Federal Transit Administration of USDOT. ()
- 07. HPMS. Highway Performance Monitoring System. ()
- 08. ICC. Interagency Consultation Committee. ()
- 09. IDEQ. Idaho Department of Environmental Quality. ()
- 10. ITD. Idaho Transportation Department. ()
- 11. LHTAC. Local Highway Technical Assistance Council. ()
- 12. LRTP. Long Range Transportation Plan. ()
- 13. MPO. Metropolitan Planning Organization. ()
- 14. NAAQS. National Ambient Air Quality Standards. ()
- 15. NEPA. National Environmental Policy Act, as amended. ()
- 16. O3. Ozone. ()
- 17. PM. Particulate matter. ()
- 18. PM_x. Particles with an aerodynamic diameter less than or equal to a nominal X micrometers, where X denotes any size fraction number regulated by the NAAQs (e.g.: 10, 2.5). ()
- 19. STIP. Statewide Transportation Improvement Program. ()
- 20. TCM. Transportation Control Measure. ()
- 21. TIP. Transportation Improvement Program. ()
- 22. USDOT. United States Department of Transportation. ()
- 23. VMT. Vehicle Miles Traveled. ()

566. DEFINITIONS FOR THE PURPOSE OF SECTIONS 563 THROUGH 574 AND 582.

Terms used but not defined in Sections 563 through 574 and 582 shall have the meaning given them by the CAA, Titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other USDOT regulations, in that order of priority. For the purpose of Sections 563 through 574 and 582: ()

01. Applicable Implementation Plan. Applicable Implementation Plan is defined in Section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under Section 110 of the CAA, or promulgated under Section 110(c) of the CAA, or promulgated or approved pursuant to regulations promulgated under Section 301(d) of the CAA and which implements the relevant requirements of the CAA. ()

02. Consult or Consultation. The lead agency confers with other ICC members and persons on the distribution list and considers their views prior to taking actions relating to transportation conformity. The lead agency shall distribute all appropriate information necessary to make a conformity determination and, prior to making a conformity determination, shall consider the views of such parties and shall provide a timely, written response to those views. Such views and written responses shall be included in the record of decision or action. Consultation shall not occur with respect to a transportation plan or transportation improvement program (TIP)

revision that merely adds or exempts projects listed in 40 CFR 93.126. ()

03. Distribute. Make available relevant documents and information by electronic and manual means, whichever is more appropriate, to all ICC members and persons on the distribution list. Electronic distribution may include existing and future technological applications, such as electronic mail, internet web-site posting including downloadable files, or the use of an electronic mail reply system based on the distribution list. Manual distribution may include the United States Postal Service, the state internal mail system, a facsimile machine, or any commercially available mail service provider. ()

04. Distribution List. A list containing the names and addresses of ICC members and any person(s) expressing an interest in receiving information and material pertaining to ICC meetings. To express interest, a person may contact the lead agency by postal mail, electronic mail, telephone or in person, and inform the ICC member of their interest in being on the distribution list for information and material pertaining to ICC meetings. ()

05. Exempt Projects. Projects exempt from conformity requirements based on the general criteria of safety, mass transit, and other factors, as described in 40 CFR 93.126. ()

06. Lead Agency. The transportation or air quality agency responsible for conducting the consultation process, as identified in Subsections 568.01 through 568.03. ()

07. Lead Air Quality Agency. An agency designated pursuant to Section 174 of the CAA as responsible for developing an applicable implementation plan, or alternatively the agency designated by the Governor as the lead air quality agency for a county, region, or any jurisdiction. ()

08. Local Highway Jurisdiction. A county with jurisdiction over a highway system, a city with jurisdiction over a highway system, or a highway district, as defined by Section 40-113(3), Idaho Code. ()

09. Local Highway Technical Assistance Council (LHTAC). The public agency created in Chapter 24, Title 40, Idaho Code. ()

10. Maximum Priority. ()

a. All possible actions must be taken to shorten the time periods necessary to complete essential steps in TCM implementation - for example, by increasing the funding rate - even though timing of other projects may be affected. It is not permissible to have prospective discrepancies with the applicable implementation plan's TCM implementation schedule due to: ()

i. Lack of funding in the TIP; ()

ii. Lack of commitment to the project by the sponsoring agency; ()

iii. Unreasonably long periods to complete future work due to lack of staff or other agency resources; ()

iv. Lack of approval or consent by local governmental bodies; or ()

v. Failure to have applied for a permit where necessary work preliminary to such application has been completed. ()

b. Where statewide and metropolitan funding resources, planning, and management capabilities are fully consumed within the flexibility of the Transportation Equity Act of 1998 (TEA-21), Pub. L. No. 105-178, 112 Stat 107, as amended by Pub. L. No. 105-206, 112 Stat 685, or future federal omnibus transportation funding bills, with responding to damage from natural disasters, civil unrest, or terrorist acts, TCM implementation can be determined to be timely without regard to the above, provided reasonable efforts are being made. ()

11. Metropolitan Planning Organization (MPO). The organization designated as being responsible, together with the State, for conducting the continuing cooperative and comprehensive transportation planning process

under 23 U.S.C. 134 and 49 U.S.C. 5303 and 23 CFR 450. It is the forum for cooperative transportation decision-making. ()

12. Public Notice. Distribution of the meeting times, location, duration and agenda, to all the ICC members and persons on the distribution list. ()

13. Recipient of Funds Designated Under Title 23 U.S.C. or the Federal Transit Laws. Any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or Federal Transit Laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners, developers, contractors, or entities that are only paid for services or products created by their own employees. ()

14. Regionally Significant Project. A transportation project, other than an exempt project, that is on a facility which serves regional transportation needs (such as access to and from the area outside the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including, at a minimum: ()

- a. All principal arterial highways; ()
- b. All fixed guideway transit facilities that offer an alternative to regional highway travel; and ()
- c. Any other facilities determined to be regionally significant through Section 570, interagency consultation. ()

15. Transportation Agency. The public agency responsible for one (1) or more of the following transportation modes: ()

- a. Air; ()
- b. Rail; ()
- c. Water; ()
- d. Highway; ()
- e. Bicycle and pedestrian paths; and ()
- f. Transit. ()

16. Transit Agency. Any agency involved in providing mass transportation services by bus, rail, or other conveyance providing general or special service to the public on a regular and continuing basis. The term "Transit Agency" does not include school buses or charter or sightseeing services. ()

567. AGENCIES AFFECTED BY CONSULTATION.

This Section identifies those agencies and other entities (federal, tribal, state and local) involved in the consultation process and those general actions requiring consultation. ()

01. Interagency Consultation Committee. A committee of representatives shall be formed in each nonattainment or maintenance area of the state, to convene on conformity determinations, as necessary, and shall be called the Interagency Consultation Committee (ICC) for that nonattainment or maintenance area. The ICC shall undertake consultation procedures, as applicable, in preparing for and before making conformity determinations in developing long-range transportation plans (LRTP), transportation improvement programs (TIP), and applicable implementation plans. ()

02. ICC Members. The ICC shall consist of the following agencies or entities, as applicable: ()

- a. A Metropolitan Planning Organization (MPO) where one exists; ()
- b. The Idaho Transportation Department (ITD); ()
- c. The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) divisional office; ()
- d. The Idaho Department of Environmental Quality (IDEQ); ()
- e. Affected Local Highway Jurisdictions involved in transportation, ()
- f. Affected Transit agency(ies); ()
- g. The Local Highway Technical Assistance Council (LHTAC); ()
- h. Indian Tribal governments with transportation planning responsibilities; and ()
- i. The United States Environmental Protection Agency (EPA). ()

03. Agencies Entitled to Participate. Agencies which may be affected by the consultation process and which are entitled to participate in the consultation process include: ()

- a. Any local transit agency or provider, local highway jurisdiction, and any city or county transportation or air quality board or agency where the nonattainment or maintenance area is located; and ()
- b. Any other state or federal or tribal organization in the state responsible under state or federal law for developing, submitting or implementing transportation related provisions of an implementation plan. ()

04. More Than One Pollutant. Areas that are nonattainment for more than one (1) pollutant may conduct consultation, as specified in this section, through a single committee for all pollutants. ()

05. Open to the Public. All meetings of the ICC shall be open to the public. ()

06. Delegation. An ICC member may delegate its role or responsibility in the consultation process to another entity pursuant to applicable state law. An ICC member making such delegation shall notify all other ICC members in writing when the delegation occurs. The written notice shall provide the name, address, and telephone number of one (1) or more contact persons representing the entity accepting the delegated role or responsibility. ()

07. General Actions Requiring Consultation. The ICC shall undertake the consultation process prior to the development of the following: ()

- a. The implementation plan(s), including the emission budget and list of TCMs in the applicable implementation plan(s), prepared by the lead air quality agency in a nonattainment or maintenance area; ()
- b. All other conformity determinations for transportation plans, projects, and programs; and ()
- c. Revisions to the preceding documents which may directly or indirectly affect conformity determinations. ()

568. ICC MEMBER ROLES IN CONSULTATION.

The lead agency as identified in this section is the ICC member responsible for initiating the consultation process, preparing the initial and final drafts of the document or decision, and assuring the adequacy of the consultation process for all conformity processes and procedures. ()

01. Designated Lead Air Quality Agency. IDEQ or the MPO, as the designated lead air quality

agency, shall be the lead agency for the development of the implementation plan, the associated emission budgets, and the list of Transportation Control Measures (TCMs) in the plan. The concurrence of IDEQ on each applicable implementation plan is required before IDEQ adopts the plan and submits it to EPA for inclusion in the applicable implementation plan. ()

02. Areas with an MPO. For areas in which an MPO has been established, the designated MPO shall be the lead agency responsible for conformity determinations, development of the LRTP, development of the TIP, and project level documentation under 23 CFR 450. ()

03. Areas Without an MPO. For areas in which an MPO has not been established, ITD shall be the lead agency for preparing the final document on conformity determinations, the development of the statewide transportation plan, the development of the STIP, and project level documentation under 23 CFR 450. ()

569. ICC MEMBER RESPONSIBILITIES IN CONSULTATION.
This Section identifies the specific responsibilities of ICC members. ()

01. Designated Lead Air Quality Agency Responsibilities. The designated lead air quality agency shall be responsible for developing or providing and distributing draft and final documentation, data and analyses for: ()

- a. Air emission inventories; ()
- b. Emission budgets; ()
- c. Attainment and maintenance demonstrations; ()
- d. Control strategy implementation plan revisions; ()
- e. Updated motor vehicle emission factors; ()
- f. Proposal and evaluation of TCMs; and ()
- g. Public outreach on draft air quality plans pursuant to 40 CFR Part 51. ()

02. Designated MPO Responsibilities. The designated MPO shall be responsible for: ()

- a. Conformity determinations corresponding to LRTPs and TIPs; ()
- b. Making conformity determinations for the entire nonattainment or maintenance area, including areas beyond the boundaries of the MPO, where no agreement is in effect as required by 23 CFR 450.310(f); ()
- c. Identify regionally significant projects through the consultation process; ()
- d. Implementing TCMs in air quality nonattainment and/or maintenance areas, as applicable; ()
- e. Providing technical and policy input on emissions budgets; ()
- f. Performing transportation modeling, regional emissions analyses, and project level analysis, as necessary; ()
- g. Documenting timely implementation of TCMs, as required, for determining conformity; and ()
- h. Distributing relevant draft and final project environmental documents to ICC members and persons on the distribution list per the schedule in Subsection 570.01.c. ()

03. Non-MPO Area Responsibilities. In areas without an established MPO, ITD shall be responsible for: ()

a. Conformity determinations corresponding to STIPs and project-level analyses; ()

b. Providing technical and policy input on proposed revisions to motor vehicle emissions factors and to emission budgets; ()

c. Distributing relevant draft and final project environmental documentation prepared by, or for ITD, to ICC members and persons on the distribution list per the schedule in Subsection 570.01.c.; ()

d. Convening air quality technical review meetings on specific projects when requested by other ICC members, or as needed; ()

e. Convening interagency consultation meetings required for purposes of making conformity determinations in nonattainment or maintenance areas, outside of MPO boundaries, as necessary; ()

f. Making conformity determinations in nonattainment or maintenance areas, outside of MPO boundaries, as necessary; and ()

g. Implementing TCMs in air quality nonattainment and/or maintenance areas, as applicable. ()

04. FHWA and FTA Responsibilities. FHWA and FTA shall be responsible for: ()

a. Assuring timely action on final findings of conformity for transportation plans, TIPs, and federally funded projects, including the basis for those findings after consultation with other agencies as provided in Section 569 and 40 CFR 93.105; and ()

b. Providing guidance on conformity and the transportation planning process to ICC members. FHWA and FTA may rely solely on the consultation process initiated by ITD or the MPO, where one exists, and shall not be required to duplicate that process. ()

05. EPA Responsibilities. EPA shall be responsible for providing policy and technical guidance on conformity criteria to ICC members. ()

06. Responsibility to Disclose Potentially Regionally Significant Projects. ITD, the local highway jurisdiction, transit agency, or transportation project sponsor shall be responsible for disclosing potentially regionally significant projects within air quality nonattainment and maintenance areas to the ICC in a timely manner. ()

a. Local Highway Jurisdictions shall disclose of potentially regionally significant projects upon written request of ITD within fourteen (14) days of such request, or when annual local and MPO project lists are due to ITD District Offices as part of the annual STIP development process; ()

b. In an MPO area, to help assure timely disclosure, the sponsor of any potentially regionally significant project shall disclose such projects to the MPO annually on or before March 1 of that calendar year; and ()

c. In MPO nonattainment and maintenance areas, the TIP and associated conformity demonstration shall be deemed to be incomplete if any regionally significant project has not been disclosed to the ICC in a timely manner. Therefore, such a TIP shall be considered to be non-conforming to applicable implementation plan(s). ()

570. GENERAL CONSULTATION PROCESS.

Section 570 provides the general procedures for interagency consultation (federal, tribal, state, and local) and public participation for transportation conformity determinations in air quality nonattainment and maintenance areas in the state of Idaho. ()

01. Lead Agency in Consultation. The following are the responsibilities of the lead agency at each stage of the consultation process: ()

a. Initiating the consultation process by notifying other ICC members of the document or decision that must undergo the consultation process and by scheduling and convening consultation meetings and agendas; ()

b. Developing and maintaining a distribution list of all ICC members and any other persons expressing an interest in receiving information and materials pertaining to ICC meetings; ()

c. Distributing an agenda and all supporting material, including minutes of ICC meetings, to ICC members and persons on the distribution list as follows: ()

i. Fourteen (14) days in advance of an ICC meeting if there are non-technical issues to be resolved by the ICC; ()

ii. Thirty (30) days in advance of an ICC meeting if there are technical issues to be resolved by the ICC; or ()

iii. If distribution of technical material pursuant to Subsection 570.01.c.ii. is not feasible thirty (30) days prior to an ICC meeting, then the lead agency shall notify the ICC members and persons on the distribution list in writing at least thirty (30) days prior to the ICC meeting. Together with the notification, the lead agency shall distribute and disclose all available material and documentation to the ICC members and persons on the distribution list, informing them of the nature, purpose, and details of possible program changes that are expected to occur from earlier analyses of the actions. All technical material and documentation shall be distributed at a minimum of fourteen (14) days prior to the ICC meeting. ()

d. Conferring with other agencies and persons not on the distribution list that have expressed an interest in the document or decision to be developed; ()

e. Providing ICC members and persons on the distribution list access to all information needed for meaningful input; ()

f. Soliciting early and continuing input from other ICC members and persons on the distribution list; ()

g. Following the public consultation procedures outlined in Section 574; ()

h. Providing an opportunity for informal question and answer on the draft document or proposed decision; ()

i. Considering the views of ICC members and persons on the distribution list and responding in writing to significant comments in a timely and substantive manner prior to finalizing or taking any final action on those documents or determinations enumerated in Section 567.07.a. through 567.07.c.; and ()

j. Assuring all comments and written responses of ICC members and persons on the distribution list are made part of the record of any action. ()

02. Public Comment Period to Satisfy Thirty Day Document Distribution Requirement. A lead agency may use all or any part of another public comment period established for public outreach procedures pursuant to 23 CFR 450 for a transportation plan, program, or project to satisfy the thirty (30) day advance distribution requirement for technical issues, and shall notify all ICC members and other persons on the distribution list when so doing fourteen (14) days prior to commencement of the public comment period. ()

03. Separate Times or in Combination. The above actions may be conducted at separate times or in combination, as required, to enhance the efficiency of the process. ()

04. Final Document Distribution. A lead agency, upon completion of a final document subject to the consultation process under Sections 563 through 574 of these rules (including any federal agency), shall distribute each final document to all other ICC members and persons on the distribution list within thirty (30) days of adopting or approving such document or making such determination. ()

05. Use of Checklist for Distribution of Material. The lead agency may supply a checklist of available supporting information to ICC members and persons on the distribution list to be used to request all or part of the supporting information, in lieu of generally distributing all supporting information. ()

06. Use of Other Meetings for Consultation. A meeting that is scheduled or required for another purpose may be used for the purposes of consultation only if the public notice for the meeting identifies consultation as an agenda item. ()

571. CONSULTATION PROCEDURES.

The consultation process among ICC members and persons on the distribution list shall be undertaken for the following specific major activities (federal, tribal, state, and local), specific routine activities and specific air quality related activities, in accordance with the procedures in Section 570. Participating agencies shall be all ICC members unless otherwise specified in Subsections 571.01 through 571.04. ()

01. Specific Major Activities. The consultation process shall be undertaken for the following specific major activities. The lead agency for each activity shall be the designated MPO or ITD in the absence of an MPO. ()

a. Evaluating and choosing each air quality model and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses including vehicle miles traveled forecasting. The hot-spot analyses shall be performed consistent with procedures described in 40 CFR 93.116 and 40 CFR 93.123 and regional emissions analysis shall be performed using procedures outlined on 40 CFR 93.122. ()

b. Determining which minor arterials and other transportation projects should be considered “regionally significant” for the purposes of regional emissions analysis, in addition to those functionally classified as principal arterial or higher or fixed guideway transit systems or extensions that offer an alternative to regional highway travel. ()

c. Evaluating whether projects otherwise exempted from meeting the requirements of Sections 563 through 574 of these rules should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason per 40 CFR 93.126 and 127. ()

d. Making a determination as to whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This consultation procedure shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs with other emission reduction measures. ()

e. Identifying projects located at sites in PM nonattainment or maintenance areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM hot-spot analysis. In case a method for quantitative hot-spot analysis has not been formally adopted by EPA, a sound qualitative analysis developed in conjunction with FHWA may be used for the same. ()

f. Making a determination whether the project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, and whether the project's design concept and scope have changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility. ()

g. For areas in the state with no MPOs, making a determination whether a project has undergone project-level analysis and whether the project's design concept and scope have changed significantly from those

which were included in the project-level analysis, or in a manner which would significantly impact use of the facility. ()

h. Establishing appropriate public participation opportunities for project-level conformity determinations, as applicable, in the manner specified by Section 574, to be initiated by the recipient of the funds designated under 23 U.S.C. or the Federal Transit Act. ()

i. Choosing conformity tests and methodologies for isolated and rural nonattainment and maintenance areas as required by 40 CFR 93.109(g)(2)(iii). ()

02. Specific Routine Activities. The consultation process shall be undertaken for the following specific routine activities. The lead agency shall be the MPO or ITD in the absence of an MPO. ()

a. Evaluating events that will trigger new conformity determinations in addition to those triggering events established in 40 CFR 93.104. Participating agencies shall be the MPO and state, tribal, regional, and local air quality planning agencies. ()

b. Consulting on emissions analysis for transportation activities that cross the borders of MPOs or nonattainment or maintenance areas. Participating agencies shall be the MPO and state, tribal, regional, and local air quality planning agencies. ()

c. Determining whether the project sponsor or MPO has demonstrated that the requirements are satisfied without a particular mitigation, such as emissions offsets or other control measures, or determining that a conforming project approved with mitigation no longer requires mitigation. ()

d. Assuring that plans for construction of regionally significant projects that are not FHWA/FTA projects, including projects for which alternative locations, design concept and scope, or the no-build option are still being considered, are disclosed to the MPO or ITD in the absence of an MPO on a regular basis, and assuring that any changes to those plans are immediately disclosed. ()

e. Determining whether a project, which was previously found to conform, has or will have a significant change in design concept and scope since the project plan and TIP conformity determination. ()

f. Designing, scheduling, and funding of research and data collection effort pertaining to transportation or air quality planning with implications for transportation conformity. ()

g. Reviewing and recommending regional transportation model development by the MPO (e.g., household/travel transportation surveys). ()

h. Development of transportation improvement programs. ()

i. Development of regional transportation plans. ()

j. Consulting when the metropolitan planning area does not include the entire nonattainment area or maintenance area, for planning requirements which may fall under the jurisdiction of more than one (1) MPO or the MPO and ITD. ()

03. Specific Air Quality Related Activities. The consultation process shall be undertaken when preparing an applicable implementation plan that includes the revision or addition of a motor vehicle emissions inventory and budget activities in accordance with the procedures in Section 570. Consultation is not required for administrative amendments that do not affect conformity. The lead agency for each activity shall be IDEQ or the MPO. In addition to the Section 570 consultation process, the lead agency shall undertake the following: ()

a. Scheduling consultation meetings early in the process of decision on the applicable implementation plan, and prior to making a final recommendation to their management, committees, boards or commissions, for a final decision on such documents; ()

b. Arranging for technical committees or teams to assist ICC members in reviewing documents provided by the lead agency. The lead agency may convene technical meetings as necessary; and ()

c. Scheduling and conducting meetings of the ICC at regularly scheduled intervals, no less frequently than quarterly. ()

d. The ICC may appoint subcommittees to address specific issues pertaining to applicable implementation plan development. Any recommendations of a subcommittee shall be considered by the ICC. ()

04. Notification Process. The designated MPO, or ITD in the absence of an MPO, shall notify ICC members and persons on the distribution list of a transportation plan or TIP revisions that merely add or delete exempt projects listed in 40 CFR 93.126 early in the process of decision, and by supplying all relevant documents and information to the same. ()

572. FINAL CONFORMITY DETERMINATIONS BY USDOT.

Section 572 establishes the process USDOT shall follow when making final determinations on proposed or anticipated transportation actions subject to transportation conformity. ()

01. Final Conformity Determination Process. USDOT will make making final determinations on proposed or anticipated STIP or transportation plan or project conformity by: ()

a. Distributing a draft conformity determination to EPA for review and comment. USDOT shall allow a maximum of thirty (30) days for EPA to respond; and ()

b. USDOT shall respond in writing to any significant comments raised by EPA within fourteen (14) days of receipt in writing before making a final decision. ()

02. New or Revised Information. If USDOT requests any new or revised information to support a STIP, TIP or transportation plan or project conformity determination, then USDOT shall either return the conformity determination for additional consultation pursuant to Section 570, or USDOT shall distribute the new information to the ICC members and persons on the distribution list for review and comment; ()

a. When USDOT distributes such new or additional information to ICC members and persons on the distribution list, USDOT shall allow for a maximum of thirty (30) days for the lead agency to respond to any new or revised supporting information; and ()

b. USDOT shall distribute a written response within fourteen (14) days of receipt to any significant comments raised by the ICC members and persons on the distribution list on the new or revised supporting information before making a final decision. ()

573. RESOLVING CONFLICTS.

Conflicts between state agencies or between state agencies and the MPO regarding a determination of conformity, applicable implementation plan submittal, or other policy decision under Sections 563 through 574, shall be resolved in the following manner. ()

01. Conflict Resolution at the Level of IDEQ Regions and ITD Districts. Every effort shall be made to resolve any conflicts among state agencies or between state agencies and an MPO at the regional level. The regional administrator of IDEQ, the District Engineer of ITD and the other agency managers at the regional level of the affected jurisdictions, or their designated representatives shall be involved in conflict resolution at the regional level. ()

02. Conflict Resolution at the Level of IDEQ and ITD Headquarters. If conflict(s) are not resolved at the regional level, the issue shall be raised to the level of agency directors for resolution. ()

03. Conflict Resolution at the Governor's Level. If conflict(s) are not resolved through Subsection 569.02, then IDEQ shall raise the conflict to the Governor, as follows: ()

a. The IDEQ administrator shall request in writing that ITD or the MPO provide IDEQ with written notification of resolution of IDEQ's comments. ITD or the MPO shall provide IDEQ with the requested written notification within fourteen (14) days of receipt of IDEQ's written request. ()

b. Within fourteen (14) days of its receipt of the requested written notification, IDEQ may appeal the conformity determination in writing to the Governor. If IDEQ appeals to the Governor, then the final conformity determination must have the concurrence of the Governor. If IDEQ does not appeal in writing to the Governor within fourteen (14) days of its receipt of written notification of resolution of its comments, then the lead transportation agency may proceed with the final conformity determination. ()

c. The fourteen (14) days shall start on the date when the IDEQ administrator receives notification of the written resolution of his comments regarding a determination of conformity, applicable implementation plan submittal, or other decision under Sections 563 through 574. ()

04. Process for Conflict Resolution at the Governor's Level. The Governor may delegate to another independent official or agency within the state his or her role in this process. The Governor may not delegate his or her role to the head or staff of the state air quality agency or any local air quality agency, ITD, a state transportation commission or board, any agency that has responsibility for any one (1) of these functions, or an MPO. ()

574. PUBLIC CONSULTATION PROCEDURES.

Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, reasonable public access to technical and policy information considered by the agency, and consistent with these requirements and those of 23 CFR 450. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.95. In addition, these agencies must specifically address, in writing, all public comments relating to known plans for a regionally significant project, which is not receiving FHWA or FTA funding, or approval. This is especially important if the project's emissions have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law. ()

575. AIR QUALITY STANDARDS AND AREA CLASSIFICATION.

Ambient Air Quality Standards. The purpose of Sections 575 through 587 is to establish air quality standards for the state of Idaho which define acceptable ambient concentrations consistent with established air quality criteria. ()

576. GENERAL PROVISIONS FOR AMBIENT AIR QUALITY STANDARDS.

01. Applicability. The ambient air quality standards established herein shall apply to all of the state. ()

02. Standard Conditions. Where applicable, air quality measurements shall be corrected to a reference temperature of twenty-five degrees Celsius (25C) and to a reference pressure of seven hundred and sixty (760) millimeters of mercury absolute. ()

03. Revisions. As pertinent air quality criteria information becomes available, such information shall be considered and new or revised air quality standards promulgated as appropriate. ()

04. Control of Unregulated Contaminants. The absence of an air quality standard for a specific contaminant shall not preclude action by the Department to control such contaminants to assure the health, welfare and comfort of the people of the State. ()

05. Methods. All measurement techniques for determining compliance with 40 CFR Part 50 shall be consistent with those specified in 40 CFR Parts 50 and 53. ()

577. AMBIENT AIR QUALITY STANDARDS FOR FLUORIDES.

Primary and secondary air quality standards are those concentrations in the ambient air which result in a total fluoride content in vegetation used for feed and forage of no more than: ()

- 01. Annual Standard.** Forty (40) ppm, dry basis -- annual arithmetic mean. ()
- 02. Bimonthly Standard.** Sixty (60) ppm, dry basis -- monthly concentration for two (2) consecutive months. ()
- 03. Monthly Standard.** Eighty (80) ppm, dry basis -- monthly concentration never to be exceeded. ()

578. DESIGNATION OF ATTAINMENT, UNCLASSIFIABLE, AND NONATTAINMENT AREAS.

01. Annual Review. The Department shall annually review the available ambient air quality data and when appropriate, redesignate areas as attainment, unclassifiable or nonattainment with the standards in 40 CFR Part 50. ()

02. Boundaries. Boundaries for such areas will be based, as much as possible, on actual ambient concentrations and shall take into account such things as the location of air pollutant sources, modeled air quality concentrations, terrain, geographical boundaries and political jurisdictions. ()

03. Area Designation. Designation of attainment and unclassifiable areas shall generally be made on a county basis. Redesignation of attainment or unclassifiable areas cannot intersect or be smaller than the area of impact of any major facility or major modification which establishes the baseline date or is subject to a PSD permit. ()

04. Redesignations. Redesignations shall be adopted by the Department after public notice and opportunity for a public hearing and will be submitted by the Governor (or if delegated, the Director) to the U.S. Environmental Protection Agency. ()

579. BASELINES FOR PREVENTION OF SIGNIFICANT DETERIORATION.

- 01. Baseline Date(s).** ()
 - a. Major Source Baseline Date.** ()
 - i. In the case of PM₁₀ and sulfur dioxide, January 6, 1975; ()
 - ii. In the case of nitrogen dioxide, February 8, 1988; and ()
 - iii. In the case of PM_{2.5}, October 20, 2010. ()
 - b. Minor Source Baseline Date.** The earliest date after the trigger date on which a major stationary source or a major modification subject to prevention of significant deterioration (PSD) submits a complete application. The trigger date is: ()
 - i. In the case of PM₁₀ and sulfur dioxide, August 7, 1977; and ()
 - ii. In the case of nitrogen dioxide, February 8, 1988. ()
 - iii. In the case of PM_{2.5}, October 20, 2011. ()
 - c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:** ()
 - i. The area in which the proposed source or modification would construct is designated as attainment

or unclassifiable under Section 107(d) of the Clean Air Act for the pollutant on the date of its complete prevention of significant deterioration (PSD) application; and ()

ii. In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant. ()

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the Department may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Department, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions. ()

02. Baseline Area. Any intrastate area designated as attainment or unclassifiable under 42 U.S.C. Section 7407(d), in which the major facility or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: Equal to or greater than 1 µg/m³ (annual average) for SO₂, NO₂, or PM₁₀; or equal or greater than 0.3 µg/m³ (annual average) for PM_{2.5}. ()

03. Baseline Concentration. The ambient concentration for a particular regulated air pollutant which exists in the applicable baseline area on the applicable minor source baseline date. ()

a. The baseline concentration shall represent: ()

i. The actual emissions from sources in existence on the applicable minor source baseline date; and ()

ii. The allowable emissions of major facilities and major modifications which commenced construction before the applicable major source baseline date, but were not in operation by the applicable minor source baseline date. ()

b. The baseline concentration shall not include the actual emissions of new major facilities and major modifications which commenced construction on or after the applicable major source baseline date. ()

580. CLASSIFICATION OF PREVENTION OF SIGNIFICANT DETERIORATION AREAS.

01. Restrictions On Area Classification. ()

a. All of the following areas which were in existence on August 7, 1977, are Class I and may not be redesignated: ()

i. International parks; ()

ii. National wilderness areas which exceed five thousand (5,000) acres; ()

iii. National memorial parks which exceed five thousand (5,000) acres; ()

iv. National parks which exceed six thousand (6,000) acres. ()

b. The following areas are Class II and may be redesignated only as Class I or II: ()

i. National monuments, national primitive areas, national preserves, national recreational areas, national wild and scenic rivers, national wildlife refuges, and national lakeshores or seashores which exceed ten thousand (10,000) acres; or ()

ii. National parks or national wilderness areas established after August 7, 1977, which exceed ten thousand (10,000) acres. ()

c. All other areas in the State are Class II and may be redesignated Class I, II or III. ()

02. Procedures for Redesignation of Prevention of Significant Deterioration (PSD) Areas. The Governor may submit to the U.S. Environmental Protection Agency a proposal to redesignate areas as a revision to the SIP. In preparing any such proposal the Department shall: ()

a. Consult with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation; ()

b. Prepare a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposal. This document will be made available for public inspection at least thirty (30) days prior to the public hearing on the proposed redesignation and the notice announcing the hearing will include notification of the availability of the document; ()

c. Provide written notice to the appropriate Federal Land Manager of any federal lands proposed for redesignation and provide at least thirty (30) days for the Federal Land Manager to confer with the Department and to submit written comments and recommendations. If written comments and recommendations are submitted, the Department shall publish a list of any inconsistency between the proposed redesignation and the comments and recommendations, including the reasons for making a redesignation against the recommendation of the Federal Land Manager; ()

d. Notify other states, Indian governing bodies, and federal land managers whose land may be affected by the proposed redesignation at least thirty (30) days prior to the public hearing; ()

e. For a redesignation to Class III: After consulting with the appropriate committees of the legislature, if it is in session, or the leadership of the legislature, if it is not in session, obtain specific approval by the Governor and by all general purpose units of local government representing a majority of the residents of the area to be redesignated; demonstrate that the redesignation would not cause, or contribute to, violations of any ambient air quality standard, or violations of PSD increments in any other area; and make available, for public inspection prior to the public hearing, any permit application and accompanying material for any major facility or major modification which could only be permitted if the area were designated as Class III; and ()

f. Hold at least one (1) public hearing on the proposed redesignation. ()

581. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) INCREMENTS.

The purpose of Section 581 is to establish the allowable degree of deterioration for the areas within the State which have air quality better than the ambient standards. ()

01. Incorporated Federal Program Requirements - Class I, II and III Areas. Class I, II, and III area PSD increment requirements contained in 40 CFR 52.21(c) are incorporated by reference into these rules at Section 107. These CFR sections have been codified in the electronic CFR at www.ecfr.gov. ()

02. Exceedances. For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location. ()

03. Exclusions. The following concentrations shall be excluded in determining compliance with the maximum allowable increases: ()

a. Concentrations attributable to the increase in emissions from facilities which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, over the emissions from such facilities before the effective date of such order or plan; this shall not apply more than five (5) years after the effective date of such order or plan; ()

b. Concentrations of PM-10 attributable to the increase in emissions from construction or other

temporary emission-related activities of new or modified facilities; ()

c. The increase in concentrations attributable to new facilities outside the United States over the concentrations attributable to existing facilities which are included in the baseline concentration; and ()

d. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen dioxide, or particulate matter from facilities which are affected by a revision to the SIP approved by the U.S. Environmental Protection Agency; this exclusion shall not exceed two (2) years unless a longer time is approved by the U.S. Environmental Protection Agency, is not renewable, and applies only to revisions which: ()

i. Would not affect the applicable pollutant concentrations in a Class I area or an area where an applicable increment is known to be violated and would not cause or contribute to a violation of an ambient air quality standard; and ()

ii. Require limitations to be in effect at the end of the approved time period which would ensure that the emissions from facilities affected by the revision would not exceed those concentrations occurring before the revision was approved. ()

582. -- 584. (RESERVED)

585. TOXIC AIR POLLUTANTS NON-CARCINOGENIC INCREMENTS.

The screening emissions levels (EL) and acceptable ambient concentrations (AAC) for non-carcinogens are as provided in the following table. The AAC in this section are twenty-four (24) hour averages. ()

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|--|-------------|------------|-------------|
| 60-35-5 | Acetamide (NY) | -- | 0.002 | 0.0003 |
| 64-19-7 | Acetic acid | 25 | 1.67 | 1.25 |
| 108-24-7 | Acetic anhydride | 20 | 1.33 | 1 |
| 67-64-1 | Acetone | 1780 | 119 | 89 |
| 75-05-8 | Acetonitrile | 67 | 4.47 | 3.35 |
| 540-59-0 | Acetylene dichloride, See 1,2-Dichloroethylene | | | |
| 79-27-6 | Acetylene tetrabromide | 15 | 1 | .75 |
| 107-02-8 | Acrolein | 0.25 | 0.017 | 0.0125 |
| 79-10-7 | Acrylic acid | 30 | 2 | 1.5 |
| 107-18-6 | Allyl alcohol | 5 | 0.333 | .25 |
| 106-92-3 | Allyl glycidyl ether | 22 | 1.47 | 1.1 |
| 2179-59-1 | Allyl propyl disulfide | 12 | 0.8 | 0.6 |
| 7429-90-5 | Aluminum Including: | | | |
| NA | Metal & Oxide | 10 | 0.667 | 0.5 |
| NA | Pyro powders | 5 | 0.333 | 0.25 |
| NA | Soluble salts | 2 | 0.133 | 0.10 |
| NA | Alkyls not otherwise classified | 2 | 0.133 | 0.10 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|--|-------------|------------|-------------|
| 141-43-5 | 2-Aminoethanol, See Ethanolamine | | | |
| 504-29-0 | 2-Aminopyridine | 2 | 0.133 | 0.10 |
| 7664-41-7 | Ammonia | 18 | 1.2 | 0.9 |
| 12125-02-9 | Ammonium chloride fume | 10 | 0.667 | 0.5 |
| 3825-26-1 | Ammonium perfluorooctanoate | 0.1 | 0.007 | 0.05 |
| 7773-06-0 | Ammonium sulfamate | 10 | 0.667 | 0.5 |
| 628-63-7 | n-Amyl acetate | 530 | 35.3 | 26.5 |
| 626-38-0 | Sec-Amyl acetate | 665 | 44.3 | 33.25 |
| 7440-36-0 | Antimony & compounds, as Sb (handling & use) | 0.5 | 0.033 | 0.025 |
| 86-88-4 | ANTU | 0.3 | 0.02 | 0.015 |
| 7784-42-1 | Arsine | 0.2 | 0.013 | 0.01 |
| 86-50-0 | Azinphos-methyl | 0.2 | 0.013 | 0.01 |
| 7440-39-3 | Barium, soluble compounds, as Ba | 0.5 | 0.033 | 0.025 |
| 17804-35-2 | Benomyl | 10 | 0.67 | 0.5 |
| 7106-51-4 | p-Benzoquinone, See Quinone | | | |
| 94-36-0 | Benzoyl peroxide | 5 | 0.333 | 0.25 |
| 92-52-4 | Biphenyl | 1.5 | 0.1 | 0.075 |
| 1304-82-1 | Bismuth telluride undoped | 10 | 0.667 | 0.05 |
| NA | Bismuth telluride if selenium doped | 5 | 0.333 | 0.25 |
| 1303-96-4 | Borates, tetra odium salts - Including: | | | |
| NA | Anhydrous | 1 | 0.067 | 0.05 |
| NA | Decahydrate | 5 | 0.333 | 0.25 |
| NA | Pentahydrate | 1 | 0.067 | 0.05 |
| 1303-86-2 | Boron oxide | 10 | 0.667 | 0.5 |
| 10294-33-4 | Boron tribromide | 10 | 0.667 | 0.5 |
| 7637-07-2 | Boron trifluoride | 3 | 0.2 | 0.25 |
| 314-40-9 | Bromacil | 10 | 0.667 | 0.5 |
| 7726-95-6 | Bromine | 0.7 | 0.047 | 0.035 |
| 7789-30-2 | Bromine penta-fluoride | 0.7 | 0.047 | 0.035 |
| 75-25-2 | Bromoform | 5 | 0.333 | 0.25 |
| 109-79-5 | Butanethiol, see Butyl mercaptan | | | |
| 78-93-3 | 2-Butanone, see Methyl ethyl ketone | | | |
| 112-07-2 | 2-butoxyethyl acetate | --- | 8.33 | 1.25 |
| 111-76-2 | 2-Butoxyethanol (EGBG) | 120 | 8 | 6 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|---------------------------------|-------------|------------|-------------|
| 123-86-4 | n-Butyl acetate | 710 | 47.3 | 35.5 |
| 105-46-4 | sec-Butyl acetate | 950 | 63.3 | 47.5 |
| 540-88-5 | tert-Butyl acetate | 950 | 63.3 | 47.5 |
| 141-32-2 | Butyl acrylate | 55 | 3.67 | 2.75 |
| 71-36-3 | n-Butyl alcohol | 150 | 10 | 7.5 |
| 78-92-2 | Sec-Butyl alcohol | 305 | 20.3 | 15.25 |
| 75-65-0 | tert-Butyl alcohol | 300 | 20 | 15 |
| 109-73-9 | Butylamine | 15 | 1 | .75 |
| 124-17-4 | Butyl carbitol acetate (ID) | --- | 0.846 | .625 |
| 1189-85-1 | tert-Butyl chromate, as CrO3 | 0.1 | 0.007 | .005 |
| 2426-08-6 | n-Butyl glycidyl ether | 135 | 9 | 6.75 |
| 138-22-7 | n-Butyl lactate | 25 | 1.67 | 1.25 |
| 109-79-5 | Butyl mercaptan | 1.8 | 0.12 | 0.09 |
| 89-72-5 | o-sec-Butylphenol | 30 | 2 | 1.5 |
| 98-51-1 | p-tert-Butyltoluene | 60 | 4 | 3 |
| 1317-65-3 | Calcium carbonate | 10 | 0.667 | 0.5 |
| 156-62-7 | Calcium cyanamide | 0.5 | 0.033 | 0.025 |
| 1305-62-0 | Calcium hydroxide | 5 | 0.333 | 0.25 |
| 1305-78-8 | Calcium oxide | 2 | 0.133 | 0.1 |
| 1344-95-2 | Calcium silicate (synthetic) | 10 | 0.667 | 0.5 |
| 13397-24-5 | Calcium sulfate | 10 | 0.667 | 0.5 |
| 76-22-2 | Camphor, synthetic | 12 | 0.8 | 0.6 |
| 105-60-2 | Caprolactam - Including: | | | |
| | Dust | 1 | 0.067 | 0.05 |
| | Vapor | 20 | 1.33 | 1.0 |
| 1333-86-4 | Carbon black | 3.5 | 0.23 | 0.175 |
| 2425-06-1 | Captafol | 0.1 | 0.007 | 0.005 |
| 133-06-2 | Captan | 5 | 0.333 | 0.25 |
| 463-58-1 | Carbonyl sulfide | 0.4 | 0.027 | 0.02 |
| 63-25-2 | Carbaryl | 5 | 0.333 | 0.25 |
| 1563-66-2 | Carbofuran | 0.1 | 0.007 | 0.005 |
| 75-15-0 | Carbon disulfide | 30 | 2 | 1.5 |
| 558-13-4 | Carbon tetrabromide | 1.4 | 0.093 | 0.07 |
| 75-44-5 | Carbonyl chloride, See Phosgene | | | |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|--|-------------|------------|-------------|
| 353-50-4 | Carbonyl fluoride | 5 | 0.333 | 0.25 |
| 120-80-9 | Catechol | 20 | 1.33 | 1.0 |
| 21351-79-1 | Cesium hydroxide | 2 | 0.133 | 0.10 |
| 133-90-4 | Chloramben (PL) | --- | 887 | 133 |
| 8001-35-2 | Chlorinated camphene | 0.5 | 0.0333 | 0.025 |
| 31242-93-0 | Chlorinated diphenyl oxide | 0.5 | 0.033 | 0.025 |
| 7782-50-5 | Chlorine | 3 | 0.2 | 0.15 |
| 10049-04-4 | Chlorine dioxide | 0.3 | 0.02 | 0.015 |
| 7790-91-2 | Chlorine trifluoride (CL) | 0.38 | 0.025 | 0.002 |
| 107-20-0 | Chloroacetaldehyde | 0.32 | 0.021 | 0.015 |
| 78-95-5 | Chloroacetone | 0.38 | 0.0253 | 0.019 |
| 532-27-4 | a-Chloroacetophenone | 0.32 | 0.021 | 0.016 |
| 79-04-9 | Chloroacetyl chloride | 0.2 | 0.013 | 0.01 |
| 108-90-7 | Chlorobenzene | 350 | 23.3 | 17.5 |
| 510-15-6 | Chlorobenzilate (PL1) | --- | 0.047 | 0.035 |
| 2698-41-1 | O-Chlorobenzylidene malononitrile (CL) | 0.4 | 0.0027 | 0.03 |
| 126-99-8 | 2-Chloro-1,3-butadiene, see B-Chloroprene | | | |
| 107-07-3 | 2-Chloroethanol, see Ethylene chlorohydrin | | | |
| 600-25-9 | 1-Chloro-1-nitro propane | 10 | 0.667 | 0.5 |
| 95-57-8 | 2-Chlorophenol (and all isomers) (ID) | --- | 0.033 | 0.025 |
| 76-06-2 | Chloropicrin | 0.7 | 0.047 | 0.037 |
| 126-99-8 | B-chloroprene | 36 | 2.4 | 1.8 |
| 2039-87-4 | o-Chlorostyrene | 285 | 19 | 14.25 |
| 95-49-8 | o-Chlorotoluene | 250 | 16.7 | 12.5 |
| 1929-82-4 | 2-Chloro-6-(tri-chloromethyl) pyridine, see Nitrapyrin | | | |
| 2921-88-2 | Chlorpyrifos | 0.2 | 0.013 | 0.01 |
| 7440-47-3 | Chromium metal - Including: | 0.5 | 0.033 | 0.025 |
| 7440-47-3 | Chromium (II) compounds, as Cr | 0.5 | 0.033 | 0.025 |
| 16065-83-1 | Chromium (III) compounds, as Cr | 0.5 | 0.033 | 0.025 |
| 2971-90-6 | Clopidol | 10 | 0.667 | 0.5 |
| NA | Coal dust (<5% silica) | 2 | 0.133 | 0.1 |
| 10210-68-1 | Cobalt carbonyl as Co | 0.1 | 0.007 | 0.005 |
| 16842-03-8 | Cobalt hydrocarbonyl as Co | 0.1 | 0.007 | 0.005 |
| 7440-48-4 | Cobalt metal, dust, and fume | 0.05 | 0.0033 | 0.0025 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|--|-------------|------------|-------------|
| 7440-50-8 | Copper: | | | |
| 7440-50-8 | Fume | 0.2 | 0.013 | 0.01 |
| 7440-50-8 | Dusts & mists, as Cu | 1 | 0.067 | 0.05 |
| 95-48-7 | o-Cresol | 22 | 1.47 | 1.1 |
| 108-39-4 | m-Cresol | 22 | 1.47 | 1.1 |
| 106-44-5 | p-Cresol | 22 | 1.47 | 1.1 |
| 1319-77-3 | Cresols/Cresylic Acid (isomers and mixtures) | 22 | 1.47 | 1.1 |
| 123-73-9 | Crotonaldehyde | 5.7 | 0.38 | 0.285 |
| 299-86-5 | Cruformate | 5 | 0.333 | 0.25 |
| 98-82-8 | Cumene | 245 | 16.3 | 12.25 |
| 420-04-2 | Cyanamide | 2 | 0.133 | 0.1 |
| 592-01-8 | Cyanide and compounds as CN | 5 | 0.333 | 0.25 |
| 110-82-7 | Cyclohexane | 1050 | 70 | 52.5 |
| 108-93-0 | Cyclohexanol | 200 | 13.3 | 10 |
| 108-94-1 | Cyclohexanone | 100 | 6.67 | 5 |
| 110-83-8 | Cyclohexene | 1015 | 67.7 | 50.75 |
| 108-91-8 | Cyclohexylamine | 41 | 2.73 | 2.05 |
| 121-82-4 | Cyclonite | 1.5 | 0.1 | 0.075 |
| 542-92-7 | Cyclopentadiene | 200 | 13.3 | 10 |
| 287-92-3 | Cyclopentane | 1720 | 114.667 | 86 |
| 94-75-7 | 2,4-D | 10 | 0.667 | 0.5 |
| 17702-41-9 | Decaborane | 0.3 | 0.02 | 0.015 |
| 8065-48-3 | Demeton | 0.1 | 0.007 | 0.005 |
| 123-42-2 | Diacetone alcohol | 240 | 16 | 12 |
| 39393-37-8 | Dialkyl phthalate (ID) | --- | 16.4 | 2.46 |
| 107-15-3 | 1,2-Diaminoethane, See Ethylenediamine | | | |
| 333-41-5 | Diazinon | 0.1 | 0.007 | 0.005 |
| 334-88-3 | Diazomethane | 0.34 | 0.023 | 0.017 |
| 19287-45-7 | Diborane | 0.1 | 0.007 | 0.005 |
| 102-81-8 | 2-N-Dibutylamino ethanol | 14 | 0.933 | 0.7 |
| 2528-36-1 | Dibutyl phenyl phosphate | 3.5 | 0.233 | 0.175 |
| 107-66-4 | Dibutyl phosphate | 8.6 | 0.573 | 0.43 |
| 84-74-2 | Dibutyl phthalate | 5 | 0.333 | 0.25 |
| 7572-29-4 | Dichloroacetylene | 0.39 | 0.0026 | 0.0195 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|---|-------------|------------|-------------|
| 95-50-1 | o-Dichlorobenzene | 300 | 20 | 15 |
| 106-46-7 | 1,4-Dichlorobenzene | 450 | 30 | 22.5 |
| 118-52-5 | 1,3-Dichloro-5, 5-dimethyl hydantoin | 0.2 | 0.013 | 0.025 |
| 75-34-3 | Dichloroethane | 405 | 27 | 20.25 |
| 540-59-0 | 1,2-Dichloroethylene | 790 | 52.7 | 39.5 |
| 111-44-4 | Dichloroethyl ether | 30 | 2 | 1.5 |
| 75-43-4 | Dichlorofluoromethane | 40 | 2.67 | 2 |
| 594-72-9 | 1, I-Dichloro-I-nitroethane | 10 | 0.667 | 0.5 |
| 78-87-5 | 1,2-Dichloropropane, see Propylene dichloride | | | |
| 75-99-0 | 2,2-Dichloropropionic acid | 6 | 0.4 | 0.3 |
| 62-73-7 | Dichlorvos | 1 | 0.067 | 0.05 |
| 141-66-2 | Dicrotophos | 0.25 | 0.017 | 0.125 |
| 77-73-6 | Dicyclopentadiene | 30 | 2 | 1.5 |
| 102-54-5 | Dicyclopentadienyl iron | 10 | 0.667 | 0.5 |
| 111-42-2 | Diethanolamine | 15 | 1 | 0.75 |
| 109-89-7 | Diethylamine | 30 | 2 | 1.5 |
| 100-37-8 | 2-Diethylamino-ethanol | 50 | 3.33 | 2.5 |
| 111-40-0 | Diethylene triamine | 4 | 0.267 | 0.2 |
| 60-29-7 | Diethyl ether | 1200 | 80 | 60 |
| 96-22-0 | Diethyl Ketone | 705 | 47 | 35.25 |
| 84-66-2 | Diethyl phthalate | 5 | 0.333 | 0.25 |
| 2238-07-5 | Diglycidyl ether (DGE) | 0.53 | 0.035 | 0.0265 |
| 123-31-9 | Dihydroxybenzene, see Hydroquinone | | | |
| 108-83-8 | Diisobutyl ketone | 145 | 9.67 | 7.25 |
| 108-18-9 | Diisopropylamine | 20 | 1.33 | 1 |
| 127-19-5 | Dimethyl acetamide | 35 | 2.33 | 1.75 |
| 124-40-3 | Dimethylamine | 9.2 | 0.613 | 0.46 |
| 60-11-7 | Dimethyl aminoazo-benzene (NY) | --- | 0.002 | 0.0003 |
| 1300-73-8 | Dimethylamino-benzene, see Xylidine | | | |
| 121-69-7 | Dimethylaniline (N,N-Dimethylaniline) | 25 | 1.67 | 1.25 |
| 1330-20-7 | Dimethylbenzene, see Xylene | | | |
| 300-76-5 | Dimethyl-1,2-dibromo-2-dichloroethyl phosphate, see Naled | | | |
| 68-12-2 | Dimethylformamide | 30 | 2 | 1.5 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|--|-------------|------------|-------------|
| 108-83-8 | 2,6-Dimethyl-4-heptanone, see Diisobutyl ketone | | | |
| 131-11-3 | Dimethylphthalate | 5 | 0.333 | 0.25 |
| 148-01-6 | Dinitolmide | 5 | 0.333 | 0.25 |
| 528-29-0 | Dinitrobenzene | 1 | 0.067 | 0.05 |
| 99-65-0 | m (or) 1,3-Dinitrobenzene | 1 | 0.067 | 0.05 |
| 100-25-4 | p (or) 1,4-Dinitrobenzene | 1 | 0.067 | 0.05 |
| 534-52-1 | Dinitro-o-cresol | 0.2 | 0.013 | 0.01 |
| 148-01-6 | 3,5-Dinitro-o-toluamide, see Dinitolmide | | | |
| 117-84-0 | N-Dioctyl Phthalate | 5 | 0.333 | 0.25 |
| 78-34-2 | Dioxathion | 0.2 | 0.013 | 0.01 |
| 92-52-4 | Diphenyl, see Biphenyl | | | |
| 122-39-4 | Diphenylamine | 10 | 0.667 | 0.5 |
| | Diphenyl methane diisocyanate, see Methylenediphenyl diisocyanate | | | |
| 34590-94-8 | Dipropylene glycol methyl ether | 600 | 40 | 30 |
| 123-19-3 | Dipropyl ketone | 235 | 15.7 | 11.75 |
| 85-00-7 | Diquat | 0.5 | 0.033 | 0.01 |
| 97-77-8 | Disulfiram | 2 | 0.133 | 0.1 |
| 298-04-4 | Disulfoton | 0.1 | 0.007 | 0.005 |
| 128-37-0 | 2,6-Ditert. butyl-p-cresol | 10 | 0.667 | 0.5 |
| 330-54-1 | Diuron | 10 | 0.667 | 0.5 |
| 108-57-6 | Divinyl benzene | 50 | 3.33 | 2.5 |
| 1302-74-5 | Emery (corundum) total dust (> 1% silica) | 10 | 0.667 | 0.5 |
| 115-29-7 | Endosulfan | 0.1 | 0.007 | 0.005 |
| 72-20-8 | Endrin | 0.1 | 0.007 | 0.005 |
| 13838-16-9 | Enflurane | 566 | 37.7 | 28.3 |
| 1395-21-7 | Enzymes, see Subtilisins | | | |
| 2104-64-5 | EPN (Ethoxy-4-Nitro-phenoxy phenylphosphine) | 0.5 | 0.033 | 0.025 |
| 106-88-7 | 1,2-Epoxybutane (MI) | --- | 0.8 | 0.6 |
| 75-56-9 | 1,2-Epoxypropane, see Propylene oxide | | | |
| 556-52-5 | 2,3-Epoxy-1-propanol, see Glycidol | | | |
| 75-08-1 | Ethanethiol, see Ethyl mercaptan | | | |
| 141-43-5 | Ethanolamine | 8 | 0.533 | 0.4 |
| 563-12-2 | Ethion | 0.4 | 0.027 | 0.02 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|---|-------------|------------|-------------|
| 110-80-5 | 2-Ethoxyethanol | 19 | 1.27 | 0.95 |
| 111-15-9 | 2-Ethoxyethyl acetate (EGEEA) | 27 | 1.8 | 1.35 |
| 141-78-6 | Ethyl acetate | 1400 | 93.3 | 70 |
| 64-17-5 | Ethyl alcohol | 1880 | 125 | 94 |
| 75-04-7 | Ethylamine | 18 | 1.2 | 0.9 |
| 541-85-5 | Ethyl amyl ketone | 130 | 8.67 | 6.5 |
| 100-41-4 | Ethyl benzene | 435 | 29 | 21.75 |
| 74-96-4 | Ethyl bromide | 22 | 1.47 | 1.1 |
| 106-35-4 | Ethyl butyl ketone | 230 | 15.3 | 11.5 |
| 51-79-6 | Ethyl carbamate (Urethane) (WA) | --- | 0.002 | 0.0015 |
| 75-00-3 | Ethyl chloride | 2640 | 176 | 132 |
| 107-07-3 | Ethylene chlorohydrin | 3 | 0.2 | 0.15 |
| 107-15-3 | Ethylenediamine | 25 | 1.67 | 1.25 |
| 107-06-2 | Ethylene dichloride | 40 | 2.667 | 2 |
| 107-21-1 | Ethylene glycol vapor (CL) | 127 | 0.846 | 6.35 |
| 628-96-6 | Ethylene glycol denigrate | 0.31 | 0.021 | 0.016 |
| 110-49-6 | Ethylene glycol methyl ether acetate, see 2-Methoxyethyl acetate | | | |
| 96-45-7 | Ethylene thiourea (PL2) | --- | 0.047 | 0.035 |
| 109-94-4 | Ethyl formate | 300 | 20 | 15 |
| 16219-75-3 | Ethylidene norbornene (CL) | 25 | 0.167 | 1.25 |
| 75-08-1 | Ethyl mercaptan | 1 | 0.067 | 0.05 |
| 100-74-3 | N-Ethylmorpholine | 23 | 1.53 | 1.15 |
| 78-10-4 | Ethyl silicate | 85 | 5.67 | 4.25 |
| 22224-92-6 | Fenamiphos | 0.1 | 0.007 | 0.005 |
| 115-90-2 | Fensulfothion | 0.1 | 0.007 | 0.005 |
| 55-38-9 | Fenthion | 0.2 | 0.013 | 0.01 |
| 14484-64-1 | Ferbam | 10 | 0.667 | 0.5 |
| 12604-58-9 | Ferrovandium dust | 1 | 0.067 | 0.05 |
| NA | Fibrous glass dust | 10 | 0.667 | 0.5 |
| NA | Fine Mineral Fibers - Including: mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less. (ID) | -- | 0.661 | 0.5 |
| NA | Fluorides, as F | 2.5 | 0.167 | 0.125 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|---|-------------|------------|-------------|
| 7782-41-4 | Fluorine | 2 | 0.133 | 0.1 |
| 944-22-9 | Fonofos | 0.1 | 0.007 | 0.005 |
| 75-12-7 | Formamide | 30 | 2 | 1.5 |
| 64-18-6 | Formic acid | 9.4 | 0.627 | 0.47 |
| 98-01-1 | Furfural | 8 | 0.533 | 0.4 |
| 98-00-0 | Furfuryl alcohol | 40 | 2.67 | 2 |
| 7782-65-2 | Germanium tetrahydride | 0.6 | 0.04 | 0.03 |
| NA | Glass, Fibrous or dust, see Fibrous glass dust | | | |
| 111-30-8 | Glutaraldehyde (CL) | 0.82 | 0.0047 | 0.041 |
| 556-52-5 | Glycidol | 75 | 5 | 3.75 |
| 110-80-5 | Glycol monoethyl ether, see 2-Ethoxyethanol | | | |
| 7440-58-6 | Hafnium | 0.5 | 0.033 | 0.025 |
| 110-43-0 | 2-Heptanone, see Methyl n-amyl ketone | | | |
| 106-35-4 | 3-Heptanone, see Ethyl butyl ketone | | | |
| 151-67-7 | Halothane | 404 | 26.9 | 20.2 |
| 142-82-5 | Heptane (n-Heptane) | 1640 | 109 | 82 |
| 77-47-4 | Hexachlorocyclopentadiene | 0.1 | 0.007 | 0.005 |
| 1335-87-1 | Hexachloronaphthalene | 0.2 | 0.013 | 0.010 |
| 684-16-2 | Hexafluoroacetone | 0.7 | 0.047 | 0.035 |
| 822-06-0 | Hexamethylene diisocyanate | 0.03 | 0.002 | 0.0015 |
| 680-31-9 | Hexamethylphosphoramide (WA) | --- | 0.002 | 0.0015 |
| 110-54-3 | Hexane (n-Hexane) | 180 | 12 | 9 |
| 591-78-6 | 2-Hexanone, see Methyl n-butyl ketone | | | |
| 108-10-1 | Hexone, see Methyl isobutyl ketone | | | |
| 108-84-9 | sec-Hexyl acetate | 300 | 20 | 15 |
| 107-41-5 | Hexylene glycol (CL) | 121 | 0.806 | 6.05 |
| 37275-59-5 | Hydrogenated terphenyls | 5 | 0.333 | 0.25 |
| 10035-10-6 | Hydrogen bromide (CL) | 10 | 0.0667 | 0.5 |
| 7647-01-0 | Hydrogen chloride (CL) | 7.5 | 0.05 | 0.375 |
| 7722-84-1 | Hydrogen peroxide | 1.5 | 0.1 | 0.075 |
| 7783-06-4 | Hydrogen sulfide | 14 | 0.933 | 0.7 |
| 123-31-9 | Hydroquinone | 2 | 0.133 | 0.1 |
| 123-42-2 | 4-Hydroxy-4-Methyl-2-pentanone, see Diacetone alcohol | | | |
| 999-61-1 | 2 -Hydroxypropyl acrylate | 3 | 0.2 | 0.15 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|--|-------------|------------|-------------|
| 95-13-6 | Indene | 45 | 3 | 2.25 |
| 7440-74-6 | Indium & compounds as In | 0.1 | 0.007 | 0.005 |
| 7553-56-2 | Iodine (CL) | 0.1 | 0.0067 | 0.005 |
| 75-47-8 | Iodoform | 10 | 0.667 | 0.5 |
| 1309-37-1 | Iron oxide fume (Fe2O3) as Fe | 5 | 0.333 | 0.25 |
| 13463-40-6 | Iron pentacarbonyl as Fe | 0.8 | 0.053 | 0.04 |
| 7439-89-6 | Iron salts, soluble, as Fe | 1 | 0.067 | 0.05 |
| 123-92-2 | Isoamyl acetate | 525 | 35 | 26.25 |
| 123-51-3 | Isoamyl alcohol | 360 | 24 | 18 |
| 110-19-0 | Isobutyl acetate | 700 | 46.7 | 35 |
| 78-83-1 | Isobutyl alcohol | 150 | 10 | 6 |
| 26952-21-6 | Isooctyl alcohol | 270 | 18 | 13.5 |
| 78-59-1 | Isophorone | 28 | 1.867 | 1.4 |
| 4098-71-9 | Isophorone diisocyanate | 0.09 | 0.006 | 0.0045 |
| 109-59-1 | Isopropoxyethanol | 105 | 7 | 5.25 |
| 108-21-4 | Isopropyl Acetate | 1040 | 69.3 | 52 |
| 67-63-0 | Isopropyl alcohol | 980 | 65.3 | 49 |
| 75-31-0 | Isopropylamine | 12 | 0.8 | 0.6 |
| 643-28-7 | N-Isopropylaniline | 10 | 0.667 | 0.5 |
| 108-20-3 | Isopropyl ether | 1040 | 69.3 | 52 |
| 4016-14-2 | Isopropyl glycidyl ether (IGE) | 240 | 16 | 12 |
| 1332-58-7 | Kaolin (respirable dust) | 2 | 0.133 | 0.1 |
| 463-51-4 | Ketene | 0.9 | 0.06 | 0.045 |
| 7580-67-8 | Lithium hydride | 0.025 | 0.002 | 0.00125 |
| 546-93-0 | Magnesite | 10 | 0.667 | 0.5 |
| 1309-48-4 | Magnesium oxide fume | 10 | 0.667 | 0.5 |
| 121-75-5 | Malathion | 10 | 0.667 | 0.5 |
| 108-31-6 | Maleic anhydride | 1 | 0.067 | 0.05 |
| 7439-96-5 | Manganese as Mn Including: | | | |
| 7439-96-5 | Dust & compounds | 5 | 0.333 | 0.25 |
| 7439-96-5 | Fume | 1 | 0.067 | 0.05 |
| 101-68-8 | MDI, see Methylene diphenyl isocyanate | | | |
| NA | Mercaptans not otherwise listed (ID) | --- | 0.033 | 0.025 |
| 141-79-7 | Mesityl oxide | 60 | 4 | 3 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|---|-------------|------------|-------------|
| 79-41-4 | Methacrylic acid | 70 | 4.67 | 3.5 |
| 74-93-1 | Methanethiol, see Methyl mercaptan | | | |
| 67-56-1 | Methanol | 260 | 17.3 | 13 |
| 16752-77-5 | Methomyl | 2.5 | 0.17 | 0.125 |
| 72-43-5 | Methoxychlor | 10 | 0.667 | 0.5 |
| 109-86-4 | 2-Methoxyethanol | 16 | 1.07 | 0.8 |
| 110-49-6 | 2-Methoxyethyl acetate | 24 | 1.6 | 1.2 |
| 150-76-5 | 4-Methoxyphenol | 5 | 0.333 | 0.25 |
| 108-65-6 | 1-methoxy-2-proanol acetate (ID) | n/a | 24 | 3.6 |
| 79-20-9 | Methyl acetate | 610 | 40.7 | 30.5 |
| 74-99-7 | Methyl acetylene | 1640 | 109 | 82 |
| NA | Methyl acetylene-propadiene mix (MAPP) | 1640 | 109 | 82 |
| 96-33-3 | Methyl acrylate | 35 | 2.33 | 1.75 |
| 126-98-7 | Methylacrylonitrile | 3 | 0.2 | 0.15 |
| 74-89-5 | Methylamine | 12 | 0.8 | 0.6 |
| 108-11-2 | Methyl emyl alcohol, see Methyl isobutyl carbinol | | | |
| 110-43-0 | Methyl n-amyl ketone | 235 | 15.7 | 11.75 |
| 100-61-8 | N-Methyl aniline | 2 | 0.133 | 0.1 |
| 74-83-9 | Methyl bromide | 19 | 1.27 | 0.95 |
| 591-78-6 | Methyl n-butyl ketone | 20 | 1.33 | 1 |
| 74-87-3 | Methyl chloride | 103 | 6.867 | 5.15 |
| 71-55-6 | Methyl chloroform | 1910 | 127 | 95.5 |
| 137-05-3 | Methyl 2-cyano-acrylate | 8 | 0.533 | 0.4 |
| 25639-42-3 | Methylcyclohexanol | 235 | 15.7 | 11.75 |
| 583-60-8 | o-Methylcyclohexanone | 230 | 15.3 | 11.5 |
| 8022-00-2 | Methyl demeton | 0.5 | 0.033 | 0.01 |
| 101-68-8 | Methylenediphenyl diisocyanate (MDI) | 0.05 | 0.003 | 0.0025 |
| 5124-30-1 | Methylene bis (4-cyclohexyl isocyanate) | 0.11 | 0.007 | 0.0055 |
| 78-93-3 | Methyl ethyl ketone (MEK) | 590 | 39.3 | 29.5 |
| 1338-23-4 | Methyl ethyl ketone peroxide (CL) | 1.5 | 0.01 | 0.0075 |
| 107-31-3 | Methyl formate | 246 | 16.4 | 12.3 |
| 541-85-5 | 5-Methyl-3-heptanone, see Ethyl amyl ketone | | | |
| 110-12-3 | Methyl isoamyl ketone | 240 | 16 | 12 |
| 108-11-2 | Methyl isobutyl carbinol | 104 | 6.93 | 5.2 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|--------------------------------------|-------------|------------|-------------|
| 108-10-1 | Methyl isobutyl ketone | 205 | 13.7 | 10.25 |
| 624-83-9 | Methyl isocyanate | 0.05 | 0.003 | 0.0025 |
| 563-80-4 | Methyl isopropyl ketone | 705 | 47 | 35.25 |
| 74-93-1 | Methyl mercaptan | 0.5 | 0.033 | 0.025 |
| 80-62-6 | Methyl methacrylate | 410 | 27.3 | 20.5 |
| 298-00-0 | Methyl parathion | 0.2 | 0.013 | 0.01 |
| 107-87-9 | Methyl propyl ketone | 700 | 46.7 | 35 |
| 681-84-5 | Methyl silicate | 6 | 0.4 | 0.3 |
| 98-83-9 | a-Methyl styrene | 240 | 16 | 10.20 |
| 109-87-5 | Methylal (dimethoxymethane) | 3110 | 207 | 155.5 |
| 108-87-2 | Methylcyclohexane | 1610 | 107 | 80.5 |
| 21087-64-9 | Metribuzin | 5 | 0.333 | 0.25 |
| 7786-34-7 | Mevinphos | 0.1 | 0.007 | 0.005 |
| 12001-26-2 | Mica (Respirable dust) | 3 | 0.2 | 0.15 |
| NA | Mineral Wool Fiber (no asbestos) | 10 | 0.667 | 0.5 |
| 7439-98-7 | Molybdenum as Mo - Including: | | | |
| NA | Soluble compounds | 5 | 0.333 | 0.25 |
| NA | Insoluble compounds | 10 | 0.667 | 0.5 |
| 108-90-7 | Monochlorobenzene, see Chlorobenzene | | | |
| 6923-22-4 | Monocrotophos | 0.25 | 0.017 | 0.0125 |
| 110-91-8 | Morpholine | 70 | 4.67 | 0.35 |
| 300-76-5 | Naled | 3 | 0.2 | 0.15 |
| 91-20-3 | Naphthalene | 50 | 3.33 | 2.5 |
| 54-11-5 | Nicotine | 0.5 | 0.033 | 0.025 |
| 1929-82-4 | Nitrapyrin | 10 | 0.667 | 0.5 |
| 7697-37-2 | Nitric acid | 5 | 0.333 | 0.25 |
| 100-01-6 | p-Nitroaniline | 3 | 0.2 | 0.15 |
| 98-95-3 | Nitrobenzene | 5 | 0.333 | 0.25 |
| 100-00-5 | p-Nitrochlorobenzene | 3 | 0.2 | 0.15 |
| 79-24-3 | Nitroethane | 310 | 20.7 | 15.5 |
| 7783-54-2 | Nitrogen trifluoride | 29 | 1.93 | 1.45 |
| 55-63-0 | Nitroglycerin | 0.46 | 0.031 | 0.023 |
| 75-52-5 | Nitromethane | 50 | 3.333 | 2.5 |
| 108-03-2 | 1-Nitropropane | 90 | 6 | 4.5 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|---|-------------|------------|-------------|
| 99-08-1 | m (or) 3-Nitrotoluene | 11 | 0.733 | 0.55 |
| 88-72-2 | o (or) 2-Nitrotoluene | 11 | 0.733 | 0.55 |
| 99-99-0 | p (or) 4-Nitrotoluene | 11 | 0.733 | 0.55 |
| 76-06-2 | Nitrotrichloromethane, see Chloropicrin | | | |
| 10024-97-2 | Nitrous oxide | 90 | 6 | 4.5 |
| 111-84-2 | Nonane | 1050 | 70 | 52.5 |
| 2234-13-1 | Octachloronaphthalene | 0.1 | 0.007 | 0.005 |
| 111-65-9 | Octane | 1400 | 93.3 | 70 |
| NA | Oil mist, mineral | 5 | 0.333 | 0.25 |
| 20816-12-0 | Osmium tetroxide as Os | 0.002 | 0.0001 | 0.0001 |
| 144-62-7 | Oxalic acid | 1 | 0.067 | 0.05 |
| 7783-41-7 | Oxygen difluoride (CL) | 0.11 | 0.0007 | 0.0005 |
| 8002-74-2 | Paraffin wax fume | 2 | 0.133 | 0.1 |
| 4685-14-7 | Paraquat | 0.1 | 0.007 | 0.007 |
| NA | Paraquat, all Compounds | 0.1 | 0.007 | 0.005 |
| 56-38-2 | Parathion | 0.1 | 0.007 | 0.005 |
| 19624-22-7 | Pentaborane | 0.01 | 0.001 | 0.0005 |
| 1321-64-8 | Pentachloronaphthalene | 0.5 | 0.033 | 0.025 |
| 82-68-8 | Pentachloronitrobenzene | 0.5 | 0.0333 | 0.025 |
| 87-86-5 | Pentachlorophenol | 0.5 | 0.033 | 0.025 |
| 109-66-0 | Pentane | 1770 | 118 | 88.5 |
| 107-87-9 | 2-Pentanone, see Methyl propyl ketone | | | |
| 594-42-3 | Perchloromethyl mercaptan | 0.8 | 0.053 | 0.04 |
| 7616-94-6 | Perchloryl Fluoride | 13 | 0.867 | 0.65 |
| 93763-70-3 | Perlite | 10 | 0.667 | 0.5 |
| 532-27-4 | Phenacyl chloride, see a-Chloroacetophenone | | | |
| 108-95-2 | Phenol | 19 | 1.27 | 0.95 |
| 92-84-2 | Phenothiazine | 5 | 0.333 | 0.25 |
| 108-45-2 | m-Phenylenediamine | 0.1 | 0.0067 | 0.005 |
| 106-50-3 | p-Phenylenediamine | 0.1 | 0.007 | 0.005 |
| 101-84-8 | Phenyl ether, vapor | 7 | 0.467 | 0.035 |
| 122-60-1 | Phenyl glycidyl ether (PGE) | 6 | 0.4 | 0.3 |
| 108-98-5 | Phenyl mercaptan | 2 | 0.133 | 0.1 |
| 638-21-1 | Phenylphosphine (CL) | 0.25 | 0.0017 | 0.00125 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|--|-------------|------------|-------------|
| 298-02-2 | Phorate | 0.05 | 0.003 | 0.001 |
| 7786-34-7 | Phosdrin, see Mevinphos | | | |
| 75-44-5 | Phosgene | 0.4 | 0.027 | 0.02 |
| 7803-51-2 | Phosphine | 0.4 | 0.027 | 0.02 |
| 7664-38-2 | Phosphoric acid | 1 | 0.067 | 0.05 |
| 7723-14-0 | Phosphorus | 0.1 | 0.007 | 0.005 |
| 10025-87-3 | Phosphorus oxychloride | 0.6 | 0.04 | 0.030 |
| 10026-13-8 | Phosphorus penta-chloride | 1 | 0.067 | 0.05 |
| 1313-80-3 | Phosphorus penta-sulfide | 1 | 0.067 | 0.05 |
| 1314-56-3 | Phosphorus pentoxide (ID) | -- | 0.067 | 0.05 |
| 7719-12-2 | Phosphorus trichloride | 1.5 | 0.1 | 0.075 |
| 85-44-9 | Phthalic anhydride | 6 | 0.4 | 0.3 |
| 626-17-5 | m-Phthalodinitrile | 5 | 0.333 | 0.25 |
| 1918-02-1 | Picloram | 10 | 0.667 | 0.5 |
| 88-89-1 | Picric acid | 0.1 | 0.006 | 0.005 |
| 83-26-1 | Pindone | 0.1 | 0.007 | 0.005 |
| 142-64-3 | Piperazine dihydro-chloride | 5 | 0.333 | 0.25 |
| 83-26-1 | 2-Pivaloyl-1,3-indandione, see Pindone | | | |
| 7440-06-4 | Platinum - Including: | | | |
| 7440-06-4 | Metal | 1 | 0.067 | 0.05 |
| NA | Soluble salts, as Pt | 0.002 | 0.0001 | 0.0001 |
| 65997-15-1 | Portland cement | 10 | 0.667 | 0.5 |
| 1310-58-3 | Potassium hydroxide | 2 | 0.133 | 0.1 |
| 107-19-7 | Propargyl alcohol | 2.3 | 0.153 | 0.115 |
| 123-38-6 | Propionaldehyde (LA) | 0.43 | 0.0287 | 0.0215 |
| 79-09-4 | Propionic acid | 30 | 2 | 1.5 |
| 114-26-1 | Propoxur (Baygon) | 0.5 | 0.033 | 0.025 |
| 109-60-4 | n-Propyl acetate | 840 | 56 | 42 |
| 71-23-8 | Propyl alcohol | 500 | 33.3 | 25 |
| 78-87-5 | Propylene dichloride | 347 | 23.133 | 17.35 |
| 6423-43-4 | Propylene glycol dinitrate | 0.34 | 0.023 | 0.017 |
| 107-98-2 | Propylene glycol monomethyl ether | 360 | 24 | 18 |
| 75-56-9 | Propylene oxide | 48 | 3.2 | 2.4 |
| 627-13-4 | n-Propyl nitrate | 105 | 7 | 5.25 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|-------------|--|-------------|------------|-------------|
| 8003-34-7 | Pyrethrum | 5 | 0.333 | 0.25 |
| 110-86-1 | Pyridine | 15 | 1 | 0.75 |
| 120-80-9 | Pyrocatechol, see Catechol | | | |
| 106-51-4 | Quinone | 0.4 | 0.027 | 0.02 |
| 121-84-4 | RDX, see Cyclonite | | | |
| NA | Refractory Ceramic Fibers (see entry for specific content of emissions, ex: silica) | | | |
| 108-46-3 | Resorcinol | 45 | 3 | 2.25 |
| 7440-16-6 | Rhodium - Including: | | | |
| 7440-16-6 | Metal | 1 | 0.067 | 0.05 |
| NA | Insoluble compounds, as Rh | 1 | 0.067 | 0.05 |
| NA | Soluble compounds, as Rh | 0.01 | 0.001 | 0.0005 |
| 299-84-3 | Ronnel | 10 | 0.667 | 0.5 |
| 83-79-4 | Rotenone (commercial) | 5 | 0.333 | 0.25 |
| 8030-30-6 | Rubber solvent (Naphtha) | 1590 | 106 | 79.5 |
| 14167-18-1 | Salcoine as CO | 0.1 | 0.007 | 0.005 |
| 7782-49-2 | Selenium | 0.2 | 0.013 | 0.010 |
| NA | Selenium and compounds as Se | 0.2 | 0.013 | 0.01 |
| 136-78-7 | Sesone | 10 | 0.667 | 0.5 |
| 7803-62-5 | Silane, see silicon tectrahydride | | | |
| NA | Silica - amorphous - Including: | | | |
| 61790-53-2 | Diatomaceous earth (uncalcined) | 10 | 0.667 | 0.5 |
| 112926-00-8 | Precipitated silica | 10 | 0.667 | 0.5 |
| 112926-00-8 | Silica gel | 10 | 0.667 | 0.5 |
| NA | Silica, crystalline - Including: | | | |
| 14464-46-1 | Cristobalite | 0.05 | 0.0033 | 0.0025 |
| 14808-60-7 | quartz | 0.1 | 0.0067 | 0.005 |
| 60676-86-0 | silica, fused | 0.1 | 0.0067 | 0.005 |
| 15468-32-3 | tridymite | 0.05 | 0.0033 | 0.0025 |
| 1317-95-9 | Tripoli | 0.1 | 0.0067 | 0.005 |
| 7440-21-3 | Silicon | 10 | 0.667 | 0.5 |
| 409-21-2 | Silicon carbide | 10 | 0.667 | 0.5 |
| 7803-62-5 | Silicon tetrahydride | 7 | 0.467 | 0.35 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|---|-------------|------------|-------------|
| 7440-22-4 | Silver - Including | | | |
| 7440-22-4 | Metal | 0.1 | 0.007 | 0.005 |
| 7440-22-4 | Soluble compounds, as Ag | 0.01 | 0.001 | 0.005 |
| 26628-22-8 | Sodium azide (CL) | 0.3 | 0.002 | 0.0015 |
| 7631-90-5 | Sodium bisulfite | 5 | 0.333 | 0.25 |
| 136-78-7 | Sodium 2,4-dichloro-phenoxyethyl sulfate, see Sesone | | | |
| 62-74-8 | Sodium fluoroacetate | 0.05 | 0.003 | 0.0025 |
| 1310-73-2 | Sodium hydroxide | 2 | 0.133 | 0.1 |
| 7681-57-4 | Sodium metabisulfite | 5 | 0.333 | 0.25 |
| NA | Stearates (not including toxic metals) | 10 | 0.667 | 0.5 |
| 7803-52-3 | Stibine | 0.5 | 0.033 | 0.025 |
| 8052-41-3 | Stoddard solvent | 525 | 35 | 26.25 |
| 57-24-9 | Strychnine | 0.15 | 0.01 | 0.0075 |
| 60-41-3 | Strychnine sulfate as strichnine | 0.15 | 0.01 | 0.01 |
| 100-42-5 | Styrene monomer (ID) | -- | 6.67 | 1 |
| 1395-21-7 | Subtilisins (Proteolytic enzymes as 100% pure crystalline enzyme) | 0.00006 | 4.0E-07 | 3.0E-7 |
| 3689-24-5 | Sulfotep | 0.2 | 0.013 | 0.01 |
| 7664-93-9 | Sulfuric acid | 1 | 0.067 | 0.05 |
| 10025-67-9 | Sulfur monochloride (CL) | 6 | 0.04 | 0.03 |
| 5714-22-7 | Sulfur pentafluoride (CL) | 0.1 | 0.0007 | 0.0005 |
| 7783-60-0 | Sulfur tetrafluoride (CL) | 0.4 | 0.0027 | 0.002 |
| 2699-79-8 | Sulfuryl fluoride | 20 | 1.33 | 1 |
| 35400-43-2 | Sulprofos | 1 | 0.067 | 0.05 |
| 8065-48-3 | Systox, see Demeton | | | |
| 93-76-5 | 2,4,5-Trichlorophen-oxyacetic acid (2,4,5,-T) | 10 | 0.667 | 0.05 |
| 7440-25-7 | Tantalum | 5 | 0.333 | 0.25 |
| 3689-24-5 | TEDP, see Sulfotep | | | |
| 13494-80-9 | Tellurium & Compounds as Te | 0.1 | 0.007 | 0.005 |
| 7783-80-4 | Tellurium hexafluoride as Te | 0.2 | 0.013 | 0.01 |
| 3383-96-8 | Temephos | 10 | 0.667 | 0.5 |
| 107-49-3 | TEPP (Tetraethyl-pyrophosphate) | 0.05 | 0.003 | 0.0025 |
| 26140-60-3 | Terphenyls | 4.7 | 0.313 | 0.235 |
| 1335-88-2 | Tetrachloronaphthalene | 2 | 0.133 | 0.10 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|--|-------------|------------|-------------|
| 78-00-2 | Tetraethyl Lead | 0.1 | 0.007 | 0.005 |
| 597-64-8 | Tetraethyltin as organic tin | 0.1 | 0.007 | 0.005 |
| 109-99-9 | Tetrahydrofuran | 590 | 39.3 | 29.5 |
| 75-74-1 | Tetramethyl lead, as Pb | 0.15 | 0.01 | 0.0075 |
| 3333-52-6 | Tetramethyl succinonitrile | 3 | 0.2 | 0.15 |
| 509-14-8 | Tetranitromethane | 8 | 0.533 | 0.4 |
| 7722-88-5 | Tetrasodium pyrophosphate | 5 | 0.333 | 0.25 |
| 479-45-8 | Tetryl | 1.5 | 0.1 | 0.075 |
| 7440-28-0 | Thallium, soluble Compounds, as Tl | 0.1 | 0.007 | 0.005 |
| 96-69-5 | 4,4-Thiobis (6 tert, butyl-m-cresol) | 10 | 0.667 | 0.5 |
| 68-11-1 | Thioglycolic acid | 4 | 0.267 | 0.2 |
| 7719-09-7 | Thionyl chloride (CL) | 4.9 | 0.0327 | 0.245 |
| 137-26-8 | Thiram | 5 | 0.333 | 0.25 |
| 7440-31-5 | Tin - Including: | | | |
| 7440-31-5 | Metal | 2 | 0.133 | 0.1 |
| NA | Oxide & inorganic compounds, except SnH ₄ , as Sn | 2 | 0.133 | 0.1 |
| NA | Organic compounds as Sn | 0.1 | 0.007 | 0.005 |
| 108-88-3 | Toluene (toluol) | 375 | 25 | 18.75 |
| 584-84-9 | Toluene-2,4-di-isocyanate (TDI) | 0.04 | 0.003 | 0.002 |
| 10-41-54 | p-Toluenesulfonic acid (ID) | n/a | 0.067 | 0.05 |
| 126-73-8 | Tributyl phosphate | 2.2 | 0.147 | 0.11 |
| 76-03-9 | Trichloroacetic acid | 7 | 0.467 | 0.35 |
| 120-82-1 | 1,2,4-Trichlorobenzene (CL) | 37 | 2.47 | 1.85 |
| 79-01-6 | Trichloroethylene | 269 | 17.93 | 13.45 |
| 1321-65-9 | Trichloronaphthalene | 5 | 0.333 | 0.25 |
| 76-06-2 | Trichloronitromethane, See Chloropicrin | | | |
| 95-95-4 | 2,4,5-Trichlorophenol (MA) | --- | --- | 0.0016 |
| 96-18-4 | 1,2,3-Trichloropropane | 60 | 4 | 3 |
| 121-44-8 | Triethylamine | 4.1 | 0.27 | 0.2 |
| 1582-09-8 | Trifluralin (PL3) | --- | 7.7 | 1.15 |
| 552-30-7 | Trimellitic anhydride | 0.04 | 0.003 | 0.002 |
| 75-50-3 | Trimethylamine | 12 | 0.8 | 0.6 |
| 25551-13-7 | Trimethyl benzene (mixed and individual isomers) | 123 | 8.2 | 6.15 |
| 540-84-1 | 2,2,4-Trimethyl-pentane | 350 | 23.3 | 17.5 |

| CAS NUMBER | SUBSTANCE | OEL (mg/m3) | EL (lb/hr) | AAC (mg/m3) |
|------------|--|-------------|------------|-------------|
| 121-45-9 | Trimethyl phosphite | 10 | 0.667 | 0.5 |
| 479-45-8 | 2,4,6-Trinitrophenyl-methylnitramine, see Tetryl | | | |
| 78-30-8 | Triorthocresyl phosphate | 0.1 | 0.007 | 0.005 |
| 603-34-9 | Triphenyl amine | 5 | 0.333 | 0.25 |
| 115-86-6 | Triphenyl phosphate | 3 | 0.2 | 0.15 |
| 7440-33-7 | Tungsten - Including: | | | |
| NA | Insoluble compounds | 5 | 0.333 | 0.25 |
| NA | Soluble compounds | 1 | 0.067 | 0.05 |
| 8006-64-2 | Turpentine | 560 | 37.3 | 28 |
| 7440-61-1 | Uranium (natural) Soluble & insoluble compounds as U | 0.2 | 0.013 | 0.01 |
| 110-62-3 | n-Valeraldehyde | 175 | 11.7 | 8.75 |
| 1314-62-1 | Vanadium, as V2O5 Respirable Dust & fume | 0.05 | 0.003 | 0.0025 |
| 108-05-4 | Vinyl acetate | 35 | 2.3 | 1.75 |
| 25013-15-4 | Vinyl toluene | 240 | 16 | 12 |
| 8032-32-4 | VM & P Naphtha | 1370 | 91.3 | 68.5 |
| 81-81-2 | Warfarin | 0.1 | 0.007 | 0.005 |
| 1330-20-7 | Xylene (o-, m-, p-isomers) | 435 | 29 | 21.75 |
| 1477-55-0 | m-Xylene a, a-diamine (CL) | 0.1 | 0.0007 | 0.0005 |
| 1300-73-8 | Xylidine | 2.5 | 1.67 | 0.125 |
| 7440-65-5 | Yttrium (Metal and compounds as Y) | 1 | 0.067 | 0.05 |
| 7440-66-6 | Zinc metal (ID) | -- | 0.667 | 0.5 |
| 7646-85-7 | Zinc chloride fume | 1 | 0.067 | 0.05 |
| 1314-13-2 | Zinc oxide fume | 5 | 0.333 | 0.05 |
| 1314-13-2 | Zinc oxide dust | 10 | 0.667 | 0.5 |
| 7440-67-7 | Zirconium compounds as Zr | 5 | 0.333 | 0.25 |

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586. TOXIC AIR POLLUTANTS CARCINOGENIC INCREMENTS.

The screening emissions levels (EL) and acceptable ambient concentrations (AACC) for carcinogens are as provided in the following table. The AACC in this section are annual averages.

| CAS NUMBER | SUBSTANCE | URF | EL lb/hr | AACC ug/m3 |
|------------|--------------|---------|----------|------------|
| 75-07-0 | Acetaldehyde | 2.2E-06 | 3.0E-03 | 4.5E-01 |

| CAS NUMBER | SUBSTANCE | URF | EL lb/hr | AACC ug/m3 |
|------------|--|---------|----------|------------|
| 79-06-1 | Acrylamide | 1.3E-03 | 5.1E-06 | 7.7E-04 |
| 107-13-1 | Acrylonitrile | 6.8E-05 | 9.8E-05 | 1.5E-02 |
| 309-00-2 | Aldrin | 4.9E-03 | 1.3E-06 | 2.0E-04 |
| 62-53-3 | Aniline | 7.4E-06 | 9.0E-04 | 1.4E-01 |
| 140-57-8 | Aramite | 7.1E-06 | 9.3E-04 | 1.4E-01 |
| NA | Aroclor, all (PCB) (ID) | --- | 6.6E-05 | 1.0E-02 |
| 7440-38-2 | Arsenic compounds | 4.3E-03 | 1.5E-06 | 2.3E-04 |
| 1332-21-4 | Asbestos (Fibers /M.L.) | 2.3E-01 | N/A | 4.0E-06 |
| 71-43-2 | Benzene | 8.3E-06 | 8.0E-04 | 1.2E-01 |
| 92-87-5 | Benzidine | 6.7E-02 | 9.9E-08 | 1.5E-05 |
| 50-32-8 | Benzo(a)pyrene | 3.3E-03 | 2.0E-06 | 3.0E-04 |
| 7440-41-7 | Beryllium & compounds | 2.4E-04 | 2.8E-05 | 4.2E-03 |
| 106-99-0 | 1,3-Butadiene | 2.8E-04 | 2.4E-05 | 3.6E-03 |
| 111-44-4 | Bis (2-chloroethyl) ether | 3.3E-04 | 2.0E-05 | 3.0E-03 |
| 542-88-1 | Bis (chloromethyl) ether | 6.2E-02 | 1.0E-07 | 1.6E-05 |
| 108-60-1 | Bis (2-chloro-1-methyl- ethyl) ether | 2.0E-05 | 3.3E-04 | 5.0E-02 |
| 117-81-7 | Bis (2-ethylhexyl) phthalate | 2.4E-07 | 2.8E-02 | 4.2E+00 |
| 7440-43-9 | Cadmium and compounds | 1.8E-03 | 3.7E-06 | 5.6E-04 |
| 56-23-5 | Carbon tetrachloride | 1.5E-05 | 4.4E-04 | 6.7E-02 |
| 57-74-9 | Chlordane | 3.7E-04 | 1.8E-04 | 2.7E-03 |
| 67-66-3 | Chloroform | 2.3E-05 | 2.8E-04 | 4.3E-02 |
| 18540-29-9 | Chromium (VI) & compounds as Cr+6 | 1.2E-02 | 5.6E-07 | 8.3E-05 |
| NA | Coal Tar Volitiles as benzene | | | |
| NA | Coke oven emissions | 6.2E-04 | 1.1E-05 | 1.6E-03 |
| 8001-58-9 | Creosote (ID) See coal tar volatiles as benzene extractables | | | |
| 50-29-3 | DDT (Dichlorodi phenyltrichloroethane) | 9.7E-05 | 6.8E-05 | 1.0E-02 |
| 96-12-8 | 1,2-Dibromo-3-chloropropane | 6.3E-03 | 1.0E-06 | 1.6E-04 |
| 75-34-3 | 1,1 dichloroethane | 2.6E-05 | 2.5E-04 | 3.8E-02 |
| 107-06-2 | 1,2 dichloroethane | 2.6E-05 | 2.5E-04 | 3.8E-02 |
| 75-35-4 | 1,1 dichloroethylene | 5.0E-05 | 1.3E-04 | 2.0E-02 |
| 75-09-2 | Dichloromethane (Methylenechloride) | 4.1E-06 | 1.6E-03 | 2.4E-01 |
| 542-75-6 | 1,3 dichloropropene | 4.0E-06 | 1.7E-03 | 2.5E-01 |
| 764-41-0 | 1,4-Dichloro-2-butene | 2.6E-03 | 2.5E-06 | 3.8E-04 |

| CAS NUMBER | SUBSTANCE | URF | EL lb/hr | AACC ug/m3 |
|------------|---|---------|----------|------------|
| 60-57-1 | Dieldrin | 4.6E-03 | 1.4E-06 | 2.1E-04 |
| 56-53-1 | Diethylstilbestrol | 1.4E-01 | 4.7E-08 | 7.1E-06 |
| 123-91-1 | 1,4 dioxane | 1.4E-06 | 4.8E-03 | 7.1E-01 |
| | Dioxin and Furans (2,3,7,8,TCDD & mixtures) Dioxin and Furan emissions shall be considered as one TAP and expressed as an equivalent emission of 2,3,7,8, TCDD based on the relative potency of the isomers in accordance with US EPA guidelines. U.S. EPA (Environmental Protection Agency), (2010) Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2,3,7,8-Tetrachlorodibenzo-p-dioxin and Dioxin-Like Compounds. Risk Assessment Forum, Washington, DC. EPA/600/R-10/005. | | | |
| 122-66-7 | 1,2-Diphenylhydrazine | 2.2E-04 | 3.0E-05 | 4.5E-03 |
| 106-89-8 | Epichlorohydrin | 1.2E-06 | 5.6E-03 | 8.3E-01 |
| 106-93-4 | Ethylene dibromide | 2.2E-04 | 3.0E-05 | 4.5E-03 |
| 75-21-8 | Ethylene oxide | 1.0E-04 | 6.7E-05 | 1.0E-02 |
| 50-00-0 | Formaldehyde | 1.3E-05 | 5.1E-04 | 7.7E-02 |
| 76-44-8 | Heptachlor | 1.3E-03 | 5.1E-06 | 7.7E-04 |
| 1024-57-3 | Heptachlor Epoxide | 2.6E-03 | 2.5E-06 | 3.5E-04 |
| 118-74-1 | Hexachlorobenzene | 4.9E-04 | 1.3E-05 | 2.0E-03 |
| 87-68-3 | Hexachlorobutadiene | 2.0E-05 | 3.3E-04 | 5.0E-02 |
| | Hexachlorocyclo-hexane, Technical | 5.1E-04 | 1.3E-05 | 1.9E-03 |
| 319-84-6 | Hexachlorocyclohexane (Lindane) Alpha (BHC) | 1.8E-03 | 3.7E-06 | 5.6E-04 |
| 319-85-7 | Hexachlorocyclohexane (Lindane) Beta (BHC) | 5.3E-04 | 1.3E-05 | 1.8E-03 |
| 58-89-9 | Hexachlorocyclohexane (Lindane) Gamma (BHC) | 3.8E-04 | 1.7E-05 | 2.6E-03 |
| 67-72-1 | Hexachloroethane | 4.0E-06 | 1.7E-03 | 2.5E-01 |
| 302-01-2 | Hydrazine | 2.9E-03 | 2.3E-06 | 3.4E-04 |
| 10034-93-2 | Hydrazine Sulfate | 2.9E-03 | 2.2E-06 | 3.5E-04 |
| 56-49-5 | 3-methylcholanthrene | 2.7E-03 | 2.5E-06 | 3.7E-04 |
| 75-09-2 | Methylene Chloride | 4.1E-06 | 1.6E-03 | 2.4E-01 |
| 74-87-3 | Methyl chloride | 3.6E-06 | 1.9E-03 | 2.8E-01 |
| 101-14-4 | 4,4-Methylene bis(2-Chloroaniline) | 4.7E-05 | 1.4E-04 | 2.1E-02 |
| 60-34-4 | Methyl hydrazine | 3.1E-04 | 2.2E-05 | 3.2E-03 |
| 7440-02-0 | Nickel | 2.4E-04 | 2.7E-05 | 4.2E-03 |
| 12035-72-2 | Nickel Subsulfide | 4.8E-04 | 1.4E-05 | 2.1E-02 |
| 7440-02-0 | Nickel Refinery Dust | 2.4E-04 | 2.8E-05 | 4.2E-02 |
| 79-46-9 | 2-Nitropropane | 2.7E-02 | 2.5E-07 | 3.7E-05 |
| 55-18-5 | N-Nitrosodiethylamine (diethylnitrosoamine) (DEN) | 4.3E-02 | 1.5E-07 | 2.3E-05 |

| CAS NUMBER | SUBSTANCE | URF | EL lb/hr | AACC ug/m3 |
|------------|---|----------|----------|------------|
| 62-75-9 | N-Nitrosodimethylamine | 1.4E-02 | 4.8E-07 | 7.1E-05 |
| 924-16-3 | N-Nitrosodi-n-butylamine | 1.6E-03 | 4.1E-06 | 6.3E-04 |
| 930-55-2 | N-Nitrosopyrrolidine | 6.1E-04 | 1.1E-05 | 1.6E-03 |
| 684-93-5 | N-Nitroso-N-methylurea (NMU) | 3.5E-01 | 1.9E-08 | 2.9E-06 |
| 82-68-8 | Pentachloronitrobenzene | 7.3E-05 | 9.1E-05 | 1.4E-02 |
| 127-18-4 | Perchloroethylene (see tetrachloroethylene) | | | |
| NA | Polyaromatic Hydrocarbons (except 7-PAH group) | 7.3E-05 | 9.1E-05 | 1.4E-02 |
| | (Polycyclic Organic Matter or 7-PAH group) For emissions of the 7-PAH group, the following PAHs shall be considered together as one TAP, equivalent in potency to benzo(a)pyrene: benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenzo(a,h)anthracene, chrysene, indeno(1,2,3,-cd)pyrene, benzo(a)pyrene. (WA) | | | |
| 23950-58-5 | Promanide | 4.6E-06 | 1.5E-03 | 2.2E-01 |
| 50-55-5 | Reserpine | 3.0E-03 | 2.2E-06 | 3.3E-04 |
| 1746-01-6 | 2,3,7,8,-Tetrachlorodibenzo-p-dioxin (2,3,7,8, -TCDD) | 4.5.E+01 | 1.5E-10 | 2.2E-08 |
| NA | Soots and Tars (ID) See coal tar volatiles as benzene extractables. | | | |
| 79-34-5 | 1,1,2,2,Tetrachloro-ethane | 5.8E-05 | 1.1E-05 | 1.7E-02 |
| 127-18-4 | Tetrachloroethylene | 4.8E-07 | 1.3E-02 | 2.1E+00 |
| 79-00-5 | 1,1,2 - trichloroethane | 1.6E-05 | 4.2E-04 | 6.2E-02 |
| 62-56-6 | Thiourea | 5.5E-04 | 1.2E-05 | 1.8E-03 |
| 8001-35-2 | Toxaphene | 3.2E-04 | 2.0E-05 | 3.0E-03 |
| 79-01-6 | Trichloroethylene | 1.3E-06 | 5.1E-04 | 7.7E-01 |
| 88-06-2 | 2,4,6 - Trichlorophenol | 5.7E-06 | 1.2E-03 | 1.8E-01 |
| 75-01-4 | Vinyl chloride | 7.1E-06 | 9.4E-04 | 1.4E-01 |

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587. LISTING OR DELISTING TOXIC AIR POLLUTANT INCREMENTS.

Persons may request the listing of any toxic substance or delisting of any toxic air pollutant in Sections 585 or 586 by filing a petition for adoption of rules in accordance with IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality."

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588. -- 591. (RESERVED)

592. STAGE 1 VAPOR COLLECTION.

The purpose of Sections 592 through 598 is to set forth requirements for Stage 1 vapor collection systems. Section 599 sets forth the requirements for gasoline cargo tanks that deliver gasoline to those required to install and operate Stage 1 vapor collection systems. These sections apply to gasoline dispensing facilities (GDF) and gasoline cargo tanks in Ada and Canyon Counties only. Nothing in these rules is intended to supersede or render inapplicable any federal, state, or local laws, including, but not limited to, the National Emission Standards for Hazardous Air

Pollutants for Source Category: Gasoline Dispensing Facilities, 40 CFR Part 63, Subpart CCCCCC, of the federal Clean Air Act. ()

593. AFFECTED EQUIPMENT OR PROCESSES.

01. Applicability. Sections 592 through 598 apply to transfers of gasoline to underground storage tanks with a tank capacity of ten thousand (10,000) gallons and not otherwise subject to 40 CFR 63.11118. The emission sources include the underground gasoline storage tanks and associated equipment components in vapor or liquid gasoline service at new, reconstructed, or existing GDFs. Pressure/vacuum vents on underground gasoline storage tanks and the equipment necessary to unload product from cargo tanks into the storage tanks at GDFs are covered emission sources. ()

02. New Sources. A source is a new source if construction commenced on the source after April 1, 2009. ()

03. Reconstructed Sources. A source is reconstructed if meeting the criteria for reconstruction as defined in 40 CFR 63.2, incorporated by reference into these rules at Section 107. ()

04. Existing Sources. A source is an existing source if it is not new or reconstructed. ()

594. COMPLIANCE DATES.

01. New or Reconstructed Sources. For a new or reconstructed source, the owner or operator must comply with the standards in Sections 595 and 596 no later than April 1, 2009 or upon startup, whichever is later. Owners or operators of new sources shall install dual point systems. ()

02. Existing Sources. For an existing source, the owner or operator must comply with the standards in Sections 595 and 596 upon installation of the Stage 1 vapor collection system, or by May 1, 2010, whichever is earlier. ()

595. SUBMERGED FILL REQUIREMENTS.

The owner or operator must only load gasoline into underground storage tanks at the facility by utilizing submerged filling. ()

01. Installed On or Before November 9, 2006. Submerged fill pipes installed on or before November 9, 2006 must be no more than twelve (12) inches from the bottom of the storage tank. ()

02. Installed After November 9, 2006. Submerged fill pipes installed after November 9, 2006 must be no more than six (6) inches from the bottom of the storage tank. ()

596. VAPOR BALANCE REQUIREMENTS.

The owner or operator of a GDF must comply with the following requirements on and after the applicable compliance date in Section 594: ()

01. Loading. When loading an underground gasoline storage tank equipped with a vapor balance system, connect and ensure the proper operation of the vapor balance system whenever gasoline is being loaded. ()

02. Maintenance. Maintain all equipment associated with the vapor balance system to be vapor tight and in good working order. ()

03. Inspection. In order to ensure that the vapor balance equipment is maintained to be vapor tight and in good working order, inspect the vapor balance equipment on an annual basis to discover potential or actual equipment failures. A log form is available on the Department's website at <http://www.deq.idaho.gov>. ()

04. Repair. Replace, repair or modify any worn or ineffective component or design element within twenty-four (24) hours to ensure the vapor-tight integrity and efficiency of the vapor balance system. If repair parts

must be ordered, either a written or verbal order for those parts must be initiated within two (2) working days of detecting such a leak. Such repair parts must be installed within five (5) working days after receipt. ()

597. TESTING AND MONITORING REQUIREMENTS.

The owner or operator of a GDF must comply with the following requirements within ninety (90) days of registration under Section 598 and every three (3) years thereafter. ()

01. Testing. ()

a. The owner or operator must demonstrate compliance with the leak rate and cracking pressure requirements, specified in item 1(g) of Table 1 to 40 CFR Part 63, Subpart CCCCCC, incorporated by reference into these rules at Section 107, for pressure-vacuum vent valves installed on underground gasoline storage tanks using the test methods identified in Subsection 597.01.a.i. or 597.01.a.ii. ()

i. California Air Resources Board Vapor Recovery Test Procedure TP-201.1E,--Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, adopted October 8, 2003 (see 40 CFR 63.14, incorporated by reference into these rules at Section 107). ()

ii. Use alternative test methods and procedures in accordance with the alternative test method requirements in 40 CFR 63.7(f), incorporated by reference into these rules at Section 107. ()

b. The owner or operator must demonstrate compliance with the static pressure performance requirement, specified in item 1(h) of Table 1 to 40 CFR Part 63, Subpart CCCCCC, for the vapor balance system by conducting a static pressure test on the underground gasoline storage tanks using the test methods identified in paragraph 597.01.b.i. or 597.01.b.ii. ()

i. California Air Resources Board Vapor Recovery Test Procedure TP-201.3,--Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, adopted April 12, 1996, and amended March 17, 1999 (see 40 CFR 63.14, incorporated by reference into these rules at Section 107). ()

ii. Use alternative test methods and procedures in accordance with the alternative test method requirements in 40 CFR 63.7(f), incorporated by reference into these rules at Section 107. ()

02. Alternative Testing. The owner or operator of a GDF, choosing, under the provisions of 40 CFR 63.6(g), to use a vapor balance system other than that described in Table 1 to 40 CFR Part 63, Subpart CCCCCC, must demonstrate to the Department the equivalency of their vapor balance system to that described in Table 1 to 40 CFR Part 63, Subpart CCCCCC, using the procedures specified in Subsections 597.02.a. and 597.02.b. ()

a. The owner or operator must demonstrate compliance by conducting a performance test on the vapor balance system to demonstrate that the vapor balance system achieves 95 percent reduction using the California Air Resources Board Vapor Recovery Test Procedure TP-201.1,--Volumetric Efficiency for Phase I Vapor Recovery Systems, adopted April 12, 1996, and amended February 1, 2001, and October 8, 2003, (see 40 CFR 63.14, incorporated by reference into these rules at Section 107). ()

b. The owner or operator must, during the performance test required under Subsection 597.02.a., determine and document alternative acceptable values for the leak rate and cracking pressure requirements specified in item 1(g) of Table 1 to 40 CFR Part 63, Subpart CCCCCC, and for the static pressure performance requirement in item 1(h) of Table 1 to 40 CFR Part 63, Subpart CCCCCC. ()

598. REGISTRATION, RECORDKEEPING, AND REPORTING REQUIREMENTS.

01. Registration. ()

a. Any GDF subject to these rules shall: ()

i. Within thirty (30) days of installation of the Stage 1 vapor collection system, the owner or operator

of the GDF shall submit to the Department a registration which provides, at a minimum, the operation name and address, signature of the owner or operator in accordance with Section 123 of these rules, the location of records and reports required by Subsections 598.02 and 598.03 (including contact person's name, address and telephone number), the number of underground gasoline storage tanks, the number of gasoline tank pipe vents, and the date of completion of installation of the Stage 1 vapor collection system and pressure/vacuum relief valve; and ()

ii. The registration certification shall be displayed at the GDF. ()

b. Upon modification of an existing Stage 1 vapor collection system or pressure/vacuum relief valve, the owner or operator of the GDF shall submit to the Department a registration that details the changes to the information provided in the previous registration and which includes the signature of the owner or operator. The registration must be submitted to the Department within thirty (30) days after completion of such modification. ()

c. A new registration must be submitted to the Department within thirty (30) days after any change in ownership of the GDF. ()

02. Recordkeeping Requirements. ()

a. Each owner or operator must keep the following records: ()

i. Records of all tests performed under Section 597; ()

ii. Records related to the operation and maintenance of vapor balance equipment required under Section 596. Any vapor balance component defect must be logged and tracked by station personnel on a monthly basis using forms provided by the Department or a reasonable facsimile; and ()

iii. Records of permanent changes made at the GDF and vapor balance equipment which may affect emissions. ()

b. Records required under 598.02.a. must be kept for a period of five (5) years and must be made available for inspection by the Department upon request. ()

03. Reporting Requirements. Each owner or operator subject to the management practices in Section 596 must report to the Department the results of all volumetric efficiency tests required under Section 597. Reports submitted under these rules must be submitted within thirty (30) days of the completion of the performance testing. ()

599. GASOLINE CARGO TANKS.

01. Prohibitions. After May 1, 2010, or if a Stage 1 vapor collection system is installed and operating, whichever is earlier, owners or operators of gasoline cargo tanks that unload gasoline into an underground gasoline storage tank with a capacity of ten thousand (10,000) gallons or more, in Ada or Canyon Counties, shall comply with Table 2 to 40 CFR Part 63, Subpart CCCCCC, incorporated by reference into these rules at Section 107. Table 2 requires that the following conditions are met prior to unloading the gasoline: ()

a. All hoses in the vapor balance system are properly connected; ()

b. The adapters or couplers that attach to the vapor line on the storage tank have closures that seal upon disconnect; ()

c. All vapor return hoses, couplers, and adapters used in the gasoline delivery are vapor-tight; ()

d. All tank truck vapor return equipment is compatible in size and forms a vapor-tight connection with the vapor balance equipment on the GDF storage tank; and ()

e. All hatches on the tank truck are closed and securely fastened. ()

f. The filling of storage tanks at GDF shall be limited to unloading by vapor-tight gasoline cargo tanks. Documentation that the cargo tank has met the specifications of EPA Method 27 (40 CFR Part 60, Appendix A-8, incorporated by reference into these rules at Section 107), shall be carried on the cargo tank. ()

02. Compliance. The owner or operator of a gasoline cargo tank subject to Section 599 shall ensure compliance with Table 2 to 40 CFR Part 63, Subpart CCCCCC, by visually inspecting the requirements set out in Subsections 599.01.a., 599.01.b., 599.01.d., and 599.01.e. and by successfully completing the testing requirements set out in Subsections 599.01.c. and 599.01.f. ()

03. Recordkeeping and Reporting. ()

a. The owner or operator of the gasoline cargo tank subject to Section 599 shall maintain records of all certification testing and repairs. The records must identify the gasoline cargo tank; the date of the test or repair; and if applicable, the type of repair and the date of retest. The records must be maintained in a legible, readily available condition for at least two (2) years after the date of testing or repair was completed and must be available for inspection by the Department upon request. ()

b. Copies of all tests required under Subsection 599.01 shall be submitted to the Department within thirty (30) days of certification testing. ()

600. RULES FOR CONTROL OF OPEN BURNING.

The purpose of Sections 600 through 624 is to reduce the amount of emissions and minimize the impact of open burning to protect human health and the environment from air pollutants resulting from open burning as well as to reduce the visibility impairment in mandatory Class I Federal Areas in accordance with the regional haze long-term strategy referenced at Section 667. ()

601. FIRE PERMITS, HAZARDOUS MATERIALS, AND LIABILITY.

Compliance with the provisions of Sections 600 through 623 does not exempt or excuse any person from complying with applicable laws and ordinances of other jurisdictions responsible for fire control or hazardous material disposal or from liability for damages or injuries which may result from open burning. ()

602. NONPREEMPTION OF OTHER JURISDICTIONS.

The provisions of Sections 600 through 623 are not intended to interfere with the rights of any city, county or other governmental entities or agencies to provide equal or more stringent control of open burning within their respective jurisdictions. ()

603. GENERAL RESTRICTIONS.

01. Categories and Materials. No person shall allow, suffer, cause or permit any open burning operation unless it is a category of open burning set forth in Sections 600 through 623 and the materials burned do not include any of the following: ()

a. Garbage, as defined in Section 006. ()

b. Dead animals, animal parts, or animal wastes (feces, feathers, litter, etc.) except as provided in Section 616. ()

c. Motor vehicles, parts, or any materials resulting from a salvage operation. ()

d. Tires or other rubber materials or products. ()

e. Plastics. ()

f. Asphalt or composition roofing or any other asphaltic material or product. ()

- g. Tar, tar paper, waste or heavy petroleum products, or paints. ()
- h. Lumber or timbers treated with preservatives. ()
- 623. i. Trade waste, as defined in Section 006, except as specifically allowed under Sections 600 through ()
- j. Insulated wire. ()
- k. Pathogenic wastes. ()
- l. Hazardous wastes. ()

02. Air Pollution Episodes. No person shall allow, suffer, cause or permit any open burning to be initiated during any stage of an air pollution episode declared by the Department in accordance with Sections 550, through 562. ()

03. Emergency Authority. In accordance with Title 39, Chapter 1, Idaho Code, the Department has the authority to require immediate abatement of any open burning in cases of emergency requiring immediate action to protect human health or safety. ()

604. -- 605. (RESERVED)

606. CATEGORIES OF ALLOWABLE BURNING.

The purpose of Sections 606 through 623 is to establish categories of open burning that are allowed when done according to prescribed conditions. Unless specifically exempted each category in Sections 606 through 623 is subject to all of the provisions of Sections 600 through 605. ()

607. RECREATIONAL AND WARMING FIRES.

Fires used for the preparation of food or for recreational purposes (e.g. campfires, ceremonial fires, and barbecues), or small fires set for handwarming purposes, are allowable forms of open burning. ()

608. WEED CONTROL FIRES.

Open outdoor fires used for the purpose of weed abatement such as along fence lines, canal banks, and ditch banks is an allowable forms of open burning. ()

609. TRAINING FIRES.

Fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, or to display certain fire ecology or fire behavior effects are allowable forms of open burning. Training facilities shall notify the Department prior to igniting any training fires. Training fires shall not be allowed to smolder after the training session has terminated. Training fires are exempt from Subsections 603.01.c. and 603.01.e. through 603.01.j. ()

610. INDUSTRIAL FLARES.

Industrial flares, used for the combustion of flammable gases are allowable forms of open burning. Industrial flares are subject to permitting requirements in Sections 200 through 223. ()

611. RESIDENTIAL SOLID WASTE DISPOSAL FIRES.

01. Fires Allowed. Open outdoor fires used to dispose of solid waste (e.g. rubbish, tree leaves, yard trimmings, gardening waste, etc.) excluding garbage produced by the operation of a domestic household is an allowable form of open burning when the following provisions are met: ()

- a. No scheduled house to house solid waste collection service is available; and ()
- b. The burning is conducted on the property where the solid waste was generated. ()

02. Fires Exempt. Open outdoor fires used to dispose of tree leaves, gardening waste or yard trimmings are exempt from Subsection 611.01.a. when conducted in accordance with local governmental ordinances or rules which allow for the open burning of tree leaves, gardening waste or yard trimming during certain periods of the year. ()

612. LANDFILL DISPOSAL SITE FIRES.

The use of fires for the disposal of solid waste at any solid waste landfill disposal site or facility is an allowable form of open burning only if conducted in accordance with IDAPA 58.01.06, "Solid Waste Management Rules and Standards" or the Solid Waste Facilities Act, Chapter 74, Title 39, Idaho Code. ()

613. ORCHARD FIRES.

The use of heating devices to protect orchard crops from frost damage and the use of fires to dispose of orchard clippings are allowable forms of open burning when the following provisions are met: ()

01. Open-Pot Heaters. The use of stackless open-pot heaters is prohibited. ()

02. Heating Device Opacity. Orchard heating device with visible emissions exceeding forty percent (40%) opacity at normal operating conditions shall not be used. Opacity shall be determined by the procedures contained in Section 625. ()

03. Heating Device Emissions. All heaters purchased after September 21, 1970, shall emit no more than one (1.0) gram per minute of solid carbonaceous matter at normal operating conditions as certified by the manufacturer. At the time of purchase, the seller shall certify in writing to the purchaser that all new equipment is in compliance with Section 613. ()

04. Orchard Clippings. The open burning of orchard clippings shall be conducted on the property where the clippings were generated. ()

614. PRESCRIBED BURNING.

The use of open outdoor fires to obtain the objectives of prescribed fire management burning is an allowable form of open burning when the provisions of Section 614 are met. ()

01. Burning Permits or Prescribed Fire Plans. ()

a. Whenever a burning permit or prescribed fire plan is required by the Department of Lands, U.S.D.A. Forest Service, or any other state or federal agency responsible for land management, any person who conducts or allows prescribed burning shall meet all permit and/or plan conditions and terms which control smoke. ()

b. The Department will seek interagency agreements to assure permits or plans issued by agencies referred to in Subsection 614.01.a. provide adequate consideration for controlling smoke from prescribed burning. ()

02. Smoke Management Plans for Prescribed Burning. ()

a. Whenever a permit or plan is not required by the Department of Lands, U.S.D.A. Forest Service, or any other state or federal agency responsible for land management, any person who conducts or allows prescribed burning shall meet all conditions set forth in a Smoke Management Plan for Prescribed Burning. ()

b. The Department will develop and put into effect a Smoke Management Plan for Prescribed Burning consistent with the purpose of Sections 600 through 616. ()

03. Rights-of-Way Fires. The open burning of woody debris generated during the clearing of rights of way shall be open burned according to Sections 38-101 and 38-401, Idaho Code, IDAPA 20 Title 16 and Sections 606 through 616 of these rules. ()

615. DANGEROUS MATERIAL FIRES.

Fires used or permitted by a public or military fire chief to dispose of materials (including military ordnance) which present a danger to life, valuable property or the public welfare, or for the purpose of prevention of a fire hazard when no practical alternative method of disposal or removal is available are allowable forms of open burning. ()

616. INFECTIOUS WASTE BURNING.

Upon the order of a public health officer, fires used to dispose of diseased animals or infested material are an allowable form of open burning and exempt from Subsection 603.01.k. ()

617. CROP RESIDUE DISPOSAL.

The open burning of crop residue on fields where the crops were grown is an allowable form of open burning if conducted in accordance with Section 39-114, Idaho Code, and Sections 618 through 624 of these rules. ()

618. PERMIT BY RULE.

01. General Requirements. All persons shall be deemed to have a permit by rule if they comply with all the provisions of Sections 618 through 624. No person shall conduct an open burn of crop residue without obtaining the applicable permit by rule. Those persons applying for a spot burn, baled agricultural residue burn, or propane flaming permit shall comply with the provisions in Section 624. The permit by rule does not relieve the applicant from obtaining all other required permits and approvals required by other state and local fire agencies or permitting authorities. ()

02. Forms. The Department shall provide the appropriate forms to complete the permit by rule. Forms may be available at the Department offices or on the Department website <http://www.deq.idaho.gov>. ()

619. REGISTRATION FOR PERMIT BY RULE.

Any person applying to burn crop residue shall annually provide the following registration information to the Department at least thirty (30) days prior to the date the applicant proposes to burn: ()

01. Location of Property. Street address of the property upon which the proposed burning of crop residue will occur or, if there is no street address of the property, the legal description of the property using longitude and latitude coordinates or township, range and section for the Idaho meridian; ()

02. Applicant Information. Name, mailing address, and telephone number of the applicant, and the person who will be responsible for conducting the proposed burning of crop residue and the portable form of communication referenced in Subsection 622.01.c. of this rule; ()

03. Plot Plan. A plot plan showing the location of each proposed crop residue burning area in relation to the property lines and indicating the distances and directions of the nearest residential, public, and commercial properties, and roads; ()

04. Type, Acreage and Fuel Characteristics of Crop Residue Proposed to be Burned. The crop type, area over which burning will be conducted (acres), and other fuel characteristics; ()

05. Preventive Measures. A description of the measures that will be taken to prevent escaped burns or withhold additional material such that the fire burns down, including but not limited to, the availability of water and plowed firebreaks; and ()

06. Date of Burning. The requested date(s) when the proposed crop residue burning would be conducted or the proposed date the field will be available to be burned. ()

620. BURN FEE.

01. Burn Fee. The burn fee in Section 39-114, Idaho Code, shall be paid in its entirety within thirty (30) days following the receipt of the annual burn fee invoice. See also Subsection 624.02.a. for registration and fee requirements for burning under a spot and baled agricultural residue burn permit. The burn fee should be sent to:

Crop Residue Burn Fee
Fiscal Office
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706-1255 ()

02. Effect of Delinquent Fee Payment. The Department shall not accept or process a registration for a permit by rule to burn for any person having burn fees delinquent, in full or in part. ()

621. BURN DETERMINATION.

01. Burn Approval Criteria. The Department shall develop a Crop Residue Operating Guide to use in assisting in the determination of burn approvals. The permittee shall obtain initial approval from the Department for the proposed burn at least twelve (12) hours in advance of the burn. The permittee shall confirm, with the Department, the approval the morning of the proposed burn. The Department may shorten this time frame if meteorological or other applicable conditions change that will impact the air quality during the proposed burn period. To approve a permittee's request to burn, the Department must determine that ambient air quality levels do not exceed ninety percent (90%) of the ozone national ambient air quality standard (NAAQS) and seventy-five percent (75%) of the level of any other NAAQS on any day and are not projected to exceed such level over the next twenty-four (24) hours, and ambient air quality levels have not reached, and are not forecasted to reach and persist at, eighty percent (80%) of the one (1) hour action criteria for particulate matter under Section 556 of these rules. In making this determination, the Department shall consider the following: ()

- a. Expected Emissions.** Expected emissions from all burns proposed for the same dates; ()
- b. Proximity of Other Burns.** The proximity of other burns and other potential emission sources within the area to be affected by the proposed burn; ()
- c. Moisture Content.** Moisture content of the material to be burned; ()
- d. Acreage, Crop Type, and Fuel Characteristics.** Acreage, crop type, and fuel characteristics to be burned; ()
- e. Meteorological Conditions.** Meteorological conditions; ()
- f. Proximity to Institutions with Sensitive Populations.** The proximity of the burn to institutions with sensitive populations, including public schools while in session; hospitals; residential health care facilities for children, the elderly or infirm; and other institutions with sensitive populations as approved by the Department. The Department shall not authorize a burn if conditions are such that institutions with sensitive populations will be adversely impacted or when the plume is predicted to impact such institutions; ()
- g. Proximity to Public Roadways.** Proximity to public roadways; ()
- h. Proximity to Airports.** Proximity to airports; and ()
- i. Other Relevant Factors.** Any other factors relevant to preventing exceedances of the air quality concentrations of Section 621. ()

02. Notification of Approval. If the Department approves the burn, then it will post on its website written notification of the approval and any specific conditions under which the burn is approved. Special conditions may include, but are not limited to: ()

- a. Conditions for burns near institutions with sensitive populations;** ()
- b. The requirement to withhold additional material such that the fire burns down if the Department determines pollutant concentrations reach the levels in Subsection 621.01 of this rule;** ()
- c. Conditions to ensure the burn does not create a hazard for travel on a public roadway; and** ()

d. The requirement to consult with the Department to determine actions to be taken if conditions at the burn site fail to satisfy the conditions specified in the notice of approval to burn. ()

622. GENERAL PROVISIONS.

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

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

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

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

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

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

f. Training Session. All persons intending to burn crop residue shall attend a crop residue burning training session provided by the Idaho Department of Environmental Quality or the Idaho State Department of Agriculture and shall attend a crop residue disposal refresher training session every five (5) years; ()

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

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

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

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

k. Specific Conditions. The open burning of crop residue shall be conducted in accordance with the specific conditions in the permittee's permit by rule. ()

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

future exceedances. ()

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

623. PUBLIC NOTIFICATION.

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

02. Posting on Website. The Department shall post daily on its website (www.deq.idaho.gov): ()

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

b. The location and number of acres permitted to be burned; ()

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

d. A toll-free number to receive requests for information (1-800-345-1007). ()

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

624. SPOT BURN, BALED AGRICULTURAL RESIDUE BURN, AND PROPANE FLAMING PERMITS.

01. Applicability. ()

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

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

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

02. Spot and Baled Agricultural Residue Burn Permit. ()

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

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

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

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

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

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

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

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

625. VISIBLE EMISSIONS.

A person shall not discharge any air pollutant into the atmosphere from any point of emission for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period which is greater than twenty percent (20%) opacity as determined by this section. ()

01. Exemptions. The provisions of this section shall not apply to: ()

a. Kraft Process Lime Kilns, if operating prior to January 24, 1969; or ()

b. Carbon Monoxide Flare Pits on Elemental Phosphorous Furnaces, if operating prior to January 24, 1969; or ()

c. Liquid Phosphorous Loading Operations, if operating prior to January 24, 1969; or ()

d. Wigwam Burners; or ()

e. Kraft Process Recovery Furnaces. ()

f. Calcining Operations Utilizing an Electrostatic Precipitator to Control Emissions, if operating prior to January 24, 1969. ()

02. Standards for Exempted Sources. Except as provided in Section 626, for sources exempted from the provisions of this section, a person shall not discharge into the atmosphere from any point of emission, for any air pollutant for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period which is greater than forty percent (40%) opacity as determined by this section. ()

03. Exception. The provisions of this section shall not apply when the presence of uncombined water, nitrogen oxides and/or chlorine gas are the only reason(s) for the failure of the emission to comply with the requirements of this rule. ()

04. Test Methods and Procedures. The appropriate test method under this section shall be EPA Method 9 (contained in 40 CFR Part 60) with the method of calculating opacity exceedances altered as follows: ()

a. Opacity evaluations shall be conducted using forms available from the Department or similar forms approved by the Department. ()

b. Opacity shall be determined by counting the number of readings in excess of the percent opacity limitation, dividing this number by four (4) (each reading is deemed to represent fifteen (15) seconds) to find the number of minutes in excess of the percent opacity limitation. This method is described in the Procedures Manual for Air Pollution Control, Section II (Evaluation of Visible Emissions Manual), September 1986. ()

c. Sources subject to New Source Performance Standards must calculate opacity as detailed above and as specified in 40 CFR Part 60. ()

05. Applicability. Section 625 shall not apply to the open burning of crop residue. ()

626. GENERAL RESTRICTIONS ON VISIBLE EMISSIONS FROM WIGWAM BURNERS.

Except for a period of one (1) hour following start up a person shall not discharge into the atmosphere from any wigwam burner any air pollutant for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period which is greater than twenty percent (20%) opacity as determined by the procedures contained in Section 625. ()

627. -- 649. (RESERVED)

650. RULES FOR CONTROL OF FUGITIVE DUST.

The purpose of Sections 650 through 652 is to require that all reasonable precautions be taken to prevent the generation of fugitive dust. ()

651. GENERAL RULES.

All reasonable precautions shall be taken to prevent particulate matter from becoming airborne. In determining what is reasonable, consideration will be given to factors such as the proximity of dust emitting operations to human habitations and/or activities, the proximity to mandatory Class I Federal Areas and atmospheric conditions which might affect the movement of particulate matter. Some of the reasonable precautions may include, but are not limited to, the following: ()

01. Use of Water or Chemicals. Use, where practical, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land. ()

02. Application of Dust Suppressants. Application, where practical, of asphalt, oil, water or suitable chemicals to, or covering of dirt roads, material stockpiles, and other surfaces which can create dust. ()

03. Use of Control Equipment. Installation and use, where practical, of hoods, fans and fabric filters or equivalent systems to enclose and vent the handling of dusty materials. Adequate containment methods should be employed during sandblasting or other operations. ()

04. Covering of Trucks. Covering, when practical, open bodied trucks transporting materials likely to give rise to airborne dusts. ()

05. Paving. Paving of roadways and their maintenance in a clean condition, where practical. ()

06. Removal of Materials. Prompt removal of earth or other stored material from streets, where practical. ()

652. AGRICULTURAL ACTIVITIES.

For agricultural activity purposes, operating in conformance with generally recognized agricultural practices constitutes reasonable control of fugitive dust. For the purpose of Section 652: ()

01. Agricultural Activity. An "agricultural activity" means any activity that is exempt from the

requirement to obtain a permit to construct under Subsection 222.02.f., wherein “agricultural activities and services” is defined in Section 007, that occurs in connection with the production of agricultural products for food, fiber, fuel, feed and other lawful purposes, and including, but not limited to: ()

- a. Preparing land for agricultural production; ()
- b. Applying or handling pesticides herbicides, or other chemicals, compounds or substances labeled for insects, pests, crops, weeds, water or soil; ()
- c. Planting, irrigating, growing, fertilizing, harvesting or producing agricultural, horticultural, floricultural and viticulture crops, fruits and vegetable products, field grains, seeds, hay, sod and nursery stock, and other plant products, plant by-products, plant waste and animal compost; ()
- d. Breeding, hatching, raising, producing, feeding and keeping livestock, dairy animals, swine, fur-bearing animals, poultry, eggs, fish and other aquatic species, and other animals, animal products and animal by-products, animal waste, animal compost, and bees, bee products and bee by-products; ()
- e. Transporting agricultural products to or from an agricultural facility; ()
- f. Grinding, chopping, cubing, or any other means of preparing or converting a commodity for animal feed; and ()
- g. Piling, stacking or other means of storing commodities outdoors. ()

02. Generally Recognized Agricultural Practices. “Generally recognized agricultural practices” means economically feasible practices that are customary among or appropriate to farms and ranches of a similar nature in the local area. In determining whether an agricultural activity is consistent with generally recognized agricultural practices, the Idaho Department of Environmental Quality shall consult with the Idaho Department of Agriculture. ()

653. -- 664. (RESERVED)

665. REGIONAL HAZE RULES.

The purpose of Sections 665 through 668 is to address regional haze visibility impairment in mandatory Class I Federal Areas. The intent of Sections 665 through 668 is to set forth the requirements to implement the federal programs for visibility protection and regional haze. ()

666. REASONABLE PROGRESS GOALS.

The Department will establish reasonable progress goals, expressed in deciviews for each mandatory Class I Federal Area located within Idaho. These goals will provide for reasonable progress toward achieving natural visibility conditions. The reasonable progress goals must provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. The reasonable progress goals are not directly enforceable, but will be implemented through enforceable strategies in the long-term strategy. ()

01. Process for Setting Reasonable Progress Goals. In establishing a reasonable progress goal for any mandatory Class I Federal Area within Idaho, the Department shall: ()

- a. Consider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal. ()
- b. Analyze and determine the rate of progress needed to attain natural visibility conditions by the year 2064. To calculate this rate of progress, the Department will compare baseline visibility conditions to natural visibility conditions in the mandatory Class 1 Federal Area and determine the uniform rate of visibility improvement (measured in deciviews) that would need to be maintained during each implementation period in order to attain natural visibility conditions by 2064. In establishing the reasonable progress, the Department will consider the

uniform rate of improvement in visibility and the emission reduction measures needed to achieve it for the period covered by the implementation plan. ()

c. Consult with those states which may reasonably be anticipated to cause or contribute to visibility impairment in the mandatory Class I Federal Area. ()

02. Justification for Reasonable Progress Goals. If the Department establishes a reasonable progress goal that provides for a slower rate of improvement in visibility than the rate that would be needed to attain natural conditions by 2064, the Department will demonstrate, based on the factors in Subsection 666.01.a., that the rate of progress for the implementation plan to attain natural conditions by 2064 is not reasonable; and that the progress goal adopted by the Department is reasonable. The Department will provide to the public for review, as part of its implementation plan, an assessment of the number of years it would take to attain natural conditions if visibility improvement continues at the rate of progress selected by the Department as reasonable. ()

667. LONG-TERM STRATEGY FOR REGIONAL HAZE.

The purpose of Section 667 is to develop a long-term strategy for making reasonable progress toward the national goal of preventing any future and remedying any existing impairment of visibility in mandatory Class I Federal Areas in which impairment results from man-made air pollution. ()

01. Submittal of Long-Term Strategy. The Department will submit to EPA a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal Area within the state and for each mandatory Class I Federal Area located outside the state which may be affected by emissions from the state. ()

02. Enforceable Emission Limitations. The long-term strategy must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals established by the Department. ()

03. Requirements for Long-Term Strategy. In establishing long-term strategy for regional haze, the Department will meet the following requirements: ()

a. The Department will document the technical basis, including modeling, monitoring and emissions information, on which the state is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal Area it affects. The Department may meet this requirement by relying on technical analyses developed by the regional planning organization and approved by all state participants. The Department will identify the baseline emission inventory on which its strategies are based. The baseline emissions inventory year is presumed to be the most recent year of the consolidated periodic emissions inventory. ()

b. The Department will identify all anthropogenic sources of visibility impairment considered by the Department in developing its long-term strategy. The Department should consider major and minor stationary sources, mobile sources, and area sources. ()

c. The Department will consider, at a minimum, the following factors in developing its long-term strategy: ()

i. Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; ()

ii. Measures to mitigate the impacts of construction activities; ()

iii. Emissions limitations and schedules for compliance to achieve the reasonable progress goal; ()

iv. Source retirement replacement schedules; ()

v. Smoke management techniques for agricultural and forestry management purposes including plans as currently exist with the state for these purposes; ()

- vi. Enforceability of emissions limitations and control measures; and ()
- vii. The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. ()

04. Interstate Consultation. The Department will undertake the following process in developing the long-term strategy where interstate consultation is required. ()

a. Where Idaho has emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal Area located in another state or states, the Department will consult with the other state(s) in order to develop coordinated emission management strategies. ()

b. The Department will consult with any other state having emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal Area within Idaho. ()

c. Where other states cause or contribute to impairment in a mandatory Class I Federal Area, the Department must demonstrate that the state has included in its implementation plan all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for the area. If the state of Idaho has participated in a regional planning process, the Department must ensure the state has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. ()

668. BART REQUIREMENT FOR REGIONAL HAZE.

The purpose of Section 668 is to implement the BART requirements in 40 CFR 51.308(e). The following analysis and documentation is required for each BART-eligible source: ()

01. BART-Eligible Sources. The Department shall identify a list of all BART-eligible sources within the state. ()

02. BART Determination. The Department shall complete a determination of BART for each BART-eligible source in the state that emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal Area. All such sources are subject to BART. ()

a. A single source that is responsible for a one (1.0) deciview change or more in any mandatory Class I Federal Area is considered to “cause” visibility impairment. ()

b. A single source that is responsible for a one-half (0.5) deciview change or more in any mandatory Class I Federal Area is considered to “contribute” to visibility impairment. ()

c. The determination of BART must be based on an analysis of the best system of continuous emission control technology available and associated emission reductions achievable for each BART-eligible source that is subject to BART within the state. In this analysis, the following must be taken into consideration: ()

- i. Costs of compliance; ()
 - ii. Energy and non-air quality environmental impacts of compliance; ()
 - iii. Any pollution control equipment in use at the source; ()
 - iv. The remaining useful life of the source; and ()
 - v. The degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. ()
- d.** The Department may determine that a BART determination is not required: ()
- i. For sulfur dioxide (SO₂) or for nitrogen oxides (NO_x) if a BART-eligible source has the potential to

emit less than forty (40) tons per year of such pollutant(s); or ()

- ii. For PM10 if a BART-eligible source emits less than fifteen (15) tons per year of such pollutant. ()

03. Alternative to Infeasible Emission Standards. If the Department determines in establishing BART that technological or economic limitations on the applicability of measurement methodology to a particular source would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or other operational standard, or combination thereof, to require the application of BART. Such standard, to the degree possible, is to set forth the emission reduction to be achieved by implementation of such design, equipment, work practice, or operation and must provide for compliance by means which achieve equivalent results. ()

04. BART Installation and Operation Due Date. Each source subject to BART is required to install and operate BART as expeditiously as practicable, but in no event later than five (5) years after approval of the implementation plan. ()

05. Maintenance of BART Equipment. Each source subject to BART is required to maintain the control equipment required by the Department and establish procedures to ensure such equipment is properly operated and maintained. ()

06. BART Alternative. As an alternative to the installation of BART for a source or sources, the Department may approve a BART alternative. If the Department approves source grouping as a BART alternative, only sources (including BART-eligible and non-BART eligible sources) causing or contributing to visibility impairment to the same mandatory Class I Federal Area may be grouped together. ()

a. If a source(s) proposes a BART alternative, the resultant emissions reduction and visibility impacts must be compared with those that would result from the BART options evaluated for the source(s). ()

b. Source(s) proposing a BART alternative must demonstrate that this BART alternative will achieve greater reasonable progress than would be achieved through the installation and operation of BART. ()

c. Source(s) proposing a BART alternative shall include in the BART analysis an analysis and justification of the averaging period and method of evaluating compliance with the proposed emission limitation. ()

07. Reasonable Progress Goal Requirements for BART-Eligible Sources. Once the Department has met the requirements for BART or BART alternative, as identified in Subsection 668.06, BART-eligible sources will be subject to the requirements of reasonable progress goals, as defined in 40 CFR 51.308(d), in the same manner as other sources. ()

669. -- 674. (RESERVED)

675. FUEL BURNING EQUIPMENT -- PARTICULATE MATTER.
The purpose of Sections 675 through 681 is to establish particulate matter emission standards for fuel burning equipment. ()

676. STANDARDS FOR NEW SOURCES.
A person shall not discharge into the atmosphere from any fuel burning equipment with a maximum rated input of ten (10) million BTU's per hour or more, and commencing operation on or after October 1, 1979, particulate matter in excess of the concentrations shown in the following table:

| FUEL TYPE | ALLOWABLE PARTICULATE gr/dscf | EMISSIONS Oxygen |
|-----------|-------------------------------|------------------|
| Gas | .015 | 3% |
| Liquid | .050 | 3% |

| FUEL TYPE | ALLOWABLE PARTICULATE gr/dscf | EMISSIONS Oxygen |
|--------------|-------------------------------|------------------|
| Coal | .050 | 8% |
| Wood Product | .080 | 8% |

The effluent gas volume shall be corrected to the oxygen concentration shown. ()

677. STANDARDS FOR MINOR AND EXISTING SOURCES.

A person shall not discharge into the atmosphere from any fuel burning equipment in operation prior to October 1, 1979, or with a maximum rated input of less than ten (10) million BTU per hour, particulate matter in excess of the concentrations shown in the following table:

| FUEL TYPE | ALLOWABLE PARTICULATE gr/dscf | EMISSIONS Oxygen |
|--------------|-------------------------------|------------------|
| Gas | .015 | 3% |
| Liquid | .050 | 3% |
| Coal | .100 | 8% |
| Wood Product | .200 | 8% |

The effluent gas volume shall be corrected to the oxygen concentration shown. ()

678. COMBINATIONS OF FUELS.

When two (2) or more types of fuel are burned concurrently, the allowable emission shall be determined by proportioning the gross heat input and emission standards for each fuel. ()

679. AVERAGING PERIOD.

For purposes of Sections 675 through 680, emissions shall be averaged according to the following, whichever is the lesser period of time: ()

01. One Cycle. One (1) complete cycle of operation; or ()

02. One Hour. One (1) hour of operation representing worst-case conditions for the emission of particulate matter. ()

680. ALTITUDE CORRECTION.

For purposes of Sections 675 through 680, standard conditions shall be adjusted for the altitude of the source by subtracting one-tenth (0.10) of an inch of mercury for each one hundred (100) feet above sea level from the standard atmospheric pressure at sea level of twenty-nine and ninety-two one hundredths (29.92) inches of mercury. ()

681. TEST METHODS AND PROCEDURES.

The appropriate test method under Sections 675 through 680 shall be EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent method approved in accordance with Subsection 157.02.d. Test methods and procedures shall also comply with Section 157. ()

682. -- 699. (RESERVED)

700. PARTICULATE MATTER -- PROCESS WEIGHT LIMITATIONS.

01. Particulate Matter Emission Limitations. The purpose of Sections 700 through 703 is to establish particulate matter emission limitations for process equipment. ()

02. Minimum Allowable Emission. Notwithstanding the provisions of Sections 701 and 702, no source shall be required to meet an emission limit of less than one (1) pound per hour. ()

03. Averaging Period. For the purposes of Sections 701 through 703, emissions shall be averaged according to the following, whichever is the lesser period of time: ()

- a. One (1) complete cycle of operation; or ()
- b. One (1) hour of operation representing worst-case conditions for the emissions of particulate matter. ()

04. Test Methods and Procedures. The appropriate test method under Sections 700 through 703 shall be EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent methods approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157. ()

701. PARTICULATE MATTER -- NEW EQUIPMENT PROCESS WEIGHT LIMITATIONS.

01. General Restrictions. No person shall emit into the atmosphere from any process or process equipment commencing operation on or after October 1, 1979, particulate matter in excess of the amount shown by the following equations, where E is the allowable emission from the entire source in pounds per hour, and PW is the process weight in pounds per hour. ()

- a. If PW is less than 9,250 pounds per hour,
 $E = 0.045(PW)^{0.60}$ ()
- b. If PW is equal to or greater than 9,250 pounds per hour,
 $E = 1.10(PW)^{0.25}$ ()

02. Exemption. The provisions of Section 701 shall not apply to fuel burning equipment. ()

03. Emission Standards -- Table. The following table illustrates the emission standards set forth in Section 701.

| PROCESS WEIGHT | ALLOWABLE EMISSIONS FROM ENTIRE SOURCE | PROCESS WEIGHT | EMISSIONS FROM ENTIRE SOURCE |
|----------------|--|----------------|------------------------------|
| lb/hr | lb/hr | lb/hr | lb/hr |
| 175 or less | 1 | 20,000 | 13.08 |
| 200 | 1.08 | 40,000 | 15.56 |
| 400 | 1.64 | 60,000 | 17.22 |
| 600 | 2.09 | 80,000 | 18.50 |
| 800 | 2.40 | 100,000 | 19.56 |
| 1,000 | 2.84 | 200,000 | 23.26 |
| 2,000 | 4.30 | 400,000 | 27.66 |
| 4,000 | 6.52 | 600,000 | 30.61 |
| 6,000 | 8.32 | 800,000 | 32.90 |
| 8,000 | 9.89 | 1,000,000 | 34.79 |
| 10,000 | 11.00 | 2,000,000 | 41.37 |

()

702. PARTICULATE MATTER -- EXISTING EQUIPMENT PROCESS WEIGHT LIMITATIONS.

The provisions of Section 702 shall become effective on January 1, 1981. ()

01. General Restrictions. No person shall emit into the atmosphere from any process or process equipment operating prior to October 1, 1979, particulate matter in excess of the amount shown by the following equations, where E is the allowable emission from the entire source in pounds per hour, and PW is the process weight in pounds per hour: ()

a. If PW is less than 17,000 pounds per hour,
 $E = 0.045 (PW)^{0.60}$ ()

b. If PW is equal to or greater than 17,000 pounds per hour,
 $E = 1.12 (PW)^{0.27}$. ()

02. Exemptions. The provisions of Section 702 shall not apply to: ()

a. Fuel burning equipment; or ()

b. Equipment used exclusively to dehydrate sugar beet pulp or alfalfa. ()

03. Emission Standards -- Table. The following table illustrates the emission standards set forth in Section 702.

| PROCESS WEIGHT | EMISSIONS FROM ENTIRE SOURCE | PROCESS WEIGHT | EMISSIONS FROM ENTIRE SOURCE |
|----------------|------------------------------|----------------|------------------------------|
| lb/hr | lb/hr | lb/hr | lb/hr |
| 175 or less | 1 | 20,000 | 16.24 |
| 200 | 1.08 | 40,000 | 19.58 |
| 400 | 1.64 | 60,000 | 21.84 |
| 600 | 2.09 | 80,000 | 23.61 |
| 800 | 2.48 | 100,000 | 25.07 |
| 1,000 | 2.84 | 200,000 | 30.23 |
| 2,000 | 4.30 | 400,000 | 36.46 |
| 4,000 | 6.52 | 600,000 | 40.67 |
| 6,000 | 8.32 | 800,000 | 43.96 |
| 8,000 | 9.89 | 1,000,000 | 46.69 |
| 10,000 | 11.30 | 2,000,000 | 56.30 |

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703. PARTICULATE MATTER -- OTHER PROCESSES.

01. Other Processes. No person with processes exempt under Subsection 702.02.b. shall emit particulate matter to the atmosphere from any process or process equipment in excess of the amount shown in the following equations, where E is the total rate of emission from all emission points from the source in pounds per hour and P is the process weight rate in pounds per hour. ()

a. If P is less than sixty thousand (60,000) pounds per hour,
 $E = 0.02518(P)^{0.67}$ ()

b. If P is greater than or equal to sixty thousand (60,000) pounds per hour,
 $E = 23.84(P)^{0.11} - 40$ ()

02. Emission Standards -- Table. The following table illustrates the emission standards set forth in Section 703.

| ALLOWABLE RATE OF EMISSION BASED ON PROCESS WEIGHT RATE | | | |
|---|------------------|---------------------|------------------|
| Process Weight Rate | Rate of Emission | Process Weight Rate | Rate of Emission |
| Lb/Hr | Lb/Hr | Lb/Hr | Lb/Hr |
| 100 | 0.551 | 16,000 | 16.5 |
| 200 | 0.877 | 18,000 | 17.9 |
| 400 | 1.40 | 20,000 | 19.2 |
| 600 | 1.83 | 30,000 | 25.2 |
| 800 | 2.22 | 40,000 | 30.5 |
| 1,000 | 2.58 | 50,000 | 35.4 |
| 1,500 | 3.38 | 60,000 | 40.0 |
| 2,000 | 4.10 | 70,000 | 41.3 |
| 2,500 | 4.76 | 80,000 | 42.5 |
| 3,000 | 5.38 | 90,000 | 43.6 |
| 3,500 | 5.96 | 100,000 | 44.6 |
| 4,000 | 6.52 | 120,000 | 46.3 |
| 5,000 | 7.58 | 140,000 | 47.8 |
| 6,000 | 8.56 | 160,000 | 49.0 |
| 7,000 | 9.49 | 200,000 | 51.2 |
| 8,000 | 10.4 | 1,000,000 | 69.0 |
| 9,000 | 11.2 | 2,000,000 | 77.6 |
| 10,000 | 12.0 | 6,000,000 | 92.7 |
| 12,000 | 13.6 | | |

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704. -- 724. (RESERVED)

725. RULES FOR SULFUR CONTENT OF FUELS.

This section applies to fuel burning sources in Idaho. Its purpose is to prevent excessive ground level concentrations of sulfur dioxide. The reference test method for measuring fuel sulfur content shall be ASTM method, D129-95 Standard Test for Sulfur in Petroleum Products (General Bomb Method) or such comparable and equivalent method approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157.

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01. Definitions. ()

- a. **ASTM.** American Society for Testing and Materials. ()
- b. **Distillate Fuel Oil.** Any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils. ()
- c. **Residual Fuel Oil.** Any oil meeting the specifications of ASTM Grade 4, Grade 5 and Grade 6 fuel oils. ()
- 02. Residual Fuel Oils.** No person shall sell, distribute, use or make available for use, any residual fuel oil containing more than one and three-fourths percent (1.75%) sulfur by weight. ()
- 03. Distillate Fuel Oil.** No person shall sell, distribute, use or make available for use, any distillate fuel oil containing more than the following percentages of sulfur: ()
 - a. **ASTM Grade 1.** ASTM Grade 1 fuel oil - zero point three percent (0.3%) by weight. ()
 - b. **ASTM Grade 2.** ASTM Grade 2 fuel oil - zero point five percent (0.5%) by weight. ()
- 04. Coal.** No person shall sell, distribute, use or make available for use, any coal containing greater than one percent (1.0%) sulfur by weight. ()
- 05. Alternative.** The Department may approve in a permit issued in accordance with these rules an alternative fuel sulfur content if the applicant demonstrates that, through control measures or other means, sulfur dioxide emissions (based on a one (1) hour averaging period) are equal to or less than those resulting from the combustion of fuels complying with the limitations of Subsections 725.01 through 725.04. ()

726. -- 749. (RESERVED)

750. RULES FOR CONTROL OF FLUORIDE EMISSIONS.

The purpose of Sections 750 through 751 is to prevent the emission of fluorides such that the accumulation of fluorine in feed and forage for livestock does not exceed the safe limits specified below. ()

751. GENERAL RULES.

Any owner or operator of a facility subject to Sections 750 and 751 shall demonstrate compliance with Section 751 by January 1, 1982, in accordance with a compliance schedule, listing increments of progress, which shall be submitted to the Department on or before August 1, 1980. ()

01. Emission Limitations -- Phosphate Fertilizer Plants. No person shall allow, suffer, cause or permit the discharge into the atmosphere of total fluoride emissions in gaseous and in particulate form, expressed as fluoride (F-), from the phosphate fertilizer plant sources listed in Subsection 751.03 in excess of thirty hundredths (0.30) pounds of fluoride per ton of P2O5 input to the calciner operation, calculated at maximum rated capacity. ()

02. Monitoring, Testing, and Reporting Requirements. Compliance with Subsection 751.01 will be adjudged upon the results of the continuing program of fluoride sampling of potential grazing areas and alfalfa growing areas conducted by the Department. Sampling conducted by any person subject to Section 751 may be accepted for determining compliance with Subsection 751.01 if such sampling is conducted at sites approved by the Department in advance of sampling, using analytical procedures appearing in the Procedures Manual for Air Pollution Control, Section I (Source Test Methods) or equivalent methods approved by the Department in advance of sampling. Compliance with Subsection 751.01 shall be demonstrated by testing methods approved in advance by the Department. When approved by the Director in advance of sampling, engineering calculations may be submitted in lieu of emission data. Monitoring and reporting requirements shall be included in operating permits granted to each facility. ()

03. Source Specific Permits. To assure compliance with Subsection 751.01, the Director shall specify methods for calculating total allowable emissions and shall issue source specific permits containing emission limitations for the following sources within phosphate fertilizer plants: ()

- a. Calciner operation; and ()
- b. Wet phosphoric acid plants; and ()
- c. Super phosphoric acid production; and ()
- d. Diammonium phosphate plants; and ()
- e. Monoammonium phosphate production; and ()
- f. Triple super phosphate (mono calcium phosphate) production. ()

04. Exemptions. The provisions of Subsections 751.01, 751.02, and 751.03 shall not apply to any phosphate fertilizer facility which produces mono ammonium phosphate exclusively if no animal feed is grown or if no animal grazing occurs or if the animal feed and forage meets the ambient air quality standards for fluorides specified in Section 577 within a three (3) mile radius of such facility. This exemption shall only apply if the owner or operator of the facility, on an annual basis: ()

- a. Conducts a fluoride sampling program of potential grazing areas at locations approved in advance of sampling by the Department, using analytical techniques appearing in the Procedures Manual for Air Pollution Control, Section I (Source Test Methods); and ()
- b. Submits the results of such sampling program to the Department as soon as they become available. ()

752. -- 759. (RESERVED)

760. RULES FOR THE CONTROL OF AMMONIA FROM DAIRY FARMS.

The purpose of Sections 760 through 764 is to set forth the requirements for the control of ammonia through best management practices (BMPs) for certain size dairy farms licensed by the Idaho State Department of Agriculture to sell raw milk for human consumption. Compliance with these sections does not relieve the owner or operator of a dairy farm from the responsibility of complying with all other federal, state and local applicable laws, regulations, and requirements, including, but not limited to, Sections 161, 650 and 651 of these rules. Registration forms and guidance documents relating to these rules are located at www.deq.idaho.gov. ()

761. GENERAL APPLICABILITY.

The requirements of Sections 760 through 764 apply to the following size dairy farms:

SUMMARY: Animal Unit (AU) or mature cow threshold to produce 100 ton NH₃/year

| Animal Unit (AU) Basis | Drylot | Free Stall/Scrape | Free Stall/Flush |
|---|--------|-------------------|------------------|
| AU (100 t NH ₃) Threshold | | | |
| No land app | 7089 | 3893 | 2293 |
| 27% volatilization 1 | 6842 | 3827 | |
| 80% volatilization 2 | 6397 | 3700 | |
| Total Cows (100 t NH ₃) Threshold | | | |
| Cow Basis (1400 lbs) | Drylot | Free Stall/Scrape | Free Stall/Flush |

| | | | |
|--|------|------|------|
| No land app | 5063 | 2781 | 1638 |
| 27% volatilization 1 | 4887 | 2733 | |
| 80% volatilization 2 | 4569 | 2643 | |
| 1 Assumes: Expected level of N->NH3 volatilization for: drop-hose or ground level liquid manure application 2 Assumes: Expected level of N->NH3 volatilization for: center pivot or other conventional sprinkler irrigation liquid manure application | | | |

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762. PERMIT BY RULE.

01. General Requirement. Owners and operators of dairy farms shall be deemed to have a permit by rule if they comply with all of the applicable provisions of Sections 760 through 764. Owners and operators of dairy farms subject to Sections 760 through 764 shall not operate without obtaining the applicable permit by rule within the time frame specified. ()

02. Optional Permit by Rule. Nothing in Sections 760 through 764 shall preclude any owner or operator of a dairy farm from requesting and obtaining an air quality permit pursuant to Section 200, nor shall Sections 760 through 764 preclude an owner or operator of a dairy farm below the threshold size in Section 761 from complying with Sections 760 through 764 and thereby obtaining a permit by rule. ()

03. Exemption. If a dairy farm not subject to Sections 760 through 764 otherwise would become subject to those sections as a result of an emergency, the dairy farm shall notify the Director in writing within fourteen (14) days of the emergency. The notification shall include an explanation of the emergency circumstances. The dairy farm shall be exempt from the requirements of Sections 760 through 764 as long as the consequences of the emergency continue (but in no case for more than one (1) year) unless for good cause the Director determines it is appropriate to limit, condition or revoke the exemption. For the purpose of this rule “emergency” shall be defined as a serious situation or occurrence that happens unexpectedly and demands immediate action. ()

763. REGISTRATION FOR PERMIT BY RULE.

01. Registration Process. Any owner or operator of a new dairy farm subject to sections 760 through 764, or an existing dairy farm that becomes subject to these sections due to change in size or type of operation, shall register prior to fifteen (15) days of triggering the threshold for which a permit is required. ()

02. Registration Due Date. Any owner or operator of an existing dairy farm subject to Sections 760 through 764 shall register within fifteen (15) days of the effective date of Sections 760 through 764. ()

03. Registration Information. The following information shall be provided by the registrant to the Department of Environmental Quality and the Department of Agriculture: ()

- a.** Name, address, location of dairy farm, and telephone number. ()
- b.** Information sufficient to establish that the dairy farm is of the size and type described in Section 761. ()
- c.** Information describing what BMPs, as described in Section 764, are employed to total twenty-seven (27) points. ()

04. Exemption from Registration Fee. Dairy farms subject to Sections 760 through 764 are exempt from paying the permit by rule registration fee set forth in Section 800. ()

05. Inspection. Within thirty (30) days of receipt of the registration information, the state of Idaho

shall conduct a qualifying inspection to ensure the requisite point total of BMPs are employed. ()

764. DAIRY FARM BEST MANAGEMENT PRACTICES.

01. BMPs. Each dairy farm subject to Sections 760 through 764, or that otherwise obtains a permit by rule under these sections, shall employ BMPs for the control of ammonia to total twenty-seven (27) points. Points may be obtained through third party export with sufficient documentation. The table located at Subsection 764.02. lists available BMPs and the associated point value. As new information becomes available or upon request, the Director may determine a practice not listed in the table constitutes a BMP and assign a point value. ()

02. Table - Ammonia Control Practices for Idaho Dairies.

| | | Ammonia Control Effectiveness ¹ | | | |
|--|--|--|------------------|-----------------|--------------------------------|
| System | Component | Open Lot | Freestall Scrape | Freestall Flush | Compliance Method ³ |
| Waste Storage and Treatment Systems | Synthetic Lagoon Cover | 15 | 20 | 20 | 1 |
| | GeoteXtile Covers | 10 | 13 | 13 | 1 |
| | Solids Separation | 3 | 3 | 3 | 3, 4 |
| | Composting | 4 | 4 | 4 | 1 |
| | Separate Slurry and Liquid Manure Basins | 6 | 10 | - | 1 |
| | In-House Separation | 0 | 12 | 0 | 1 |
| | Direct Utilization of Collected Slurry | 6 | 10 | - | 1, 3, 4 |
| | Direct Utilization of Parlor Wastewater | 10 | 10 | 10 | 1 |
| | Direct Utilization of Flush Water | 8 | 0 | 13 | 3, 4 |
| | Anaerobic Digester | - | - | - | - |
| | Anaerobic Lagoon | - | - | - | - |
| | Aerated Lagoon | 10 | 12 | 15 | 2 |
| | Sequencing-Batch Reactor | 15 | 20 | 20 | 2 |
| | Lagoon Nitrification/Denitrification Systems | 15 | 20 | 20 | 2 |
| | Fixed-Media Aeration Systems | 15 | 20 | 20 | 2 |
| Zeolite Treatment of Liquid Manure 1lb/cow/day | 4 | 5 | 5 | 2 | |
| Zeolite Treatment of Liquid Manure 2lb/cow/day | 8 | 10 | 10 | 2 | |
| General Practices | Vegetative or Wooded Buffers (established) | 7 | 7 | 7 | 1 |

| | | Ammonia Control Effectiveness ¹ | | | |
|-------------------------------|--|--|------------------|-----------------|--------------------------------|
| System | Component | Open Lot | Freestall Scrape | Freestall Flush | Compliance Method ³ |
| | Vegetative or Wooded Buffers (establishing) | 2 | 2 | 2 | 1 |
| | Alternatives to Copper Sulfate | - | - | - | - |
| Freestall Barns | Scrape Built Up Manure | - | 3 | 3 | 1 |
| | Frequent Manure Removal | UD | UD | UD | - |
| | Tunnel Ventilation | - | - | - | - |
| | Tunnel Ventilation w/Biofilters | - | 10 | 10 | 1 |
| | Tunnel Ventilation w/Washing Wall | - | 10 | 10 | 3, 4 |
| Open Lots and Corrals | Rapid Manure Removal | 4 | 2 | 2 | 1, 2 |
| | Corral Harrowing | 4 | 2 | 2 | 1 |
| | Surface Amendments | 10 | 5 | 5 | 2 |
| | In-Corral Composting / Stockpiling | 4 | 2 | 2 | 1 |
| | Summertime Deep Bedding | 10 | 5 | 5 | 1 |
| Animal Nutrition | Manage Dietary Protein | 2 | 2 | 2 | 2 |
| Composting Practices | Alum Incorporation | 12 | 8 | 6 | 2 |
| | Carbon:Nitrogen Ratio (C:N) Ratio Manipulation | 10 | 7.5 | 5 | 2 |
| | Composting with Windrows | - | - | - | - |
| | Composting Static Pile | 6 | 4.5 | 3 | 1 |
| | Forced Aeration Composting | 10 | 7.5 | 5 | 1 |
| | Forced Aeration Composting with Biofilter | 12 | 8 | 6 | 1 |
| | Zeolite Incorporation | 12 | 8 | 6 | 2 |
| Land Application ² | Soil Injection - Slurry | 10 | 15 | 7.5 | 2 |
| | Incorporation of Manure within 24 hrs | 10 | 10 | 10 | 2 |

| System | Component | Ammonia Control Effectiveness ¹ | | | Compliance Method ³ |
|--------|---|--|------------------|-----------------|--------------------------------|
| | | Open Lot | Freestall Scrape | Freestall Flush | |
| | Incorporation of Manure within 48 hrs | 5 | 5 | 5 | 2 |
| | Nitrification of Lagoon Effluent | 10 | 10 | 15 | 3, 4 |
| | Low Energy/Pressure Application Systems | 7 | 7 | 10 | 1 |
| | Freshwater Dilution | 5 | 8 | 8 | 1, 2 |
| | Pivot Drag Hoses | 8 | 8 | 10 | 1 |
| | Subsurface Drip Irrigation | 10 | 10 | 12 | 1 |

Notes:

1. The ammonia emission reduction effectiveness of each practice is rated numerically based on practical year-round implementation. Variations due to seasonal practices and expected weather conditions have been factored into these ratings. Not implementing a BMP when it is not practicable to do so, does not reduce the point value assigned to the BMP, nor does it constitute failure to perform the BMP. UD indicates that the practice is still under development.

2. Land application practices assume practice is conducted on all manure; points will be pro-rated to reflect actual waste treatment; points can be obtained on exported material with sufficient documentation.

3. Method used by inspector to determine compliance

1=Observation by Inspector

2=On-Site Recordkeeping Required

3, 4=Deviation Reporting Required. Equipment upsets and/or breakdowns shall be recorded in a deviation log and if repaired in a reasonable timeframe does not constitute non-compliance with this rule.

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765. -- 774. (RESERVED)

775. RULES FOR CONTROL OF ODORS.

The purpose of Sections 775 through 776 is to control odorous emissions from all sources for which no gaseous emission control rules apply. ()

776. GENERAL RULES.

01. General Restrictions. No person shall allow, suffer, cause or permit the emission of odorous gases, liquids or solids into the atmosphere in such quantities as to cause air pollution. ()

02. Restrictions on Rendering Plants. No person shall allow, suffer, cause or permit any plant engaged in the processing of animal, mineral, or vegetable matter or chemical processes utilizing animal, mineral or vegetable matter to be operated without employing reasonable measures for the control of odorous emissions including wet scrubbers, incinerators, chemicals or such other measures as may be approved by the Department. ()

777. -- 784. (RESERVED)

785. RULES FOR CONTROL OF INCINERATORS.

The purpose of Sections 785 through 788 is to prevent excessive emissions of particulate matter from incinerators. ()

786. EMISSION LIMITS.

01. General Restrictions. No person shall allow, suffer, cause or permit any incinerator to discharge more than two-tenths (0.2) pounds of particulates per one hundred (100) pounds of refuse burned. ()

02. Averaging Period. For the purposes of Section 786, emissions shall be averaged according to the following, whichever is the lesser period of time: ()

a. One (1) complete cycle of operation; or ()

b. One (1) hour of operation representing worst-case conditions for the emissions of particulate matter. ()

03. Test Methods and Procedures. The appropriate test method under Sections 785 through 788 shall be EPA Method 5 contained in 40 CFR Part 60 or such comparable and equivalent methods approved in accordance with Subsection 157.02.d. Test methods and procedures shall comply with Section 157. ()

787. EXCEPTIONS.

Sections 785 and 786 do not apply to wigwam burners. ()

788. -- 789. (RESERVED)

790. RULES FOR THE CONTROL OF NONMETALLIC MINERAL PROCESSING PLANTS.

The purpose of Sections 790 through 799 is to set forth the requirements for nonmetallic mineral processing plants, frequently referred to as rock crushers. Definitions specific to nonmetallic mineral processing permits are located in Section 011 while other general terms may be defined in Sections 006 through 008. Compliance with Section 790 does not relieve the owner or operator of a nonmetallic mineral processing plant from the responsibility of complying with other federal, state, and local applicable laws, regulations, and requirements. ()

791. GENERAL CONTROL REQUIREMENTS.

01. Prohibition. No owner or operator of a nonmetallic mineral processing plant shall allow, suffer, or cause the emissions of any air pollutant to the atmosphere in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property. ()

02. Control of Fugitive Dust. In accordance with Sections 650 and 651, owners and operators of nonmetallic mineral processing plants shall take all reasonable precautions to prevent the generation of fugitive dust. In determining what is reasonable, consideration will be given to factors such as the proximity to human habitations and/or activities and atmospheric conditions which might affect the movement of particulate matter. ()

792. EMISSIONS STANDARDS FOR NONMETALLIC MINERAL PROCESSING PLANTS SUBJECT TO 40 CFR 60, SUBPART 000.

01. Applicability and Designation of Affected Facilities. The provisions of 40 CFR 60.670(a)(1) are applicable to the following affected facilities in fixed or portable nonmetallic mineral processing plants that commence construction, modification, or reconstruction after August 31, 1983: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station. Also, crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including the first storage silo or bin, are subject to the provisions of 40 CFR 60.670(a)(1). ()

02. Facilities Not Applicable to 40 CFR 60.670(a)(2), (b), and (c). The provisions of 40 CFR

60.670(a)(2), (b), and (c) do not apply to the following operations: all facilities located in underground mines, plants without crushers or grinding mills above ground, and wet processing operations (as defined in 40 CFR 60.671). ()

a. An affected facility that is subject to the provisions of 40 CFR 60, Subpart F (Standards of Performance for Portland Cement Plants) or Subpart I (Standards of Performance for Hot Mix Asphalt Plants) or that follows the in plant process any facility subject to the provisions of 40 CFR 60, Subparts F or I, is not subject to the provisions of 40 CFR 60, Subpart OOO. ()

b. Facilities at the following plants are not subject to the provisions of 40 CFR 60, Subpart OOO: ()

i. Fixed sand and gravel plants and crushed stone plants with capacities, as defined in 40 CFR 60.671, of twenty-three (23) megagrams per hour (twenty-five (25) tons per hour) or less; ()

ii. Portable sand and gravel plants and crushed stone plants with capacities, as defined in 40 CFR 60.671, of one hundred thirty-six (136) megagrams per hour (one hundred fifty (150) tons per hour) or less; and ()

iii. Common clay plants and pumice plants with capacities, as defined in 40 CFR 60.671, of nine (9) megagrams per hour (ten (10) tons per hour) or less. ()

03. Standards of Performance for Nonmetallic Mineral Processing Plants. Affected facilities subject to 40 CFR 60, Subpart OOO, shall comply with all applicable emissions standards, monitoring requirements, test methods and procedures, and reporting and recordkeeping requirements. ()

793. EMISSIONS STANDARDS FOR NONMETALLIC MINERAL PROCESSING PLANTS NOT SUBJECT TO 40 CFR 60, SUBPART OOO.

Owners and operators of nonmetallic mineral processing plants that are not subject to a NSPS requirement shall comply with the emissions standards set forth in Section 793. ()

01. Processing Plants Not Regulated by NSPS. Fixed or portable plants that commenced construction, reconstruction, or modification before August 31, 1983 are not subject to 40 CFR 60, Subpart OOO. ()

02. Emissions Standards for Fugitive Emissions. No owner or operator shall cause to be discharged into the atmosphere emissions which exhibit greater than twenty percent (20%) opacity from any crusher, grinding mill, screening operation, bucket elevator, belt conveyor, conveying system, transfer point, vent, capture system, storage bin, stockpile, truck dumping operation, vehicle traffic on an affected paved public roadway, vehicle traffic on or wind erosion of an unpaved haul road, or other source of fugitive emissions. Opacity shall be determined using the test methods and procedures in Section 625. The plant is not required to have a certified opacity reader. ()

794. PERMIT REQUIREMENTS.

No owner or operator may commence construction, reconstruction, modification or operation of any nonmetallic mineral processing plant regardless of whether or not the source is an affected facility pursuant to 40 CFR 60.670(e) without first obtaining a permit or complying with Sections 795 through 799. The owner or operator shall comply with the permitting requirements of Subsection 794.02 or Subsection 794.03 and the applicable portions of Subsection 794.04 and/or Subsection 794.05. ()

01. Permit by Rule Eligibility. New major facilities or major modifications subject to Sections 204 and 205 are not eligible for a Permit by Rule. ()

02. Permit by Rule. Owners and operators of nonmetallic mineral processing plants that meet all of the applicable requirements set forth in Sections 795 through 799 shall be deemed to have a permit by rule (PBR) and shall not be required to obtain a permit to construct under Sections 200 through 228. ()

03. Permit to Construct. Owners and operators of nonmetallic mineral processing plants that do not

meet all of the requirements set forth in Sections 795 through 799, or that operate or intend to operate a nonmetallic mineral processing plant at a single site of operations for more than twelve (12) consecutive months, or that choose to construct and operate under specific permit requirements rather than the provisions of the permit by rule shall obtain a permit to construct pursuant to Sections 200 through 228. An existing permit to construct shall be considered valid until the permit is modified, incorporated into a Tier II operating permit, or terminated by the Department. Existing permits to construct may be terminated by the Department by registering the source under the permit by rule provisions in accordance with Section 797 after June 15, 2001. ()

04. Tier I Operating Permits. Owners and operators of nonmetallic mineral processing plants that are affected facilities subject to a requirement of the New Source Performance Standards (NSPS) in 40 CFR 60 are Tier I sources as defined in Section 006. Tier I sources must comply with the applicable permitting requirements of Sections 300 through 399. ()

05. Tier II Operating Permits. Owners and operators of nonmetallic mineral processing plants that are required by the Department or choose to obtain a Tier II operating permit pursuant to Sections 400 through 410 shall operate in accordance with the specific provisions of the Tier II operating permit until such time as the operating permit is terminated in writing by the Department. The Department may require owners and operators of nonmetallic mineral processing plants to obtain a Tier II operating permit whenever the Department determines that: ()

a. Emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increment; or ()

b. Specific emissions standards, or requirements on operation or maintenance are necessary to ensure compliance with any applicable emission standard or rule. ()

795. PERMIT BY RULE REQUIREMENTS.
The purpose of Sections 795 through 799 is to establish the requirements for a permit by rule for nonmetallic mineral processing plants. ()

796. APPLICABILITY.

01. Permit by Rule. Owners and operators of nonmetallic mineral processing plants shall be deemed to have a permit by rule if they comply with all of the applicable provisions of Sections 795 through 799. Nothing in Sections 795 through 799 shall preclude any owner or operator from obtaining a permit. Portable sources that operate or may be operated at a single location or site of operations for more than twelve (12) consecutive months must obtain a permit to construct or a Tier II operating permit. ()

02. Permit Option. Owners and operators of nonmetallic mineral processing plants that hold a valid permit to construct or a Tier II operating permit must comply with the terms and conditions of the permit and are not subject to the requirements of the permit by rule in Sections 795 through 799. ()

797. REGISTRATION FOR PERMIT BY RULE.

01. Registration Process. Any owner or operator of a nonmetallic mineral processing plant that opts to operate under the permit by rule shall register in the following manner: ()

a. Any new or modified processing plant shall register fifteen (15) days prior to commencing operation or modification. The Department shall acknowledge registration in writing within fifteen (15) days. ()

b. Any permitted processing plant shall register with the Department and request termination of the current permit to construct or Tier II operating permit. The Department shall normally act on the request within fifteen (15) days and notify the registrant in writing. ()

Registration for permit by rule does not relieve the owner or operator of portable equipment from the registration and relocation requirements of Section 500. ()

02. Registration Information. The following information shall be provided by the registrant to the Department: ()

a. For all crushers and grinding mills, the registrant shall supply information on the manufacturer, crusher type (such as jaw, cone), serial number, date of manufacture, and maximum throughput capacity; ()

b. For all screen decks, the registrant shall supply manufacturer name, physical size of screen, number of decks, serial number, and date of manufacture; and ()

c. For all electrical generators, the registrant shall supply manufacturer name, rated output, and fuel. ()

798. ELECTRICAL GENERATORS.

The following requirements apply to all electrical generators used to provide electrical power to any nonmetallic mineral processing plant. The requirements apply to each site of operations. ()

01. Fuel Type. Only ASTM (American Society of Testing and Materials) Grade 1 or 2 fuel oil shall be used. The sulfur content of the fuel used shall not exceed the percentages of sulfur given in Section 725. ()

02. Generator Operating Requirements. For the purposes of Sections 790 through 799, the following apply to all electrical generators.

| Rated Output Capacities (kW) | Allowable Operating Hours (hr/day) | | Allowable Operating Hours (hr/yr) | |
|------------------------------|------------------------------------|---------------------------|-----------------------------------|---------------------------|
| | Attainment Unclassifiable Areas | PM-10 Nonattainment Areas | Attainment Unclassifiable Areas | PM-10 Nonattainment Areas |
| 0 - 454 | 24 | 8 | 8760 | 2880 |
| 455 - 1000 | 24 | 24 | 8760 | 8760 |
| 1001 - 2000 | 24 | 24 | 5200 | 5200 |

kW = kilowatts
 hr/day = hours per day
 hr/yr = hours per year ()

03. Generator Opacity Limit. Visible emissions from any generator stack, vent, or other functionally equivalent opening shall not exceed twenty percent (20%) opacity for a period or periods aggregating more than three (3) minutes in any sixty (60) minute period. Opacity shall be determined using the test methods and procedures contained in Section 625. ()

04. Monitoring and Recordkeeping Requirements. ()

a. The owner or operator shall monitor and record the following information. ()

i. The rated output capacity, in kilowatts (kW), of the electrical generator(s) used; ()

ii. Operating hours on a monthly and annual basis so compliance can be continuously determined for the previous twelve (12) month period; and ()

iii. Vendor receipts of the fuel oil purchased clearly identifying the ASTM Grade. ()

b. Records of monitoring and recordkeeping requirements for current operations shall be maintained at the site of operations for the duration of operations at that location and shall be available to Department

representatives upon request. Records for previous sites of operation shall be kept for the most recent two (2) year period at a location where they can be reasonably accessed and shall be made available to the Department upon request. ()

799. NONMETALLIC MINERAL PROCESSING PLANT FUGITIVE DUST BEST MANAGEMENT PRACTICE.

The owner or operator of a nonmetallic mineral processing plant shall use the Best Management Practices (BMP) contained in Section 799 to control the emissions of fugitive dust. Fugitive dust emissions shall be reasonably controlled as required by Sections 650 and 651. It shall be the responsibility of the owner or operator to reasonably control fugitive emissions at each site of operations but only for the duration of operations at each site under the control of the owner or operator. ()

01. Generally Applicable Requirements. All reasonable precautions shall be taken to prevent particulate matter from becoming airborne. The following requirements apply generally to this Fugitive Dust BMP. ()

a. Control strategy triggers. The owner or operator of a nonmetallic mineral processing plant shall at all times be observant of all sources of fugitive dust emissions and monitor control strategies at least once per day when operating. When fugitive dust emissions are observed at any time to be exceeding any control strategy trigger specified in Subsections 799.02 through 799.06, that event shall trigger initiation of the prescribed control strategy or control strategies to control the fugitive dust emissions. ()

b. Control strategies. A progressive control strategy shall be used to reasonably control the emissions of fugitive dust. Progressive control strategy means that if the initial control strategy or strategies chosen do not adequately control fugitive dust emissions, the owner or operator shall employ successive control strategies as listed until fugitive dust control is achieved. Fugitive dust control shall be applied on a frequency such that visible emissions do not exceed any emission standard specified in Sections 790 through 799. ()

c. Monitoring and recordkeeping. The owner or operator shall maintain a record of each event where a control strategy is triggered. The trigger shall be recorded with a summary of the control strategy employed. If the trigger is a citizen complaint, the owner or operator shall record the complaint, an evaluation of whether the complaint has merit, and a summary of the corrective action taken. The record shall be maintained on forms provided by the Department or other forms that contain similar information. Records for current operations shall be maintained at the site of operations for the duration of operations at that location and shall be available to Department representatives upon request. Records for previous sites of operation shall be kept for the most recent two (2) year period at a location where they can be reasonably accessed and shall be made available to the Department upon request. ()

02. Requirements for Paved Public Roadways. ()

a. Definitions. ()

i. Paved public roadway. A paved public roadway means a roadway accessible to the general public having a surface of asphalt or concrete. ()

ii. Track-out. Track-out means the deposition of mud, dirt, or similar debris onto the surface of a paved public roadway from the tires and/or undercarriage of any vehicle associated with the operation of a nonmetallic mineral processing plant. ()

b. Control strategy triggers. Triggers that require initiation of a strategy or strategies to control fugitive dust emissions from track-out include, but are not limited to: ()

i. Visible deposition of mud, dirt, or similar debris on the surface of a paved public roadway. ()

ii. Visible fugitive emissions from vehicle traffic on an affected paved public roadway that approach twenty percent (20%) opacity for a period or periods aggregating more than one (1) minute in any sixty (60) minute period. ()

iii. Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. ()

c. Control strategies. The following are control strategies for track-out. ()

i. Prompt removal of mud, dirt, or similar debris from the affected surface of a paved public roadway. ()

ii. Water flush, and/or water flush and vacuum sweep, the affected surface of the paved public roadway. Runoff shall be controlled so it does not saturate the surface of the adjacent unpaved haul road such that track-out is enhanced. If runoff is not, or cannot be controlled, gravel shall be applied to the surface of the adjacent unpaved haul road over an area sufficient to control track-out. ()

iii. Apply gravel to the surface of the adjacent unpaved haul road. The area of application shall be sufficient to control track-out. ()

iv. Apply an environmentally safe chemical soil stabilizer or chemical dust suppressant to the surface of the adjacent unpaved haul road. The area of application shall be sufficient to control track-out. ()

v. Other control strategy or strategies as approved by the Department. ()

03. Requirements for Unpaved Haul Roads. ()

a. Definition of “unpaved haul roads.” Any unsurfaced roadway within the physical boundary of a nonmetallic mineral processing facility that is used as a haul road, access road, or similar. ()

b. Control strategy triggers. Triggers that require initiation of a strategy or strategies to control fugitive dust emissions from unpaved haul roads include, but are not limited to: ()

i. Visible fugitive emissions from vehicle traffic on an affected paved public roadway that approach twenty percent (20%) opacity for a period or periods aggregating more than one (1) minute in any sixty (60) minute period. ()

ii. Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. ()

c. Control strategies. The following are control strategies for fugitive dust emissions from unpaved haul roads. ()

i. Limit vehicle traffic on unpaved haul roads. ()

ii. Limit vehicle speeds on unpaved haul roads. If a speed limit is imposed, signs shall be posted along the haul road route and clearly indicate the speed limit. Signs shall be placed so they are visible to vehicles entering and leaving the site of operations. ()

iii. Apply water to the surface of the unpaved haul road. Runoff shall be controlled so it does not saturate the surface of the unpaved haul road such that it causes track-out. If runoff is not, or cannot be controlled, gravel shall be applied to the surface of the unpaved haul road over an area sufficient to control track-out. ()

iv. Apply gravel to the surface of the unpaved haul road. ()

- v. Apply an environmentally safe chemical soil stabilizer or chemical dust suppressant to the surface of the unpaved haul road. ()
- vi. Other control strategy or strategies as approved by the Department. ()
- 04. Requirements for Transfer Points, Screening Operations, and Stacks and Vents. ()**
 - a. Definitions. ()**
 - i. Transfer point. Transfer point means a point in a conveying operation where the nonmetallic mineral is transferred to or from a belt conveyor except where the nonmetallic mineral is being transferred to a stockpile. ()
 - ii. Belt conveyor. Belt conveyor means a conveying device that transports material from one (1) location to another by means of an endless belt that is carried on a series of idlers and routed around a pulley at each end. ()
 - iii. Conveying system. Conveying system means a device for transporting materials from one (1) piece of equipment or location to another location within a plant. Conveying systems include but are not limited to the following: feeders, belt conveyors, bucket elevators and pneumatic systems. ()
 - iv. Bucket elevator. Bucket elevator means a conveying device of nonmetallic minerals consisting of a head and foot assembly which supports and drives an endless single or double strand chain or belt to which buckets are attached. ()
 - v. Screening operation. Screening operation means a device for separating material according to size by passing undersize material through one (1) or more mesh surfaces (screens) in series, and retaining oversize material on the mesh surfaces (screens). ()
 - vi. Capture system. Capture system means the equipment (including enclosures, hoods, ducts, fans, dampers, etc.) used to capture and transport particulate matter generated by one (1) or more process operations to a control device. ()
 - vii. Control device. Control device means the air pollution control equipment used to reduce particulate matter emissions released to the atmosphere from one (1) or more process operations at a nonmetallic mineral processing plant. ()
 - viii. Vent. Vent means an opening through which there is mechanically induced air flow for the purpose of exhausting from a building air carrying particulate matter emissions from one (1) or more affected facilities. ()
 - b. Control strategy triggers. Triggers that require initiation of a strategy or strategies to control fugitive dust emissions from transfer points, belt conveyors, bucket elevators, screening operations, conveying systems, capture systems, and building vents include, but are not limited to, the following: ()**
 - i. NSPS regulated processing plants. ()
 - (1) Opacity greater than ten percent (10%) from any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation. ()
 - (2) For any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation located within a building, opacity greater than seven percent (7%) from any building vent. ()
 - (3) Opacity greater than seven percent (7%) from any capture system stack. ()
 - (4) Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy

shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. ()

ii. Processing plants not regulated by NSPS. ()

(1) Opacity greater than twenty percent (20%) from any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation. ()

(2) For any transfer point on a belt conveyor, conveying system, bucket elevator, or screening operation located within a building, opacity greater than twenty percent (20%) from any building vent. ()

(3) Opacity greater than twenty percent (20%) from any capture system stack. ()

(4) Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. ()

c. Control Strategies. The following are control strategies for transfer points, belt conveyors, bucket elevators, screening operations, conveying systems, capture systems, and building vents. Controls shall be applied on a frequency such that visible fugitive emissions do not exceed any applicable opacity limit. ()

i. Limit drop heights of materials such that there is a homogeneous flow of material. ()

ii. Install, operate, and maintain water spray bars to control fugitive dust emissions at transfer points on belt conveyors, conveying systems, bucket elevators, and screening operations as necessary. ()

iii. Other control strategy or strategies as approved by the Department. ()

05. Requirements for Crushers and Grinding Mills. ()

a. Definitions. ()

i. **Crusher.** Crusher means a machine used to crush any nonmetallic mineral, and includes, but is not limited to, the following types: jaw, gyratory, cone, roll, rod mill, hammermill, and impactor. ()

ii. **Grinding mill.** Grinding mill means a machine used for the wet or dry fine crushing of any nonmetallic mineral. Grinding mills include, but are not limited to, the following types: hammer, roller, rod, pebble and ball, and fluid energy. The grinding mill includes the air conveying system, air separator, or air classifier, where such systems are used. ()

iii. **Initial crusher.** Initial crusher means any crusher into which nonmetallic minerals can be fed without prior crushing in the plant. ()

b. Control strategy triggers. Triggers that require initiation of a strategy or strategies to control fugitive dust emissions from any crusher, grinding mill, building vent, or capture system stack include, but are not limited to, the following. ()

i. NSPS regulated processing plants. ()

(1) Opacity greater than fifteen percent (15%) from any crusher or grinding mill at which capture system is not used. ()

(2) For any crusher or grinding mill located within a building, opacity greater than seven percent (7%) from any building vent. ()

- (3) Opacity greater than seven percent (7%) from any capture system stack. ()
- (4) Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. ()
 - ii. Processing plants not regulated by NSPS. ()
- (1) Opacity greater than twenty percent (20%) from any crusher or grinding mill at which capture system is not used. ()
- (2) For any crusher or grinding mill located within a building, opacity greater than twenty percent (20%) from any building vent. ()
- (3) Opacity greater than twenty percent (20%) from any capture system stack. ()
- (4) Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. ()
 - c. Control strategies. The following are control strategies for any crusher, grinding mill, building vent, or capture system stack. Controls shall be applied on a frequency such that visible fugitive emissions do not exceed any applicable opacity limit. ()
 - i. Limit drop heights of materials such that there is a homogeneous flow of material. ()
 - ii. Install, operate, and maintain water spray bars to control fugitive dust emissions at crusher drop points as necessary. ()
 - iii. Other control strategy or strategies as approved by the Department. ()
- 06. Requirements for Stockpiles.** ()
 - a. Definitions. ()
 - i. Stockpile. Stockpile means any nonmetallic mineral storage pile, reserve supply, or similar. Nonmetallic minerals shall have the meaning given in 40 CFR Part 60, Subpart OOO. Nonmetallic minerals may be stockpiled by belt conveyor, truck dumping, or similar. ()
 - ii. Truck dumping. Truck dumping means the unloading of nonmetallic minerals from movable vehicles designed to transport nonmetallic minerals from one (1) location to another. Movable vehicles include but are not limited to: trucks, front-end loaders, skip hoists, and railcars. ()
 - b. Control strategy triggers. Triggers that require immediate initiation of a strategy or strategies to control fugitive dust emissions from stockpiles include, but are not limited to: ()
 - i. Visible fugitive emissions from wind erosion of any stockpile that approaches twenty percent (20%) opacity for a period or periods aggregating more than one (1) minute in any sixty (60) minute period. ()
 - ii. Citizen complaints of failure to reasonably control fugitive dust shall be expeditiously evaluated by the owner or operator for merit. If the owner or operator determines the complaint has merit, the progressive strategy shall be expeditiously employed to reasonably control fugitive dust. The Department may review the complaint

records and investigate citizen complaints as appropriate. If the Department finds that a complaint has merit, it may determine additional control measures are required. ()

- c. Control strategies. The following are control strategies for stockpiles. ()
 - i. Limit the height of the stockpiles. ()
 - ii. Limit the disturbance of the stockpiles. ()
 - iii. Apply water onto the surface of the stockpile. ()
 - iv. Other control strategy or strategies as approved by the Department. ()

800. REGISTRATION FEE FOR PERMIT BY RULE.

A registration fee of two hundred fifty dollars (\$250) shall be submitted to the Department with each permit by rule registration. ()

801. PAYMENT OF FEES FOR PERMITS BY RULE REGISTRATION.

The permit by rule registration fee shall be paid in its entirety at the time the required registration form is submitted to the Department. The permit by rule registration form and fee should be sent to:

Permit by Rule Registration Fees
Fiscal Office
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, ID 83706-1255 ()

802. RECEIPT AND USAGE OF FEES.

Permit by rule registration fee receipts shall be deposited by the Department into a stationary source permit account. Monies from this account shall be used solely toward technical, legal and administrative support of the Department's Permit to Construct and Tier II permit programs and shall not be used for those activities supported by the fund created for implementing the operating permit program required under Title V of the federal Clean Air Act amendments of 1990. Fees payable under Section 800 shall be retained by the Department regardless of whether a permit by rule registration is accepted by the Department in response to a registration request. ()

803. -- 804. (RESERVED)

805. RULES FOR CONTROL OF HOT-MIX ASPHALT PLANTS.

The purpose of Sections 805 through 808 is to establish for hot-mix asphalt plants restrictions on the emission of particulate matter. ()

806. EMISSION LIMITS.

No person shall cause, allow or permit a hot-mix asphalt plant to have particulate emissions which exceed the limits specified in Sections 700 through 703. ()

807. MULTIPLE STACKS.

In the case of more than one (1) stack to a hot-mix asphalt plant, the emission limitation will be based on the total emission from all stacks. ()

808. FUGITIVE DUST CONTROL.

01. Fugitive Emission Controls. No person shall cause, allow or permit a plant to operate that is not equipped with an efficient fugitive dust control system. The system shall be operated and maintained in such a manner as to satisfactorily control the emission of particulate material from any point other than the stack outlet. ()

02. Plant Property Dust Controls. The owner or operator of the plant shall maintain fugitive dust control of the plant premises and plant owned, leased or controlled access roads by paving, oil treatment or other

suitable measures. Good operating practices, including water spraying or other suitable measures, shall be employed to prevent dust generation and atmospheric entrainment during operations such as stockpiling, screen changing and general maintenance. ()

809. -- 814. (RESERVED)

815. RULES FOR CONTROL OF KRAFT PULP MILLS.

The purpose of Sections 815 through 818 is to establish emission standards for recovery furnaces and notification and reporting requirements for low volume high concentration (LVHC) and high volume low concentration (HVLC) gas venting at kraft pulp mills. ()

816. RECOVERY FURNACE TRS STANDARD.

The average daily emissions of total reduced sulfur (TRS) from each recovery furnace shall not exceed fifteen (15) ppm expressed as hydrogen sulfide on a dry basis. Recovery furnaces at kraft pulp mills subject to 40 CFR Part 60 TRS standards are exempt from the requirements of Section 816. ()

817. RECOVERY FURNACE TRS MONITORING AND RECORDKEEPING.

Owners and operators of each recovery furnace subject to the TRS emission standard in Section 816 shall maintain and operate equipment to continuously monitor and record the daily average TRS concentrations. ()

818. KRAFT PULP MILL LVHC AND HVLC GAS VENTING NOTIFICATION AND REPORTING.

Section 818 is applicable to kraft pulp mill LVHC and HVLC gas venting from sources required to be controlled pursuant to 40 CFR 63, Subpart S. For purposes of Sections 130 through 136, an excess emission is defined as a continuous uncontrolled gas venting in excess of five (5) minutes. Excess emissions notification and reporting shall be conducted pursuant to the requirements contained in Sections 130 through 136 and the permit issued to the kraft pulp mill. ()

819. -- 834. (RESERVED)

835. RULES FOR CONTROL OF RENDERING PLANTS.

The purpose of Sections 835 through 839 is to establish for rendering plants limitations on the emission of odors. ()

836. CONTROL OF COOKERS.

No person shall allow, suffer, cause, or permit the operation or use of any device, machine, equipment, or other contrivance to cook inedible animal or marine matter unless all gases, vapors, and gas entrained effluents from these processes are passed through condensers to remove all steam and other condensable materials. All noncondensibles passing through the condensers must then be incinerated at one thousand two hundred degrees Fahrenheit (1,200) for a minimum of three-tenths (0.3) seconds, or treated in an equally effective manner. ()

837. CONTROL OF EXPELLERS.

No person shall allow, suffer, cause, or permit the installation or operation of an expeller unless it is properly hooded and all exhaust gases are ducted to odor control equipment. ()

838. CONTROL OF PLANT AIR.

No person shall allow, suffer, cause, or permit the installation or operation of a rendering plant unless plant ventilation air is collected and ducted to odor control equipment. ()

839. EXCEPTIONS.

Section 838 shall not apply when it can be demonstrated that without ducting plant ventilation air to the odor control equipment no noticeable odors from the plant can be detected at the property line. ()

840. -- 859. (RESERVED)

860. EMISSION GUIDELINES FOR MUNICIPAL SOLID WASTE LANDFILLS THAT COMMENCED CONSTRUCTION, RECONSTRUCTION OR MODIFICATION BEFORE MAY 30, 1991.

01. Applicability. All owners or operators of any small or large municipal solid waste landfills in the following categories are subject to Section 860: ()

- a. Landfills that have accepted waste since November 8, 1987; ()
- b. Landfills with no modifications after May 30, 1991; or ()
- c. Landfills that closed after November 8, 1987 with no modifications after May 30, 1991. ()

02. Definitions. Unless specifically provided otherwise immediately below, the definitions for all terms set forth in Section 860 shall be the definitions set forth in 40 CFR Part 60. The following definitions apply to Section 860: ()

a. "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60. ()

b. "Effective date" means July 2, 1999. ()

c. "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before May 30, 1991 and has accepted waste at any time since November 8, 1987 or has additional design capacity available for future waste deposition. ()

d. "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to two point five (2.5) million megagrams or two point five (2.5) million cubic meters. ()

e. "Modification" means an action that results in an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion. ()

f. "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification). ()

g. "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after May 30, 1991. ()

h. "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than two point five (2.5) million megagrams or two point five (2.5) million cubic meters. ()

03. General Requirements. All owners or operators of landfills subject to Section 860 must comply with, 40 CFR Section 60.30c through 60.36c and 40 CFR Section 60.751 through 60.759 as amended by 63 Fed. Reg. 32,743-53 (June 16, 1998) and 64 Fed. Reg. 9,257-62 (February 24, 1999) and incorporated by reference into these rules at Section 107. Where "Administrator" or "EPA" appears in 40 CFR Part 60, "Department" shall be substituted, except in any section of 40 CFR Part 60 for which a federal rule or delegation specifically indicates that authority will not be delegated to the state. ()

04. Permitting Requirements. All owners or operators of landfills subject to Section 860 must

comply with Federal Operating Permit Requirements (Title V) as specified in Sections 300 through 399 of these rules: ()

a. All owners or operators of existing large landfills must submit a complete Federal Operating Permit application one (1) year after EPA approves the Clean Air Act Section 111(d) State Plan associated with Section 860. ()

b. All owners or operators of existing small landfills that are major sources must submit a complete Federal Operating Permit application within one (1) year of becoming a major source. ()

05. Reporting Requirements. All owners or operators of landfills subject to Section 860 shall comply with the following: ()

a. All owners or operators of large landfills must: ()

i. Submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within ninety (90) days of the effective date of Section 860 and; ()

ii. Submit an annual Nonmethane Organic Compound Report until nonmethane emissions are less than fifty (50) Mg/yr. ()

b. All owners or operators of small landfills must submit an Initial Design Capacity Report and an Initial Nonmethane Organic Compound Report within ninety (90) days of the effective date of Section 860. ()

06. Compliance Schedules and Increments of Progress. All owners or operators of landfills subject to Section 860 that have a nonmethane organic compound emission rate fifty (50) Mg/yr or greater as specified in 40 CFR Section 60.752(b)(2) shall comply with the following schedule: ()

a. The owner or operator of an existing large landfill must submit their first Annual Emission Rate Report with the design capacity report no later than July 31, 2000. ()

b. The owner or operator of an existing landfill shall submit a collection and control system design plan within one (1) year of the date of the first Annual Emission Rate Report showing that the nonmethane organic compound emission rate is fifty (50) Mg/yr or greater as specified in 40 CFR Section 60.752(b)(2). ()

c. The owner or operator of an existing landfill shall award contracts for construction of collection and control systems or orders for purchase of components no later than January 31, 2002. ()

d. The owner or operator of an existing landfill shall initiate on-site construction or installation of the collection and control systems no later than April 30, 2002. ()

e. The owner or operator of an existing landfill shall complete, no later than September 30, 2002, on-site construction or installation of collection and control systems capable of meeting the requirements of Section 860. ()

f. The owner or operator of an existing landfill shall comply with Section 860 no later than September 30, 2002. ()

07. Compliance Schedules and Increments of Progress for Municipal Solid Waste Landfills That Have Nonmethane Organic Compound Emission Rates Less Than 50 Mg/yr. All owners or operators of landfills subject to Section 860 that have nonmethane organic compound emission rates less than fifty (50) Mg/yr on or after November 19, 1999 shall install collection and control systems within thirty (30) months after the date the first annual nonmethane organic compound emission rate equals or exceeds fifty (50) Mg/yr as specified in 40 CFR Section 60.36c(b). ()

861. -- 999. (RESERVED)

58.01.05 – RULES AND STANDARDS FOR HAZARDOUS WASTE

000. LEGAL AUTHORITY.

These rules are adopted pursuant to the authority vested in the Board of Environmental Quality by the Hazardous Waste Management Act of 1983, as amended (HWMA), Sections 39-4401 et seq., Idaho Code, and the authority vested in the Director of the Department of Environmental Quality by the Hazardous Waste Facility Siting Act of 1985, as amended, Sections 39-5801 et seq., Idaho Code. ()

001. TITLE.

These rules are titled IDAPA 58.01.05, “Rules and Standards for Hazardous Waste.” ()

002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260 - 268, 270, 273, 278, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2020, including any notes and appendices therein, unless expressly provided otherwise in these rules. ()

01. Exceptions. Nothing in 40 CFR Parts 260 - 268, 270, 273, 278, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. ()

02. Availability of Referenced Material. The federal regulations adopted by reference throughout these rules are maintained at the following locations: ()

- a. U.S. Government Printing Office, <http://www.ecfr.gov/cgi-bin/ECFR>; and ()
- b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208) 334-3316; and ()
- c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502. ()

003. DEFINITIONS.

For the purpose of these rules and any materials incorporated herein by reference, the following definitions apply unless their application would be inconsistent with the Hazardous Waste Management Act, or unless these rules expressly provide for different definitions. ()

01. Board. The Idaho Board of Environmental Quality. ()

02. CFR. The United States Code of Federal Regulations. ()

03. Department. The Idaho Department of Environmental Quality. ()

04. Director. When used in the context of 40 CFR, the definition shall be the Director of the Idaho Department of Environmental Quality, or his designee, as the context requires. When used in the context of these rules, the definition shall be the U. S. Environmental Protection Agency Region 10 Regional Administrator. ()

05. Environmental Appeals Board. When used in the context of 40 CFR, the definition shall be the Idaho Board of Environmental Quality except as set forth in Section 39-4413(2), Idaho Code, or except where noted in these rules. When used in the context of these rules, the definition shall be the U.S. Environmental Appeals Board. ()

06. U.S. Environmental Protection Agency or EPA, EPA Headquarters, or EPA. When used in the context of 40 CFR, the definition shall be the Idaho Department of Environmental Quality, except when used to refer to an EPA Identification number, EPA hazardous waste number, EPA forms, publications or guidance, and EPA Acknowledgment of Consent, and where noted in these rules. Under the latter circumstances, the definition shall be the U.S. Environmental Protection Agency and the Headquarters of the U.S. Environmental Protection Agency as appropriate. When used in the context of these rules, the definition shall be the U.S. Environmental Protection Agency. ()

07. HWFSA. The Hazardous Waste Facility Siting Act of 1985, Sections 39-5801 et seq., Idaho Code.

- ()
- 08. HWMA.** The Hazardous Waste Management Act of 1983, Sections 39-4401 et seq., Idaho Code. ()
- 09. IDAPA.** The Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. ()
- 10. RCRA.** When used in the context of 40 CFR, the definition shall be the comparable sections of the Hazardous Waste Management Act of 1983, Sections 39-4401 et seq., Idaho Code. When used in the context of these rules, the definition shall be The Resource Conservation and Recovery Act, 42 U.S. Code, Sections 6901 et seq. ()
- 11. Regional Administrator or Administrator.** When used in the context of 40 CFR, the definition shall be the Director of the Idaho Department of Environmental Quality, or his designee, except where noted in these rules. When used in the context of these rules, the definition shall be the U.S. Environmental Protection Agency Administrator or Region 10 Regional Administrator as appropriate. ()
- 12. TSD.** Treatment, storage or disposal. ()
- 13. United States or U.S.** When used in the context of 40 CFR, the definition shall be the state of Idaho, except where noted in these rules. When used in the context of these rules, the definition shall be the United States. ()
- 004. HAZARDOUS WASTE MANAGEMENT SYSTEM.**
40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For the purposes of 40 CFR 260.4(a)(4) and 260.5(b)(2), “EPA” is defined as the U.S. Environmental Protection Agency. For the purposes of 40 CFR 260.10 in the definition of electronic manifest and electronic manifest system, “EPA” is defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, “Administrator” is defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, “Federal Register” is defined as the Idaho Administrative Bulletin. ()
- 005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.**
40 CFR Part 261 and all Subparts (excluding 261.4(b)(17)), except the language “in the Region where the sample is collected” in 40 CFR 261.4(e)(3)(iii), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR 261.10 and 40 CFR 261.11, “Administrator” is defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261.4(b)(11)(ii), 40 CFR 261.39(a)(5), 40 CFR 261.41, and 40 CFR 261 Appendix IX, “EPA” is defined as the U.S. Environmental Protection Agency. Copies of annual reports and advance notifications under these sections shall also be sent to the Director. ()
- 01. Hazardous Secondary Materials Managers Emergency Notification.** In addition to the emergency notification required by 40 CFR 261.411(d)(3) and 261.420(f)(4)(ii), the emergency coordinator must also immediately notify the Idaho Office of Emergency Management by telephone, 1-800-632-8000, to file an identical report. ()
- 02. Excluded Wastes.** Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by EnviroSAFE Services of Idaho, Inc. (ESII) at ESII’s facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: ()
- a. Verification Testing Requirements.** Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.02.b. and 005.02.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. ()
- b. Initial Verification Testing.** ()

i. For purposes of Subsections 005.02.b., “new source” means any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.02.d. ()

ii. Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification includes: ()

(1) The waste profile information; and ()

(2) The name and address of the generator. ()

iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.02.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.02.d. ()

iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.02.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.02.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. ()

v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: ()

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.02.d.; and ()

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.02.b.iv. ()

vi. For purposes of Subsections 005.02.b. and 005.02.c., “batch” means the CSEAFD that results from a single treatment episode in a full scale mixing vessel. ()

c. Subsequent Verification Testing. ()

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.02.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. ()

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Subsection 005.02.d. ()

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. ()

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.02.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.02.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. ()

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.02.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: ()

- (1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.02.d.; or ()
- (2) Managed and disposed of in accordance with Subtitle C of RCRA. ()
- vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.02.d. ()

d. Delisting Levels. ()

- i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

| | | | |
|-----------|-------|----------|-------|
| antimony | 0.06 | mercury | 0.009 |
| arsenic | 0.50 | nickel | 1 |
| barium | 7.60 | selenium | 0.16 |
| beryllium | 0.010 | silver | 0.30 |
| cadmium | 0.050 | thallium | 0.020 |
| chromium | 0.33 | vanadium | 2 |
| lead | 0.15 | zinc | 70 |

- ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. ()

e. Modification of Treatment Process. ()

- i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. ()

- ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. ()

- iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. ()

- iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Waste Management and Remediation Division, 1410 N. Hilton, Boise, Idaho 83706. ()

f. Records and Data Retention and Submittal. ()

- i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. ()

- ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. ()

- iii. Failure to submit requested records or data within ten (10) business days of receipt of a written

request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. ()

iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: “Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII’s RCRA and CERCLA obligations premised upon ESII’s reliance on the void exclusion.” ()

g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII’s facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. ()

006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

01. Incorporation by Reference. 40 CFR Part 262 and all Subparts, except for the language “for the Region in which the generator is located” in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR 262.82, 262.83, and 262.84, “EPA” is defined as the U.S. Environmental Protection Agency. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.20, 262.21, 262.24, 262.25, and 262.32, EPA or Environmental Protection Agency is defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262, Subpart H, “United States or U.S.” is defined as the United States. ()

02. Generator Emergency Notification. In addition to the emergency notification required by 40 CFR 262.16(b)(9)(iv)(C) and 262.265(d)(2), (see 40 CFR 262.17(a)(6), 263.30(c)(1), 264.56(d)(2), and 265.56(d)(2)) the emergency coordinator must also immediately notify the Idaho Office of Emergency Management by telephone, 1-800-632-8000, to file an identical report. ()

007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), “United States” is defined as the United States. For the purposes of 40 CFR 263.20(a), “EPA” is defined as U.S. Environmental Protection Agency. ()

008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR Subsection 264.12(a), “Regional Administrator” is defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.71 and 264.1082(c)(4)(ii), “EPA” is defined as the U.S. Environmental Protection Agency. ()

009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.1(c)(15), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)), except the language contained in 40 CFR 265.340(b)(2) as replaced with: “The following requirements continue to apply even when the owner or operator has

demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part,” are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR Subsection 265.12(a), “Regional Administrator” is defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.71 and 265.1083(c)(4)(ii), “EPA” is defined as the U.S. Environmental Protection Agency. ()

010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.

40 CFR Part 266 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. ()

011. LAND DISPOSAL RESTRICTIONS.

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.2(j) “EPA” is defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), “Administrator” is defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), “D009” is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV.) ()

012. HAZARDOUS WASTE PERMIT PROGRAM.

40 CFR Part 270 and all Subparts, except 40 CFR 270.1(c)(2)(ix), 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), “EPA” and “Administrator” or “Regional Administrator” is defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively. ()

013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).

40 CFR Part 124, Subparts A, B and G are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020, except that the last sentence of 40 CFR 124.10(b)(1), 40 CFR 124.15(b)(2), 40 CFR 124.19, the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) “EPA” and “Administrator” or “Regional Administrator” is defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. ()

014. (RESERVED)

015. STANDARDS FOR THE MANAGEMENT OF USED OIL.

01. Incorporation by Reference. 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR 279.43(c)(3)(ii) “Director” is defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. ()

02. Used Oil as a Dust Suppressant. 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: ()

a. Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and ()

b. Demonstrate how the requirements of 40 CFR 279.82(b) will be met. ()

016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. For purposes of 40 CFR 273.32(a)(3), “EPA” is defined as the U.S. Environmental Protection Agency. ()

017. CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS.

40 CFR Part 278 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. ()

018. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARDIZED PERMIT.

40 CFR Part 267 and all Subparts, except 40 CFR 267.150, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2020. ()

019. -- 354. (RESERVED)

355. HAZARDOUS WASTE FACILITY SITING LICENSE FEE.

An application for a siting license required by HWFSA shall be accompanied by a siting license fee in an amount established by these rules. The license fee shall not exceed seven thousand five hundred dollars (\$7,500) and shall be submitted with the siting license application. ()

01. License Fee Criteria. The siting license fee required by HWFSA and these rules shall be based on the costs to the Department of reviewing the siting license application and the characteristics of the proposed hazardous waste facility, including the projected site size, projected waste volume, and the hydrogeological characteristics surrounding the site. ()

a. “Projected Waste Volume” means the total actual or potential hazardous waste volume, in gallons or an equivalent measurement, proposed for the hazardous waste facility. ()

b. “Site Size” means the sum in acres of all proposed “Hazardous Waste Management Unit(s)” as defined in Section 004 (40 CFR 260.10). ()

02. License Fee Scale. Except as provided in Subsection 355.03, the siting license fee required by HWFSA and these rules shall be determined using the table below.

| LICENSE FEE SCALE - PROJECTED HAZARDOUS WASTE VOLUME (gallons) | | | |
|---|---------------------|------------------------|-------------------------|
| Site Size | Up to 10,000 | 10,000 - 20,000 | More Than 20,000 |
| 1 acre or greater | \$3,000 | \$4,000 | \$7,500 |
| Equal to or greater than 1/2 acre, but less than 1 acre | \$4,000 | \$5,000 | \$7,500 |
| Less than 1/2 acre | \$5,000 | \$6,000 | \$7,500 |

03. License Fee for Facilities Required to Submit Engineering or Hydrogeological Information. For any proposed commercial hazardous waste disposal, treatment or storage facility or any on-site land disposal facility for wastes listed pursuant to Section 201(d)(2) and (e), as modified by Section 209 of the Federal Hazardous and Solid Waste Amendments of 1984, which must submit engineering or hydrogeological information to indicate compliance with technical criteria as adopted in the Hazardous Waste Management Plan, the siting license fee shall be seven thousand five hundred dollars (\$7,500). ()

04. Expansion, Enlargement or Alteration of a Commercial Hazardous Waste Disposal, Treatment or Storage Facility or Any On-Site Land Disposal Facility for Wastes Listed Pursuant to Section 201(D)(2) and (E), as Modified by Section 209 of the Hazardous and Solid Waste Amendments of 1984. The significant expansion, enlargement or alteration of a hazardous waste treatment, storage or disposal facility in existence on July 1, 1985, constitutes a new proposal for which a siting license is required and for which a siting license fee must be paid. ()

05. Siting License Fee Nonrefundable. The siting license fee required by these rules shall be nonrefundable and may not be applied toward any subsequent application should the siting license application be cancelled or withdrawn, or denied. ()

356. VARIANCE APPLICATIONS FOR TSD FACILITIES OR SITES.

01. Application Contents and Standard of Review. Applications for variances shall be submitted in triplicate and shall contain such detailed plans, specifications, and information regarding objectives, procedures, controls, and other pertinent data as the Director may require. A variance shall not exceed one (1) year in duration. The Director may grant a variance only if the applicant demonstrates to the Director's satisfaction that construction and operation of the TSD facility or site in the manner allowed by the variance and any term or condition imposed as part of the variance: ()

- a. Is required to avert unnecessary and significant hardship; ()
- b. Is not inconsistent with EPA requirements; and ()
- c. Will not create a nuisance or a hazard to the public health, safety or the environment. ()

02. Public Hearings. The Director may hold a public hearing on an initial application for a variance and shall hold a public hearing on any application to renew or extend a variance. The public hearing shall be held at a location in the county where the operations that are the subject of the application for the variance are conducted unless the Director determines that a different location would be more appropriate and convenient for interested members of the public. The Director shall give at least twenty (20) days' notice of the hearing to the applicant by certified mail and shall cause at least one (1) publication of notice in a newspaper with general circulation in either the county where the operation is conducted or the county where the hearing is to be held. The Director shall cause to be made a complete record of the testimony and the evidence submitted at the hearing. ()

03. Public Information. All information submitted as part of a variance application shall be treated as public information and shall not be subject to any claim of confidentiality. The Director shall make the application available for public inspection at the Department's state office and appropriate regional office. The Director shall make available for public inspection at the Department's state office and all regional offices a current list of pending applications for variances and a current schedule of pending variance hearings. ()

04. Director's Decision. No variance shall be issued or denied until the Director has considered the relative interests of the applicant, other persons and property affected by the variance and the public. Any variance granted pursuant to this section shall be for a period specified by the Director but not more than one (1) year. No variance shall be issued or denied without a written order stating the findings upon which the decision is based. ()

05. Applicant to Bear Costs. The cost of public notice, recording and transcribing of testimony and hearing facilities shall be borne by the applicant, regardless of whether or not a variance is issued. ()

357. -- 499. (RESERVED)

500. ROUTING OF HAZARDOUS WASTE SHIPMENTS.

01. Transporting. Any person transporting a quantity of hazardous waste which requires a manifest shall, to the extent possible: ()

- a. Use state, United States and interstate highways; and ()
- b. Avoid municipalities and population centers, even when doing so may add miles to the distance traveled. ()

02. Director's Conditions. The Director may, upon a finding that a shipment or shipments of hazardous waste constitutes a greater than normal risk to the public health, safety or environment, prescribe by order particular conditions for that shipment or shipments including but not limited to special placarding, pilot vehicles, routing restrictions, parking restrictions and timing restrictions. ()

501. -- 799. (RESERVED)

800. INSPECTION PLAN -- FREQUENCY LEVELS.

The Department may, as time and resources permit, conduct regular inspections of persons or entities subject to these rules, their records, and property at approximately the following frequency levels based upon potential risk to the public health or environment. ()

01. Commercial TSD Facilities. Commercial TSD facilities or sites or offsite generator TSD facilities or sites, up to every day. ()

02. Generator On-Site TSD Facilities. Generator on-site TSD facilities or sites -- up to twenty (20) times per year. ()

03. Transport Vehicles. Transport vehicles as necessary. ()

04. Transport Facilities. Transport facilities or sites -- up to twelve (12) times per year. ()

05. Generators. Generators -- up to twelve (12) times per year. ()

06. Conduct Inspections. Nothing in the preceding schedule of frequency levels may be construed as limiting the Department's authority to conduct inspections when there is reasonable cause to suspect a violation of HWMA or these rules. The Director may by policy guidance memorandum modify the inspection frequency levels as necessary for the effective or efficient enforcement of HWMA and these rules. ()

801. -- 849. (RESERVED)

850. ILLEGAL ACTIONS.

01. False Statements or Representations. Any person who makes a false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for the purpose of complying with these rules or HWMA thereby commits a violation. Each false statement or representation constitutes a separate and distinct violation for which civil penalties may be imposed. Any person who knowingly makes a false statement or representation of the type described above is, in addition to civil penalties, subject to criminal prosecution for the commission of a misdemeanor for each statement or representation. ()

02. Failure to Comply with These Rules, the HWMA, or Other Requirements. Any person who violates these rules, HWMA, or any permit, standard, condition, requirement, compliance agreement or order issued pursuant to these rules or HWMA thereby commits a violation. Civil penalties may be imposed for each separate violation and for each day of continuing violation. Any person who knowingly commits a violation of the type described above is, in addition to civil penalties, subject to criminal prosecution for the commission of a misdemeanor for each separate violation and for each day of a continuing violation. ()

851. -- 899. (RESERVED)

900. EXPENDITURES FROM HAZARDOUS WASTE EMERGENCY ACCOUNT.

The Director may declare a hazardous waste emergency if the public health, safety or the environment are threatened by a release or threat of release of a hazardous waste or a substance which has become a hazardous waste. Following

a hazardous waste emergency declaration, the Department may spend or obligate to be spent up to two hundred thousand dollars (\$200,000) from the Hazardous Waste Emergency Account to obtain equipment and materials, conduct investigations, test samples, and employ personnel as necessary or eliminate or mitigate the immediate threat and stabilize the situation. The Director may authorize the expenditure or obligation of more than two hundred thousand dollars (\$200,000) from this account in any given situation upon a finding by the Board that a greater expenditure or obligation is prudent and necessary to protect the public health, safety or environment. ()

901. -- 995. (RESERVED)

996. ADMINISTRATIVE PROVISIONS.

Administrative appeals of agency actions shall be governed by IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ()

997. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules shall be disclosed to the public in accordance with Chapter 1, Title 74, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 74-114, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality." ()

998. -- 999. (RESERVED)

58.01.06 – SOLID WASTE MANAGEMENT RULES

000. LEGAL AUTHORITY.

Sections 39-105 and 39-107, Idaho Code, authorize the Board of Environmental Quality to adopt rules and administer programs to protect surface water quality, ground water quality and air quality, and to regulate solid waste treatment or disposal and the licensure and certification requirements pertinent thereto. Section 39-7408C, Idaho Code, authorizes the Board of Environmental Quality to establish by rule municipal solid waste commercial siting license fees. ()

001. TITLE AND SCOPE.

- 01. Title.** These rules are titled IDAPA 58.01.06, “Solid Waste Management Rules.” ()
- 02. Scope.** These rules establish requirements applicable to all solid waste and solid waste management facilities in Idaho, except as specifically provided in Subsections 001.03 and 001.04. ()
- 03. Wastes Not Regulated Under These Rules.** ()
- a.** These rules do not apply to the following solid wastes: ()
- i. Liquid wastes when the discharge or potential discharge of the liquid waste is regulated under a federal, state or local water pollution discharge or wastewater land application permit, including management of any solids if management of the solids are addressed in a permit term or condition; ()
- ii. Hazardous wastes regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and the rules adopted thereunder; ()
- iii. Polychlorinated biphenyl (PCB) waste regulated under the Toxic Substance Control Act, 15 U.S.C. 2601, et seq., and these rules apply to PCB waste authorized by federal law to be disposed of at a nonhazardous waste landfill that is permitted, licensed or registered under Idaho Law; ()
- iv. Slash or slashing areas resulting from the harvesting of timber and the disposal of which is managed pursuant to Chapter 1, Title 38, Idaho Code or log landings or sorting sites; ()
- v. Wastes used, managed, stored and disposed in accordance with The Wood and Mill Yard Debris Technical Guidance Manual, as amended, published by the Department and developed pursuant to Sections 39-171 through 39-174, Idaho Code; ()
- vi. Clean soils and clean dredge spoils as regulated under Section 404 of the federal Clean Water Act provided that they are not hazardous wastes regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code and the rules adopted thereunder; ()
- vii. Septage taken to a sewage treatment plant permitted by either the U.S. Environmental Protection Agency or the Department pursuant to IDAPA 58.01.15, “Rules Governing the Cleaning of Septic Tanks”; ()
- viii. All radioactive waste and radioactive materials regulated pursuant to Section 39-4405(9), Idaho Code and rules adopted thereunder and radioactive waste and materials regulated under the authority of the Atomic Energy Act of 1954, as amended; ()
- ix. Petroleum Contaminated Soils (PCS) from a leaking petroleum storage tank system managed as a one (1) time remediation pursuant to IDAPA 58.01.02, “Water Quality Standards”; ()
- x. Asbestos as regulated by the Toxic Substances Control Act, as amended, 15 U.S.C. Sections 2601, et seq., or asbestos as regulated by the Clean Air Act, as amended, 42 U.S.C. Section 7412; ()
- xi. Nonhazardous wastes disposed in a permitted hazardous waste treatment, storage and disposal unit regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and rules adopted thereunder; or ()
- xii. Waste otherwise regulated under Department authorities. ()
- b.** These rules do not apply to the following solid waste unless these wastes are mixed with more than incidental quantities of regulated waste; ()

- i. Inert wastes; ()
- ii. Manures and crop (plant) residues ultimately returned to the soils at agronomic rates; ()
- iii. Any agricultural solid waste which is managed and regulated pursuant to rules adopted by the Idaho Department of Agriculture. The Department reserves the right to use existing authorities to regulate agricultural waste that impacts human health or the environment; ()
- iv. Overburden, waste dumps, low-grade stockpiles, tailings and other materials uniquely associated with mineral extraction, beneficiation or processing operations; ()
- v. Slag from the production of elemental phosphorus; ()
- vi. Phospho-gypsum from the production of phosphate fertilizers, which includes the production of phosphoric acid; and ()
- vii. Wood waste used for ornamental, animal bedding, mulch and plant bedding, or road building purposes. ()

04. Solid Waste Management Facilities Not Regulated Under These Rules. These Rules do not apply to the following solid waste management facilities: ()

- a. Solid waste management facilities accepting only solid waste excluded by Subsection 001.03; ()
- b. Recycling centers; or ()
- c. Backyard composting sites. ()

002. (RESERVED)

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ()

004. APPLICABILITY.

These rules apply to all solid waste unless excluded by Subsection 001.03 and to all solid waste management sites in Idaho unless excluded by Subsection 001.04. Compliance with these rules does not relieve owners and operators from the obligation to comply with other applicable state or federal laws, including but not limited to the IDAPA 58.01.02, "Water Quality Standards," IDAPA 58.01.11, "Ground Water Quality Rule," and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho." ()

01. Solid Waste Facility Other Than Municipal Solid Waste Landfills (MSWLF) Applicability. Sections 000 through 060 and Section 999 apply to all solid waste facilities other than MSWLF, as specified therein. ()

02. Municipal Solid Waste Landfill Applicability. Sections 000 through 007, and Sections 994 through 999 apply to all MSWLFs, as specified therein. ()

005. DEFINITIONS.

01. Active Portion. That part of a unit where waste had been, or may be, disposed of, treated, or otherwise managed, and that has not been closed in accordance with applicable rules. ()

02. Backyard Composting. Composting operations used only by the owner or person in control of a residential dwelling unit to process garbage and yard waste generated at that dwelling unit. ()

- 03. Beneficial Use.** Various uses of ground water in Idaho including, but not limited to, domestic water supplies, industrial water supplies and agricultural water supplies. A beneficial use is defined as actual current and projected future uses of ground water. ()
- 04. Commercial Solid Waste Facility.** A MSWLF owned and operated as an enterprise conducted with the intent of making a profit by any individual, association, firm, or partnership for the disposal of solid waste, but excluding a MSWLF owned or operated by a political subdivision, state or federal agency or, municipality or a MSWLF owned or operated by any individual, association, firm, or partnership exclusively for the disposal of solid waste generated by such individual, association, firm, or partnership. ()
- 05. Composting Facility.** See definition of Processing Facility. ()
- 06. Very Small Quantity Generator (VSQG) Hazardous Waste.** As defined in 40 CFR Part 260.10. ()
- 07. Very Small Quantity Generator (VSQG) Management Facility.** A facility or portion thereof where household hazardous waste or VSQG wastes are transferred from a vehicle or container and subsequently transported to another facility. A VSQG management facility does not include temporary drop off locations or other facilities where individuals or businesses are authorized to store waste for ultimate collection and disposal. ()
- 08. Contamination.** The introduction of a substance into the surface or ground water causing: ()
- a.** At or beyond the point of compliance, the concentration of that substance in ground water to result in significant degradation, as determined pursuant to Subsection 400.02.b of IDAPA 58.01.11, "Ground Water Quality Rule," or in an exceedance of the maximum contamination level (MCL) specified in the Ground Water Quality Rule; ()
 - b.** The concentration of that substance in surface water exceeds a numerical criteria or fails to protect designated beneficial uses specified in the "Water Quality Standards," IDAPA 58.01.02; ()
 - c.** A statistically significant increase in the concentration of that substance in the ground water at or beyond the point of compliance, or in surface water, where the existing concentration of that substance exceeds the contamination level specified in Subsections 005.08.a. or 005.08.b. of this rule; or ()
 - d.** A statistically significant increase in the concentration of that substance in ground water at the point of compliance, or in surface water, above background of a substance which: ()
 - i.** Is not specified in Subsections 005.08.a. or 005.08.b. of this rule; and ()
 - ii.** Is a result of the disposal of solid waste; and ()
 - iii.** Has been determined by the department to present a substantial risk to human health or the environment in the concentrations found in the ground water at the point of compliance, or in surface water. ()
- 09. Degradation.** The lowering of ground water quality as measured in a statistically significant and reproducible manner. ()
- 10. Department.** The Idaho Department of Environmental Quality. ()
- 11. Director.** The Director of the Idaho Department of Environmental Quality. ()
- 12. Disposal.** Discharge, deposit, injection, dumping, spilling, leaking, leaching, migration or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water. ()
- 13. Facility.** Any area used for any solid waste management activity, including, but not limited to,

storage, transfer, processing, separation, incineration, treatment, salvaging, or disposal of solid waste. ()

14. Garbage. Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food, including wastes materials from households, markets, storage facilities, handling and sale of produce and other food products. ()

15. Ground Water. Any water of the state that occurs beneath the surface of the earth in a saturated geological formation of rock or soil. ()

16. Household Waste. Any solid waste, including kitchen wastes, trash and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas. ()

17. Incinerator. Any source consisting of a furnace and all appurtenances thereto designed for the destruction of solid waste by burning. "Open Burning" is not considered incineration. ()

18. Inert Waste. Noncombustible, nonhazardous, and non-putrescible solid wastes that are likely to retain their physical and chemical structure and have a de minimis potential to generate leachate under expected conditions of disposal, which includes resistance to biological attack. "Inert waste" includes, but is not limited to, rock, concrete, cured asphaltic concrete, masonry block, brick, gravel, dirt, inert coal combustion by-products, inert precipitated calcium carbonate and inert component mixture of wood or mill yard debris. ()

19. Landfill. An area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well or waste pile, as those terms are defined under 40 CFR 257.2. ()

20. Leachate. A liquid that has passed through or emerged from waste and contains soluble, suspended, or miscible materials removed from such waste. ()

21. Lift. A vertical rise of compacted solid waste that is complete when it is no longer practical to add additional height without the addition of a cover layer to provide structural stability. ()

22. Modification. Any change in the physical characteristics, waste types managed, method of operation, or lateral expansion beyond the boundaries of a site. The following is not considered a modification: ()

a. Repair and replacement of existing equipment; ()

b. Increase in production rate that does not exceed the Tier level criteria or approved facility capacity; ()

c. An increase in hours of operation if more restrictive hours of operation are not specified in an approved operating plan; and ()

d. Acquisition of property that is not to be used for the processing or disposal of solid waste. ()

23. Municipal Solid Waste Landfill Unit (MSWLF). As regulated under Chapter 74, Title 39, Idaho Code, a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR 257.2. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, VSQG waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. ()

24. Non-Municipal Solid Waste (NMSW). A solid waste that is: ()

a. Not mixed with household waste; or ()

- b. Not excluded from these rules by Subsection 001.03. ()
25. **Non-Municipal Solid Waste Landfill (NMSWLF).** A landfill that accepts only non-municipal solid waste. ()
26. **Open Burning.** The combustion of solid waste without: ()
- a. Control of combustion air to maintain adequate temperature for efficient combustion; ()
- b. Containment of the combustion reaction in an enclosed device so as to provide sufficient residence time and mixing for complete combustion; and ()
- c. Control of the emission of the combustion products. ()
27. **Operator.** The person(s) responsible for the overall operation of all or part of a site or facility. ()
28. **Owner.** The person(s) who owns land or a portion of the land on which a site or facility is located. ()
29. **Person.** Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties. ()
30. **Point of Compliance.** A vertical surface located no more than one hundred fifty (150) yards hydraulically down gradient from the active portion of a facility or site, located at the facility boundary down gradient of the land area, or located at the point of diversion of an identified beneficial use within the site, whichever is the smallest distance from the active portion. ()
31. **Processing Facility.** A facility that uses biological or chemical decomposition to prepare solid waste for reuse, excluding waste handling at transfer stations or recycling centers. ()
32. **Projected Waste Volume.** The total actual or potential solid waste volume measured in tons per day, cubic yards per day, or an equivalent measurement, proposed to be received or processed at a solid waste facility. ()
33. **Pumpable Waste.** Wastes, including non-domestic septage, sludge, wastewater and non-municipal solid wastes, which are pumped from a holding area or container into a watertight tank truck or equivalent and transported for processing or disposal. ()
34. **Qualified Professional.** Qualified professional means a licensed professional geologist or licensed professional engineer, as appropriate, holding current professional registration in good standing and in compliance with applicable provisions of Chapter 12, Title 54, Idaho Code. ()
35. **Recyclables.** Used, end, or waste products with useful properties that can be reused. ()
36. **Recycling.** The reclamation of solid waste and its subsequent introduction into an industrial process by which the materials are transformed into a new product in such a manner that the original identity as a product is lost. ()
37. **Recycling Center.** A materials recovery facility that receives recyclables, then sorts, bales, loads, or physically alters the material and transports the commodities to markets. ()
38. **Salvage.** The reclamation of solid waste at a disposal site. ()
39. **Scavenge.** The unauthorized removal of materials from a facility. ()

- 40. Septage.** A semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a septic tank system. ()
- 41. Site.** Any contiguous geographic area with one (1) or more facilities owned or operated by the same person used for any solid waste management activity, including, but not limited to, storage, transfer, processing, separation, incineration, treatment, salvaging, or disposal of solid waste. ()
- 42. Site Size.** The sum in acres of all proposed or existing facilities. ()
- 43. Solid Waste.** Any garbage or refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923). ()
- 44. Speculative Accumulation.** Stock piles of materials or recyclables to be processed for reuse or disposal when fifty percent (50%) of the material is not reused or disposed by the end of the following calendar year after the date of first receipt by the facility, and which may create a nuisance or public health impact. ()
- 45. Storm Water.** Accumulation of water from natural precipitation, including snow melt. ()
- 46. Surface Water.** All surface accumulations of water, natural or artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state, unless such waters are an integral part of the facility's operation for storm water control and or leachate management. ()
- 47. Tipping Floor.** An area at a transfer station, processing facility, VSQG management facility or incinerator that receives and contains all waste materials. ()
- 48. Toxic Leachate or Gas.** Concentrations of leachate or gas that will cause contamination, as defined by these rules, or that will exceed standards in the IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho." ()
- 49. Transfer Station.** A facility or portion thereof where solid wastes are transferred from a vehicle or container and subsequently transported off-site to another facility. A transfer station does not include an authorized rural drop-box or other facilities where persons are authorized to store individual waste for ultimate collection and disposal, or any other facility that stores solid waste generated at the facility for collection and disposal off-site. ()
- 50. Wood or Mill Yard Debris Facility.** A facility that manages exclusively, solid wood, bark, or wood fiber generated from the process of manufacturing wood products that may include ash from the burning of wood waste in amounts and in conformity with the requirements of the Wood & Mill Yard Technical Guidance Manual, components of soil, rock, or moisture. ()
- 51. Yard Waste.** Weeds, straw, leaves, grass clippings, brush, wood, and other natural, organic, materials typically derived from general landscape maintenance activities. ()

006. ABBREVIATIONS.

- 01. BRC.** Below Regulatory Concern. ()
- 02. CFR.** Code of Federal Regulations. ()
- 03. EPA.** Environmental Protection Agency. ()
- 04. ISWFA.** Idaho Solid Waste Facilities Act, Chapter 74, Title 39, Idaho Code. ()

- 05. MSWLF. Municipal Solid Waste Land Fill. ()
- 06. NMSW. Non-Municipal Solid Waste. ()
- 07. NMSWLF. Non-Municipal Solid Waste Land Fill. ()
- 08. PCS. Petroleum Contaminated Soils. ()
- 09. RCRA. Resource Conservation and Recovery Act. ()
- 10. U.S.C. United States Code. ()

007. INCORPORATION BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 007.02 shall constitute the full adoption by reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. ()

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: ()

- a. [40 CFR 257.24\(a\)](#), revised as of July 1, 2001. ()
- b. [40 CFR 257.9](#), revised as of July 1, 2001. ()

03. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: ()

- a. Department of Environmental Quality, 1410 N. Hilton, Boise ID 83706-1255. ()
- b. Idaho State Law Library, 451 W. State Street, P.O. Box 83720, Boise ID 83720-0051. ()
- c. U.S. Government Printing Office, Superintendent of Documents, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194 Federal Bldg., 915 Second Ave., Seattle, WA 98174, www.ecfr.gov. ()

008. (RESERVED)

009. SOLID WASTE MANAGEMENT FACILITY CLASSIFICATION.

01. BRC Facilities. A facility is below regulatory concern (BRC) provided it is a processing facility that does not manage PCS or pumpable waste, and the cumulative volume of solid waste at the facility at any one (1) time is less than or equal to three hundred (300) cubic yards. ()

02. Tier I Facilities. Tier I facilities shall comply with the requirements identified in Section 011. A facility shall be classified as a Tier I facility if the Department determines the facility is: ()

- a. A landfill that only accepts for disposal materials that are not likely to produce leachate including, but not limited to, glass, plastic, cardboard, wood, composition roofing material, roofing paper, or ceramics, and which has a total disposal capacity of less than or equal to two thousand (2000) cubic yards. ()
- b. A processing facility that only processes wastes including, but not limited to, untreated or unpainted wood, yard waste, sheet rock, clean paper products, animal manures, plant or crop residues, or garbage without meats or animal fats, and the cumulative volume of wastes at the facility at any one time is less than or equal to six hundred (600) cubic yards. ()

c. A processing facility that only manages PCS not excluded under Subsection 001.03.a.ix. or pumpable wastes and the cumulative volume of material at the facility at any one (1) time is less than or equal to two hundred (200) cubic yards; or ()

d. An emergency solid waste management facility that only accepts debris resulting from a natural disaster. ()

03. Tier II Facility. Tier II facilities shall comply with the Tier II general siting, operational and closure requirements and any applicable Tier II facility specific requirements. Tier II facilities are not required to install ground water monitoring wells, leachate collection systems or liners. Facilities shall be classified as a Tier II facility if the Department determines the facility is not: (1) landfilling or disposing of VSQG hazardous waste; (2) landfilling or disposing of materials with a high human pathogenic potential; (3) managing solid waste in a manner or volume that will form toxic leachate or gas; or (4) managing solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment. A Tier II facility is one that meets the four (4) above criteria and is identified below: ()

a. A NMSW landfill which has a total disposal capacity greater than two thousand (2000) cubic yards; or ()

b. A processing facility or incinerator that has a cumulative volume of wastes at the facility at any one time that is greater than six hundred (600) cubic yards; or ()

c. A processing facility that only manages PCS not excluded under Subsection 001.03.a.ix or pumpable wastes and the cumulative volume of material at the facility at any one (1) time is greater than two hundred (200) cubic yards; or ()

d. A transfer station or VSQG waste management facility. ()

04. Tier III Facility. Tier III facilities shall comply with the Tier III general siting, operating and closure requirements, ground water monitoring requirements, install leachate collection systems, liners, air contaminant control systems and any applicable Tier III facility specific requirements. Facilities shall be classified as a Tier III facility if the Department determines the facility is: (1) a facility landfilling or disposing of VSQG hazardous waste; (2) a facility landfilling or disposing of materials with a high human pathogenic potential; (3) a facility managing solid waste in a manner or volume that will form toxic leachate or gas; or (4) a facility managing solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment. ()

05. Wood or Mill Yard Debris Facilities. All Wood and Mill Yard Debris Facilities that are not exempt from these Rules as provided in Section 001.03 shall be regulated as Tier I Facilities unless, based on site-specific criteria including but not limited to site geology, site soils, groundwater characteristics, distance to surface waters, and site climatic data, the Department determines the facility is more appropriately regulated under a different tier classification. Facilities not regulated as a Tier I Facility shall be regulated as a Tier II Facility unless the Department determines the facility manages waste in a manner that will form toxic leachate or gas. ()

06. Site Specific Classification. An owner or operator of a facility classified as a Tier I, Tier II or Tier III facility may request to be regulated pursuant to the requirements of a lower classification. An owner or operator requesting site specific classification must submit information demonstrating to the Department that, when in compliance with the requirements of a lower classification, the facility would not cause contamination, toxic leachate or gas, or concentrations of a substance that exceed standards in the IDAPA 58.01.01 "Rules for the Control of Air Pollution in Idaho." The information included in any request under this subsection shall include: ()

a. Characterization of waste and expected quantities of waste; ()

b. Site characterization including; ()

i. Site geology report; ()

ii. Site soils report; ()

- iii. Ground water report; ()
- iv. Site climatic data; ()
- c. Facility Design Plan; ()
- d. Operating Plan; and ()
- e. Closure Plan. ()

07. General and Site Specific Classification Process. The Department's review of a request for a site specific classification shall be conducted pursuant to the process set forth in Section 032. ()

010. BELOW REGULATORY CONCERN FACILITIES.

01. Applicable Requirements. The owner and operator of a BRC facility shall comply with the following requirements prior to accepting waste. ()

a. Prohibited Activities. The following activities are prohibited: ()

i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 010 will have the same meaning as defined at 29 CFR 1910.1030; ()

ii. Speculative accumulation, unless otherwise approved by the Department in writing; and ()

iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. ()

b. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: ()

i. Disease or discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; ()

ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; ()

iii. Odor. The facility shall be operated to control malodorous gases; and ()

iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. ()

c. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft; and ()

d. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by Section 061. ()

02. Application Content, Review and Approval Requirements. The owner and operator of a BRC

facility are not required to submit an application. ()

03. Documentation Requirements. The owner and operator shall maintain on site documentation, such as a daily log of the quantity and type of waste received or managed, that verifies the facility's BRC status. ()

011. APPLICABLE REQUIREMENTS FOR TIER I FACILITIES.

01. Applicable Requirements. The owner and operator of a Tier I facility shall comply with the following requirements prior to accepting waste. ()

a. Prohibited Activities. The following activities are prohibited: ()

i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 011 will have the same meaning as defined at 29 CFR 1910.1030; ()

ii. Speculative accumulation, unless otherwise approved by the Department in writing; and ()

iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. ()

b. Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility. The signs shall specify at a minimum the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number. ()

c. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: ()

i. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; ()

ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; ()

iii. Odor. The facility shall be operated to control malodorous gases; and ()

iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. ()

d. Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or otherwise blocked to access when an attendant is not on duty. The owner and operator shall maintain the fencing or other access controls for a period of ten (10) years after closure, or another timeframe approved in writing by the Department. ()

e. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. ()

f. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by Section 061. ()

g. Storm Water Run-On/Run-Off Controls. Implement sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of surface or ground water and prevent the spread and impact of contamination beyond the boundary of the facility. ()

h. Variance Request. An owner and operator may submit a written variance request for a variance from the requirements listed in Section 011. The owner and operator must demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 011. ()

02. Application Content, Review and Approval Requirements. The owner and operator of a Tier I facility shall submit notification to the Department prior to operating. The notice shall include; the owners name, operators name, physical location of site, mailing address, facility phone number and type of solid waste management facility. ()

03. Documentation Requirements. The owner and operator shall maintain on site documentation, such as a daily log of the quantity and type of waste received, that verifies the facility's Tier I status. ()

012. APPLICABLE REQUIREMENTS FOR TIER II FACILITIES.

The owner and operator of a Tier II facility shall establish compliance with the requirements of Section 012 by obtaining Department approval of the applications required in Subsection 012.02 before beginning construction and Subsection 012.04 prior to accepting waste. The owner and operator of a Tier II facility shall meet the requirements of Subsection 012.05 prior to facility closure. ()

01. General Siting Requirements. The owner and operator of a Tier II facility shall comply with the following siting requirements: ()

a. Flood Plain Restriction. A facility shall not be located within a one hundred (100) year flood plain if the facility will restrict the flow of the one hundred (100) year flood, reduce the temporary water storage capacity of the flood plain, or result in a washout of solid waste so as to pose a hazard to human health and the environment. ()

b. Endangered or Threatened Species Restriction. The facility shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17. ()

c. Surface Water Restriction. The active portion of a facility shall be located such that the facility shall not cause contamination of surface waters, unless such surface waters are an integral part of the non-municipal solid waste management facility's operation for storm water and/or leachate management. ()

d. Park, Scenic or Natural Use Restriction. The active portion of a facility shall not be located closer than one thousand (1,000) feet from the boundary of any state or national park, or land reserved or withdrawn for scenic or natural use including, but not limited to, wild and scenic areas, national monuments, wilderness areas, historic sites, recreation areas, preserves and scenic trails. ()

e. Variance from Siting Requirement. An owner or operator of a facility that cannot meet the siting requirements of Section 012 may apply for a variance from the Department. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of public health and the environment as the siting requirements in Section 012. ()

02. Siting Application. Documentation shall be submitted to the Department demonstrating compliance with the siting requirements and restrictions specified in Subsection 012.01 within the time frames specified in Section 012. If the documentation has been certified by a qualified professional, the Director shall approve the siting application unless the Director finds the evidence supports a contrary opinion. A map indicating the following shall also be submitted to the Department as part of a Siting Application: ()

a. Highways, roads, and adjacent communities; ()

- b. Property boundaries; ()
 - c. Total acreage of the site; ()
 - d. Off-site and on-site access roads and service roads; ()
 - e. Type(s) of land use adjacent to the facility and a description of all facilities on the site; ()
 - f. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the proposed facility property lines; ()
 - g. High tension power line rights-of-way, fuel transmission pipeline rights-of-way, and proposed and existing utilities; ()
 - h. Proposed or existing fencing; ()
 - i. Proposed and existing structures at the facility and within five hundred (500) feet of the facility boundary. This shall include location of employee buildings, and scales (if provided); and ()
 - j. Direction of prevailing winds. ()
- 03. General Operating Requirements.** The owner and operator of a Tier II facility shall comply with the following operating requirements: ()
- a. Prohibited Activities. The following activities are prohibited: ()
 - i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. “Regulated waste” and “decontaminated” for the purpose of Section 012 have the same meaning as defined at 29 CFR 1910.1030; ()
 - ii. Speculative accumulation, unless otherwise approved in an operating plan; and ()
 - iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. ()
 - b. Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility specifying, at a minimum, the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number. ()
 - c. Waste Types. Only the solid waste types listed in the approved operating plan may be accepted for disposal or processing. ()
 - d. Waste Monitoring and Measurement. Provisions shall be made for monitoring or measuring all solid waste delivered to a facility. The waste monitoring program shall include: ()
 - i. A daily written log listing the types and quantities of wastes received; ()
 - ii. A plan for monitoring and handling receipt of unauthorized wastes; ()
 - iii. Routine characterization of the wastes received; and ()
 - iv. Other measures included in an approved Operating Plan. ()
 - e. Communication. Communication devices shall be available or reasonably accessible at the site. ()

f. Fire Prevention and Control. Adequate provisions shall be made for controlling or managing fires at the site. ()

g. Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or otherwise blocked to access when an attendant is not on duty. ()

h. Scavenging and Salvaging. Scavenging by the public at a facility is prohibited; however, salvaging may be conducted in accordance with a written operations plan and only by the owner, operator or an authorized agent. ()

i. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: ()

i. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; ()

ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; ()

iii. Odor. The facility shall be operated to control malodorous gases; and ()

iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. ()

j. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. ()

k. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by Section 061. ()

l. Storm Water Run-On/Run-Off Controls. The operating plan shall include sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of surface and ground water and prevent the spread and impact of contamination beyond the boundary of the facility. ()

m. Variance Request. An owner and operator of a facility may submit to the Department a written variance request for a variance from the operating requirements listed in Section 012. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 012. ()

04. Operating Plan. The owner and operator of a Tier II facility shall submit to the Department an Operating Plan containing that information required by Subsection 012.03, within the time frames stated in Section 012. An Operating Plan shall include a description of the wastes to be accepted, the methods for maintaining compliance with each of the applicable general operating requirements of Subsection 012.03, and complies with any applicable facility specific requirements found in Subsections 012.09 through 012.11. ()

05. Closure Requirement. The owner and operator of a Tier II facility shall comply with the following closure and post-closure care requirements: ()

a. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility's closure by publishing a notice in the local newspaper and posting signs at the facility's entrance. This notice shall be published and the signs posted; ()

i. At least thirty (30) days and no more than ninety (90) days prior to the date of last receipt of waste for a facility that has reached disposal capacity; or ()

ii. If the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional waste, a notice shall be published and signs posted at least thirty (30) days and no more than ninety (90) days prior to closure. ()

b. Facility Closure. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within six (6) months of the Department's approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan. ()

c. Clean Site/Access Control. The owner and operator shall close the facility by managing or removing all solid waste to prevent impact to human health or the environment and installing a gate or other device to prevent public access after the last receipt of waste; and ()

d. Drainage and Erosion Control. The owner and operator shall install appropriate measures to control erosion and install appropriate measures to control the run-on and runoff from a twenty-five (25) year, twenty-four (24) hour storm event and to provide for the diversion of other surface waters from the closed facility. ()

e. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the Department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as "as-built" plans, showing the final conditions of the facility. ()

06. Closure Plan Application. Except as specified in Subsection 012.10, the owner and operator of a Tier II facility shall submit to the Department a Closure Plan Application containing the following information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes or, if the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional wastes, no later than one (1) year after the most recent receipt of wastes: ()

a. A complete and accurate legal description of the facility; ()

b. A map of the facility, showing pertinent facility features, including: ()

i. Facility boundaries, drainage patterns, location of fill areas, and location of access control measures; ()

ii. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the facility boundary; ()

iii. Location of disposal trenches and description of waste disposed; and ()

iv. Proposed final contours of the closed facility, drawn to a reasonable scale with five (5) foot intervals for the operational area, and ten (10) foot intervals for the remainder of the facility; ()

c. Estimated date of last receipt of waste; ()

d. A description of how public access to the closed facility will be controlled; ()

e. Estimated total cubic yards, or tons, of waste in place; ()

f. Total acreage of the facility and acres containing waste; ()

g. Closure equipment and procedures to be used; ()

h. Texture, depth and permeability of final cover material; ()

- i. Design and construction plan for any necessary final cover; ()
- j. Placement, design, and management of run-on and run-off storm water controls; ()
- k. Types of vegetation and planting procedures to be used for establishing vegetative cover; ()
- l. Other closure information the Department determines is necessary to protect human health and the environment. ()

07. Documentation Requirements. The owner and operator of a Tier II facility shall maintain on site a copy of each Department-approved Application and Plan required by Section 012. ()

08. Modification Application. The owner and operator shall submit to the Department for review and approval a Modification Application describing any proposed modification. The owner and operator of a Tier II facility shall not implement the modification prior to Department approval. If a proposed modification alters the classification of a facility, the owner and operator shall comply with the application content, review and approval requirements for the new classification. ()

09. Tier II Processing Facilities. In addition to the requirements in Subsections 012.01 through 012.08, the owner and operator of a Tier II processing facility shall also comply with the following requirements: ()

- a. Siting Requirements: ()
 - i. Ground Water. The active portion of a facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of the ground water. ()
 - ii. Geologic Restrictions. No facility may be located on land that would threaten the integrity of the design. ()
 - iii. Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. ()
- b. Siting Application. The owner and operator shall provide in the Siting Application documentation that demonstrates compliance with the siting requirements specified in Subsection 012.01 and 012.09.a. ()
- c. Operating Requirements: ()
 - i. Odor Management Plan. The owner and operator of a Tier II processing facility shall implement a Department approved Odor Management Plan designed to minimize malodorous gases. An Odor Management Plan shall include specific operating criteria for oxygen, moisture and temperature levels appropriate for the wastes to be processed and processing technologies to be employed, methods used to maintain the specific operating criteria and a monitoring strategy that includes the frequency and parameters for monitoring the specific operating criteria. ()
 - ii. Documentation requirement. The owner and operator of a processing facility shall maintain documentation of compliance with Section 012, including an operational log of the methods used to maintain the operating criteria and sampling results. ()
- d. Operating Plan. The operating plan required in Subsection 012.04 shall identify methods used for maintaining compliance with each applicable operating requirement of Subsection 012.03 and Subsection 012.09.c. ()

10. Tier II Incinerators, VSQG Management Facility and Transfer Stations. In addition to the requirements in Subsections 012.01 through 012.04 and Subsections 012.07 and 012.08, the owner and operator of a Tier II incinerator, VSQG management facility or transfer station shall comply with the following requirements: ()

- a.** Design Requirements. The owner and operator shall comply with the following design requirements: ()
- i. A tipping floor design constructed of impermeable and durable material and designed to contain, collect, and convey any liquids to a storage or leachate management system; and ()
 - ii. A leachate storage or management system. ()
- b.** Design Application. The following information shall be submitted to the Department in a Design Application: ()
- i. A description of the tipping floor design; ()
 - ii. A description of the storage or leachate management system design; ()
 - iii. Building and construction design blueprints; ()
 - iv. A map illustrating a storm water run-on/run-off system designed to prevent contamination of surface and ground water, and prevent the spread and impact of contamination beyond the boundary of the facility; and ()
 - v. Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes. ()
- c.** Operating Requirements. The owner and operator of a Tier II facility shall comply with the following operating requirements: ()
- i. Implement cleaning procedures and waste residency times to maintain sanitary conditions on the surface of the tipping floor; and ()
 - ii. Implement and operate a leachate storage or management system. ()
- d.** Closure Requirement. The owner and operator of a Tier II facility shall comply with the following closure and post-closure care requirements: ()
- i. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility's closure by publishing a notice in the local newspaper and posting signs at the facility's entrance. This notice shall be published and the signs posted at least thirty (30) days prior to closure; ()
 - ii. Facility Closure. The owner and operator shall close the facility by removing all solid waste to prevent impact to human health or the environment and installing a gate or other device to prevent public access after the last receipt of waste; ()
 - iii. Closure Time Period. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within two (2) months of the Department's approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan; and ()
 - iv. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the Department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as "as-built" plans, showing the final conditions of the facility. ()
- e.** Closure Plan Application. The owner and operator shall submit to the Department a Closure Plan Application containing the following information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes: ()
- i. A complete and accurate legal description of the facility; ()

- ii. A map of the facility, showing pertinent facility features, including facility boundaries, drainage patterns, and location of access control measures; ()
 - iii. Estimated date of last receipt of waste; ()
 - iv. A description of how public access to the closed facility will be controlled; ()
 - v. Closure equipment and procedures to be used; ()
 - vi. Anticipated future uses for the facility; and ()
 - vii. Other closure information the Department determines is necessary to protect human health and the environment. ()
- 11. Tier II NMSWLF.** In addition to the requirements in Subsections 012.01 through 012.08, the owner and operator of a Tier II NMSWLF shall also comply with the following requirements: ()
- a. Siting Requirements:** ()
 - i. Wetlands. A facility shall not be located in wetlands, except as provided in 40 CFR 257.9. ()
 - ii. Ground Water. The active portion of a facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of the ground water. ()
 - iii. Geologic Restrictions. No facility may be located on land that would threaten the integrity of the design. ()
 - iv. Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. ()
 - b. Siting Application.** The owner and operator shall provide in the Siting Application documentation that demonstrates compliance with the siting requirements specified in Subsections 012.01 and 012.11.a.; ()
 - c. Design Application.** The owner and operator shall provide the following information for design approval: ()
 - i. A facility map illustrating:
 - (1) Surface water and erosion control systems; ()
 - (2) Proposed fill area, including the location of waste disposal trenches or cells, noting the locations of trenches used for separated wastes such as animal carcasses, tree trunks, stumps, bulky wastes, car bodies, asbestos, and petroleum contaminated soils; ()
 - (3) Location of borrow areas; ()
 - (4) Design elevation grade of final cover; ()
 - (5) Soil and water table test boring holes, wells, or excavations; ()
 - (6) Proposed receiving, storage, and processing areas; ()
 - (7) Proposed trench layout and development; and ()
 - (8) Contour lines at five (5) foot intervals within the operating area and ten (10) foot intervals to the

facility boundary. ()

d. Operating Requirements: The owner and operator of a NMSWLF shall comply with the following operating requirements: ()

i. Compaction and placement of waste in locations consistent with the approved operating plan; ()

ii. Provision for storage of waste during periods when the NMSWLF is inaccessible; ()

iii. Application of a six (6) inch compacted soil cover layer on exposed waste as necessary to prevent nuisance and vector conditions at periods consistent with the approved operating plan. An owner and operator may request that the Department approve an alternate cover that addresses vectors, litter, fire, odor, and scavenging concerns; ()

iv. Placement of an interim cover layer of twelve (12) inches of compacted soil between lifts to provide erosion control and structural stability. An owner and operator may request that the Department approve an alternate interim cover that addresses erosion, and stability for subsequent lifts; ()

v. Preservation of existing vegetation where attainable. ()

e. Operating Plan. The operating plan required in Subsection 012.04 shall identify the methods used for maintaining compliance with each applicable operating requirement of Subsection 012.03 and Subsection 012.11.d.; ()

f. Closure Requirements. The owner and operator of a Tier II NMSWLF shall comply with the following closure requirements: ()

i. Final Cover. Within seven (7) days of the date of last receipt of waste, a cover layer shall be applied to prevent nuisances and vector conditions. Within one hundred and twenty (120) days of the date of last receipt of waste, a final cover layer of eighteen (18) inches of compacted soil with an approved in-place permeability designed to minimize infiltration, or its functional equivalent, and, a six (6) inch soil layer that minimizes erosion and sustains plant growth shall be constructed; ()

ii. Facility Stabilization. All disturbed portions of the facility shall be stabilized. Stabilization practices may include but are not limited to: establishment of vegetation, mulching, geotextiles, and sod stabilization; ()

iii. Slope Stability. Finished grade shall be at a minimum of two percent (2%) and a maximum of thirty- three percent (33%) slope on the final surface of the completed fill area, after settlement; and ()

iv. Drainage Control. The completed landfill shall be graded to prevent surface water ponding and erosion, and to conform to the local topography. ()

g. Closure Plan. The owner and operator shall provide in the Closure Plan documentation that demonstrates compliance with closure requirements specified in Subsections 012.05 and 012.11.f. ()

h. Environmental Covenants: ()

i. After completion and certification of closure of a NMSWLF, the owner and operator shall record an environmental covenant, pursuant to the Uniformed Environmental Covenants Act (UECA) Chapter 30, Title 55, Idaho Code, on the property where the landfill facility is located and its future use may be restricted in accordance with a post-closure care plan. A copy of the environmental covenant shall be sent to the Department after recording with the county clerk; ()

ii. The owner may request permission from the Department to remove the environmental covenant if all wastes are removed from the facility; ()

iii. Federal agencies with responsibility for management of landfills on federal property shall make an environmental covenant or notation in the federal property records for the affected property. If the subject property is ever sold or transferred by the federal government, a notation on the deed or patent shall be made. ()

i. Post-Closure Care Plan. Owners and operators of a NMSWLF shall submit, in accordance with the time frames specified in Subsection 012.06, to the Department for review and approval a Post-Closure Care Plan, shall obtain Department approval of the Plan, and shall conduct post-closure care in accordance with the Plan. The Post-Closure Care Plan shall typically contain: ()

i. The name and address of an agent authorized to accept communications or service during the post-closure period. The name may be changed during the post-closure period by providing the Department with twenty (20) days advance written notice of the change; ()

ii. Provisions to maintain the integrity and effectiveness of the final cover; ()

iii. Provisions to continue to maintain and operate the systems required in the operating plan including run-on/run-off control systems; ()

iv. Provisions to maintain appropriate security of the closed facility; ()

v. Provisions for routine facility inspections by the owner and operator to insure compliance with the Post-Closure Care Plan; and ()

vi. A description of the planned use(s) of the property during the post-closure care period: ()

j. Post-closure care for the NMSWLF shall be conducted for a period of five (5) years, unless the Department establishes in writing an alternate facility-specific post-closure care period. ()

k. Post-Closure Standards and Inspection. Post-closure use or operation of the site shall not disturb any final cover or storm water control systems in a manner that will increase the potential to threaten human health or the environment. ()

l. The approved Post-Closure Care Plan shall be maintained and available for review on request by the Department. ()

013. APPLICABLE REQUIREMENTS FOR TIER III FACILITIES.

The owner and operator of a Tier III facility shall establish compliance with the requirements of Section 013 by obtaining Department approval of the applications required in Subsection 013.02 before beginning construction and Subsection 013.04 prior to accepting waste. The owner and operator of a Tier III facility shall meet the requirements of Subsection 012.07 prior to facility closure. ()

01. General Siting Requirements. The owner and operator of a Tier III facility shall comply with the following siting requirements: ()

a. Flood Plain Restriction. A facility shall not be located within a one hundred (100) year flood plain if the facility will restrict the flow of the one hundred (100) year flood, reduce the temporary water storage capacity of the flood plain, or result in a washout of solid waste so as to pose a hazard to human health and the environment. ()

b. Endangered or Threatened Species Restriction. The facility shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17. ()

c. Surface Water Restriction. The active portion of a facility shall be located such that the facility shall not cause contamination of surface waters, unless such surface waters are an integral part of the non-municipal solid waste management facility's operation for storm water and/or leachate management. ()

d. Ground Water. The active portion of the facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of ground water. ()

e. Geologic Restrictions. No facility may be located on land that would threaten the integrity of the design. ()

f. Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. ()

g. Park, Scenic or Natural Use Restriction. The active portion of a facility shall not be located closer than one thousand (1,000) feet from the boundary of any state or national park, or land reserved or withdrawn for scenic or natural use including, but not limited to, wild and scenic areas, national monuments, wilderness areas, historic sites, recreation areas, preserves and scenic trails. ()

h. Variance from Siting Requirement. Any facility that does not meet the siting requirements of Section 013 may apply for a variance from the Department. The Department may approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of public health and the environment as the siting requirements in Section 013. ()

02. Siting Application. Documentation shall be submitted to the Department demonstrating compliance with the siting requirements and restrictions specified in Subsection 013.01 within the time frames specified in Section 013. If the documentation has been certified by a qualified professional, the Director shall approve the siting application unless the Director finds the evidence supports a contrary opinion. A map indicating the following shall also be submitted to the Department as part of a Siting Application: ()

a. Highways, roads, and adjacent communities; ()

b. Property boundaries; ()

c. Total acreage of the site; ()

d. Off-site and on-site access roads and service roads; ()

e. Type(s) of land use adjacent to the facility and a description of all facilities on the site; ()

f. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the proposed facility property lines; ()

g. High tension power line rights-of-way, fuel transmission pipeline rights-of-way, and proposed and existing utilities; ()

h. Proposed or existing fencing; ()

i. Proposed and existing structures at the facility and within five hundred (500) feet of the facility boundary. This shall include location of employee buildings, and scales (if provided); and ()

j. Direction of prevailing winds. ()

03. General Operating Requirements. The owner and operator of a Tier III facility shall comply with the following operating requirements: ()

a. Prohibited Activities. The following activities are prohibited: ()

i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 013 have the same meaning as defined at 29 CFR 1910.1030; ()

- ii. Speculative accumulation, unless otherwise approved in an operating plan; and ()
- iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. ()
- b.** Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility specifying, at a minimum, the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number. ()
- c.** Waste Types. Only the solid waste types listed in the approved operating plan may be accepted for disposal or processing. ()
- d.** Waste Monitoring and Measurement. Provisions shall be made for monitoring or measuring all solid waste delivered to a facility. The waste monitoring program shall include: ()
 - i. A daily written log listing the types and quantities of wastes received; ()
 - ii. A plan for monitoring and handling receipt of unauthorized wastes; ()
 - iii. Routine characterization of the wastes received; and ()
 - iv. Other measures included in an approved Operating Plan. ()
- e.** Communication. Communication devices shall be available or reasonably accessible at the site. ()
- f.** Fire Prevention and Control. Adequate provisions shall be made for controlling or managing fires at the site. ()
- g.** Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or otherwise blocked to access when an attendant is not on duty. ()
- h.** Scavenging and Salvaging. Scavenging by the public at a facility is prohibited; however, salvaging may be conducted in accordance with a written operating plan and only by the owner, operator or an authorized agent. ()
- i.** Nuisance Control. The owner and operator shall control nuisances, including but not limited to: ()
 - i. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; ()
 - ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; ()
 - iii. Odor. The facility shall be operated to control malodorous gases; and ()
 - iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. ()
- j.** Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used

by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. ()

k. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by Section 061. ()

l. Storm Water Run-On/Run-Off Controls. The operating plan shall include sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of ground or surface water and prevent the spread and impact of contamination beyond the boundary of the facility. ()

m. Variance Request. An owner and operator may submit to the Department a written variance request for a variance from the operating requirements listed in Section 013. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 013. ()

04. Operating Plan. The owner and operator of a Tier III facility shall submit to the Department an Operating Plan containing that information required by Subsection 013.03, within the time frames stated in Section 013. An Operating Plan shall include a description of the wastes to be accepted, the methods for maintaining compliance with each of the applicable general operating requirements of Subsection 013.03, and complies with any applicable facility specific requirements found in Subsections 013.11 through 013.13. ()

05. Ground Water Monitoring Requirements. The owner and operator of a Tier III facility shall comply with the following ground water monitoring requirements: ()

a. Install and maintain ground water monitoring wells at the point of compliance as approved by the Department; ()

b. Within thirty (30) days of completion of each well, submit a copy of the geologic log and record of well construction to the Department; ()

c. Monitor the ground water quarterly, unless otherwise directed by the Department. Constituents to be monitored shall be those listed in 40 CFR Part 257.24 unless otherwise authorized by the Department; and ()

d. The owner and operator of any facility required to monitor ground water pursuant to Section 013 shall continue the approved monitoring schedule for five (5) years following facility closure, unless otherwise approved by the Department upon request of the owner and operator for a modified monitoring schedule. ()

06. Ground Water Monitoring Application. The following information shall be submitted to the Department in a Ground Water Monitoring Application: ()

a. A map showing soil types, depth to ground water, ground water flow direction and locations of proposed ground water monitoring wells; and ()

b. A monitoring schedule indicating sample frequency and constituents to be analyzed. ()

07. Closure Requirement. The owner and operator of a Tier III facility shall comply with the following closure requirements: ()

a. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility's closure by publishing a notice in the local newspaper and posting signs at the facility's entrance. This notice shall be published and the signs posted; ()

i. At least thirty (30) days and no more than ninety (90) days prior to the date of last receipt of waste for a facility that has reached disposal capacity; or ()

ii. If the facility has remaining capacity and there is a reasonable likelihood that the facility will

receive additional waste, a notice shall be published and signs posted at least thirty (30) days and no more than ninety (90) days prior to closure. ()

b. Facility Closure. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within six (6) months of the Department's approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan. ()

c. Clean Site/Access Control. The owner and operator shall close the facility by managing or removing all solid waste to prevent impact to human health or the environment and shall install a gate or other device to prevent public access after the last receipt of waste; ()

d. Drainage and Erosion Control. The owner and operator shall install appropriate measures to control erosion and install appropriate measures to control the run-on and runoff from a twenty-five (25) year, twenty-four (24) hour storm event and to provide for the diversion of other surface waters from the closed facility; and ()

e. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as "as-built" plans, showing the final conditions of the facility. ()

08. Closure Plan Application. The owner and operator of a Tier III facility shall submit to the Department a Closure Plan Application containing the information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes or, if the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional wastes, no later than one (1) year after the most recent receipt of wastes. The following information shall be submitted to the Department in a Closure Application: ()

- a.** A complete and accurate legal description of the facility; ()
- b.** A map of the facility, showing pertinent facility features, including: ()
 - i.** Facility boundaries, drainage patterns, location of fill areas, and location of access control measures; ()
 - ii.** All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the facility boundary; ()
 - iii.** Location of disposal trenches and description of waste disposed; and ()
 - iv.** Proposed final contours of the closed facility, drawn to a reasonable scale with five (5) foot intervals for the operational area, and ten (10) foot intervals for the remainder of the facility; ()
- c.** Estimated date of last receipt of waste; ()
- d.** A description of how public access to the closed facility will be controlled; ()
- e.** Estimated total cubic yards, or tons, of waste in place; ()
- f.** Total acreage of the facility and acres containing waste; ()
- g.** Closure equipment and procedures to be used; ()
- h.** Texture, depth and permeability of final cover material; ()
- i.** Design and construction plan for any necessary final cover; ()
- j.** Placement, design, and management of run-on and run-off storm water controls; ()

- k. Types of vegetation and planting procedures to be used for establishing vegetative cover; ()
- l. Details of any proposed changes to any existing groundwater monitoring system; ()
- m. Details of any proposed changes to any existing landfill gas control system; ()
- n. Details of any proposed changes to any existing leachate collection system; and ()
- o. Other closure information the Department determines is necessary to protect human health and the environment. ()

09. Documentation Requirements. The owner and operator of a Tier III facility shall maintain on site each Department-approved application required by Section 013. ()

10. Modification Application. The owner and operator shall submit to the Department a Modification Application describing the proposed modification no less than sixty (60) days prior to the proposed modification of the facility. The owner and operator of a Tier III facility shall not implement the modification prior to Department approval. If a proposed modification alters the classification of a facility, the owner and operator shall comply with the application content, review and approval requirements for the new classification. ()

11. Tier III Processing Facilities. In addition to the requirements in Subsections 013.01 through 013.10, the owner and operator of a Tier III processing facility shall comply with the following requirements: ()

a. Odor Management Plan. The owner and operator of a Tier III processing facility shall implement a Department approved Odor Management Plan designed to minimize malodorous gases. An Odor Management Plan shall include specific operating criteria for oxygen, moisture and temperature levels appropriate for the wastes to be processed and processing technologies to be employed; methods used to maintain the specific operating criteria and a monitoring strategy that includes the frequency and parameters for monitoring the specific operating criteria; ()

b. Additional Requirements for PCS. Owners and operators of Tier III PCS processing facilities shall comply with the following applicable requirements: ()

- i. Leachate collection and control system to prevent contamination of ground and surface waters; ()
- ii. Liner designed to prevent ground and surface water contamination. The liner design shall account for the types of wastes handled and the potential for migration of liquids and gaseous contaminants to ground water; and ()
- iii. Air emission control system to prevent discharges of air pollutants. ()
- iv. An owner and operator of a PCS processing facility may submit a written request for a variance from the leachate control and liner requirements. The owner and operator must demonstrate that the variance is at least as protective of surface and ground water as the leachate collection system and liner. ()

c. Design Application. The following information shall be submitted to the Department in a Design Application: ()

- i. Building and construction design blueprints; ()
- ii. A map illustrating a storm water run-on/run-off system designed to prevent contamination of ground or surface water or and prevent contamination beyond the boundary of the facility; ()
- iii. Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes; and ()
- iv. Design and Construction Requirements. The owner and operator of a Tier III PCS processing

facility shall submit for Department review and approval the following information as part of the Design Application: ()

- (1) A hydrogeologic evaluation, including the potential for migration of contamination to ground or surface water; ()
- (2) A detailed description of treatment methods to be used; ()
- (3) Design plans for a leachate collection and control system to prevent ground and surface water contamination from the leachate control system; ()
- (4) Design plans for an air emissions control system to prevent discharges of air pollutants; and ()
- (5) Design plans for a liner designed to prevent ground or surface water contamination. The liner design shall account for the types of wastes handled and the potential for migration of liquid and gaseous contaminants to ground water. ()

d. Operating Plan. The owner and operator of a PCS processing facility shall submit for Department review and approval the following information as part of the Subsection 013.04, Operating Plan: ()

- i. A sampling plan that describes the methods and frequency that the owner and operator will use to sample and analyze the wastes when received, during processing, and on final testing of processed material; and ()
- ii. A description of how the owner and operator will maintain and operate the liner, leachate collection and control system, and air emission control system consistent with the approved design application. ()

e. Documentation Requirement. The owner and operator of a processing facility shall maintain documentation of compliance with Section 013, including an operational log of the methods used to maintain the operating criteria and sampling results. ()

12. Tier III Incinerators. In addition to the requirements in Subsections 013.01 through 013.04 and Subsections 013.09 and 013.10, the owner and operator of a Tier III incinerator shall comply with the following requirements: ()

a. Design Requirements. The owner and operator of an incinerator comply with the following design requirements: ()

- i. A tipping floor constructed of impermeable and durable material and designed to contain, collect, and convey any liquids to a storage or leachate management system. ()
- ii. A storage or leachate management system. ()

b. Design Application. The following information shall be submitted to the Department in a Design Application: ()

- i. A description of the tipping floor design; ()
- ii. A description of the storage or leachate management system design; ()
- iii. Building and construction design blueprints; ()
- iv. A map illustrating a storm water run-on/run-off system designed to prevent ground or surface water contamination, or contamination from the facility beyond the boundary of the facility; ()
- v. Operational design and capacity information including a description of the waste types and ()

- projected daily and annual waste volumes; and ()
- vi. Any facility specific design elements required by these rules. ()
- c. Operating Requirements. The owner and operator of an incinerator shall comply with the following operating requirements: ()
- i. Maintain and operate the tipping floor to control odors, insects, and rodents; ()
 - ii. Implement cleaning procedures and waste residency times used to maintain sanitary conditions on the surface of the tipping floor; and ()
 - iii. Implement a storage or leachate management system operation. ()
- d. If it is determined that the tipping floor or leachate management system integrity has been breached, or waste has been handled or stored outside of the containment of the tipping floor, unless allowed in the facility Operating Plan, the owner and operator of the Tier III incinerator shall comply with Subsections 013.05 through 013.08. ()
- 13. Tier III NMSWLFs.** In addition to the requirements in Subsection 013.01 through 013.10, the owner and operator of a Tier III NMSWLF shall comply with the following requirements: ()
- a. Siting Requirements: A facility shall not be located in wetlands, except as provided in 40 CFR 257.9; ()
 - b. Siting Application. The owner and operator shall include in the Siting Application documentation demonstrating compliance with the requirement specified in Subsection 013.13.a.; ()
 - c. Design and Construction Requirements: The owner and operator of a NMSWLF shall comply with the following design and construction requirements: ()
 - i. Leachate Collection and Control System. A leachate collection and control system shall be constructed to prevent ground and surface water contamination; ()
 - ii. Liner. A liner designed to prevent ground or surface water contamination shall be installed. The liner design shall account for the types of wastes handled and the potential for migration of liquid and gaseous contamination to ground or surface water; ()
 - iii. Landfill Emission Control System. Appropriate toxic and flammable gas monitoring devices shall be installed where the location, geophysical condition, and waste characteristics indicate that there is a reasonable probability that the facility will generate toxic and flammable gas: exceeding twenty-five (25) percent of the lower explosive limit for gases in facility structures (excluding gas control or gas recovery system components); exceeding the lower explosive limit at the property boundary; or otherwise presenting a potential threat to public health or the environment; and ()
 - iv. An owner or operator may submit a written request for a variance from the leachate collection and control system, liner, or emission control system requirements. The Department may approve the variance upon demonstration by the owner or operator that the variance is at least as protective of human health and the environment as the leachate collection and control system, liner, or emission control system. ()
 - d. Design Application. The following information shall be submitted to the Department in a Design Application: ()
 - i. Design plans shall address the need for and include as required a leachate collection and control system, liner, and emission control systems in Subsection 013.13.c.; ()
 - ii. A facility map illustrating: ()

- (1) Surface water and erosion control systems; ()
 - (2) Proposed fill area, including the location of waste disposal trenches or cells, noting the locations of trenches used for separated wastes such as animal carcasses, tree trunks, stumps, bulky wastes, car bodies, asbestos, and petroleum contaminated soils; ()
 - (3) Location of borrow areas; ()
 - (4) Design elevation grade of final cover; ()
 - (5) Soil and water table test boring holes, wells, or excavations; ()
 - (6) Proposed receiving, storage, and processing areas; ()
 - (7) Proposed trench layout and development; and ()
 - (8) Contour lines at five (5) foot intervals within the operating area and ten (10) foot intervals to the facility boundary. ()
 - (9) Building and construction design blueprints; ()
 - (10) Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes; and ()
- e. Operating Requirements:** The owner and operator of a NMSWLF shall comply with the following operating requirements: ()
- i. Compaction and placement of waste in locations consistent with the approved operations plan; ()
 - ii. Provision for storage of waste during periods when the NMSWLF is inaccessible; ()
 - iii. Application of a six (6) inch compacted soil cover layer on exposed waste as necessary to prevent nuisance and vector conditions at periods consistent with the approved operations plan. An owner and operator may request that the Department approve an alternate cover that addresses vectors, litter, fire, odor, and scavenging concerns; ()
 - iv. Placement of an interim cover layer of twelve (12) inches of compacted soil between lifts to provide erosion control and structural stability. An owner and operator may request that the Department approve an alternate interim cover that addresses erosion, and stability for subsequent lifts; ()
 - v. Maintenance and operation of a leachate collection and control system and air emission control system consistent with the approved design application; and ()
 - vi. Preservation of existing vegetation where attainable. ()
- f. Operating Plan.** The operating plan required in Section 013 shall identify the methods used for maintaining compliance with each applicable operating requirement of Subsection 013.03. and Subsection 013.13.e. including but not limited to the type, the method of compaction and the frequency of application of respective cover materials; ()
- g. Closure Requirements.** The owner and operator of a NMSWLF shall comply with the following closure requirements: ()
- i. Final Cover. Within seven (7) days of the date of last receipt of waste, a cover layer shall be applied to prevent nuisances and vector conditions. Within one hundred and twenty (120) days of the date of last receipt of

waste, a final cover layer of eighteen (18) inches of compacted soil with an approved in-place permeability designed to minimize infiltration, or its functional equivalent, and, a six (6) inch soil layer that minimizes erosion and sustains plant growth shall be constructed; ()

ii. Facility Stabilization. All disturbed portions of the facility shall be stabilized. Stabilization practices may include but are not limited to: establishment of vegetation, mulching, geotextiles, and sod stabilization; ()

iii. Slope Stability. Finished grade shall be at a minimum of two percent (2%) and a maximum of thirty- three percent (33%) slope on the final surface of the completed fill area, after settlement; and ()

iv. Drainage Control. The completed landfill shall be graded to prevent surface water ponding and erosion, and to conform to the local topography. ()

h. Environmental Covenants: ()

i. After completion and certification of closure of a NMSWLF, the owner and operator shall record an environmental covenant, pursuant to the Uniformed Environmental Covenants Act (UECA) Chapter 30, Title 55, Idaho Code, on the property where the landfill facility is located and its future use may be restricted in accordance with a post-closure care plan. A copy of the environmental covenant will be sent to the Department after recording with the county clerk. ()

ii. The owner may request permission from the Department to remove the environmental covenant if all wastes are removed from the facility. ()

iii. Federal agencies with responsibility for management of landfills on federal property shall make an environmental covenant or notation in the federal property records for the affected property. If the subject property is ever sold or transferred by the federal government, a notation on the deed or patent shall be made. ()

i. Closure Plan. The owner and operator shall provide in the Closure Plan documentation that demonstrates compliance with closure requirements specified in Subsections 013.07 and 013.13.g. ()

j. Post-Closure Care Plan. Owners and operators of a NMSWLF shall submit, in accordance with the time frames specified in Subsection 013.08, to the Department for review and approval a Post-Closure Care Plan, shall obtain Department approval of the Plan, and shall conduct post-closure care in accordance with the Plan: ()

i. Unless the Department determines otherwise, the Post-Closure Care Plan shall contain: ()

(1) The name and address of an agent authorized to accept communications or service during the post-closure period. The name may be changed during the post-closure period by providing the Department with twenty (20) days advance written notice of the change; ()

(2) Provisions to maintain the integrity and effectiveness of the final cover; ()

(3) Provisions to continue to maintain and operate the systems required in the operating plan, including: run-on/run-off control systems, leachate collection and control systems, groundwater monitoring systems, and gas monitoring systems; ()

(4) Provisions to maintain appropriate security of the closed facility; ()

(5) Provisions for routine facility inspections by the owner and operator to insure compliance with the Post-Closure Care Plan; and ()

(6) A description of the planned use(s) of the property during the post-closure care period. ()

ii. Post-closure care for the NMSWLF shall be conducted for a minimum of five (5) years, but not

more than thirty (30) years, as necessary to protect human health and the environment. ()

iii. Post-Closure Standards and Inspection. Post-closure use or operation of the site shall not disturb any final cover, liner or other component of the containment system in a manner that will increase the potential to threaten human health or the environment. ()

iv. The approved Post-Closure Care Plan shall be maintained and available for review on request by the Department. ()

v. The requirements in Subsection 013.07 shall apply to owners and operators and their successors and assigns. ()

014. -- 031. (RESERVED)

032. TIER II AND TIER III APPLICATION AND PLAN REVIEW AND APPROVAL.

01. Application Submittal. The owner and operator shall submit three (3) copies of each required application to the Department. The owner and operator may submit applications for siting, design, operation, or ground water monitoring approval sequentially or concurrently. ()

02. Preapplication Conference. The owner or operator may request that the Department convene a preapplication conference with any interested federal, state and local entities to discuss the approval procedures, application content, time tables for application processing, siting and design requirements. ()

03. Application Review. ()

a. On receipt of an application the Department shall, within thirty (30) days, notify the owner and operator in writing whether the submission is complete and whether the application identifies an appropriate Tier level. The notice shall identify any deficiencies in the application, and the information relied upon in making the determination, and shall state that an applicant may submit additional information in the form of an amended application, withdraw the application or request a conference to discuss the Department's determination. ()

b. Upon receipt of the Department's determination that a siting application is complete, the owner and operator shall publish a notice in a newspaper of general circulation as determined in Section 31-819, Idaho Code, in the county and the immediate vicinity of the proposed facility and shall also provide notice to local government. The notice shall include the name and location of the proposed facility, a general description of the proposed operations, the location where the application may be reviewed, and instructions directing the public to submit comments to the Department within thirty (30) days of the date of publication. The owner and operator shall provide a copy of the published notice and notice to local government to the Department within five (5) business days of publication. ()

c. The Department shall approve, deny, or approve with conditions each application. Failure to issue a decision within the stated time shall be deemed approval. Approval conditions shall relate to protection of human health and the environment as required in these rules. ()

i. For a siting application, the Department shall notify the owner and operator in writing of the Department's decision within thirty (30) days of the date of the close of the public comment period. The Department and the owner and operator may agree, in writing to a longer period of time for the Department's determination. Design, Operating and Ground Water Monitoring Applications shall not be reviewed until the Siting Application is approved. ()

ii. For the Design, Operating and Ground Water Monitoring applications, the Department shall notify the owner and operator in writing of the Department's decision within sixty (60) days from the date the application is determined to be complete. ()

d. If the Department denies an application, the written decision shall state the basis for the denial, and the information relied upon in making the determination. ()

04. Application Valid for Two Years. Unless otherwise stated in the Department's approval of the facility's application, the Department's approval shall become invalid if the owner and operator fail to begin construction within two (2) years from the date of approval, or if after construction has begun, work is suspended for more than two (2) years. Owners and operators may apply for an extension provided that the written request is received by the Department no less than one (1) month prior to expiration of the approval. Within fifteen (15) days from Department receipt of extension request, the Department shall approve the extension request or deny the extension request and state the basis for denial. ()

033. -- 059. (RESERVED)

060. VIOLATIONS.

01. Failure to Comply. Failure by any person to comply with the provisions of these rules shall be deemed a violation of these rules. ()

02. Falsification of Statements and Records. It shall be a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of an approval. ()

03. Penalties. Any person violating any provision of these rules or any approved conditions or order issued thereunder shall be liable for civil penalty in accordance with Title 39, Chapter 1, Idaho Code. ()

061. OPEN BURNING AND FIRES.

Open burning is prohibited at facilities except as authorized by IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho," and the following: ()

01. No Open Burning During an Air Pollution Episode. No open burning may be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ()

02. Conditions Under Which Open Burning Authorized. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned may not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors; and ()

03. Contact Department and Local Fire Authority Prior to Conducting Open Burning. Open burning may be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility must contact the Department and the local fire authority prior to conducting open burning to report its nature and location. ()

062. -- 993. (RESERVED)

994. COMMERCIAL SOLID WASTE SITING LICENSE FEE.

An application for a commercial solid waste siting license required by the Idaho Solid Waste Facilities Act shall be accompanied by a siting license fee in an amount established by these rules. The license fee shall not exceed seven thousand five hundred dollars (\$7,500) and shall be submitted with the siting license application. ()

01. Commercial Solid Waste Siting License Fee Criteria. The commercial solid waste siting license fee required by the Idaho Solid Waste Facilities Act and these rules shall apply to commercial MSWLFs only and shall be based on the cost of the Department's review and the characteristics of the proposed commercial solid waste facility, including the projected site size, projected waste volume, and the hydrogeological and atmospheric characteristics surrounding the site. ()

02. Commercial Solid Waste Siting License Fee Scale. The commercial solid waste siting license fee

required by the Idaho Solid Waste Facilities Act and these rules shall be determined using the table below. The fee determined using the table below may then be adjusted by the Department if necessary to reflect the cost of the Department's review, taking into account the hydrogeological and atmospheric characteristics surrounding the site.

| COMMERCIAL SOLID WASTE SITING LICENSE FEE SCALE | | | |
|--|---------------------|----------------------|--------------------------|
| PROJECTED SOLID WASTE VOLUME | | | |
| Tons per day (TPD) | | | |
| Site Size | Up to 20 TPD | 20 to 100 TPD | More than 100 TPD |
| 5 acres or less | \$3,500 | \$4,500 | \$5,500 |
| 5 to 50 acres | \$4,500 | \$5,500 | \$6,500 |
| more than 50 acres | \$5,500 | \$6,500 | \$7,500 |

()

03. Notification of Adjustment of Fee. Within thirty (30) days of receipt of the application and fee, the Department shall notify the applicant if the fee has been adjusted and the date by which any additional fee must be paid by the applicant. ()

04. Expansion or Enlargement of a Commercial Solid Waste Facility. The expansion or enlargement of a commercial solid waste facility constitutes a new proposal for which a commercial solid waste siting license is required and for which a siting license fee must be paid. All commercial solid waste facilities not in operation on March 20, 1996 must submit a commercial solid waste license application and fee. ()

05. Commercial Solid Waste Siting License Fee Not Refundable. The commercial solid waste siting license fee required by the Idaho Solid Waste Facilities Act and by these rules shall not be refundable and may not be applied toward any subsequent application should the commercial solid waste siting license application be canceled, withdrawn or denied. ()

995. COMMERCIAL SOLID WASTE SITING LICENSE APPLICATION.
In addition to the contents of a Siting License Application as required in the Idaho Solid Waste Facilities Act, these rules require the applicant to include in the application the following items: ()

01. Location. A map indicating the location of the proposed commercial solid waste facility; ()

02. Copies of Application. Ten (10) copies of the completed application; and ()

03. Application Format. A copy of the application in a format prepared for photocopying. ()

996. -- 998. (RESERVED)

999. CONFIDENTIALITY OF RECORDS.
Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 74-114, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Department of Environmental Quality." ()

58.01.07 – RULES REGULATING UNDERGROUND STORAGE TANK SYSTEMS

000. LEGAL AUTHORITY.

Chapters 1 and 88, Title 39, Idaho Code, grant authority to the Board of Environmental Quality to promulgate rules for the regulation of underground storage tank systems within the state of Idaho. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 58.01.07, “Rules Regulating Underground Storage Tank Systems.” ()

02. Scope. These rules establish standards and procedures necessary for the regulation of underground storage tank systems. Compliance with these rules shall not relieve persons from the obligation to comply with other applicable state or federal laws. ()

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. ()

003. ADMINISTRATIVE PROVISIONS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ()

004. INCORPORATION BY REFERENCE.

Any reference to any document identified in Subsection 004.01 shall constitute the full adoption by reference into IDAPA 58.01.07. ()

01. Documents Incorporated by Reference. Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, [40 CFR Part 280](#), revised as of July 1, 2017 with the following exceptions: ()

- a. 40 CFR 280.12, the definition of “Replaced” is excluded; ()
- b. 40 CFR 280.12, the definition of “Under-dispenser containment or UDC” is excluded; ()
- c. 40 CFR 280.20, the introductory paragraph sentence, “In addition, except for suction piping that meets the requirements of Section 280.41(b)(1)(ii)(A) through (E), tanks and piping installed or replaced after April 11, 2016 must be secondarily contained and use interstitial monitoring in accordance with Section 280.43(g),” is excluded; ()
- d. 40 CFR 280.20(f), is excluded; ()
- e. 40 CFR 280.34(b)(9), the citation to Section 280.245 is excluded; ()
- f. 40 CFR 280.41(a)(1), “installed on or before April 11, 2016...” is excluded; ()
- g. 40 CFR 280.41(a)(2), is excluded; ()
- h. 40 CFR 280.41(b)(1), “installed on or before April 11, 2016...” is excluded; ()
- i. 40 CFR 280.41(b)(2), is excluded; ()
- j. 40 CFR 280.42, Note to paragraph (a), “for tank installed on or before October 13, 2015.” is excluded; ()
- k. 40 CFR 280.42(e), “installed on or before October 13, 2015...” is excluded; and ()
- l. 40 CFR Part 280 Subpart J is excluded. ()

02. Hazardous Substance Underground Storage Tank Systems. ()

- a. The following items only apply to hazardous substance underground storage tank systems and do

not apply to petroleum underground storage tank systems: ()

i. The definition of “Hazardous substance UST system” in 40 CFR 280.12 and use of this term or regulations regarding hazardous substance in [40 CFR Part 280](#); and ()

ii. 40 CFR 280.42 and any reference to 40 CFR 280.42 in [40 CFR Part 280](#). ()

b. All other provisions of 40 CFR Part 280 and all provisions of IDAPA 58.01.07 shall apply to hazardous substance underground storage tank systems. ()

03. Consistency. In the event of conflict or inconsistency between the language in IDAPA 58.01.07 and that found in [40 CFR Part 280](#), IDAPA 58.01.07 shall prevail. ()

04. Stringency. IDAPA 58.01.07 shall be no more stringent than federal law or regulations governing underground storage tank systems. ()

05. Availability of Referenced Material. The federal regulations adopted by reference can be obtained at the following locations: ()

a. U.S. Government Printing Office, www.ecfr.gov; and ()

b. Department of Environmental Quality, Hearing Coordinator, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. ()

005. OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, (208) 373-0502, www.deq.idaho.gov. The office hours are 8 a.m. to 5 p.m. Monday through Friday. ()

006. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 74, Chapter 1, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.” ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.07, “Rules Regulating Underground Storage Tank Systems,” the following definitions apply: ()

01. Board. The Idaho Board of Environmental Quality. ()

02. Community Water System. A public water system that serves at least fifteen (15) service connections used by year-round residents of the area served by the system or regularly serves at least twenty-five (25) year-round residents. ()

03. Department. The Idaho Department of Environmental Quality. ()

04. Director. The Director of the Idaho Department of Environmental Quality or his authorized agent. ()

05. Existing. Solely for purposes of determining when secondary containment is required, existing is when a petroleum underground storage tank, piping, motor fuel dispensing system, facility, public water system or potable drinking water well is in place when a new installation or replacement of a tank, piping, or motor fuel dispensing system begins. ()

06. EPA. The United States Environmental Protection Agency. ()

07. Installation of a New Motor Fuel Dispenser System. The installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the petroleum underground storage tank system. This equipment may include flexible connectors, risers, or other transitional components that are beneath the dispenser, below the shear valve, and connect the dispenser to the piping. It does not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the petroleum underground storage tank system. ()

08. Installer. Any person who installs a new or replacement petroleum underground storage tank system. ()

09. New Underground Storage Tank. Has the same meaning as “underground storage tank or UST” in 40 CFR 280.12, except that such term includes tanks that have been previously used and meet the requirements of 40 CFR 280.20(a). ()

10. Non-Community Water System. A public water system that is not a community water system. A non-community water system is either a transient non-community water system or a non-transient non-community water system. ()

11. Piping. A hollow cylinder or a tubular conduit constructed of non-earthen materials that routinely contains and conveys regulated petroleum substances from the petroleum underground storage tank(s) to the dispenser(s) or other end-use equipment. It does not mean vent, vapor recovery, or fill lines that do not routinely contain regulated petroleum substances. ()

12. Potable Drinking Water Well. Any hole (dug, driven, drilled, or bored) that extends into the earth until it meets ground water which supplies water for a non-community public water system or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities. ()

13. Product Deliverer. Any person who delivers or deposits product into a petroleum underground storage tank. This term may include major oil companies, jobbers, petroleum transportation companies, or other product delivery entities. ()

14. Public Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A public water system is either a “community water system” or a “non-community water system.” ()

15. Red Tag. A tamper-resistant tag, device, or mechanism attached to the tank’s fill pipes that clearly identifies a petroleum underground storage tank as ineligible for product delivery. The tag or device shall be visible to the product deliverer and clearly state that it is unlawful to deliver to, deposit into, or accept product into the ineligible petroleum underground storage tank. ()

16. Replace. As it applies to petroleum underground storage tanks and piping, replace is defined as follows: ()

a. Petroleum Underground Storage Tank. Replace means to remove an existing tank and install a new tank. ()

b. Piping. Replace means to remove and put back in one hundred (100) percent of the piping, excluding connectors, connected to a single petroleum underground storage tank system. This definition does not alter the requirement in 40 CFR 280.33(c) to replace metal pipe sections and fittings that have released product as a

result of corrosion or other damage. A replacement of metal pipe section and fittings pursuant to 40 CFR 280.33(c) shall be considered a replacement under this definition only if one hundred (100) percent of the metal piping, excluding connectors, is replaced. ()

17. Under-Dispenser Spill Containment. Containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or ground water. Such containment must: ()

- a.** At installation or modification, be liquid-tight on its sides, bottom, and at any penetrations; and ()
- b.** Be compatible with the substance conveyed by the piping; and either ()
- c.** Allow for visual inspection and access to the components in the containment system; or ()
- d.** Be monitored for releases using a release detection method that meets the requirements of 40 CFR 280.43(g). ()

011. – 099. (RESERVED)

100. ADDITIONAL MEASURES TO PROTECT GROUND WATER FROM CONTAMINATION.

01. Notification. An owner, operator or designee must: ()

- a.** Provide written notice to the Department thirty (30) days prior to the installation of a new piping system or a new or replacement petroleum underground storage tank. ()
- b.** Provide notice to the Department twenty-four (24) hours prior to the installation of a replacement piping system. ()

02. Notification Forms. The written notice required in Subsection 100.01.a. shall be made upon forms provided by the Department. ()

03. Requirements for Petroleum UST Systems. Owners, operators, and installers of a new or replacement petroleum underground storage tank or piping system shall comply with the following requirements. ()

a. Each new petroleum underground storage tank, or piping connected to any such new tank, installed after February 23, 2007, or any existing petroleum underground storage tank, or existing piping connected to such existing tank, that is replaced after February 23, 2007, shall have secondary containment and be monitored for leaks if the new or replaced petroleum underground storage tank or piping is within one thousand (1,000) feet of any existing public water system or any existing potable drinking water well. At a minimum, secondary containment systems must be designed, constructed, and installed to contain regulated substances released from the tank system until they are detected and removed, prevent the release of regulated substances to the environment at any time during the operational life of the petroleum underground storage tank system, and be checked for evidence of a release at least every thirty (30) days. The following conditions are excluded: ()

- i.** Suction piping that meets the requirements of 40 CFR 280.41(b)(1)(ii)(A) through (E); ()
- ii.** Piping that manifolds two (2) or more petroleum underground storage tanks together; ()
- iii.** Existing piping to which new piping is connected to install a dispenser; and ()
- iv.** Tanks identified in 40 CFR 280.10(b). ()

b. If the owner installs, within one (1) year, a potable drinking water well at the new facility that is within one thousand (1,000) feet of the petroleum underground tanks, piping, or motor fuel dispenser system as part of the new underground storage tank facility installation, secondary containment and under-dispenser containment

are required, regardless of whether the well is installed before or after the petroleum underground tanks, piping, and motor fuel dispenser system are installed. ()

c. The notice required in Subsection 100.01 shall indicate whether the new or replacement installation is within one thousand (1,000) feet of an existing public water system or any existing potable drinking water well. If the owner and installer certify that the installation is not within one thousand (1,000) feet of an existing public water system or any existing potable drinking water well, the owner, operator or designee shall provide and maintain documentation showing that a reasonable investigation of water systems and drinking water wells was undertaken. A reasonable investigation includes, but is not limited to, a search of the records of: ()

- i.** The public or private water service provider in the area which the new or replacement installation is located (if any); ()
- ii.** The city or county in which the new or replacement installation is located; ()
- iii.** The Idaho Department of Water Resources; and ()
- iv.** The Idaho Department of Environmental Quality. ()

d. In the case of a replacement of an existing petroleum underground storage tank or existing piping connected to the petroleum underground storage tank, Section 100 shall apply only to the specific petroleum underground storage tank or piping being replaced, not to other petroleum underground storage tanks and connected pipes comprising such system. ()

e. Each installation of a new motor fuel dispenser system shall include under-dispenser spill containment if the new dispenser is within one thousand (1,000) feet of any existing public water system or any existing potable drinking water well. ()

04. Requirements for Hazardous Substance UST Systems. Owners, operators, and installers of a new or replacement hazardous substance underground storage tank or piping system shall have secondary containment as required in 40 CFR 280.42. ()

05. Certification. Owners and operators shall also comply with the certification requirements of 40 CFR 280.22(f) as incorporated by reference into these rules. ()

101. ALTERNATIVE PERIODIC TESTING OF CONTAINMENT SUMPS USED FOR INTERSTITIAL MONITORING OF PIPING.

01. Applicability. ()

a. The alternative test method in Subsection 101.02 shall only be used for containment sumps that are performing continuous interstitial monitoring as a piping release detection method where an electronic sump sensor is installed and connected to an electronic monitoring device, such as an automatic tank gauge, or where the piping within a containment sump is continuous to a containment sump which has an electronic sump sensor installed and connected to an electronic monitoring device, such as an automatic tank gauge. ()

i. The sump sensor in Subsection 101.01.a. must be positioned in the containment sump according to manufacturer instructions and at the lowest possible point in the containment sump. ()

ii. The sump sensor in Subsection 101.01.a. must be wired and programmed appropriately to shut down power to the submersible turbine pump (positive shutdown) when the sensor is in contact with liquid in any containment sump. ()

iii. If new dispensers are added and Subsection 101.01.a.ii. cannot be achieved (no electrical conduit, not enough sensor ports, etc.), an electronic stand-alone dispenser containment sump sensor may be used if it is wired appropriately to shut down power to the dispenser when the sensor is in contact with liquid in the dispenser containment sump. ()

b. The Department may not allow the alternative test method in Subsection 101.02 if it determines the containment sump, penetration fittings, or containment sump sensors are not constructed or positioned in a manner that will accommodate the alternative testing or prevent releases to the environment (i.e., penetration fittings are too close to the containment sump bottom). ()

02. Alternative Test Method Allowed. ()

a. As an alternative to the allowable test method in 40 CFR 280.35(a)(1)(ii)(A)-(C), containment sumps used for interstitial monitoring of piping may be tested as follows: ()

i. Temporarily remove any interstitial monitoring containment sump sensors before conducting the test; ()

ii. Add water to the containment sump up to a point directly beneath the first containment sump penetration fitting from the bottom of the containment sump. The water must be allowed to settle for at least fifteen (15) minutes; ()

iii. Place a measuring stick that has one sixteenth (1/16th) inch increments into the lowest point in the containment sump and extending above the water level in the sump; and ()

iv. Document the initial water level measurement as measured from the bottom of the containment sump. After one (1) hour, document the ending water level measurement. If the water level changes less than one eighth (1/8th) inch, the containment sump passes the integrity test. If the water level changes one eighth (1/8th) inch or greater, the containment sump fails the integrity test. ()

b. Upon completion of the test, remove all water and properly dispose of it. Reinstall any interstitial monitoring sensors. Reinstall all containment sump lids, gaskets, and covers. ()

102. -- 199. (RESERVED)

200. RELEASE REPORTING REQUIREMENTS.

01. Information to be Reported. ()

a. In addition to the requirements in IDAPA 58.01.02, "Water Quality Standards," Subsection 851.01, owners or operators shall report the following information regarding confirmed petroleum underground storage tank releases to the Department on forms provided by the Department: ()

i. The release source; and ()

ii. The release cause. ()

b. Releases less than twenty-five (25) gallons that are cleaned up within twenty-four (24) hours, and which do not cause a sheen on nearby surface water, do not need to be reported. ()

02. Release Sources. Release sources may include, but are not limited to the following: ()

a. Petroleum Underground Storage Tanks; ()

b. Piping; ()

c. Dispensers, which include the dispenser and equipment used to connect the dispenser to the piping. A release from a suction pump or components located above the shear valve would be an example of a release from the dispenser; ()

d. Submersible turbine pump area, which includes the submersible turbine pump head (typically

located in the tank sump), the line leak detector, and the piping that connects the submersible turbine pump to the petroleum underground storage tank; and ()

e. Delivery problem, which identifies releases that occurred during product delivery to the petroleum underground storage tank. Typical causes associated with this source are spills and overfills. ()

03. Release Causes. Release causes may include, but are not limited to the following: ()

a. Spills which may occur when the delivery hose is disconnected from the fill pipe of the petroleum underground storage tank or when the nozzle is removed from the vehicle at the dispenser; ()

b. Overfills which may occur from the fill pipe at the petroleum underground storage tank or when the nozzle fails to shut off at the dispenser; ()

c. Physical or mechanical damage of all types except corrosion. Examples include a puncture of the petroleum underground storage tank or piping, loose fittings, broken components, and components that have changed dimension like elongation or swelling; ()

d. Corrosion of a metal tank, piping, flex connector, or other component; and ()

e. Installation problem that occurs specifically because the underground storage tank system was not installed properly. ()

04. Requirements. The reporting required in Section 200 shall be reported to the Department within ninety (90) days of a confirmed release. The reporting requirement in Section 200 shall not relieve owners or operators from the obligation to comply with 40 CFR Part 280 Subpart E “Release Reporting, Investigation, and Confirmation,” IDAPA 58.01.02, “Water Quality Standards,” Section 851, “Petroleum Release Reporting, Investigation, and Confirmation,” and IDAPA 58.01.02, “Water Quality Standards,” Section 852, “Petroleum Release Response and Corrective Action.” ()

201. -- 299. (RESERVED)

300. TRAINING REQUIREMENTS.

01. Requirements. The Department shall adopt a training program to help owners and operators comply with the requirements of these rules. The training program requirements shall: ()

a. Be consistent with 42 U.S.C. 6991i(a), as amended by the Underground Storage Tank Compliance Act, (Pub.L. 109-58, title XV, sec. 1524(a), Aug. 8, 2005); ()

b. Be developed in cooperation with petroleum underground storage tank owners and tank operators; ()

c. Take into consideration training programs implemented by petroleum underground storage tank owners and operators as of August 8, 2005; ()

d. Provide for training to be conducted on site or at another mutually convenient location; and ()

e. Be appropriately communicated to petroleum underground storage tank owners and operators. ()

02. Operator Designation. For each petroleum underground storage tank system regulated under these rules, the owner or operator shall: ()

a. Designate: ()

i. The class A operator, who is the individual(s) having primary responsibility for on-site operation and maintenance of the petroleum underground storage tank system. This does not require that the class A operator be on site; ()

ii. The class B operator, who is the individual(s) having daily on-site responsibility for the operation and maintenance of the petroleum underground storage tank system. This does not require that the class B operator be on site at all times; and ()

iii. The class C operator, who is the daily, on-site individual(s) having primary responsibility for addressing emergencies presented by a spill or release from the petroleum underground storage tank system. The class C operator can be designated by the class A or B operator. ()

b. Maintain a record at the facility where the petroleum underground storage tank is located listing each person designated in Subsections 300.02.a.i., 300.02.a.ii., and 300.02.a.iii. ()

c. Notify the Department in writing of the individual(s) designated in Subsections 300.02.a.i. and 300.02.a.ii. within thirty (30) days of the designation. ()

03. Training. The owner or operator of each petroleum underground storage tank system regulated under these rules shall ensure that the individual(s) identified in Subsections 300.02.a.i. and 300.02.a.ii. participate in the training conducted by the Department or a state of Idaho approved third party. ()

a. The individual(s) identified in Subsections 300.02.a.i. or 300.02.a.ii. shall provide training to the persons identified in Subsection 300.02.a.iii. ()

b. The individual(s) identified in Subsection 300.02.a.iii. must be trained before assuming responsibility for responding to emergencies. ()

c. The individual(s) identified in Subsections 300.02.a.i. and 300.02.a.ii. shall repeat the training within thirty (30) days if the petroleum underground storage tank system for which they have responsibility is determined to be out of compliance with these rules. ()

d. The individual(s) identified in Subsections 300.02.a.i. and 300.02.a.ii. shall be trained within thirty (30) days of assuming operation and maintenance duties. ()

04. Unattended Sites. In the case of unattended sites, a sign must be posted in a location visible from the dispensers indicating emergency shut-off procedures and emergency contact phone numbers. ()

301. -- 399. (RESERVED)

400. INSPECTIONS.

01. Department Authority. In order to fulfill the statutory requirements of Chapter 88, Title 39, Idaho Code, officers, employees or representatives of the Department, or third-party inspectors as described in Subsection 400.02, are authorized to inspect petroleum underground storage tanks, contents of the tanks, and associated equipment and records relating to such tanks, contents, and associated equipment. ()

02. Third-Party Inspections. ()

a. Third-party inspectors must be certified, licensed, or registered by an approved state program to perform on-site inspections. At a minimum, third-party inspectors must meet the requirements listed in Subsections 400.02.a.i. through 400.02.a.v.: ()

i. Be trained in the state-specific inspection protocols and procedures, and perform inspections pursuant to such protocols and procedures; ()

ii. Successfully complete the state's required training program. The training program for third-party

inspectors must be comparable to the training program for Department inspectors; ()

iii. Not be the owner or operator of the petroleum underground storage tank, an employee of the owner or operator of the petroleum underground storage tank, or a person having daily on-site responsibility for the operation and maintenance of the petroleum underground storage tank; ()

iv. Use an inspection report form developed by the Department. Review of applicable records and other activities that can be accomplished off-site may be combined with activities conducted at the site to fulfill the on-site inspection requirement; and ()

v. Complete and submit the inspection report to the Department in the manner and time frame established by the Department. All third-party inspection reports must be submitted electronically to the Department for review and for the Department to make a compliance determination for each site. If requested by the Department, third-party inspectors shall provide all supporting documentation for its inspection reports. ()

b. Third-party inspection procedures must contain an audit program, developed by the Department, to monitor third-party inspectors on a routine basis. The audit program must include a sufficient number of on-site inspections to effectively assess inspector performance. ()

c. If a third-party inspector fails to demonstrate to the approved state program adequate competence and proficiency to perform petroleum underground storage tank inspections, or the approved state program otherwise determines it is not appropriate for the third-party inspector to conduct on-site inspections as part of a third-party inspection program, the approved state program must take appropriate action against the third-party inspector as provided by law. ()

03. Inspections. All inspections shall be done in accordance with the provisions of Section 39-108, Idaho Code. At a minimum, an on-site inspection must assess compliance with the provisions of these rules and 40 CFR Part 280. ()

401. -- 499. (RESERVED)

500. DELIVERY PROHIBITION.

01. Prohibition. Effective August 8, 2007, it shall be unlawful for any person to deliver to, deposit into, or accept a regulated petroleum substance into a petroleum underground storage tank at a facility which has been identified by the Department to be ineligible for such delivery, deposit, or acceptance. ()

02. Classification as Ineligible. The Department shall classify a petroleum underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance as soon as practicable after the Department determines one or more of the following conditions exists: ()

a. Required spill prevention equipment is not installed; ()

b. Required overfill protection equipment is not installed; ()

c. Required leak detection equipment is not installed; or ()

d. Required corrosion protection equipment is not installed. ()

03. Warning of Violations. The Department may classify a petroleum underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance if the owner or operator of the tank has been issued a written warning for any of the following violations, and the owner or operator fails to initiate corrective action within thirty (30) days of the issuance of the written warning, unless the deadline is extended by the Department: ()

a. Failure to properly operate or maintain leak detection equipment; ()

- b. Failure to properly operate or maintain spill, overfill, or corrosion protection equipment; or ()
- c. Failure to maintain financial responsibility. ()

04. Service of Notice. If the Department classifies a petroleum underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance pursuant to Subsections 500.02 or 500.03, the Department shall provide a written notice of the determination to the owner or operator prior to prohibiting the delivery, deposit, or acceptance of a regulated petroleum substance. Notice is considered properly served by the Department in any of the following ways: ()

- a. The notice is personally delivered to the owner or operator; or ()
- b. The notice is clearly posted at a public entrance to the facility where the petroleum underground storage tank is located and a copy of the notice is also sent by certified mail to the last known address of the owner or operator. ()

05. Red-Tagging. Once service of the written notice of the ineligible determination is complete, the Department shall then attach a red tag to each fill pipe of the ineligible petroleum underground storage tank clearly identifying the tank as ineligible. The Department shall also maintain a list of all petroleum underground storage tanks that are classified as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance. The Department shall make the list available to the public by posting the list on the Department's website at www.deq.idaho.gov. ()

06. Written Notice. The written notice required by Subsection 500.04 must include: ()

- a. The specific reasons or violations that led to the ineligible classification; ()
- b. A statement notifying the owner and operator that the petroleum underground storage tank is ineligible for delivery and it is unlawful for any person to deliver to, deposit into, or accept a regulated petroleum substance into the petroleum underground storage tank; ()
- c. The effective date the petroleum underground storage tank is deemed ineligible for delivery; ()
- d. The name and address of the department representative to whom a written request for re-inspection can be made, if a re-inspection is necessary; ()
- e. A statement regarding the right to appeal the Department's action regarding ineligible classification pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality"; and ()
- f. The option to request a compliance conference pursuant to Subsection 500.07. ()

07. Compliance Conference. The owner or operator may request a compliance conference with the Department within fifteen (15) days of receipt of the notice. A compliance conference shall be scheduled within twenty (20) days and conducted in an informal manner by the Department. At the compliance conference, the owner or operator may explain why he believes the petroleum underground storage tank should not be classified as ineligible. During the compliance conference, the owner or operator and the Department will identify and establish appropriate acts and a time schedule for compliance as necessary. ()

08. Duration of Ineligible Classification. The classification of a petroleum underground storage tank as ineligible shall remain in effect until the conditions cited in the notice no longer exist. If the Department determines that an ineligible storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated petroleum substance, the Department or an authorized designee shall, as soon as practicable, remove the red tag from the petroleum underground storage tank and also remove the petroleum underground storage tank from the ineligible list posted on its website. The Department will also send a written notice to the owner and operator that an ineligible storage tank has returned to compliance and is now eligible for delivery,

deposit, or acceptance of a regulated petroleum substance. ()

09. Declining Classification. The Director may decline to classify a petroleum underground storage tank as ineligible if the Director decides that classifying the petroleum underground storage tank as ineligible for delivery, deposit, or acceptance is not in the best interest of the public. ()

a. The Director may only defer application of delivery prohibition for up to one hundred eighty (180) days after determining a petroleum underground storage tank is ineligible for delivery, deposit, or acceptance of a regulated petroleum substance. ()

b. The Director may authorize the delivery, deposit, or acceptance of product into an ineligible petroleum underground storage tank if such activity is necessary to test or calibrate the underground storage tank or dispenser system. ()

10. Department Authority. Nothing in Section 500 shall affect or preempt the authority of the Department to prohibit the delivery, deposit, or acceptance of a regulated petroleum substance to a petroleum underground storage tank under other existing authorities. ()

11. Proper Notice. A person shall not be in violation of Subsection 500.01 if the Department fails to provide the notice required by Subsections 500.04 and 500.05. ()

12. Unlawful to Tamper with Red Tag. It shall be unlawful for any person to tamper with and/or remove the red tag without the Department's approval. ()

501. -- 599. (RESERVED)

600. PETROLEUM UNDERGROUND STORAGE TANK DATABASE.

01. Maintenance. The Department shall maintain a database which provides details on the status of all petroleum underground storage tanks in the state of Idaho which are subject to regulation. The database shall be updated no less than the end of each calendar quarter. ()

02. Identification. The database shall identify any tanks subject to delivery prohibition. ()

03. Petition. Petroleum underground storage tank owners or operators may petition the Department to correct any inaccurate information for their tanks and the Department shall correct any such inaccurate information within thirty (30) days after verification. ()

04. Availability. The database shall be available to the public on the Department's website at www.deq.idaho.gov. ()

601. FEE SCHEDULE FOR UNDERGROUND STORAGE TANKS.

All regulated underground storage tanks shall pay an annual underground storage tank fee provided in Section 39-119, Idaho Code. The fee shall be assessed to regulated underground storage tanks as provided in Section 601. ()

01. Fee Criteria. ()

a. Compartment and siphon-manifolded underground storage tanks shall be treated as separate underground storage tanks. ()

b. Temporarily out of use tanks are included in Section 601. ()

02. Fee Amount and Schedule. ()

a. Annual fees shall be paid for each fee year beginning January 2, 2018, and continuing for each succeeding year. ()

b. The annual fee per underground storage tank is one hundred dollars (\$100). The annual fee shall not exceed one hundred dollars (\$100) and will be re-calculated each year if the fee balance exceeds thirty-five thousand dollars (\$35,000). Any fee balance above thirty-five thousand dollars (\$35,000) will be used to reduce the following year's fee. ()

c. New underground storage tanks installed after January 2 will not pay a fee until the following January. ()

03. Billing. ()

a. An annual fee invoice will be generated and mailed in November for each owner listed in the Department's Underground Storage Tank Database. ()

b. Owners will have one (1) month to notify the Department in writing if the number of underground storage tanks is incorrect. ()

04. Payment. Payment of the annual fee shall be due on January 2, unless it is a Saturday, a Sunday, or a legal holiday, in which event the payment shall be due on the successive business day. Fees paid by check or money order shall be made payable to the Idaho Department of Environmental Quality and sent to 1410 North Hilton Street, Boise, ID 83706-1255. ()

05. Delinquent Unpaid Fees. An owner will be delinquent in payment if the annual fee has not been received by the Department by March 1. ()

06. Enforcement. Failure to comply with Section 601 shall be subject to enforcement and penalties pursuant to the enforcement provisions of Section 39-108, Idaho Code, (Idaho Environmental Protection and Health Act), and Section 39-8811(2), Idaho Code, (Idaho Underground Storage Tank Act). ()

07. Nonrefundable. The annual fee required by these rules shall be nonrefundable. ()

08. Fee Report. Prior to February 1 of each year, the Director shall report to the Governor and the Idaho Legislature on the use of fees collected the previous year. At a minimum, the report shall include: ()

a. A list of all tanks subject to inspection; ()

b. The type of inspection and regulatory authority or guidance used; and ()

c. A detailed accounting of how fee funds were spent. ()

602. -- 999. (RESERVED)

58.01.08 – IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Idaho Board of Environmental Quality the authority to promulgate rules governing quality and safety of drinking water, pursuant to Title 37, Chapter 21 and Title 39, Chapter 1, Idaho Code.

()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems.”

()

02. Scope. The purpose of these rules is to control and regulate the design, construction, operation, maintenance, and quality control of public drinking water systems to provide a degree of assurance that such systems are protected from contamination and maintained free from contaminants which may injure the health of the consumer.

()

002. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIALS.

01. Incorporation by Reference. The following documents are incorporated by reference into these rules.

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a. [40 CFR Part 141](#), revised as of July 1, 2015 (excluding annual monitoring provisions in 40 CFR 141.854(a)(4),(d),(e),(f) and (h), and the Aircraft Drinking Water Rule in Subsection X), and [40 CFR Part 143](#), revised as of July 1, 2011. Any reference in these rules to requirements, procedures, or specific forms contained in any section or subsection of 40 CFR Parts 141 and 143 shall constitute the full adoption by reference of that section or subsection, including any notes and appendices therein, unless expressly provided otherwise in these rules.

()

b. American Water Works Association (AWWA) Standards, effective December 2009, available for a fee from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, Telephone (800) 926-7337, <http://apps.awwa.org/ebusmain/OnlineStore.aspx>.

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02. Availability of Specific Referenced Material. Copies of specific documents referenced within these rules are available at the following locations:

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a. All federal regulations: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Telephone (202)783-3238; U.S. Government Bookstore, Room 194, Federal Bldg., 915 Second Ave., Seattle, WA 98174, (206) 553-4270; or [Online at http://www.gpoaccess.gov/ecfr/index.html](http://www.gpoaccess.gov/ecfr/index.html).

()

b. All documents incorporated by reference are available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502.

()

c. Recommended Standards for Water Works: a report of the Water Supply Committee of the Great Lakes -- Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, published by Health Education Services, P.O. Box 7126, Albany, New York 12224, Telephone (518) 439-7286.

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d. Manual of Individual and Non-Public Water Supply Systems (EPA 570/9-91-004), published by the U.S. Environmental Protection Agency, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.20402, Telephone (202) 782-3238.

()

e. U.S. Department of Commerce, National Bureau of Standards Handbook, No. 69, “Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure” as amended in 1963, NCRP Publications, P.O. Box 20175, Washington, D.C. 20014.

()

f. Rules of the Idaho Water Resources Board are available [at http://www.adminrules.idaho.gov/rules/37/37index.htm](http://www.adminrules.idaho.gov/rules/37/37index.htm), or the Idaho Department of Water Resources, Idaho Water Center, 322 E. Front St., P.O. Box 83720, Boise, Idaho 83720-0098, Telephone (208) 287-4800.

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g. ANSI/NSF Standard 44-2002e -- 2004, Residential Cation Exchange Water Softeners, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010.

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- h.** ANSI/NSF Standard 53-2002e -- 2003, Drinking Water Treatment Units -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. ()
- i.** ANSI/NSF Standard 55-2002 -- 2002, Ultraviolet Microbiological Water Treatment Systems, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. ()
- j.** ANSI/NSF Standard 58-2003 -- 2004, Reverse Osmosis Drinking Water Treatment Systems, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. ()
- k.** ANSI/NSF Standard 60-2000a -- 2000, Drinking Water Treatment Chemicals -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. ()
- l.** ANSI/NSF Standard 61-2000a -- 2000, Drinking Water System Components -- Health Effects, available from the National Sanitation Foundation, 789 N. Dixboro Road, Ann Arbor, Michigan 48105, Telephone (734) 769-8010. ()
- m.** American Water Works Association (AWWA) Standards, available from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, (800) 926-7337, www.awwa.org. ()
- n.** Cross Connection Control Manual, available from Pacific Northwest Section of the American Water Works Association, P.O. Box 19581, Portland, OR, 97280-0581, Telephone (503) 246-5845. ()
- o.** Manual of Cross-Connection Control, Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California, KAP-200 University Park MC-2531, Los Angeles, CA 90089-2531, (866)545-6340, www.usc.edu/dept/fccchr/. ()
- p.** Manual on Slow Sand Filtration (1991), published by AWWA Research Foundation 6666 West Quincy Avenue, Denver, CO 80235, (800)926-7337, www.awwa.org. ()
- q.** Slow Sand Filtration (1991), published by the American Society of Civil Engineers American Society of Civil Engineers, 1801 Alexander Bell Drive, Reston, VA 20191, (800)548-2723, www.asce.org. ()
- r.** Slow Sand Filtration and Diatomaceous Earth Filtration for Small Water Systems, DOH Pub #331-204 (4/03), Washington State Department of Health, Division of Environmental Health, Office of Drinking Water, PO Box 47828, Olympia WA 98504-7828, (360)236-3100 or (800)521-0323, http://www.doh.wa.gov/ehp/dw/Programs/water_sys_design.htm. ()
- s.** Water System Design Manual, DOH Pub #331-123 (Rev. 8/01), Washington State Department of Health, Division of Environmental Health, Office of Drinking Water, PO Box 47828, Olympia WA 98504-7828, (360)236-3100 or (800)521-0323, http://www.doh.wa.gov/ehp/dw/Programs/water_sys_design.htm. ()
- t.** Submersible Motors: Application, Installation, Maintenance (Franklin Electric AIM manual), Franklin Electric, Bluffton, Indiana 46714, (800)348-2420, <http://www.franklin-electric.com/aim-manual.aspx>. ()
- u.** Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources (March 1991 Edition), U.S. Environmental Protection Agency, <http://water.epa.gov/lawsregs/rulesregs/sdwa/swtr/upload/guidsws.pdf>. ()
- v.** Standard Methods for the Examination of Water and Wastewater, a joint publication of the American Public Health Association, the Water Environment Federation, and the American Water Works Association, 6666 West Quincy Avenue, Denver, CO 80235, 800-926-7337, www.standardmethods.org ()

w. F480-02 Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension ratios (SDR), SCH 40 and SCH 80, American Society for Testing and Materials (ASTM Standard F480-02). ()

x. “Idaho Standards for Public Works Construction,” Local Highway Technical Assistance Council, 3330 Grace Street, Boise, ID 83605, (208)344-0565. ()

y. Memorandum of Understanding between the Idaho Department of Environmental Quality and the Idaho Division of Building Safety Plumbing Bureau, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, www.deq.idaho.gov. ()

z. Idaho General Safety and Health Standards (IGSHS), available from the Idaho Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642, (208)334-3950, <http://dbs.idaho.gov/>. ()

aa. Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, www.deq.idaho.gov. ()

bb. Implementation Guidance for the Stage 2 Disinfectants and Disinfection Byproducts Rule, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, www.deq.idaho.gov. ()

cc. Implementation Guidance for the Ground Water Rule, Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706, www.deq.idaho.gov. ()

dd. AWWA Recommended Practice for Backflow Prevention and Cross-Connection Control (M14), available from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, Telephone (800) 926-7337. ()

ee. Membrane Filtration Guidance Manual (EPA 815-R-06-009) published by the U.S. Environmental Protection Agency, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, Telephone (202) 782-3238, http://www.epa.gov/ogwdw/disinfection/lt2/pdfs/guide_lt2_membranefiltration_final.pdf. ()

ff. Ultraviolet Disinfection Guidance Manual for the Final Long Term 2 Enhanced Surface water Treatment Rule (EPA 815-R-06-007) published by the U.S. Environmental Protection Agency, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.20402, Telephone (202) 782-3238, www.epa.gov/safewater/disinfection/lt2/pdfs/guide_lt2_uvguidance.pdf. ()

gg. Improving Clearwell Design for CT Compliance, Report #90756, available from the Water Research Foundation, http://waterrf.org/ProjectsReports/PublicReportLibrary/RFR90756_2000_271.pdf. ()

hh. Surface Water Treatment Rule Compliance Guidance, dated January 10, 1996, Idaho Department of Environmental Quality, www.deq.idaho.gov. ()

ii. Uniform Plumbing Code, available at 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, <http://dbs.idaho.gov>. ()

03. Precedence. In the event of conflict or inconsistency between the language in these rules and that found in any document incorporated by reference, these rules shall prevail. ()

003. DEFINITIONS.

The definitions set forth in 40 CFR 141.2 are herein incorporated by reference except for the definition of the terms “action level,” “disinfection,” “noncommunity water system,” and “person.” ()

01. Action Level. The concentration of lead or copper in water that determines, in some cases, whether a water system must install corrosion control treatment, monitor source water, replace lead service lines, or undertake

- a public education program. ()
- 02. Administrator.** The Administrator of the United States Environmental Protection Agency. ()
- 03. Annual Samples.** Samples that are required once per calendar year. ()
- 04. Annular Opening.** As used in well construction, this term refers to the nominal inside diameter of the borehole minus the outside diameter of the casing divided by two (2). ()
- 05. Aquifer.** A geological formation of permeable saturated material, such as rock, sand, gravel, etc., capable of yielding an economic quantity of water to wells and springs. ()
- 06. Average Day Demand.** The volume of water used by a system on an average day based on a one (1) year period. See also the definition of Water Demand in these rules. ()
- 07. Backflow.** The reverse from normal flow direction in a plumbing system or water system caused by back pressure or back siphonage. ()
- 08. Bag Filters.** Pressure-driven separation devices that remove particulate matter larger than one (1) micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside. ()
- 09. Bank Filtration.** A water treatment process that uses a well to recover surface water that has naturally infiltrated into ground water through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s). ()
- 10. Board.** The Idaho Board of Environmental Quality. ()
- 11. Capacity.** The capabilities required of a public drinking water system in order to achieve and maintain compliance with these rules and the requirements of the federal Safe Drinking Water Act. It is divided into three (3) main elements: ()
- a.** Technical capacity means the system has the physical infrastructure to consistently meet drinking water quality standards and treatment requirements and is able to meet the requirements of routine and emergency operations. It further means the ability of system personnel to adequately operate and maintain the system and to otherwise implement technical knowledge. Training of operator(s) is required, as appropriate, for the system size and complexity. ()
- b.** Financial capacity means the financial resources of the water system, including an appropriate budget; rate structure; cash reserves sufficient for current operation and maintenance, future needs and emergency situations; and adequate fiscal controls. ()
- c.** Managerial capacity means that the management structure of the water system embodies the aspects of water system operations, including, but not limited to; ()
- i.** Short and long range planning; ()
- ii.** Personnel management; ()
- iii.** Fiduciary responsibility; ()
- iv.** Emergency response; ()
- v.** Customer responsiveness; ()

- vi. Source water protection; ()
- vii. Administrative functions such as billing and consumer awareness; and ()
- viii. Ability to meet the intent of the federal Safe Drinking Water Act. ()

12. Cartridge Filters. Pressure-driven separation devices that remove particulate matter larger than one (1) micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside. ()

13. Clean Compliance History. For the purposes of the Revised Total Coliform Rule in Subsection 100.01, clean compliance history means a record of no maximum contaminant level violations under Subsection 050.05, no monitoring violations under Subsection 100.01, and no coliform treatment technique trigger exceedances or treatment technique violations under Subsection 100.01. ()

14. Combined Distribution System. The interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water. ()

15. Community Water System. A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. See also the definition of a Public Drinking Water System in these rules. ()

16. Components of Finished Water Storage. Storage is available to serve the system if the storage structure or facility is elevated sufficiently or is equipped with sufficient booster pumping capability to pressurize the system. Components of finished water storage are further defined as: ()

a. Dead Storage. Storage that is either not available for use in the system or can provide only substandard flows and pressures. ()

b. Effective Storage. Effective storage is all storage other than dead storage and is made up of the additive components described in Paragraphs c. through f. of this Subsection. ()

c. Operational Storage. Operational storage supplies water when, under normal conditions, the sources are off. This component is the larger of; ()

i. The volume required to prevent excess pump cycling and ensure that the following volume components are full and ready for use when needed; or ()

ii. The volume needed to compensate for the sensitivity of the water level sensors. ()

d. Equalization Storage. Storage of finished water in sufficient quantity to compensate for the difference between a water system's maximum pumping capacity and peak hour demand. ()

e. Fire Suppression Storage. The water needed to support fire flow in those systems that provide it. ()

f. Standby Storage. Standby storage provides a measure of reliability or safety factor should sources fail or when unusual conditions impose higher than anticipated demands. Normally used for emergency operation, if standby power is not provided, to provide water for eight (8) hours of operation at average day demand. ()

17. Composite Correction Program (CCP). A systematic approach to identifying opportunities for improving the performance of water treatment and implementing changes that will capitalize on these opportunities. The CCP consists of two (2) elements: ()

a. Comprehensive Performance Evaluation (CPE). A thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation, and maintenance practices. It is

conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. The CPE must consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report. ()

b. Comprehensive Technical Assistance (CTA). The implementation phase that is carried out if the CPE results indicate improved performance potential. During the CTA phase, the system must identify and systematically address plant-specific factors. The CTA consists of follow-up to the CPE results, implementation of process control priority setting techniques, and maintaining long term involvement to systematically train staff and administrators. ()

18. Compositing of Samples. The mixing of up to five (5) samples by the laboratory. ()

19. Confining Layer. A nearly impermeable subsurface stratum which is located adjacent to one (1) or more aquifers and does not yield a significant quantity of water to a well. ()

20. Confirmation Sample. A sample of water taken from the same point in the system as the original sample and at a time as soon as possible after the original sample was taken. ()

21. Connection. Each structure, facility, or premises which is connected to a water system, and which is or could be used for domestic purposes, is considered a single connection. A single family residence is considered to be a premises. Multi-family dwellings and apartment, condominium, and office complexes are considered single connections unless individual units are billed separately for water by the water system, in which case each such unit shall be considered a single connection. ()

22. Consecutive System. A public water system that receives some or all of its finished water from one (1) or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one (1) or more consecutive systems. ()

23. Consumer. Any person served by a public water system. ()

24. Consumer Confidence Report (CCR). An annual report that community water systems must deliver to their customers. The reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner. ()

25. Contaminant. Any physical, chemical, biological, or radiological substance or matter in water. ()

26. Cross Connection. Any actual or potential connection or piping arrangement between a public or a consumer's potable water system and any other source or system through which it is possible to introduce into any part of the potable water system used water, water from any source other than an approved public water system, industrial fluid, gas or substance other than the intended potable water with which the system is supplied. Cross connections include bypass arrangements, jumper connections, removable sections, swivel or change-over devices and other temporary or permanent devices which, or because of which "backflow" can or may occur. ()

27. Dead End Main. A distribution main of any diameter and length that does not loop back into the distribution system. ()

28. Dead Storage. Storage that is either not available for use in the system or can provide only substandard flows and pressures. See also the definition of Components of Finished Water Storage in these rules. ()

29. Department. The Idaho Department of Environmental Quality. ()

30. Director. The Director of the Department of Environmental Quality or his designee. ()

- 31. Direct Integrity Test (DIT).** A physical test applied to a microfiltration or ultrafiltration membrane unit in order to identify integrity breaches. ()
- 32. Disinfection.** Introduction of chlorine, other agents, or processes that are approved by the Department (such as ultraviolet light) in sufficient concentration, dosage, or application, and for the time required to kill or inactivate pathogenic and indicator organisms. ()
- 33. Disinfection Profile.** A summary of daily *Giardia lamblia* inactivation through the drinking water treatment plant. The procedure for developing a disinfection profile is contained in 40 CFR 141.172 and 40 CFR 141.530-141.536. ()
- 34. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s), treatment facility(ies), or a combination of source(s) and treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. ()
- 35. Drinking Water.** Means “water for human consumption.” ()
- 36. Drinking Water System.** All mains, pipes, and structures through which water is obtained and distributed, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use. ()
- 37. Dual Sample Set.** A set of two (2) samples collected at the same time and same location, with one (1) sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an Initial Distribution System Evaluation (40 CFR Part 141, Subpart U) and for determining compliance with the TTHM and HAA5 MCLs under the Stage 2 Disinfection Byproducts Requirements (40 CFR Part 141, Subpart V). ()
- 38. Effective Contact Time.** For the purpose of these rules, effective contact time means the time in minutes that it takes for water to move from the point of completely mixed chemical application to the point where residual concentration is measured. It is the “T” in contact time (CT) calculations and is either “demonstrated” or “calculated.” It is the contact time sufficient to achieve the inactivation of target pathogens under the expected range of raw water pH and temperature variation and must be demonstrated through tracer studies or other evaluations or calculations acceptable to the Department. “Improving Clearwell Design for CT Compliance,” referenced in Subsection 002.02, contains information that may be used as guidance for these calculations. ()
- 39. Effective Storage.** Effective storage is all storage other than dead storage and is made up of the additive components described in Paragraphs c. through f. of the definition of Components of Finished Water Storage in these rules. ()
- 40. Enhanced Coagulation.** The addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment. Conventional filtration treatment is defined in 40 CFR 141.2. ()
- 41. Enhanced Softening.** The improved removal of disinfection byproduct precursors by precipitative softening. ()
- 42. Equalization Storage.** Storage of finished water in sufficient quantity to compensate for the difference between a water system’s maximum pumping capacity and peak hour demand. See also the definition of Components of Finished Water Storage in these rules. ()
- 43. Equivalent Dwelling Unit (EDU).** A unit of measure that standardizes all land use types (housing, retail, office, etc.) to the level of demand created by a single-family detached housing unit within a water system. The demand for one (1) equivalent dwelling unit is equivalent to the amount of water provided to the average single-family detached housing unit within a water system. For example, a business designed to use three (3) times as much water as an average single-family detached housing unit would have a demand of three (3) equivalent dwelling units. ()

()

44. Exemption. A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only if the system demonstrates to the satisfaction of the Department that the system cannot comply due to compelling factors and the deferment does not cause an unreasonable risk to public health. ()

45. Facility Plan. The facility plan for a public drinking water system describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for infrastructure and includes a plan for the future of the system/facility, including upgrades and additions. It is usually updated on a regular basis due to anticipated or unanticipated growth patterns, regulatory requirements, or other infrastructure needs. A facility plan is sometimes referred to as a master plan or facilities planning study. In general, a facility plan is an overall system-wide plan as opposed to a project specific plan. ()

46. Facility Standards and Design Standards. Facility standards and design standards are described in Sections 500 through 552 of these rules. Facility and design standards found in Sections 500 through 552 of these rules must be followed in the planning, design, construction, and review of public drinking water facilities. ()

47. Fee Assessment. A charge assessed on public drinking water systems based on a rate structure calculated by system size. ()

48. Filter Profile. A graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed. ()

49. Filtrate. As the term relates to microfiltration and ultrafiltration, the product water or the portion of the feed stream that has passed through the membrane. ()

50. Finished Water. Water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals). ()

51. Finished Water Storage Structures or Facilities. Finished water storage structures or facilities are defined as: ()

a. Above-ground storage structure or facility. A finished water storage structure or facility with a bottom elevation above normal ground surface. ()

b. Ground-level storage structure or facility. A finished water storage structure or facility with a bottom elevation at normal ground surface. ()

c. Partially buried storage structure or facility. A finished water storage structure or facility with a bottom elevation below normal ground surface and any portion of the structure or facility above normal ground surface. ()

d. Below-ground storage structure or facility. A finished water storage structure or facility with a bottom elevation and top elevation below normal ground surface. ()

52. Fire Flow Capacity. The water system capacity, in addition to maximum day demand, that is available for fire fighting purposes within the water system or distribution system pressure zone. Adequacy of the water system fire flow capacity is determined by the local fire authority or through a hydraulic analysis performed by a licensed professional engineer to establish required fire flows in accordance with the International Fire Code as adopted by the State Fire Marshal. ()

53. Fire Suppression Storage. The water needed to support fire flow in those systems that provide it. See also the definition of Components of Finished Water Storage in these rules. ()

54. Fixture Protection. The practice of installing backflow prevention assemblies or devices to isolate one (1) or more cross connections within a customer's facility. ()

55. Flowing Stream. As used in the Long Term 2 Enhanced Surface Water Treatment Rule (40 CFR Part 141, Subpart W), this term means a course of running water flowing in a definite channel. ()

56. Flux. The throughput of a pressure-driven membrane filtration process expressed as flow per unit of membrane area, usually in gallons per square foot per day or liters per hour per square meter. ()

57. Ground Water System. A public water system which is supplied exclusively by a ground water source or sources. ()

58. Ground Water Under the Direct Influence of Surface Water (GWUDI). Any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence shall be determined by the Department for individual sources. The determination of direct influence may be based on site-specific measurements of water quality, documentation of well construction characteristics and geology with field evaluation, a combination of water quality and documentation, or other information required by the Department. ()

59. Haloacetic Acids (Five) (HAA5). The sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid) rounded to two (2) significant figures after addition. ()

60. Health Hazards. Any condition which creates, or may create, a danger to the consumer's health. Health hazards may consist of, but are not limited to, design, construction, operational, structural, collection, storage, distribution, monitoring, treatment or water quality elements of a public water system. See also the definition of Significant Deficiency, which refers to a health hazard identified during a sanitary survey. ()

61. Indirect Integrity Monitoring. Monitoring some aspect of filtrate water quality that is indicative of the removal of particulate matter. ()

62. Inorganic. Generally refers to compounds that do not contain carbon and hydrogen. ()

63. Internal or In-Plant Isolation. The practice of installing backflow prevention assemblies to protect an area within a water customer's structure, facility, or premises from contaminating another part of the structure, facility, or premises. ()

64. Lake/Reservoir. As used in the Long Term 2 Enhanced Surface Water Treatment Rule (40 CFR Part 141, Subpart W), this term means a natural or man-made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow. ()

65. Level 1 Assessment. A Level 1 Assessment is an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the system triggered the assessment. It is conducted by the system operator or owner. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. The system must conduct the assessment consistent with any Department directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system. ()

66. Level 2 Assessment. A Level 2 Assessment is an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason

that the system triggered the assessment. A Level 2 assessment provides a more detailed examination of the system (including the system's monitoring and operational practices) than does a Level 1 assessment through the use of more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices. It is conducted by an individual approved by the Department in accordance with Subsection 305.03, which may include the system operator. Minimum elements include review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., whether a ground water system is disinfected); existing water quality monitoring data; and inadequacies in sample sites, sampling protocol, and sample processing. ()

67. License. A physical document issued by the Idaho Division of Occupational and Professional Licenses certifying that an individual has met the appropriate qualifications and has been granted the authority to practice in Idaho under the provisions of Chapter 24, Title 54, Idaho Code. ()

68. Locational Running Annual Average (LRAA). The average of sample analytical results for samples taken at a particular monitoring location during the previous four (4) calendar quarters, as set forth in the Stage 2 Disinfection Byproducts Requirements (40 CFR Part 141, Subpart V). ()

69. Log. Logarithm to the base ten (10). In the context of these rules, it is used in the determination of removal or inactivation efficiencies. It is expressed as the logarithm to the base ten (10) or "log" of the concentration of the feed or raw water minus the log of the concentration in the filtrate or product water. For example, if the incoming feed or raw water concentration is one hundred (100), and the outgoing filtrate or product water concentration is ten (10), a 10-fold reduction was attained; or 1-log removal. 1-log removal also equates to ninety percent (90%) removal, as ninety (90) of the original feed concentration counts had been removed, leaving ten (10) in the filtrate. Similarly, 2-log equates to ninety-nine percent (99%) removal. ()

70. Log Removal Value (LRV). LRV is a measure of filtration removal efficiency for a target organism, particulate, or surrogate expressed as Logarithm to the base ten (10). ()

71. Material Deviation. A change from the design plans that significantly alters the type or location of facilities, requires engineering judgment to design, or impacts the public safety or welfare. ()

72. Material Modification. Those modifications of an existing public water system that are intended to increase system capacity or alter the methods or processes employed. Any project that adds source water to a system, increases the pumping capacity of a system, increases the potential population served by the system or the number of service connections within the system, adds new or alters existing drinking water system components, or affects the water demand of the system is considered to be increasing system capacity or altering the methods or processes employed. Maintenance and repair performed on the system and the replacement of valves, pumps, or other similar items with new items of the same size and type are not considered a material modification. ()

73. Maximum Contaminant Level (MCL). The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. ()

74. Maximum Day Demand. The average rate of consumption for the twenty-four (24) hour period in which total consumption is the largest for the design year. See also the definition of Water Demand in these rules. ()

75. Maximum Pumping Capacity. The pumping capacity with the largest source or pump out of service. ()

76. Maximum Residual Disinfectant Level (MRDL). A level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a public water system is in compliance with the MRDL, when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a public water system is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two (2) consecutive daily samples exceed the MRDL.

MRDLs are enforceable in the same manner as maximum contaminant levels under Section 1412 of the Safe Drinking Water Act. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in 40 CFR 141.65, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections. ()

77. Maximum Residual Disinfectant Level Goal (MRDLG). The maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants. ()

78. Membrane Filtration. A pressure or vacuum driven separation process in which particulate matter larger than one (1) micrometer (μm) is rejected by an engineered barrier, primarily through a size-exclusion mechanism. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis. ()

79. Membrane Unit. A group of treatment systems or membrane modules that usually share common control and valving so that the group can be isolated for testing or cleaning. ()

80. Method Detection Limit (MDL). The lowest concentration which can be determined to be greater than zero with ninety-nine percent (99%) confidence, for a particular analytical method. ()

81. Microfiltration (MF). A low pressure membrane filtration process with pore diameter normally in the range of 0.1 to 0.5 μm . ()

82. Module. As the term relates to membrane filtration, it is the smallest component of a membrane unit in which a specific membrane surface area is housed. The component is typically equipped with a feedwater inlet, a filtrate outlet, and concentrate or backwash outlet structure. ()

83. Nanofiltration (NF). A membrane filtration process that removes dissolved constituents from water. Nanofiltration is similar to reverse osmosis but allows a higher percentage of certain ions to pass through the membrane. These systems typically operate under higher pressure than microfiltration and ultrafiltration. ()

84. New System. Any water system that meets, for the first time, the definition of a public water system provided in Section 1401 of the federal Safe Drinking Water Act (42 U.S.C. Section 300f). This includes systems that are entirely new construction and previously unregulated systems that are expanding. ()

85. Noncommunity Water System. A public water system that is not a community water system. A non-community water system is either a transient noncommunity water system or a non-transient noncommunity water system. See also the definition of a Public Drinking Water System in these rules. ()

86. Non-Potable Fluids. Any fluids that do not meet the definition of potable water. This definition also includes any gases that are heavier than air such as propane. ()

87. Non-Potable Mains. Pipelines that collect, deliver, or otherwise convey non-potable fluids. ()

88. Non-Potable Services or Lines. Pipelines that collect, deliver, or otherwise convey non-potable fluids to or from a non-potable main. These pipelines connect individual facilities to the non-potable main. This term also refers to pipelines that convey non-potable fluids from a pressurized irrigation system, reclaimed wastewater system, and other non-potable systems to individual consumers. ()

89. Nontransient Noncommunity Water System. A public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. See also the definition of a Public Drinking Water System in these rules. ()

90. Operating Shift. That period of time during which water system operator decisions that affect public health are necessary for proper operation of the system. ()

91. Operational Storage. Operational storage supplies water when, under normal conditions, the sources are off. This component is the larger of the volume required to prevent excess pump cycling and ensure that the following volume components are full and ready for use when needed or the volume needed to compensate for the sensitivity of the water level sensors. See also the definition of Components of Finished Water Storage in these rules. ()

92. Operation and Maintenance Manual. An operation and maintenance manual typically covers three main subjects: a water system specific operations plan (see definition of Operations Plan); maintenance information and checklists; and manufacturer's product information (including trouble shooting information, a parts list and parts order form, special tools, spare parts list, etc.). An operation and maintenance manual may cover every aspect of the water system or any part of the water system, including but not limited to the following: treatment, pump stations, storage reservoirs, distribution system, pressure reducing valve stations, etc. ()

93. Operations Plan. The operations plan is part of an operation and maintenance manual. Depending on which facilities of the water system are being addressed, the operations plan may cover many types of information including but not limited to the following: daily, weekly, monthly, and yearly operating instructions; information specific to a particular type of treatment; location of valves and other key distribution system features; pertinent telephone and address contact information including the responsible charge water system operator and water system owner; operator safety procedures; alarm system; emergency procedures; trouble-shooting advice; water quality testing; depressurization events; customer service; and response to customer complaints. ()

94. Owner/Purveyor of Water/Supplier of Water. The person, company, corporation, association, or other organizational entity which holds legal title to the public water system, who provides, or intends to provide, drinking water to the customers, and who is ultimately responsible for the public water system operation. ()

95. Peak Hour Demand. The highest hourly flow, excluding fire flow, that a water system or distribution system pressure zone is likely to experience in the design year. See also the definition of Water Demand in these rules. ()

96. Person. A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. ()

97. Pesticides. Substances which meet the criteria for regulation pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, and any regulations adopted pursuant to FIFRA. For example, pesticides include, but are not limited to insecticides, fungicides, rodenticides, herbicides, and algaecides. ()

98. Plant Design Capacity. The maximum design flow through treatment units. The minimum plant design capacity could be equal to peak hour demand but could also be equal to the maximum day demand if equalization storage is provided. ()

99. Plant. A physical facility where drinking water or wastewater is treated or processed. ()

100. Point of Use (POU) Treatment Device. A treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap. ()

101. Point of Use (POU) Treatment System. A collection of POU treatment devices. ()

102. Potable Mains. Pipelines that deliver potable water to multiple service connections. ()

103. Potable Services. Pipelines that convey potable water from a connection to the potable water main to individual consumers. ()

104. Potable Water. Water for human consumption. See the definition of Water for Human Consumption in Section 003. ()

105. Preliminary Engineering Report. The preliminary engineering report for a public drinking water system facility is a report that addresses specific portions of the system or facility for which modifications are being designed. Modifications may include, but are not limited to, significant changes to existing processes or facilities, system expansion, addition of treatment, or installation of other processes and facilities. This report addresses specific purpose and scope, design requirements, alternative solutions, costs, operation and maintenance requirements, and other requirements as described in Section 503. Preliminary engineering reports are generally project specific as opposed to an overall system-wide plan, such as a facility plan. ()

106. Premises Isolation or Containment. The practice of separating the customer's structure, facility, or premises from the purveyor's system by means of a backflow prevention assembly installed on the service line before any distribution takes place. ()

107. Presedimentation. A preliminary treatment process used to remove gravel, sand, and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant. ()

108. Protected Water Source. For the purposes of the Revised Total Coliform Rule (40 CFR Part 141, Subpart Y), a protected water source is a ground water well that is not susceptible to contamination on the basis of well construction, hydrologic data, or contamination history. ()

109. Public Notice. The notification of public water system consumers of information pertaining to that water system including information regarding water quality or compliance status of the water system. ()

110. Public Drinking Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system" as further defined as: ()

a. Community water system. A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. ()

b. Noncommunity water system. A public water system that is not a community water system. A noncommunity water system is either a transient noncommunity water system or a non-transient noncommunity water system. ()

c. Nontransient noncommunity water system. A public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. ()

d. Transient noncommunity public water system. A noncommunity water system which does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year. ()

111. Public Water System/Water System/System. Means "public drinking water system." ()

112. Pump House. A structure containing important water system components, such as a well, hydropneumatic tank, booster pump, pump controls, flow meter, well discharge line, or a treatment unit. Pump houses are often called well houses in common usage, even though in modern construction these structures may not contain either a well or a pump. These terms are used interchangeably in national standards and trade publications. ()

113. Qualified Licensed Professional Engineer (QLPE). A professional engineer licensed by the state

of Idaho; qualified by education or experience in the specific technical fields involved in these rules; and retained or employed by a city, county, quasi-municipal corporation, or regulated public utility for the purposes of plan and specification review. ()

114. Quasi-Municipal Corporation. A public entity, other than community government, created or authorized by the legislature to aid the state in, or to take charge of, some public or state work for the general welfare. For the purpose of these rules, this term refers to drinking water districts. ()

115. Raw Water. Raw water is any ground water, spring water, or surface water utilized as source water prior to treatment for the purpose of producing potable water. ()

116. Redundancy. The installation of duplicate components or backup systems that are designed to maintain minimum pressure and capacity of the system should any component fail or otherwise be out of service for maintenance or repair. ()

117. Regulated Public Utility. For the purpose of these rules, any public water system that falls under the jurisdiction of the Idaho Public Utilities Commission and is subject to the rules thereof. ()

118. Reverse Osmosis (RO). A membrane filtration process that removes dissolved constituents from water. Reverse osmosis is similar to nanofiltration but allows a lower percentage of certain ions to pass through the membrane. These systems typically operate under higher pressure than microfiltration and ultrafiltration. ()

119. Repeat Compliance Period. Any subsequent compliance period after the initial compliance period. ()

120. Resolution. As the term relates to membrane treatment, it is the size of the smallest integrity breach that contributes to a response from a direct integrity test when testing low pressure membranes. ()

121. Responsible Charge (RC). Responsible Charge means active, daily on-site or on-call responsibility for the performance of operations or active, on-going, on-site, or on-call direction of employees and assistants. ()

122. Responsible Charge Operator. An operator of a public drinking water system, designated by the system owner, who holds a valid license at a class equal to or greater than the drinking water system classification, who is in responsible charge of the public drinking water system. ()

123. Reviewing Authority. For those projects requiring preconstruction approval by the Department, the Department is the reviewing authority. For those projects allowing for preconstruction approval by others, pursuant to Subsection 504.03.b. of these rules, the qualified Idaho licensed professional engineer (QLPE) is also the reviewing authority. ()

124. Sampling Point. The location in a public water system from which a sample is drawn. ()

125. Sanitary Defect. A defect that could provide a pathway of entry for microbial contamination into the distribution system or that is indicative of a failure or imminent failure in a barrier that is already in place. Examples of sanitary defects include but are not limited to: cross connections, inadequate distribution system pressures, inadequate or missing sanitary seal, improperly screened storage tank vents, inadequate protection from contamination during flooding, history of treatment failures, deterioration of system components, and water main leaks or breaks. ()

126. Sanitary Survey. An onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water. The sanitary survey will include, but is not limited to the following elements: ()

a. Source; ()

- b. Treatment; ()
- c. Distribution system; ()
- d. Finished water storage; ()
- e. Pumps, pump facilities, and controls; ()
- f. Monitoring and reporting and data verification; ()
- g. System management and operation; and ()
- h. Operator compliance with state requirements. ()

127. SDWIS-State. An acronym that stands for “Safe Drinking Water Information System-State Version.” It is a software package developed under contract to the U.S. Environmental Protection Agency and used by a majority of U.S. states to collect, maintain, and report data about regulated public water systems. ()

128. Seasonal System. A noncommunity water system that is not operated as a public water system on a year-round basis and starts up and shuts down at the beginning and end of each operating season. ()

129. Sensitivity. As the term relates to membrane treatment, it is the maximum log removal value (LRV) for a specific resolution that can be reliably verified by the direct integrity test associated with a given low pressure membrane filtration system. ()

130. Sewage. The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. ()

131. Significant Deficiency. As identified during a sanitary survey, any defect in a system’s design, operation, maintenance, or administration, as well as any failure or malfunction of any system component, that the Department or its agent determines to cause, or have potential to cause, risk to health or safety, or that could affect the reliable delivery of safe drinking water. See also the definition of Health Hazards. ()

132. Simple Water Main Extension. New or replacement water main(s) that require plan and specification review by a qualified licensed professional engineer (QLPE) or by the Department per these rules and that is connected to existing water main facilities and does not require the addition of system components designed to control quantity or pressure, including, but not limited to, booster stations, new sources, pressure reducing valve stations, or reservoirs; and continues to provide the pressure and quantity requirements of Subsection 552.01. ()

133. Special Irrigation District. An irrigation district in existence prior to May 18, 1994 that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with the exclusion provisions in Section 1401(4)(B)(i)(II) or (III) of the Safe Drinking Water Act. ()

134. Spring. A source of water which flows from a laterally percolating water table's intersection with the surface or from a geological fault that allows the flow of water from an artesian aquifer. ()

135. Standby Storage. Standby storage provides a measure of reliability or safety factor should sources fail or when unusual conditions impose higher than anticipated demands. See also the definition of Components of Finished Water Storage in these rules. ()

136. Substantially Modified. The Department shall consider a public water system to be substantially modified when, as the result of one (1) or more projects, there is a combined increase of twenty-five percent (25%) or more above the system’s existing configuration in the population served or number of service connections, the total length of transmission and distribution water mains, and the peak or average water demand. ()

137. Substitute Responsible Charge Operator. An operator of a public drinking water system who holds a valid license at a class equal to or greater than the drinking water system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. ()

138. Surface Water System. A public water system which is supplied by one (1) or more surface water sources or ground water sources under the direct influence of surface water. Also called subpart H systems in applicable sections of 40 CFR Part 141. ()

139. Total Organic Carbon (TOC). Total organic carbon in mg/l measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two (2) significant figures. ()

140. Total Trihalomethanes (TTHM). The sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane and tribromomethane [bromoform]), rounded to two (2) significant figures. ()

141. Transient Noncommunity Public Water System. A noncommunity water system which does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year. See also the definition of a Public Drinking Water System in these rules. ()

142. Treatment Facility. Any place(s) where a public drinking water system or nontransient noncommunity water system alters the physical or chemical characteristics of the drinking water. Chlorination may be considered as a function of a distribution system. ()

143. Turbidity. A measure of the interference of light passage through water, or visual depth restriction due to the presence of suspended matter such as clay, silt, nonliving organic particulates, plankton and other microscopic organisms. Operationally, turbidity measurements are expressions of certain light scattering and absorbing properties of a water sample. Turbidity is measured by the Nephelometric method. ()

144. Ultrafiltration (UF). A low pressure membrane filtration process with pore diameter normally in the range of five thousandths to one tenth micrometer (0.005 to 0.1 μ m). ()

145. Ultraviolet (UV) Light Technology. A physical disinfection process that has proven effective against common pathogens in drinking water. ()

146. UV Transmittance (UVT). A measure of the fraction of incident light transmitted through a material (e.g., water sample or quartz). The UVT is usually reported for a wavelength of two hundred fifty-four (254) nm and a pathlength of one (1) cm. It is often represented as a percentage. ()

147. Unregulated Contaminant. Any substance that may affect the quality of water but for which a maximum contaminant level or treatment technique has not been established. ()

148. Use Assessment. For the purpose of obtaining a waiver from certain monitoring requirements, a use assessment is an evaluation as to whether synthetic organic contaminants are being or have been used, manufactured, transported, stored, or disposed of in the watershed for surface water or the zone of influence for ground water. ()

149. Variance. A temporary deferment of compliance with a maximum contaminant level or treatment technique requirement which may be granted only when the system demonstrates to the satisfaction of the Department that the raw water characteristics prevent compliance with the MCL or requirement after installation of the best available technology or treatment technique and the deferment does not cause an unreasonable risk to public health. ()

150. Very Small Public Drinking Water System. A Community or Nontransient Noncommunity Public Water System that serves five hundred (500) persons or less and has no treatment other than disinfection or has only treatment which does not require any chemical treatment, process adjustment, backwashing or media ()

regeneration by an operator (e.g. calcium carbonate filters, granular activated carbon filters, cartridge filters, ion exchangers). ()

151. Volatile Organic Chemicals (VOCs). VOCs are lightweight organic compounds that vaporize or evaporate easily. ()

152. Vulnerability Assessment. A determination of the risk of future contamination of a public drinking water supply. ()

153. Waiver. ()

a. For the purposes of these rules, except Sections 500 through 552, “waiver” means the Department approval of a temporary reduction in sampling requirements for a particular contaminant. ()

b. For purposes of Sections 500 through 552, “waiver” means a dismissal of any requirement of compliance. ()

c. For the purposes of Section 010, “waiver” means the deferral of a fee assessment for a public drinking water system. ()

154. Wastewater. Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any ground water, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, gray water or commercial or industrial pollutants; and sewage. See IDAPA 58.01.16, “Wastewater Rules,” for additional information. ()

155. Water for Human Consumption. Water that is used by humans for drinking, bathing for purposes of personal hygiene (including hand-washing), showering, cooking, dishwashing, and maintaining oral hygiene. In common usage, the terms “culinary water,” “drinking water,” and “potable water” are frequently used as synonyms. ()

156. Water Demand. The volume of water requested by system users to satisfy their needs. Water demand can be further categorized as: ()

a. Average day demand. The volume of water used by a system on an average day based on a one (1) year period. ()

b. Maximum day demand. The average rate of consumption for the twenty-four (24) hour period in which total consumption is the largest for the design year. ()

c. Peak hour demand. The highest hourly flow, excluding fire flow, that a water system or distribution system pressure zone is likely to experience in the design year. ()

157. Water Main. A pipe within a public water system which is under the control of the system operator and conveys water to two (2) or more service connections or conveys water to a fire hydrant. The collection of water mains within a given water supply is called the distribution system. ()

158. Watershed. The land area from which water flows into a stream or other body of water which drains the area. ()

159. Wholesale System. A public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one (1) or more consecutive systems. ()

004. COVERAGE.
40 CFR 141.3 is herein incorporated by reference. ()

005. GENERAL PROVISIONS FOR WAIVERS, VARIANCES, AND EXEMPTIONS.

40 CFR 141.4 is herein incorporated by reference. ()

01. Waivers. ()

a. The Department may waive any requirement of Sections 500 through 552 that is not explicitly imposed by Idaho Statute, if it can be shown to the satisfaction of the Department that the requirement is not necessary for the protection of public health, protection from contamination, and satisfactory operation and maintenance of a public water system. ()

b. The Department may at its discretion waive the requirements outlined in Section 010. ()

c. Waiver of monitoring requirements is addressed in Subsection 100.07. ()

02. Variances. ()

a. General Variances. A variance may be granted by the Department if a public water system submits an application and demonstrates to the satisfaction of the Department that the following minimum requirements as required by 42 USC Section 1415(a) (The Safe Drinking Water Act) are met. These include but are not limited to: ()

i. The system has installed the best available technology, treatment techniques, or other means to comply with the maximum contaminant level; and ()

ii. Alternative sources of water are not reasonably available to the system. ()

iii. For provisions of a national primary drinking water regulation which requires the use of a specific treatment technique with respect to a contaminant, the system must demonstrate that the technique is not necessary to protect the health of the system's customers. ()

b. Small System Variances. A small system variance for a maximum contaminant level or treatment technique may be granted by the Department if a public water system submits an application and demonstrates to the satisfaction of the Department that the following minimum requirements as required by 42 USC Section 1415(e) are met. These include, but are not limited to: ()

i. The system serves three thousand three hundred (3,300) or fewer persons; ()

ii. If the system serves more than three thousand three hundred (3,300) persons but fewer than ten thousand (10,000) persons, the application shall be approved by the U.S. Environmental Protection Agency; ()

iii. The U.S. Environmental Protection Agency has identified a variance technology that is applicable to the size and source water quality conditions of the public water system; ()

iv. The system installs, operates and maintains such treatment technology, treatment technique, or other means; and ()

v. The system cannot afford to comply with a national primary drinking water regulation in accordance with affordability criteria established by the Department, including compliance through treatment, alternative source of water supply, restructuring or consolidation. ()

03. Exemptions. An exemption may be granted by the Department if a public water system submits an application and demonstrates to the satisfaction of the Department that the following minimum requirements as required by 42 USC Section 1416(a) are met. These include but are not limited to: ()

a. The system is unable to comply with a maximum contaminant level or treatment technique due to compelling factors, which may include economic factors; ()

b. The system was in operation by the effective date of such contaminant level or treatment technique and no reasonable source of water is available to the system; or ()

c. If the system was not in operation by the effective date of such contaminant level or treatment technique, then no reasonable alternative source of water is available to the system; and ()

d. The granting of an exemption will not result in an unreasonable risk to health; ()

e. Management or restructuring changes cannot reasonably be made to comply with the contaminant level or treatment technique to improve the quality of the drinking water; ()

f. The system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to 42 USC Section 1412b(10); ()

g. If the system needs financial assistance, the system has entered into an agreement to obtain such financial assistance; or ()

h. The system has entered into an enforceable agreement to become a part of a regional public water system and is taking all practical steps to meet the standard. ()

04. Conditions. A waiver, exemption or variance may be granted upon any conditions that the Department, in its discretion, determines are appropriate. Failure by the public water system to comply with any condition voids the waiver, variance or exemption. ()

05. Public Hearing. The Department shall provide public notice and an opportunity for public hearing in the area served by the public water system before any exemption or variance under Section 005 is granted by the Department. At the conclusion of the hearing, the Department shall record the findings and issue a decision approving, denying, modifying, or conditioning the application. ()

06. Exceptions. Any person aggrieved by the Department's decision on a request for a waiver, variance or exemption may file a petition for a contested case with the Board. Such petitions shall be filed with the Board, as prescribed in, IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ()

07. Surface Water Variances. Variances from the requirements of Sections 300 through 303 are not allowed. ()

08. Surface Water Exemptions. Exemptions from 40 CFR 141.72(a)(3) and 40 CFR 141.72(b)(2) are not allowed. ()

006. SITING REQUIREMENTS. 40 CFR 141.5 is herein incorporated by reference. ()

007. DISAPPROVAL DESIGNATION. The Department or its agent may assign a disapproved designation to a public water system when: ()

01. Defects. There are design or construction defects, or some combination of design and construction defects; or ()

02. Operating Procedures. Operating procedures constitute a health hazard; or ()

03. Quality. Physical, chemical, microbiological or radiological quality does not meet the requirements of these rules; or ()

04. Monitoring. The required monitoring as specified in these rules has not been conducted; or ()

05. Unapproved Source. An unapproved source of drinking water is used or the system is interconnected with a disapproved water system. ()

06. Non-Payment of Annual Fee Assessment. The annual drinking water system fee assessment is not paid as set forth in Section 010. ()

07. Public Notification. The Department may require the owner of a water system that has been given a disapproval designation to notify the public. The manner, content, and timing of this notification will be determined by the Department. This requirement is in addition to any public notification requirements set forth in Section 150 that may also apply to the disapproved system. ()

008. HEALTH HAZARDS.

01. Prohibited. ()

a. No public water system, or portion of a public water system, shall constitute a health hazard, as determined by the Department and defined in Section 003 of these rules. ()

b. No public water system, or portion of a public water system, shall create a condition which prevents, or may prevent, the detection of a health hazard, as determined by the Department. ()

02. Schedule. Health hazards and conditions which prevent, or may prevent, the detection of a health hazard must be mitigated as required by the Department and terminated within a time schedule established by the Department. ()

03. Standards. Design and construction revisions necessary to correct a health hazard or conditions which prevent, or may prevent, the detection of a health hazard, must be reviewed and approved by the Department, and comply with Sections 501 through 552, unless otherwise specified by the Department. ()

009. MONITORING.

The Department may, in its discretion, alter the monitoring or sampling requirements for any contaminant otherwise specified in these rules if the Department determines that such alteration is necessary to adequately assess the level of such contamination. ()

010. FEE SCHEDULE FOR PUBLIC DRINKING WATER SYSTEMS.

All regulated public drinking water systems shall pay an annual drinking water system fee. The fee shall be assessed to regulated public drinking water systems as provided in this section. ()

01. Effective Date. Annual fees shall be paid for each fee year beginning October 1, 1993, and continuing for each succeeding year. ()

02. Fee Schedule. ()

a. Community and Nontransient noncommunity public drinking water systems shall pay an annual fee according to the following fee schedule:

| Number of Connections | Fee |
|-----------------------|--|
| 1 to 20 | \$100 |
| 21 to 184 | \$5 per connection, not to exceed a total of \$735 per system |
| 185 to 3,663 | \$4 per connection, not to exceed a total of \$10,988 per system |
| 3,664 or more | \$3 per connection |

()

- b.** The annual fee for transient public drinking water systems is twenty-five dollars (\$25). ()
- c.** New public drinking water systems formed after October 1 will not pay a fee until the following October. ()
- 03. Fee Assessment.** ()
- a.** An annual fee assessment will be generated for each community and nontransient noncommunity public drinking water system listed in the Department's Safe Drinking Water Information System (SDWIS). ()
- b.** Community and nontransient noncommunity public drinking water systems will be notified each year of the official number of connections listed in SDWIS. Systems will have at least one (1) month to notify the Department if the number of connections listed in SDWIS is not in agreement with the system's records. ()
- c.** The official number of connections listed in SDWIS following each yearly update, as required in Subsection 010.03.b., will be used to calculate the annual fee for community and nontransient noncommunity public drinking water systems for the next fee year of October 1 through September 30. ()
- 04. Billing.** An annual fee shall be assessed and a statement will be mailed to all community, nontransient noncommunity, and transient public drinking water systems listed in SDWIS by the Department on or before September 1 of each year. ()
- 05. Payment.** ()
- a.** Payment of the annual fee shall be due on October 1, unless it is a Saturday, a Sunday, or a legal holiday, in which event the payment shall be due on the successive business day. Fees paid by check or money order shall be made payable to the Idaho Department of Environmental Quality and sent to 1410 North Hilton Street, Boise, ID 83706-1255. ()
- b.** If a public water system consists of two hundred fifty (250) connections or more, the system may request to divide its annual fee payment into equal monthly or quarterly installments by submitting a request to the Department on the proper request form provided with the initial billing statement. ()
- c.** The Department will notify applicable systems, in writing, of approval or denial of a requested monthly or quarterly installment plan within ten (10) business days of the Department receiving such a request. ()
- d.** If a public water system has been approved to pay monthly installments then each installment shall be due by the first day of each month, unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment shall be due on the successive business day. ()
- e.** If a public water system has been approved to pay quarterly installments then each installment shall be due by the first day of the month of each quarter (October 1, January 1, April 1, and July 1), unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment shall be due on the first successive business day. ()
- 06. Delinquent Unpaid Fees.** A public water system will be delinquent in payment if its annual fee assessment has not been received by the Department by November 1; or if having first opted to pay monthly or quarterly installments, its monthly or quarterly installment has not been received by the Department by the last day of the month in which the monthly or quarterly payment is due. ()
- 07. Suspension of Services and Disapproval Designation.** ()
- a.** For any system delinquent in payment of fee assessed under Subsections 010.02 and 010.06, in excess of ninety (90) days, technical services provided by the Department may be suspended except for the following: ()

- i. Issuance of monitoring waivers; ()
- ii. Review and processing of engineering reports; and ()
- iii. Review of plans and specifications for design and construction as set forth in Sections 501 through 552. ()

b. For any system delinquent in payment of fee assessed under Subsections 010.02 and 010.06, in excess of one hundred and eighty (180) days, the Department may suspend all technical services provided by the Department including any of the following: ()

- i. Review and processing of engineering reports; ()
- ii. Review of plans and specifications for design and construction as set forth in Sections 501 through 552; ()
- iii. Renewal of monitoring waivers; or ()
- iv. Granting of new monitoring waivers. ()

c. For any system delinquent in payment of fee assessed under Subsections 010.02 and 010.06, in excess of one hundred and eighty (180) days, the Department may disapprove the public water system pursuant to Subsection 007.06. ()

08. Reinstatement of Suspended Services and Approval Status. For any public water system for which delinquency of fee payment, pursuant to Subsection 010.07, has resulted in the suspension of technical services, the disapproval of a public water system, or both, continuation of technical services, reinstatement of public water system approval, or both, will occur upon payment of delinquent annual fee assessments. ()

09. Enforcement Action. Nothing in Section 010 waives the Department's right to undertake an enforcement action at any time, including seeking penalties, as provided in Section 39-108, Idaho Code. ()

10. Responsibility to Comply. Subsection 010.07 shall in no way relieve any system from its obligation to comply with all applicable state and federal drinking water statutes, rules, regulations, or orders. ()

011. CONTINUITY OF SERVICE.

01. Transfer of Ownership. No owner shall transfer system ownership without providing written notice to the Department and all customers. Notification shall include a schedule for transferring responsibilities and identification of the new owner. ()

02. Maintenance of Standards. The system transferring ownership shall ensure that all health related standards are met during transfer and shall ensure that water rights, operation and maintenance manuals, and all other pertinent documentation is transferred to the new owner. ()

012. WRITTEN INTERPRETATIONS.

The Department of Environmental Quality may have written statements in the form of guidance and policy documents that pertain to the interpretation of the rules of this chapter. Such written statements may be inspected and copies obtained at the Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255. ()

013. USE OF GUIDANCE.

Guidance documents referenced in these rules are to be used to assist both designers and reviewers in determining a reasonable way to achieve compliance with the rules. Nothing in these rules makes the use of a particular guidance or guidance document mandatory. If the plans and specifications comply with applicable facility and design standards as set out in these rules, Section 39-118, Idaho Code, requires that the Department not substitute its judgment for that of the design engineer concerning the manner of compliance. If the design engineer needs assistance as to how to

comply with a particular rule, the design engineer may use the referenced guidance documents for that assistance. However, the design engineer may also use other guidance or provide documentation to substantiate his or her own professional judgment. ()

014. ADMINISTRATIVE PROVISIONS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ()

015. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 74-114, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Department of Environmental Quality." ()

016. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8 a.m. to 5 p.m. Monday through Friday. ()

017. -- 049. (RESERVED)

050. MAXIMUM CONTAMINANT LEVELS AND MAXIMUM RESIDUAL DISINFECTANT LEVELS.

01. Maximum Contaminant Levels for Inorganic Contaminants. ()

a. 40 CFR 141.11 is herein incorporated by reference. ()

b. 40 CFR 141.62 is herein incorporated by reference. ()

c. The maximum contaminant level for cyanide is two-tenths milligram per liter (0.2 mg/l). ()

02. Maximum Contaminant Levels for Organic Contaminants. 40 CFR 141.61 is herein incorporated by reference, except that the best available technology (BAT) treatment listed in 40 CFR 141.61(b) shall be changed to reflect that packed tower aeration will not be listed for toxaphene but will be listed for toluene. ()

03. Maximum Contaminant Levels for Turbidity. 40 CFR 141.13 is herein incorporated by reference. ()

04. Maximum Contaminant Levels for Radionuclides. 40 CFR 141.66 is herein incorporated by reference. ()

05. Maximum Contaminant Levels for Microbiological Contaminants. 40 CFR 141.63 is herein incorporated by reference. ()

06. Maximum Contaminant Levels for Disinfection Byproducts. 40 CFR 141.64 is herein incorporated by reference. ()

07. Maximum Residual Disinfectant Levels. 40 CFR 141.65 is herein incorporated by reference. ()

08. Effective Dates. Effective date information provided in 40 CFR 141.6 and 40 CFR 141.60 is applicable. ()

051. -- 099. (RESERVED)

100. MONITORING AND ANALYTICAL REQUIREMENTS.

01. Total Coliform Sampling and Analytical Requirements. The Total Coliform Rule, 40 CFR 141.21, is herein incorporated by reference. The Revised Total Coliform Rule, 40 CFR Part 141, Subpart Y, is herein incorporated by reference, excluding the annual monitoring provisions in 40 CFR 141.854 (a)(4), (d), (e), (f) and (h). ()

a. Routine monitoring requirements for public water systems serving more than one thousand (1,000) people. 40 CFR 141.857 is herein incorporated by reference. ()

b. Routine monitoring requirements for community water systems serving one thousand (1,000) or fewer people using only ground water. 40 CFR 141.855 is herein incorporated by reference. ()

c. Routine monitoring requirements for subpart H public water system serving one thousand (1,000) or fewer people. 40 CFR 141.856 is herein incorporated by reference. ()

d. Routine monitoring requirements for non-community water system serving one thousand (1,000) or fewer people using only ground water. 40 CFR 141.854 is herein incorporated by reference, excluding the annual monitoring provisions in 40 CFR 141.854 (a)(4), (d), (e), (f), and (h). ()

02. Turbidity Sampling and Analytical Requirements. 40 CFR 141.22 is herein incorporated by reference. ()

03. Inorganic Chemical Sampling and Analytical Requirements. 40 CFR 141.23 is herein incorporated by reference. ()

04. Organic Chemicals, Sampling and Analytical Requirements. 40 CFR 141.24 is herein incorporated by reference. ()

05. Analytical Methods for Radioactivity. 40 CFR 141.25 is herein incorporated by reference. ()

06. Monitoring Frequency and Compliance Requirements for Radioactivity in Community Water Systems. 40CFR 141.26 is herein incorporated by reference. ()

07. Monitoring Waivers. 40 CFR 141.23(b) 141.23(c), 141.24(f), 141.24(h) are herein incorporated by reference. ()

a. Waivers from sampling requirements in Subsections 100.03, 100.04, 200.01, and 503.03.e.v. may be available to all systems for all contaminants except nitrate, nitrite, and disinfection byproducts and are based upon a vulnerability assessment, use assessment, the analytical results of previous sampling, or some combination of vulnerability assessment, use assessment, and analytical results. ()

b. There are two (2) general types of monitoring waivers: ()

i. Waivers based exclusively upon previous analytical data ()

ii. Waivers based on a use or vulnerability assessment. ()

c. Waivers are to be made by the Department on a contaminant specific basis and must be in writing. ()

d. Vulnerability assessments may be conducted by the Department, the water system, or a third party organization. The Department shall approve or disapprove all vulnerability assessments in writing. ()

e. Water systems which do not receive waivers shall sample at the required initial and repeat monitoring frequencies. ()

f. If a system elects to request a waiver from monitoring, it shall do so in writing at least sixty (60) days prior to the required monitoring deadline date. ()

08. Initial Monitoring Schedule. In addition to the requirements specified in 40 CFR 141.23, 40 CFR 141.24, and 40 CFR 141.40, initial monitoring must be completed according to the following schedule unless otherwise specified by the Department: ()

a. Public water systems serving more than one hundred (100) people must conduct initial monitoring before January 1, 1995 except that: ()

i. Initial monitoring for nitrate and nitrite must be completed before January 1, 1994 for all surface water sources serving transient noncommunity public water systems and for all ground water sources serving any public water system. ()

ii. Initial monitoring for nitrate and nitrite must be completed before April 1, 1993 for all surface water sources serving community or nontransient noncommunity public water systems. ()

iii. Initial monitoring required under 40 CFR 141.23(c) must be completed before January 1, 1994 for all surface water sources serving community or nontransient noncommunity public water systems. ()

b. Public water systems serving one hundred (100) or less people must conduct initial monitoring before January 1, 1996 except that: ()

i. Initial monitoring for nitrate and nitrite must be completed before January 1, 1994 for all surface water sources serving transient noncommunity public water systems and for all ground water sources serving a public water system. ()

ii. Initial monitoring for nitrate and nitrite must be completed before April 1, 1993 for all surface water sources serving community or nontransient noncommunity public water systems. ()

iii. Initial monitoring required under 40 CFR 141.23(c) must be completed before January 1, 1994 for all surface water sources serving community or nontransient noncommunity public water systems. ()

09. Alternate Analytical Techniques. 40 CFR 141.27 is herein incorporated by reference. ()

10. Approved Laboratories. 40 CFR 141.28 and 40 CFR 141.852(b) are herein incorporated by reference. All analyses conducted pursuant to these rules, except those listed below, shall be performed in laboratories certified or granted reciprocity by the Idaho Department of Health and Welfare, Bureau of Laboratories, as provided in IDAPA 16.02.13, "Rules Governing Certification of Idaho Water Quality Laboratories." The following analyses may be performed by any person acceptable to the Department of Environmental Quality: ()

a. pH; ()

b. Turbidity (Nephelometric method only); ()

c. Daily analysis for fluoride; ()

d. Temperature; ()

e. Disinfectant residuals, except ozone, which shall be analyzed using the Indigo Method or an acceptable automated method pursuant to Subsection 300.05.d.; ()

f. Alkalinity; ()

g. Calcium; ()

h. Conductivity; ()

- i. Silica; and ()
- j. Orthophosphate. ()
- 11. **Monitoring of Consecutive Water Systems.** 40 CFR 141.29 is herein incorporated by reference. ()
- 12. **Disinfection Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors.** 40 CFR Part 141, Subpart L is herein incorporated by reference. ()
- 101. -- 149. (RESERVED)
- 150. **REPORTING, PUBLIC NOTIFICATION, RECORDKEEPING.**
 - 01. **Reporting Requirements.** 40 CFR 141.31 is herein incorporated by reference. ()
 - 02. **Public Notification of Drinking Water Violations.** 40 CFR Part 141, Subpart Q is herein incorporated by reference. ()
 - 03. **Record Maintenance.** 40 CFR 141.33 is herein incorporated by reference. ()
 - 04. **Reporting for Unregulated Contaminant Monitoring Results.** 40 CFR 141.35 is herein incorporated by reference. ()
 - 05. **Reporting and Record Keeping Requirements for the Interim Enhanced Surface Water Treatment Rule.** 40 CFR 141.175 is herein incorporated by reference. ()
 - 06. **Reporting and Record Keeping Requirements for the Disinfectants and Disinfectant Byproducts Rule.** 40 CFR 141.134 is herein incorporated by reference. ()
 - 07. **Reporting and Record Keeping Requirements for the Revised Total Coliform Rule.** 40 CFR 141.861 is herein incorporated by reference. ()
- 151. **CONSUMER CONFIDENCE REPORTS.** 40 CFR Part 141, Subpart O is herein incorporated by reference. ()
- 152. -- 199. (RESERVED)
- 200. **SPECIAL REGULATIONS.**
 - 01. **Monitoring Requirements for Unregulated Contaminants.** 40 CFR 141.40 is herein incorporated by reference. ()
 - 02. **Special Monitoring for Sodium.** 40 CFR 141.41 is herein incorporated by reference. ()
 - 03. **Special Monitoring for Corrosively Characteristics.** 40 CFR 141.42 is herein incorporated by reference. ()
 - 04. **Prohibition on Use of Lead Pipes, Solder, and Flux.** 40 CFR 141.43 is herein incorporated by reference. ()
- 201. -- 249. (RESERVED)
- 250. **MAXIMUM CONTAMINANT LEVEL GOALS AND MAXIMUM RESIDUAL DISINFECTION LEVEL GOALS.**

01. Maximum Contaminant Level Goals for Organic Contaminants. 40 CFR 141.50 is herein incorporated by reference. ()

02. Maximum Contaminant Level Goals for Inorganic Contaminants. 40 CFR 141.51 is herein incorporated by reference. ()

03. Maximum Contaminant Level Goals for Microbiological Contaminants. 40 CFR 141.52 is herein incorporated by reference. ()

04. Maximum Contaminant Level Goals for Disinfection Byproducts. 40 CFR 141.53 is herein incorporated by reference. ()

05. Maximum Residual Disinfectant Level Goals for Disinfectants. 40 CFR 141.54 is herein incorporated by reference. ()

06. Maximum Contaminant Level Goals for Radionuclides. 40 CFR 141.55 is herein incorporated by reference. ()

251. -- 299. (RESERVED)

300. FILTRATION AND DISINFECTION.

01. General Requirements. 40 CFR 141.70 is herein incorporated by reference. Each public water system using a surface water source or ground water source directly influenced by surface water shall be operated by personnel, as specified in Sections 553 and 554, who have met state requirements for licensing of water system operators. ()

02. Filtration. 40 CFR 141.73 is herein incorporated by reference. ()

a. Each system which provides filtration treatment shall submit engineering evaluations, other documentation, or some combination of engineering evaluations and other documentation as required by the Department to demonstrate ongoing compliance with these rules. ()

b. The Department will establish filtration removal credit on a system-by-system basis. Unless otherwise demonstrated to the satisfaction of the Department, the maximum log removal credit allowed for filtration is as follows:

| Maximum Log Removal | | | |
|----------------------|-----------------|---------|-----------------|
| Filtration Type | Giardia lamblia | Viruses | Cryptosporidium |
| Conventional | 2.5 | 2.0 | 2.5 |
| Direct | 2.0 | 1.0 | 2.0 |
| Slow sand | 2.0 | 2.0 | 2.0 |
| Diatomaceous earth | 2.0 | 1.0 | 2.0 |
| Microfiltration | 3.0 | 0.5 | 3.0 |
| Ultrafiltration | 3.5 | 2.0 | 3.5 |
| Nanofiltration | 4.0 | 3.0 | 4.0 |
| Reverse Osmosis | 4.0 | 3.0 | 4.0 |
| Alternate technology | 2.0 | 0 | 2.0 |

()

- c. Filtration removal credit shall be granted for filtration treatment provided the system is: ()
 - i. Operated in accordance with the Operations Plan specified in Subsection 552.03.a.; and ()
 - ii. The system is in compliance with the turbidity performance criteria specified under 40 CFR 141.73; and ()
 - iii. Coagulant chemicals must be added and coagulation and flocculation unit process must be used at all times during which conventional and direct filtration treatment plants are in operation; and ()
 - iv. Slow sand filters are operated at rates not to exceed one-tenth (0.1) gallons per minute per square foot or as approved by the Department; and ()
 - v. Diatomaceous earth filters are operated at a rate not to exceed one point five (1.5) gallons per minute per square foot. ()
- 03. Criteria for Avoiding Filtration.** 40 CFR 141.71 is herein incorporated by reference. ()
- 04. Disinfection.** 40 CFR 141.72 is herein incorporated by reference. ()
 - a. In addition to the disinfection requirements in 40 CFR 141.72, each system with a surface water source or ground water source directly influenced by surface water shall maintain a minimum of at least two-tenths (0.2) parts per million of chlorine in the treated water after an effective contact time of at least thirty (30) minutes at peak hour demand before delivery to the first customer. Effective contact time is either demonstrated or calculated. ()
 - i. Demonstrated effective contact time is generally determined by tracer studies on a completed contact basin. Prior to conducting a tracer study, a testing plan shall be submitted to the Department for review and approval. The tracer chemical shall not be reactive with anything in the water or be consumed in the process. ()
 - ii. Calculated effective contact time for tank type contact basins is based on tank baffling and inlet/outlet configurations for the maximum hourly flow rate through that contact basin. Calculated effective contact time in a "pipeline type contact basin" (often called a pipeline contactor) is calculated by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipeline contactor. ()
 - b. The Department may allow a system to utilize automatic shut-off of water to the distribution system whenever total disinfectant residual is less than two-tenths (0.2) mg/l rather than provide redundant disinfection components and auxiliary power as required in 40 CFR 141.72(a)(2). An automatic water shut-off may be used if the system demonstrates to the satisfaction of the Department that, at all times, a minimum of twenty (20) psi pressure and adequate fire flow can be maintained in the distribution system when water delivery is shut-off to the distribution system and, at all times, minimum *Giardia lamblia* and virus inactivation removal rates can be achieved prior to the first customer. ()
 - c. Each system which is required to provide filtration must provide disinfection treatment such that filtration plus disinfection provide at least 3-Log or ninety-nine and nine tenths percent (99.9%) inactivation/removal of *Giardia lamblia* cysts and at least 4-Log or ninety-nine and ninety-nine hundredths percent (99.99%) inactivation/removal of viruses as specified in 40 CFR 141.72 and Section 300, and at least 2-Log or ninety-nine percent (99%) removal of *Cryptosporidium* as required by 40 CFR Part 141, Subpart P or Subpart T. However, in all cases the disinfection portion of the treatment train shall be designed to provide not less than five tenths (0.5) log *Giardia lamblia* inactivation, irrespective of the *Giardia lamblia* removal credit awarded to the filtration portion of the treatment train. ()
- 05. Analytical and Monitoring Requirements.** 40 CFR 141.74 is herein incorporated by reference. ()
 - a. Each public water system which is required to provide disinfection shall monitor as follows:

()

i. Each day the system is in operation, the purveyor shall determine the total level of inactivation of *Giardia lamblia* cysts and viruses achieved through disinfection based on CT99.9 values provided in 40 CFR 141.74(b)(3) (Tables 1.1 through 1.6, 2.1 and 3.1). ()

ii. At least once per day, the system shall monitor the following parameters to determine the total inactivation ratio achieved through disinfection: ()

(1) Temperature of the disinfected water at each residual disinfectant concentration sampling point; and ()

(2) If using chlorine, the pH of the disinfected water at each chlorine residual sampling point. ()

(3) The effective contact time, "T," must be determined each day during peak hour demand. Disinfectant contact time, "T," in pipelines used for *Giardia lamblia* and virus inactivation shall be calculated by dividing the internal volume of the pipe by the peak hour flow rate through that pipe. Effective contact time, "T," for all other system components used for *Giardia lamblia* and virus inactivation shall be determined by tracer studies or other evaluations or calculations acceptable to the Department. ()

(4) The residual disinfectant concentrations at each residual disinfectant sampling point at or before the first customer, must be determined each day during peak hour demand, or at other times approved by the Department. ()

iii. The purveyor may demonstrate to the Department, based on a Department approved on-site disinfection challenge study protocol, that the system is achieving disinfection requirements specified in Subsection 300.04 utilizing CT99.9 values other than those specified in 40 CFR 141.74(b)(3) (Tables 2.1 and 3.1) for ozone, chlorine dioxide, and chloramine. ()

iv. The total inactivation ratio shall be calculated as follows: ()

(1) If the system applies disinfectant at only one (1) point, the system shall determine the total inactivation ratio by either of the two (2) following methods: ()

(a) One inactivation ratio (CTcalc/CT99.9) is determined at/or before the first customer during peak hour demand; or ()

(b) Sequential inactivation ratios are calculated between the point of disinfectant application and a point at or before the first customer during peak hour demand. The following method must be used to calculate the total inactivation ratio: ()

(i) Step 1: Determine (CTcalc/CT99.9) for each sequence. ()

(ii) Step 2: Add the (CTcalc/CT99.9) values for all sequences. The result is the total inactivation ratio. ()

(2) If the system uses more than one point of disinfectant application at or before the first customer, the system must determine the CT value of each disinfection sequence immediately prior to the next point of disinfectant application during peak hour demand. The sum of the (CTcalc/CT99.9) values from all sequences is the total inactivation ratio. (CTcalc/CT99.9) must be determined by the methods described in 40 CFR 141.74(b)(4)(i)(B). ()

v. Log removal credit for disinfection shall be determined by multiplying the total inactivation ratio by three (3). ()

vi. The Department may reduce the CT monitoring requirements specified under Section 300, for any system which demonstrates that the required inactivation levels are consistently exceeded. Reduced CT monitoring

shall be allowed only where the reduction in monitoring will not endanger the health of consumers served by the water system. ()

b. Residual disinfectant concentrations for ozone must be measured using the Indigo Method, or automated methods may be used if approved by the Department as provided for in 40 CFR 141.74(a)(2). ()

c. Unfiltered Subpart H systems. 40 CFR 141.857(c) is herein incorporated by reference. ()

d. As provided for in 40 CFR 141.74(b), the Department may specify interim monitoring requirements for unfiltered systems notified by the Department or U.S. Environmental Protection Agency that filtration treatment must be installed. Until filtration is installed, systems shall conduct monitoring for turbidity and disinfectant residuals as follows unless otherwise specified by the Department. ()

i. Disinfectant residual concentrations entering the distribution system shall be measured at the following minimum frequencies, and samples must be taken at evenly spaced intervals throughout the workday.

| Minimum Frequencies | |
|---------------------|-------------|
| Population | Samples/day |
| Less than 500 | 1 |
| 501 - 1000 | 2 |
| 1,001 - 2,500 | 3 |
| Greater than 2501 | 4 |

()

ii. Turbidity shall be measured at least once per day at the entry point to the distribution system. ()

iii. The Department may, at its discretion, reduce the turbidity monitoring frequency for any noncommunity system which demonstrates to the satisfaction of the Department: ()

(1) A free chlorine residual of two-tenths (0.2) part per million is maintained throughout the distribution system; ()

(2) The water source is well protected; ()

(3) The total coliform MCL is not exceeded or a Level 1 or Level 2 Assessment has not been triggered in accordance with 40 CFR 141.859; and ()

(4) No significant health risk is present. ()

e. The Department may allow systems with surface water sources or ground water sources under the direct influence of surface water, to substitute continuous turbidity monitoring for grab sample monitoring as specified in 40 CFR 141.74(b)(2) and 40 CFR 141.74(c)(1) and Subsection 300.05. The Department may allow continuous turbidity monitoring provided the continuous turbidimeter is operated, maintained, standardized and calibrated per the manufacturer's recommendations. For purposes of determining compliance with turbidity performance criteria, discrete values must be recorded every four (4) hours water is supplied to the distribution system. ()

f. The Department may allow systems using both a surface water source(s), or ground water source(s) under the direct influence of surface water, and one (1) or more ground water sources, to measure disinfectant residual at points other than the total coliform sampling points, as specified in 40 CFR 141.74(b)(6)(i) and 40 CFR 141.74(c)(3)(i) and Subsection 300.05. The Department may allow alternate sampling points provided the system

submits an alternate monitoring plan to the Department for approval in advance of the monitoring requirement that demonstrates the alternative points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in 40 CFR 141.74(a)(1), may be measured in lieu of residual disinfectant concentration as outlined in 40 CFR 141.74(b)(6)(i). ()

g. The Department may allow a reduced turbidity monitoring frequency for systems using slow sand filtration or technology other than conventional, direct, or diatomaceous earth filtration, as specified in 40 CFR 141.74(c)(1) and Subsection 300.05. To be considered for a reduced turbidity monitoring frequency, a system must submit a written request to the Department in advance of the monitoring requirement. ()

06. Reporting and Recordkeeping Requirements. 40 CFR 141.75 is herein incorporated by reference. ()

a. As provided in 40 CFR 141.75(a) and Section 300, the Department may establish interim reporting requirements for systems notified by the Department or U.S. Environmental Protection Agency that filtration treatment must be installed as specified in 40 CFR 141.75(a) and as referred to in Subsection 300.06. Until filtration treatment is installed, systems required to install filtration treatment shall report as follows: ()

i. The purveyor shall immediately report to the Department via telephone or other equally rapid means, but no later than the end of the next business day, the following information: ()

- (1) The occurrence of a waterborne disease outbreak potentially attributable to that water system; ()
- (2) Any turbidity measurement which exceeds five (5) NTU; and ()
- (3) Any result indicating that the disinfectant residual concentration entering the distribution system is below two-tenths (0.2) mg/l free chlorine. ()

ii. The purveyor shall report to the Department within ten (10) days after the end of each month the system serves water to the public the following monitoring information using a Department-approved form: ()

- (1) Turbidity monitoring information; and ()
- (2) Disinfectant residual concentrations entering the distribution system. ()

iii. Personnel qualified under Subsection 300.01 shall complete and sign the monthly report forms submitted to the Department as required in Subsection 300.06. ()

b. In addition to the reporting requirements in 40 CFR 141.75(b) pertaining to systems with filtration treatment, each public water system which provides filtration treatment must report the level of *Giardia lamblia* and virus inactivation/removal achieved each day by filtration and disinfection. ()

07. Recycle Provisions. 40 CFR 141.76 is herein incorporated by reference. ()

a. The Department shall evaluate recycling records kept by water systems pursuant to 40 CFR 141.76 during sanitary surveys, comprehensive performance evaluations, or other inspections. ()

b. The Department may require a system to modify recycling practices if it can be shown that these practices adversely affect the ability of the system to meet surface water treatment requirements. ()

301. ENHANCED FILTRATION AND DISINFECTION - SYSTEMS SERVING TEN THOUSAND OR MORE PEOPLE.

This Section incorporates, 40 CFR Part 141, Subpart P, of the National Primary Drinking Water Regulations, known as the Interim Enhanced Surface Water Treatment Rule. ()

- 01. **General Requirements.** 40 CFR 141.170 is herein incorporated by reference. ()
- 02. **Criteria for Avoiding Filtration.** 40 CFR 141.171 is herein incorporated by reference. ()
- 03. **Disinfection Profiling and Benchmarking.** 40 CFR 141.172 is herein incorporated by reference. ()
- 04. **Filtration.** 40 CFR 141.173 is herein incorporated by reference. ()
- 05. **Filtration Sampling Requirements.** 40 CFR 141.174 is herein incorporated by reference. ()

302. SANITARY SURVEYS FOR SYSTEMS USING SURFACE WATER OR GROUND WATER UNDER THE DIRECT INFLUENCE OF SURFACE WATER.

The Department shall conduct a sanitary survey of all public water systems which use surface water or ground water under the direct influence of surface water. ()

01. **Frequency.** For noncommunity water systems, a sanitary survey shall be conducted every five (5) years. For community water systems, a sanitary survey shall be conducted every three (3) years, except that a community water system that has been determined to have outstanding performance, according to criteria established by the Department, may have a sanitary survey conducted every five (5) years. ()

02. **Report.** A report describing the results of the sanitary survey will be provided to the water system. ()

a. As part of the sanitary survey report or as an independent action, the Department shall provide written notice to the water system describing any significant deficiency within thirty (30) days after the Department identifies the significant deficiency. The notice may specify corrective actions and deadlines for completion of corrective actions. ()

b. The Department may, at its discretion, provide this written notice at the time of the sanitary survey. ()

03. **Response Required.** The owner of a public water system must respond in writing, describing how and on what schedule the system will address all significant deficiencies, not later than forty-five (45) days after receiving notification from the Department. ()

04. **Consultation with the Department.** Public water systems shall consult with the Department prior to taking specific corrective actions in response to significant deficiencies identified during a sanitary survey, unless such corrective actions are specified in detail by the Department in its written notification under Subsection 302.02. ()

05. **Violation.** Failure to address significant deficiencies identified in a sanitary survey that are within the control of the public water system and its governing body shall constitute a violation of these rules. ()

303. SANITARY SURVEYS FOR PUBLIC WATER SYSTEMS USING GROUND WATER.
The Department shall conduct a sanitary survey of all public water systems that use ground water. 40 CFR Part 141, Subpart S, is herein incorporated by reference. ()

01. **Frequency.** For non-community water systems, a sanitary survey shall be conducted every five (5) years. For community water systems, a sanitary survey shall be conducted every three (3) years, except as provided below. ()

a. A community water system may have a sanitary survey conducted every five (5) years if the system provides at least a four (4)-log treatment of viruses (using inactivation, removal, or a Department approved combination of 4-log inactivation and removal) before or at the first customer for all of its ground water sources. ()

b. A community water system may have a sanitary survey conducted every five (5) years if it has an outstanding performance record, as determined by the Department and documented in previous sanitary surveys, and has no history of Total Coliform Rule or Revised Total Coliform Rule MCL or monitoring violations under Subsection 100.01 since the last sanitary survey. ()

02. Report. A report describing the results of the sanitary survey shall be provided to the water system. ()

a. As part of the sanitary survey report or as an independent action, the Department shall provide written notice to the water system describing any significant deficiency within thirty (30) days after the Department identifies the significant deficiency. The notice may specify corrective actions and deadlines for completion of corrective actions. ()

b. The Department may, at its discretion, provide this written notice at the time of the sanitary survey. ()

03. Significant Deficiencies. For each of the eight (8) elements of a sanitary survey of a ground water system, the following deficiencies shall in all cases be considered significant for the purposes of the notice required in Subsection 303.02. Decisions about the significance of other deficiencies identified during the sanitary survey shall be at the Department's discretion, as indicated in the Department's sanitary survey protocol. ()

a. Source: Lack of a sanitary well cap as specified in Subsection 511.06.b. ()

b. Treatment: ()

i. Chemical addition lacks emergency shut-off as specified in Subsection 531.02.b.ii. ()

ii. Chemical addition is not flow proportioned where the rate of flow or chemical demand is not reasonably constant, as specified in Subsection 531.02.b.ii. ()

c. Distribution system: No means for flushing dead end water mains, as specified in Subsection 542.09. ()

d. Finished water storage: Roof leaking, as specified in Subsections 544.09 and 544.09.c. ()

e. Pumps, pump facilities, and controls: No accessible check valve between pump and shut-off valve, as specified in Subsection 511.04. ()

f. Monitoring, reporting, and data verification: Repeated failure to collect the required number and type of Total Coliform Rule or the Revised Total Coliform Rule samples during the most recent two (2) year period, as specified in Subsection 100.01. ()

g. System management and operation: History of frequent depressurization in the distribution system in violation of Subsection 552.01. ()

h. Operator compliance with state licensing requirements: Responsible charge operator is not licensed as required in Subsection 554.02. ()

04. Response Required. The owner of a public water system must respond in writing, describing how and on what schedule the system will address all significant deficiencies, not later than thirty (30) days after receiving notification from the Department. ()

05. Consultation with the Department. Public water systems shall consult with the Department prior to taking specific corrective actions in response to significant deficiencies identified during a sanitary survey unless such corrective actions are specified in detail by the Department in its written notification under Subsection 303.02. ()

06. Violation. Failure to address significant deficiencies identified in a sanitary survey that are within the control of the public water system and its governing body shall constitute a violation of these rules. ()

304. COMPOSITE CORRECTION PROGRAM (CCP).

In accordance with 40 CFR 142.16(g)(1), the Department may require a public water system to conduct a composite correction program, as defined in Section 003 of these rules, for the purpose of identifying and correcting deficiencies in water treatment and distribution. Composite Correction Programs consist of a Comprehensive Performance Evaluation (CPE) and Comprehensive Technical Assistance (CTA). Failure to implement any Department-required performance improvement factors identified through the CCP constitutes a violation of these rules. ()

01. Comprehensive Performance Evaluation (CPE). If required, the CPE must be conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance. It must emphasize approaches that can be implemented without significant capital improvements and must consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report. ()

02. Comprehensive Technical Assistance (CTA). During the CTA phase, the system must identify and systematically address plant-specific factors. The CTA consists of follow-up to the CPE results, implementation of process control priority setting techniques, and maintaining long term involvement to systematically train staff and administrators. ()

305. COLIFORM TREATMENT TECHNIQUE TRIGGERS AND ASSESSMENT REQUIREMENTS FOR PROTECTION AGAINST POTENTIAL FECAL CONTAMINATION.

40 CFR 141.859, excluding 40 CFR 141.859(a)(2)(iii), is herein incorporated by reference. ()

01. Treatment Technique Triggers. Systems owners and operators must ensure that assessments are conducted in accordance with Subsection 305.02 after exceeding treatment technique triggers in this subsection. ()

a. Level 1 treatment technique triggers: ()

i. For systems taking forty (40) or more samples per month, the system exceeds five percent (5.0%) total coliform-positive samples for the month. ()

ii. For systems taking fewer than forty (40) samples per month, the system has two (2) or more total coliform positive samples in the same month. ()

iii. The system owner or operator fails to take every required repeat sample after any single total coliform-positive sample. ()

b. Level 2 treatment technique triggers: ()

i. An E.coli MCL violation, as specified in Subsection 050.05 and Subsection 100.01 of these rules; or ()

ii. A second or any additional Level 1 triggers as defined in Subsection 305.01.a. within a rolling 12-month period, unless the Department has determined a likely reason that the samples that caused the first Level 1 treatment technique trigger were total coliform-positive and has established that the system has corrected the problem. ()

02. Requirements For Assessments. ()

a. System owners and operators must ensure that Level 1 and 2 assessments are conducted in order to identify the possible presence of sanitary defects and defects in distribution system coliform monitoring practices. The assessment must be conducted consistent with any Department directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.

()

b. When conducting assessments, owners and operators must ensure that the assessor evaluates minimum elements that include review and identification of inadequacies in sample sites; sampling protocol; sample processing; atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including water storage); source and treatment considerations that bear on distributed water quality, where appropriate (e.g., small ground water systems); and existing water quality monitoring data. The system owner or operator must ensure the assessments are consistent with the elements in the Department provided forms for Level 1 and Level 2 assessments. ()

c. Level 1 Assessments. A system owner or operator must conduct a Level 1 assessment if the system exceeds one of the treatment technique triggers in Subsection 305.01.a. as soon as practical after any trigger level is identified and submit a completed Level 1 assessment report or form to the Department within thirty (30) days after the system learns that it has exceeded a trigger. ()

i. The completed assessment report or form must describe sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed. The assessment report or form may also note that no sanitary defects were identified. ()

ii. If the Department reviews the completed Level 1 report or form and determines that the assessment is not sufficient (including any proposed timetable for any corrective actions not already completed), the Department will consult with the owner or operator of the system. If the Department requires revisions after consultation, the system owner or operator must submit a revised assessment report or form to the Department on an agreed-upon schedule not to exceed thirty (30) days from the date of consultation. ()

iii. Upon completion and submission of the assessment report or form by the system owner or operator, the Department will determine if the system has identified a likely cause for the Level 1 trigger and, if so, establish that the system has corrected the problem, or has included a schedule acceptable to the Department for correcting the problem. ()

d. Level 2 Assessments. A system owner or operator must ensure that a Level 2 assessment is conducted if the system exceeds one of the treatment technique triggers in Subsection 305.01.b. The owner or operator must comply with any expedited actions or additional action required by the Department in the case of an E.coli MCL violation. ()

i. The system owner or operator must ensure that a Level 2 assessment is conducted by the Department or a party approved by the Department as described in Subsection 305.03 as soon as practical after any trigger in Subsection 305.01.b. and must submit a completed Level 2 assessment report or form to the Department within 30 (thirty) days after the system learns that it has exceeded a trigger if the assessment was conducted by a party other than the Department. ()

ii. The Department will schedule and conduct Level 2 assessments for an E.coli treatment technique trigger in Subsection 305.01.b.i. unless the Department approves another party to conduct the assessment as outlined in Subsection 305.03. ()

iii. A second or any additional triggered Level 2 Assessment within a rolling twelve-month period must be conducted by a Department approved third party even if the public water system has staff or management approved under Subsection 305.03. ()

iv. The completed assessment report or form must describe sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed. The assessment report or form may also note that no sanitary defects were identified. ()

v. If the Department reviews the completed Level 2 report or form and determines that the assessment is not sufficient (including any proposed timetable for any corrective actions not already completed), the Department will consult with the owner or operator of the system. If the Department requires revisions after consultation, the

system owner or operator must submit a revised assessment report or form to the Department on an agreed-upon schedule not to exceed 30 (thirty) days from the date of consultation. ()

vi. Upon completion and submission of the assessment report or form by the system owner or operator, the Department will determine if the system has identified a likely cause for the Level 2 trigger and, if so, establish that the system has corrected the problem, or has included a schedule acceptable to Department for correcting the problem. ()

e. Corrective action. Systems must correct sanitary defects found through either Level 1 or Level 2 assessments conducted under this section. For corrections not completed by the time of submission of the assessment report or form, the system must complete the corrective action(s) in compliance with a timetable approved by the Department in consultation with the system. The system must notify the Department when each scheduled corrective action is completed. ()

f. Consultation. At any time during the assessment or corrective action phase, either the water system or the Department may request a consultation with the other party to determine the appropriate actions to be taken. The system may consult with the Department on all relevant information that may impact its ability to comply with a requirement of this Section, including the method of accomplishment, an appropriate timeframe, and other relevant information. ()

03. Approved Parties for Level 2 Assessments. The system may conduct a Level 2 assessment if the system has staff or management with the certification or qualifications outlined in this Subsection or if the system hires parties that meet the qualifications in this Subsection. The following parties are approved by the Department to conduct Level 2 assessments: ()

a. The Department or persons contracted with the Department who are trained to conduct sanitary surveys; ()

b. Currently licensed operators in good standing that are licensed through the Idaho Division of Occupational and Professional Licenses with a drinking water classification of Distribution I through IV or Treatment I through IV and that are licensed at least to the classification level of the public water system requiring the Level 2 assessment; or ()

c. Licensed professional engineers licensed by the state of Idaho and qualified by education and experience in the specific technical fields involved in these rules. ()

306. -- 309. (RESERVED)

310. ENHANCED FILTRATION AND DISINFECTION - SYSTEMS SERVING FEWER THAN TEN THOUSAND PEOPLE.
40 CFR 141, Subpart T is herein incorporated by reference. ()

311. ENHANCED TREATMENT FOR CRYPTOSPORIDIUM -- LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE.
40 CFR Part 141, subpart W is herein incorporated by reference. ()

01. Cryptosporidium Treatment Credit for Approved Watershed Control Program. The Department shall award 0.5 (zero point five) logs cryptosporidium removal credit to systems that have a Department approved Watershed Control Program. Requirements for a watershed control program are set forth in 40 CFR 141, Subpart W. Guidance on how to develop a watershed control program and obtain Department approval is provided in "Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule," as referenced in Section 002. ()

02. Assessment of Significant Changes in the Watershed. As part of the sanitary survey process set forth in Section 302, the Department, or an agent approved by the Department, shall assess significant changes in the watershed of a surface water system that have occurred since the system conducted source water monitoring. If changes in the watershed have the potential to significantly increase contamination of the source water with

cryptosporidium, the Department shall consult with the water system owner on follow-up actions that may be required under 40 CFR 141, Subpart W, including, but not limited to, source water monitoring and/or additional treatment requirements. "Implementation Guidance for the Long Term 2 Enhanced Surface Water Treatment Rule," as referenced in Section 002, provides a description of factors that will be considered by the Department when making an assessment of changes in the watershed. These factors include, but are not limited to the following:

- a. New NPDES permits or changes in existing NPDES permits that involve increased loading of contaminants. ()
- b. Changes in land use patterns. ()
- c. Changes in agricultural cropping, chemical application, or irrigation practices. ()
- d. Changes in other non-point discharge source activities (such as grazing, manure application, commercial or residential development). ()
- e. Stream or riverbed modifications. ()
- f. NPDES permit violations at wastewater treatment plants and confined animal feedlot operations. ()
- g. Dramatic natural events such as floods, forest fires, earthquakes, and landslides that may transport or expose contaminants. ()
- h. Prolonged drought conditions that may warrant special preparatory measures to minimize impacts from waste accumulations that are washed into source waters when precipitation returns. ()
- i. Status of the water system's emergency response plan. ()
- j. Accidental or illegal waste discharges and spills. ()

312. -- 319. (RESERVED)

320. DISINFECTANT RESIDUALS, DISINFECTION BYPRODUCTS, AND DISINFECTION BYPRODUCT PRECURSORS.

This Section incorporates 40 CFR Part 141, Subpart L, of the National Primary Drinking Water Regulations, known as the Disinfectants and Disinfection Byproducts Rule. ()

- 01. General Requirements.** 40 CFR 141.130 is herein incorporated by reference. ()
- 02. Analytical Requirements.** 40 CFR 141.131 is herein incorporated by reference. DPD colorimetric test kits may be used to measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide. ()
- 03. Monitoring Requirements.** 40 CFR 141.132 is herein incorporated by reference. ()
- 04. Compliance Requirements.** 40 CFR 141.133 is herein incorporated by reference. ()
- 05. Treatment Techniques for Control of Disinfection Byproduct (DBP) Precursors.** 40 CFR 141.135 is herein incorporated by reference. ()

321. INITIAL DISTRIBUTION SYSTEM EVALUATIONS.

40 CFR Part 141, Subpart U is herein incorporated by reference. "Implementation Guidance for the Stage 2 Disinfectants and Disinfection Byproducts Rule," as referenced in Section 002, provides assistance to public water system owners and operators in understanding and achieving compliance with the requirements of 40 CFR 141, Subpart U. ()

322. STAGE 2 DISINFECTION BYPRODUCTS REQUIREMENTS.

40 CFR Part 141, Subpart V is herein incorporated by reference. "Implementation Guidance for the Stage 2 Disinfectants and Disinfection Byproducts Rule," as referenced in Section 002, provides assistance to public water system owners and operators in understanding and achieving compliance with the requirements of 40 CFR Part 141, Subpart V. ()

323. GROUND WATER RULE.

40 CFR 141, Subpart S is herein incorporated by reference. "Implementation Guidance for the Ground Water Rule," as referenced in Section 002, provides assistance to public water system owners and operators in understanding and achieving compliance with the requirements of 40 CFR 141, Subpart S. ()

01. Discontinuation of Treatment. Systems that wish to discontinue four (4)-log virus treatment at a ground water source must meet the following criteria. Ground water sources on which treatment has been discontinued shall be subject to the triggered source water monitoring requirements of 40 CFR 141, Subpart S. ()

- a. Demonstration that any known source of contamination has been removed. ()
- b. Demonstration that structural deficiencies of the well have been rehabilitated and no longer exist. ()
- c. Provide evidence that the well is drawing from a protected or confined aquifer. ()
- d. Submit results of one (1) year of monthly monitoring for a fecal indicator organism during which no positive results occurred. ()

02. Chlorine Purging Prior to Triggered Source Sampling. 40 CFR 141.402(e) requires that ground water source samples be collected at a location prior to any treatment. Pursuant to this requirement, systems that add chlorine to a source, either in the well bore or near enough to the wellhead that chlorinated water could backflow into the well, shall ensure that all chlorine residual has been purged prior to taking a triggered source water sample. This shall be accomplished by measuring chlorine residual in the source water until a reading of zero is obtained and be recorded in the space provided for chlorine residual on the sample submittal form. ()

324. -- 349. (RESERVED)

350. CONTROL OF LEAD AND COPPER.

01. General Requirements. 40 CFR 141.80, revised as of July 1, 2008, is herein incorporated by reference. ()

02. Applicability of Corrosion Control Treatment Steps to Small, Medium-Size, and Large Water Systems. 40 CFR 141.81, revised as of July 1, 2008, is herein incorporated by reference. ()

03. Description of Corrosion Control Treatment Requirements. ()

- a. 40 CFR 141.82, revised as of July 1, 2008, is herein incorporated by reference. ()
- b. The Department may modify its determination of the optimal corrosion control treatment or optimal water quality control parameters where it concludes that such changes are necessary to optimize corrosion control treatment as specified in 40 CFR 141.82(h) and as referred to in Subsection 350.03. The Department may also modify its determination of the optimal corrosion control treatment or water quality control parameters where it finds such changes will provide equivalent or improved treatment in a manner which is simpler or less costly to operate. ()

04. Source Water Treatment Requirements. 40 CFR 141.83, revised as of July 1, 2008, is herein incorporated by reference. The Department may modify its determination of optimal source treatment or maximum permissible lead and copper concentrations where it concludes that such changes are necessary as specified in 40

CFR 141.83(b)(6). ()

05. Lead Service Line Replacement Requirements. 40 CFR 141.84, revised as of July 1, 2008, is herein incorporated by reference. ()

06. Public Education and Supplemental Monitoring Requirements. 40 CFR 141.85, revised as of July 1, 2008, is herein incorporated by reference. ()

07. Monitoring Requirements for Lead and Copper in Tap Water. 40 CFR 141.86, revised as of July 1, 2008, is herein incorporated by reference. ()

08. Monitoring Requirements for Water Quality Parameters. 40 CFR 141.87, revised as of July 1, 2008, is herein incorporated by reference. ()

09. Monitoring Requirements for Lead and Copper in Source Water. 40 CFR 141.88, revised as of July 1, 2008, is herein incorporated by reference. ()

10. Analytical Methods. 40 CFR 141.89, revised as of July 1, 2008, is herein incorporated by reference. ()

11. Reporting Requirements. 40 CFR 141.90, revised as of July 1, 2008, is herein incorporated by reference. ()

12. Recordkeeping Requirements. 40 CFR 141.91, revised as of July 1, 2008, is herein incorporated by reference. ()

351. -- 399. (RESERVED)

400. SECONDARY MCLS.

01. Purpose. 40 CFR 143.1, revised as of July 1, 2003, is herein incorporated by reference. ()

02. Definitions. 40 CFR 143.2, revised as of July 1, 2003, is herein incorporated by reference. ()

03. Secondary Maximum Contaminant Levels. 40 CFR 143.3, revised as of July 1, 2003, is herein incorporated by reference. ()

04. Monitoring. 40 CFR 143.4, revised as of July 1, 2010, is herein incorporated by reference. ()

401. -- 449. (RESERVED)

450. USE OF NON-CENTRALIZED TREATMENT DEVICES.

01. Criteria and Procedures for Public Water Systems Using Point of Entry Devices. 40 CFR 141.100 is herein incorporated by reference. ()

02. Point of Use (POU) Treatment Devices. ()

a. A public water system may use point of use (POU) treatment in order to achieve compliance with certain maximum contaminant levels (MCL) or treatment techniques, in accordance with Subsection 450.02.b., when the following conditions are met: ()

i. A program for long-term operation, maintenance, and monitoring of the POU treatment system is approved by the Department, pursuant to Section 450.02.d. ()

ii. The public water system or a vendor of POU treatment devices under contract with the public water system shall own, control, and maintain the POU treatment system to ensure proper operation and maintenance and compliance with the MCL or treatment technique. ()

iii. Each POU treatment device is equipped with a mechanical warning mechanism to ensure that customers are automatically notified of operational problems. ()

iv. The POU treatment device must be certified by an accredited American National Standards Institute (ANSI) certification body to meet applicable ANSI/National Sanitation Foundation (NSF) Standards. ()

b. POU treatment devices shall not be used to achieve compliance with a MCL or treatment technique requirement for a microbial contaminant or an indicator of a microbial contaminant. Community water systems may not use POU treatment devices to achieve compliance with a nitrate MCL. ()

c. The Department will waive the plan and specification requirements of Section 504 relating to material modifications for the following systems only to the extent that the material modification proposed is limited to the installation or use of a POU treatment device(s): ()

i. Community water systems serving two hundred (200) or fewer service connections. ()

ii. Non-transient non-community water systems. ()

iii. Transient non-community water systems. ()

iv. Community water systems serving more than two hundred (200) service connections if approved by the Department through the waiver process outlined in Subsection 005.01.a. ()

d. A public water system must obtain written approval by the Department before installation of a POU treatment device for the purpose of achieving compliance with a MCL or treatment technique. The public water system shall submit the following documentation for approval to the Department: ()

i. Information identifying the public water system name and number, total number of service connections, contaminant(s) to be treated, type of POU treatment device to be installed, manufacturer and model number of the POU treatment device, type and function of the mechanical warning mechanism (performance indicator) on the POU treatment device, certification verification for ANSI/NSF, installer qualifications, and a proposed date for installation of the POU treatment device(s). ()

ii. The manufacturer's specifications for the POU treatment device including demonstration that the POU treatment device is suited for the water chemistry of the public water system and contaminant(s) of concern and is of sufficient design and capacity for the particular application. ()

iii. Information relating to how other drinking water dispensing units, such as instant hot water dispensers and refrigerator water and ice dispensers, whose primary function is to provide drinking water, will be provided with treated water. If water is transported from a POU treatment device to another drinking water dispensing unit, the conducting tube shall be of non-reactive material. ()

iv. For non-transient non-community water systems and transient non-community water systems, demonstration that the drinking water dispensing units are located in areas adequate to protect public health. ()

v. Demonstration that all POU treatment devices are owned, controlled, and maintained by the public water system or by a vendor of POU treatment devices under contract with the public water system. ()

vi. A sampling plan identifying the location of all service connections and demonstrating how the system will ensure that all POU treatment devices are sampled for compliance with the contaminant(s) being treated during every compliance period or at a frequency designated by the Department. ()

vii. Documentation that a customer at each service connection has agreed to installation and use of a POU treatment device and has granted access for installation, maintenance, and sampling. ()

viii. A plan that describes how the public water system will address any non-compliance with Subsection 450.02.d.vii. ()

ix. A maintenance plan that demonstrates how on-going maintenance activities will be performed and on what frequency, including: frequency of treatment media replacements, frequency of POU treatment device replacements, periodic verification that the mechanical warning device is functional, schedule of planned maintenance activities, plan of how the system will address unscheduled maintenance problems, and a plan and method of waste disposal. ()

x. Documentation that the system meets the current requirements for a certified operator pursuant to Section 554. ()

xi. A plan for on-going education and outreach to the customers of the public water system, including rental customers, on POU treatment and health effects of the contaminant(s) of concern. ()

xii. A plan for how the system will ensure real estate disclosures for the POU treatment system. ()

xiii. A statement of recognition that failure to maintain compliance with the MCL, or the failure to operate and maintain compliance with a POU treatment system as approved by the Department, may necessitate installation of centralized treatment. ()

e. Within thirty (30) days of installing the approved POU treatment system, the public water system shall notify the Department in writing that the POU treatment system was installed as approved by the Department. ()

f. Within thirty (30) days of installing the approved POU treatment system, the public water system shall submit samples from each POU treatment device to a certified laboratory for the contaminant(s) being treated by the POU treatment device. The samples shall be used to demonstrate initial compliance with the MCL. ()

g. The water system owner or operator must maintain records for a POU treatment system. Records shall be submitted to the Department at a frequency and in a format specified by the Department. Records to maintain shall include: ()

i. Requirements of Subsection 450.02.d.; ()

ii. All sampling performed on the POU treatment devices; ()

iii. Maintenance logs and schedules; ()

iv. Log of installed units; and ()

v. Contracts, lease agreements, or other legal documents with vendors and consumers. ()

03. Use of Bottled Water. 40 CFR 141.101 is herein incorporated by reference. ()

451. TREATMENT TECHNIQUES.

01. General Requirements. 40 CFR 141.110 is herein incorporated by reference. ()

02. Treatment Techniques for Acrylamide and Epichlorohydrin. 40 CFR 141.111 is herein incorporated by reference. ()

452. -- 499. (RESERVED)

500. FACILITY AND DESIGN STANDARDS: DEMONSTRATION OF TECHNICAL, FINANCIAL, AND MANAGERIAL CAPACITY OF PUBLIC DRINKING WATER SYSTEMS.

No person shall proceed, or cause to proceed, with construction of a new or substantially modified community or nontransient, noncommunity drinking water system until it has been demonstrated to the Department that the water system will have adequate technical, financial, and managerial capacity, as defined in Section 003 of these rules. With the exception of water sources, demonstration of capacity shall be submitted to the Department prior to or concurrent with the submittal of plans and specifications, as required in Section 39-118, Idaho Code, and Subsection 504.03 of these rules. Plans and specifications for water sources may be submitted to the Department prior to demonstration of capacity for the water system. The Department shall issue its approval of the new system capacity demonstration in writing. ()

01. Technical Capacity. In order to meet this requirement, the public water system shall submit documentation to demonstrate the following: ()

- a.** The system meets the relevant design, construction, and operating requirements of these rules; ()
- b.** The system has an adequate and consistent source of water; ()
- c.** A plan is in place to protect the water source and deal with emergencies; ()
- d.** A plan exists for replacement or improvement of infrastructure as necessary; and ()
- e.** The system has trained personnel with an understanding of the technical and operational characteristics of the system. ()

02. Financial Capacity. A demonstration of financial capacity must include but is not limited to the following information: ()

- a.** Documentation that organizational and financial arrangements are adequate to construct and operate the public water system in accordance with these rules. This information can be provided by submitting estimated construction, operation, and maintenance costs, letters of credit, or other access to financial capital through public or private sources and, if available, a certified financial statement; ()
- b.** Demonstration of revenue sufficiency, that includes but is not limited to billing and collection procedures; a proposed rate structure which demonstrates the availability of operating funds, revenues for depreciation and reserves, and the ability to accrue a capital replacement fund. A preliminary operating budget shall be provided; and ()
- c.** Adequate fiscal controls must be demonstrated. ()

03. Managerial Capacity. In order to demonstrate adequate managerial capacity, the owner or operator of a new drinking water system shall submit at least the following information to the Department: ()

- a.** Clear documentation of legal ownership and any plans that may exist for transfer of that ownership upon completion of construction or after a period of operation; ()
- b.** The name, address, and telephone number of the person who will be accountable for ensuring that the water system is in compliance with these rules; ()
- c.** The name, address, and telephone number of the responsible charge operator; ()
- d.** A description of the manner in which the water system will be managed. Information such as by-laws, restrictive covenants, articles of incorporation, or procedures and policy manuals which describe the management organizational structure shall be provided; ()

e. A recommendation of staff qualifications, including training, experience, certification or licensing, and continuing education; ()

f. An explanation of how the water system will establish and maintain effective communications and relationships between the water system management, its customers, professional service providers, and any applicable regulatory agencies; and ()

g. Evidence of planning for future growth, equipment repair and maintenance, and long term replacement of system components. ()

04. Submittal Form. The Department shall provide a standard form to be used in preparing a new system capacity demonstration. The submittal form and general guidance on how to prepare a new system capacity document is provided in, "How to Demonstrate Financial, Technical, and Managerial Capacity in New Public Water Systems." This document may be requested from the Department and is available on the DEQ website at <http://www.deq.idaho.gov>. ()

05. Expanding Systems. A public water system which comes into existence as a result of growth in population or number of service connections within a previously unregulated system will be considered a new system under these rules and is subject to all design, construction and operating requirements herein. ()

06. Consolidation. In demonstrating new system capacity, the owner of the proposed new system must investigate the feasibility of obtaining water service from an established public water system. If such service is available, but the owner elects to proceed with an independent system, the owner must explain why this choice is in the public interest in terms of environmental protection, affordability to water users, and protection of public health. ()

07. Exclusion. New public water systems which are public utilities as defined in Sections 61-104 (Corporation), 61-124 (Water System), 61-125 (Water Corporation), and 61-129 (Public Utility), Idaho Code, must meet the regulatory requirements of the Idaho Public Utilities Commission (IPUC) in Chapter 1, Title 61, Idaho Code, Public Utilities Law, and IDAPA 31.01.01, "Rules of Procedure of the Idaho Public Utilities Commission." Such water systems will not be required to meet any requirements of this Section which are in conflict with the provisions and requirements of the IPUC. ()

501. FACILITY AND DESIGN STANDARDS: GENERAL DESIGN REQUIREMENTS FOR PUBLIC DRINKING WATER SYSTEMS.

Unless otherwise specified by the Department, the design of new drinking water systems, or modifications to existing, public drinking water systems, shall be in conformance with the facility and design standards set forth in Sections 006 and 500 through 552 of these rules. The following general design requirements shall apply as applicable for the type of water system and the treatment or other processes employed. ()

01. Materials Used in Construction. Products that are used to construct public drinking water systems and have water contact surfaces shall conform to applicable AWWA standards and be certified by an accredited ANSI certification body to meet applicable ANSI/NSF standards, where products meeting such AWWA and ANSI/NSF standards exist. In the absence of such products, products meeting applicable product standards and acceptable to the reviewing authority may be selected. Corrosion control shall be taken into account during all aspects of public water system design. ()

02. Additives Used in Operation. No chemical or other substance shall be added to drinking water, nor shall any process be utilized to treat drinking water, unless specifically approved by the Department. All chemicals shall conform to applicable AWWA standards and be certified by an accredited ANSI certification body to meet ANSI/NSF Standard 60, referenced in Subsection 002.02. ()

03. Design Basis. The system, including the water source and treatment facilities, shall be designed to provide either peak hour demand of the system or maximum day demand plus equalization storage at the design year. ()

04. Design of Treatment Facilities. Design of treatment facilities shall address: ()

- a. Functional aspects of facility layout and provisions for future facility expansion; ()
- b. Provision for expansion of waste treatment and disposal facilities (see Section 540); ()
- c. Roads constructed to provide year-round access by vehicles and equipment needed for repair and maintenance; ()
- d. Site grading and drainage; and ()
- e. Chemical Feed or Injection. Unless otherwise approved by the Department based on documentation provided by the design engineer, all chemical feed or injection systems must be designed to ensure complete mixing through rapid mix devices or other measures. ()

f. Redundancy. Unless otherwise approved by the Department or as specified in other sections of these rules, to ensure that minimum quality, quantity, and pressure requirements of these rules are continuously met during maintenance, breakdowns, structural failures, emergencies, or other periods when components must be out of service, water system treatment, filtration, and disinfection components for all new or substantially modified community or nontransient, noncommunity drinking water systems shall be designed such that plant design capacity can be maintained with any component out of service. Raw water intake structures are excluded from the general redundancy requirement but shall be designed to ensure that plant design capacity will be maintained. ()

05. Design of Buildings. The design of buildings that are a part of public drinking water systems shall provide for: ()

- a. Adequate ventilation, lighting, heating, and air conditioning; ()
- b. Adequate drainage; ()
- c. Dehumidification equipment, if necessary; ()
- d. Accessibility of equipment for operation, servicing, and removal; ()
- e. Flexibility and convenience of operation and safety of operators; and ()
- f. Separate room(s) for chemical storage and feed equipment that may be required based on type of chemicals and associated hazards. ()

06. Electrical. Main switch gear electrical controls shall be located above grade, in areas not subject to flooding. All electrical work shall conform to the requirements of the National Electrical Code or to relevant state/local codes. The National Electrical Code is available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, (617)770-3000, <http://www.nfpa.org>. ()

07. Reliability and Emergency Operation. New community water systems constructed after April 15, 2007 are required to have sufficient dedicated on-site standby power, with automatic switch-over capability, or standby storage so that water may be treated and supplied to pressurize the entire distribution system during power outages. During a power outage, the water system shall be able to meet the operating pressure requirements of Subsection 552.01.b. for a minimum of eight (8) hours at average day demand plus fire flow where provided. A minimum of eight (8) hours of fuel storage shall be located on site unless an equivalent plan is authorized by the Department. Standby power provided in a public drinking water system shall be coordinated with the standby power that is provided in the wastewater collection and treatment system. ()

a. The Department may require the installation of standby power or storage facilities in existing systems if the frequency and duration of power outages a system experiences constitute a health hazard. ()

b. Existing community public water systems that are substantially modified after April 15, 2007 shall meet the requirements of Subsection 501.07. in those portions of the system affected by the modifications. ()

c. New sources and booster pumps intended to increase system capacity shall be provided with standby power or equivalent unless, during a power outage, the public water system or distribution system pressure zone can already meet the minimum operating capacity and pressure requirements in Subsection 501.07 for a minimum of eight (8) hours at average day demand plus fire flow where provided for each pressure zone. ()

d. For both new and existing public water systems, the Department may reduce the requirements of Subsection 501.07 if the system can demonstrate the capacity to adequately protect public health during a power outage. Any decision by the Department will be based on, but not limited to, the following considerations: ()

- i. An adequate emergency response and operation plan and the capacity to implement that plan. ()
- ii. The adequacy of the system's cross connection control program and the capacity to protect public health in the event of a system wide depressurization. ()
- iii. Demonstration of historical and projected reliability of the electrical power supplied to the water system. ()
- iv. A strategy for providing information to the public during power outages, including instructions to stop irrigation, boil water, etc., until notified otherwise. ()
- v. The level of reliability acceptable to consumers. This can be accomplished with either a vote of the majority of consumers for privately owned and operated systems or a decision by the governing body for publicly governed systems. ()
- vi. Other considerations that may be pertinent, including connections to other public water systems, agreements to provide water in emergency situations, and the availability of dedicated portable auxiliary power. ()

08. On-Site Analysis and Testing Capabilities. Each public water system shall have equipment and facilities for routine testing necessary to ensure proper operation. Equipment selection shall be based on the characteristics of the raw water source and the complexity of the treatment process involved. ()

09. Sample Taps. Sample taps shall be provided so that water samples can be obtained from each water source and from appropriate locations in each unit operation of treatment, and from the finished water. Taps shall be consistent with sampling needs and shall not be of the petcock type. Taps owned by the water system and used for obtaining samples for bacteriological analysis shall be of the smooth-nosed type without interior or exterior threads, shall not be of the mixing type, and shall not have a screen, aerator, or other such appurtenance. ()

10. Facility Potable Water Supply. The facility water supply service line and the plant finished water sample tap shall be supplied from a source of finished water at a point where all chemicals have been thoroughly mixed, and the required disinfectant contact time, if applicable, has been achieved. There shall be no cross connections between the facility water supply service line and any piping, troughs, tanks, or other treatment units containing wastewater, treatment chemicals, raw or partially treated water. ()

11. Meters. All water supplies shall have an acceptable means of measuring the flow from each source, the wash water, the recycled water, any blended water of different quality, and the finished water. ()

12. Operation and Maintenance Manual. A new or updated operation and maintenance manual that addresses all water system facilities shall be submitted to the Department for review and approval prior to start-up of the new or materially modified public water system unless the same system components are already covered in an existing operation and maintenance manual. For existing systems with continual operational problems as determined by the Department, the Department may require that an operation and maintenance manual be submitted to the Department for review and approval. The operator shall ensure that the system is operated in accordance with the approved operation and maintenance manual. ()

13. Start-Up Training. Provisions shall be made for operator instruction at the start-up of a new plant or pumping station. ()

14. Safety. Consideration shall be given to the protection of maintenance personnel and visitors from typical and foreseeable hazards in accordance with the engineering standards of care. The design shall comply with all applicable safety codes and regulations that may include the Uniform Building Code, International Fire Code, National Fire Protection Association Standards, and state and federal OSHA standards. Items to be considered include, but are not limited to, noise arresters, noise protection, confined space entry, protective equipment and clothing, gas masks, safety showers and eye washes, handrails and guards, warning signs, smoke detectors, toxic gas detectors and fire extinguishers. ()

15. Security. Appropriate design measures to help ensure the security of water system facilities shall be incorporated. Such measures, at a minimum, shall include means to lock all exterior doorways, windows, gates and other entrances to source, treatment, pumping stations, and water storage facilities. ()

16. Other Regulations. Consideration must be given to the design requirements of other federal, state, and local regulatory agencies for items such as safety requirements, special designs for the handicapped, plumbing and electrical codes, and construction in the flood plain. ()

17. Ground Water Source Redundancy. New community water systems served by ground water shall have a minimum of two (2) sources if they are intended to serve more than twenty-five (25) connections or equivalent dwelling units (EDUs). Under normal operating conditions, with any source out of service, the remaining source(s) shall be capable of providing either the peak hour demand of the system or a minimum of the maximum day demand plus equalization storage. See Subsection 501.18 for general design and redundancy requirements concerning fire flow capacity. ()

18. Redundant Fire Flow Capacity. ()

a. Public water systems that provide fire flow shall be designed to provide maximum day demand plus fire flow. Fire flow requirements and system adequacy shall be determined by the local fire authority or by a hydraulic analysis by a licensed professional engineer to establish required fire flows in accordance with the International Fire Code as adopted by the State Fire Marshal. Pumping systems supporting fire flow capacity must be designed so that fire flow may be provided with any pump out of service. ()

b. The requirement for redundant pumping capacity specified in Subsection 501.18.a. may be reduced to the extent that fire suppression storage is provided in sufficient quantity to meet some or all of fire flow demands. Where fire suppression storage is not provided, the requirement for fire flow pumping redundancy may be reduced or eliminated if the following conditions are met: ()

i. The local fire authority justifies that the fire flow capacity of the system is acceptable and is compatible with the water demand of existing and planned fire-fighting equipment and fire-fighting practices in the area served by the system. ()

ii. In a manner appropriate to the system type and situation, notification is provided to customers that describes the design of the system's fire-fighting capability and explains how it differs from the requirements of Subsection 501.18.a. ()

19. Pilot Studies. Unless otherwise approved by the Department based on documentation provided by the design engineer, pilot studies are required for treatment processes other than chlorine disinfection or point of use installations. Pilot studies may be performed in the field using the proposed source water or in conjunction with bench scale testing in the lab using the proposed source water. The system shall obtain the Department's approval of a pilot study plan before the pilot study is implemented. A pilot study shall be conducted for a period that shall be determined by the design engineer and approved by the Department. A final pilot study report with results shall be submitted to the Department for review and approval. Upon completion of the pilot study, final approval of equipment and treatment processes is subject to the applicable requirements of Sections 500 through 552. ()

a. Pilot Study Plan. A pilot study plan shall include the following and any other items required by the

Department: ()

i. Introduction and Background. The plan shall discuss general information about the project including the existing system, the reason for conducting the pilot study, and anticipated results of a successful pilot study. ()

ii. Alternative Processes. Provide a brief description of alternative processes that could be used if the proposed process is shown to be ineffective from the study. ()

iii. Procedures and Methods. The procedures and methods section shall discuss how the pilot study will be conducted, the time frame of the study, source water quality, how source water may be altered to mimic various source water quality conditions, and the water quality parameters that are monitored and evaluated to determine if the treatment process was effective. ()

b. Pilot Study Report. The pilot study report shall include the following and any other items required by the Department: ()

i. Introduction and Background. ()

ii. Results. A discussion of the overall pilot study progress, including any issues or problems and a general discussion of results of the study and what the results indicate. This discussion should determine parameters necessary for full scale implementation. ()

iii. Conclusions. Conclusions and recommendation to proceed with the treatment process if the results of the study proved successful. ()

c. Additional specific pilot study requirements in Sections 500 through 552 shall be included in pilot study plans and reports. ()

d. Engineer's Seal Required. Pilot study plans and pilot study reports submitted to the Department shall bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. ()

502. FACILITY AND DESIGN STANDARDS: FACILITY PLANS.
See the definition of Facility Plan in Section 003. ()

01. Facility Plans Required. All new public drinking water systems, and existing public drinking water systems undergoing material modification or expansion, are required to have a current facility plan that shall address all applicable issues specifically required in Sections 500 through 552 of these rules including, but not limited to, hydraulic capacity, treatment capacity, standby power, redundancy, fire flows, project financing, and operation and maintenance considerations sufficiently to determine the effects of the project on the overall infrastructure. Facility plans must address the entire potential service area of the project. Facility plans may not be required for simple water main extension projects as detailed in Subsections 502.01.a. and 502.01.b. ()

a. Department-reviewed simple water main extension projects. A facility plan is not required if the Department is provided documentation supporting the ability of the purveyor to provide service for the simple water main extension without adding system components designed to control quantity or pressure to the system and while continuing to provide the pressure and quantity requirements of Subsection 552.01. Documentation may be in the form of: ()

i. Hydraulic modeling; ()

ii. Usage data and flow calculations; ()

iii. Declining balance reports that demonstrate the system has the capacity to supply the service area of the system served by the extension; or ()

- iv. Other documentation acceptable to the Department. ()

b. Qualified Licensed Professional Engineer (QLPE)-reviewed Simple Water Main Extension Projects. A Department-approved facility plan is not required to be in place prior to the QLPE approving a simple water main extension pursuant to Subsection 504.03.b., provided that the service area of the system served by the extension is in compliance with the facility and design standards in Sections 500 through 552 of these rules. If the Department has not approved a facility plan for the system which includes the proposed simple water main extension, then the system purveyor or the QLPE shall provide with the transmittal letter documentation supporting the ability of the purveyor to provide service for the simple water main extension without adding system components designed to control quantity or pressure to the system and while continuing to provide the pressure and quantity requirements of Subsection 552.01. The purveyor shall provide this documentation to the QLPE as necessary. Documentation may be in the form of: ()

- i. Hydraulic modeling; ()
- ii. Usage data and flow calculations; ()
- iii. Declining balance reports that demonstrate the system has the capacity to supply the service area of the system served by the extension; or ()
- iv. Other documentation acceptable to the Department. ()

02. Submittal to the Department. When required, facility plans shall be submitted to the Department for review and approval prior to the submission of plans and specifications for a project related to the facility plan. ()

03. Engineer's Seal Required. Facility plans submitted to the Department shall bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. ()

04. Facility Plan Contents. The facility plan shall include basic information, criteria and assumptions, and alternative solutions with preliminary layouts and cost estimates as applicable. The facility plan is intended to address system wide growth, to identify system deficiencies, and to lay out a plan for system upgrades and expansion. ()

a. New public water system facility plan. The minimum requirements for a facility plan for a new public water system are listed in Subsections 502.04.a.i. through 502.04.a.viii. If specific items listed in Subsections 502.04.a.i. through 502.04.a.viii. are not applicable to a particular system, then the submitting engineer shall state this in the facility plan and state the reason why the requirement is not applicable. The facility plan must also include sufficient detail to support applicable requirements of Sections 501 through 552. ()

- i. Location. A general description and location of the system. ()
- ii. Population. The estimated design population of the system including the number of connections and the number of EDUs proposed. ()
- iii. Sources of Water. Adequacy, quality, and availability of sources of water for potable use and a description of the non-potable irrigation system. ()
- iv. Treatment. Identify and describe any anticipated treatment. ()
- v. Water Quantity. Design data for domestic, irrigation, fire fighting, commercial, or industrial water uses, including peak hour, maximum day, and average day demands. ()
- vi. Storage. Include the size and location of any anticipated storage structures. ()
- vii. Operating Pressure. Pressure ranges for all flow conditions prescribed by these rules. ()

viii. Sewage. Describe the sewage collection system and sewage treatment works, with reference to their relationship to existing or proposed water works structures which may affect the operation of the water supply system, or which may affect the quality of the supply. ()

b. Existing public water system facility plan. The minimum requirements for a facility plan for an existing public water system must include Subsections 502.04.b.i. through 502.04.b.vii. as well as Subsections 502.04.a.i. through 502.04.a.viii. If specific items listed in Subsections 502.04.b.i. through 502.04.b.vii. or Subsections 502.04.a.i. through 502.04.a.viii. are not applicable to a particular facility plan, then the submitting engineer shall state this in the facility plan and state the reason why the requirement is not applicable. The facility plan must also include sufficient detail to support applicable requirements of Sections 501 through 552. ()

i. Hydraulic analysis. A computer analysis of the hydraulics of the distribution system if requested by the Department; any analysis of an existing distribution system shall be properly calibrated. The type or sophistication of analysis shall be dependent on the type of system. ()

ii. Identify and evaluate problems related to the drinking water system. ()

iii. Describe financing methods. ()

iv. Set forth anticipated charges for users. ()

v. Review organizational and staffing requirements. ()

vi. Offer a project(s) recommendation for client consideration. ()

vii. Outline official actions and procedures to implement the project. ()

c. **Public Water System Facility Plan funded by the State Revolving Fund.** If the project is funded by the state revolving fund or a state grant, the facility plan must meet the requirements of Subsections 502.04.a. and 502.04.b., and other requirements that may also apply. See IDAPA 58.01.20, "Rules for Administration of Drinking Water Loan Program," and IDAPA 58.01.22, "Rules for Administration of Planning Grants for Public Drinking Water Facilities." ()

d. Facility Plan Guidance. A checklist, which can be used as guidance, can be found on the DEQ website at <http://www.deq.idaho.gov>. The guidance document is for Department grant and loan projects, but may be used in part or in whole as a guide to assist in the development of any facility plan. ()

503. FACILITY AND DESIGN STANDARDS: PRELIMINARY ENGINEERING REPORTS.

See the definition of Preliminary Engineering Report in Section 003. Preliminary engineering reports are required for all new water systems or material modifications to existing water systems that require plan and specification review and approval pursuant to Subsection 504.03. The preliminary engineering report shall be in conformance with the approved facility plan or shall describe any modifications to the facility plan. Preliminary engineering reports must be completed for all major water system projects including, but not limited to, source, pump station, pressure control, storage, and treatment projects. Preliminary engineering reports are not required for simple water main extensions that are approved in accordance with Subsections 502.01.a. or 502.01.b. ()

01. Submittal to Reviewing Authority. Preliminary engineering reports shall be submitted to the Department for review and must be approved by the Department prior to the submission of plans and specifications. The Department may allow well construction plans and specifications to be submitted concurrently with a preliminary engineering report for these projects. ()

02. Seal Required. Preliminary engineering reports submitted to the Department shall bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. The Department will accept the seal and signature of an Idaho licensed professional geologist on preliminary reports for well source, spring source, or infiltration gallery site reports, and for well construction. ()

03. Preliminary Engineering Report Contents. The preliminary engineering report must include

sufficient detail to demonstrate that the proposed project meets applicable criteria. The items included in Subsections 503.03.a. through 503.03.e., and all applicable issues and items specifically required in Sections 500 through 552, shall be addressed in detail. As required, a preliminary engineering report shall also identify and evaluate drinking water related problems, assemble basic information, present criteria and assumptions, examine alternative solutions with preliminary layouts and cost estimates, offer a conclusion with a proposed project, and outline official actions and procedures to implement the project. If specific items in Subsections 503.03.a. through 503.03.e. are not applicable to a particular design, then the designer shall state this in the preliminary engineering report and state the reason why it is not applicable. Items adequately addressed in the facility plan under which the project is being designed may be addressed by reference for purposes of the preliminary engineering report. ()

a. All preliminary engineering reports shall include items in Subsection 503.03.a. and the applicable items from Subsections 503.03.b. through 503.03.e. ()

i. General information. The preliminary engineering report general information shall include, but is not limited to: ()

(1) Project description. A detailed description of the proposed project; ()

(2) Site selection. A general description of the location of the project and justification of the site selection; ()

(3) Access and utilities. A general discussion of adequacy of local roadways and availability of power or other utilities; ()

(4) Surrounding land use. A general discussion of surrounding land use, including any potential sources of contamination; and ()

(5) Security. A general discussion of planned security features such as fencing, lighting, alarm systems, etc. ()

ii. Coordination with facility plan. The preliminary engineering report shall discuss or reference items provided in the Department-approved facility plan. These items include, but are not limited to: ()

(1) Existing System. A general description of the existing system and how the project fits into the overall system and facility plan; ()

(2) Size. The estimated system size based on number of persons, number of connections, or number of EDUs served or impacted by the project; ()

(3) Water Quantity. Design data for domestic, irrigation, fire fighting, commercial and industrial water uses, including peak hour, maximum day, and average day demands; ()

(4) Storage. How the project will affect various storage requirements. See definition of Components of Finished Water Storage in Section 003; ()

(5) Operating Pressure. Pressure ranges for all flow conditions prescribed by these rules; ()

(6) Hydraulic Analysis. A computer analysis of the hydraulics of the distribution system if requested by the Department; any analysis of an existing distribution system shall be properly calibrated. The type and sophistication of analysis shall be dependent on the type of system; ()

(7) Sources of Water. A general discussion of the adequacy, quality and availability of source of water. A water system that is to be served by a separate non-potable irrigation system must provide documentation to demonstrate the actual availability of water in sufficient quantity to ensure that the irrigation system will not compete with or in any way diminish the source of water for the potable water system; ()

(8) Sewage. Describe the sewage collection system and sewage treatment works, with special

reference to their relationship to existing or proposed water works structures which may affect the operation of the water supply system, or which may affect the quality of the supply; ()

(9) Treatment wastes. Assesses and characterize all anticipated waste discharges generated by the project and any activities that could impact the water supply. The location of each waste handling area or discharge point shall be shown on a scale map; ()

(10) Financing methods. Provide brief discussion of financing options investigated or planned; and ()

(11) Flooding. Discuss mechanisms for protection of the system from flooding. ()

iii. Code provisions. The preliminary engineering report shall include a summary of applicable codes and standards that apply to the proposed project. ()

iv. Cost estimate. The preliminary engineering report shall provide, as applicable, estimated construction costs for public works projects or projects funded through public monies. ()

v. Construction schedule. The preliminary engineering report shall include the proposed construction schedule. ()

vi. Potential sources of contamination. Identify sources of contamination and describe how the drinking water sources will be protected. ()

vii. Soils and ground water levels. Generally discuss soil, ground water conditions, and potential building foundation problems, including a description of: ()

(1) The character of the soil through which water mains are to be laid; ()

(2) Characteristics of the soil, water table, and geological substrate that may affect the design and construction of the foundations of proposed structures; and ()

(3) The approximate elevation of ground water in relation to subsurface structures. ()

b. Drinking water wells and spring construction projects. In addition to items listed in Subsection 503.03.a., a preliminary engineering report for source water construction projects shall include all items listed in Subsection 503.03.b., applicable items in Sections 510 through 514, and Sections 500 to 552 should be evaluated for their relevance to the project. ()

i. Anticipated geology and hydrogeology. Include geological data and existing well logs. ()

ii. Drilling methodology. Describe the anticipated drilling method and well construction. ()

iii. Water quality. Anticipated potability and water quality including monitoring results required for new sources by these rules. ()

iv. Water rights. Provide the appropriate documentation for the water rights for the drinking water source. ()

v. Dimensions of the well lot and location of source. Include geographical coordinates of the source location. ()

vi. Evaluation of surface water influence. For all new ground water sources, including but not limited to wells, springs, and infiltration galleries, systems shall supply information as required by the Department to determine if these sources are under the direct influence of surface water. ()

vii. Provide a site evaluation report as required by Section 510 for wells and 514 for springs. ()

c. Well and pump house construction projects. In addition to items listed in Subsection 503.03.a., preliminary engineering reports for well and pump house construction projects shall include all items listed in Subsection 503.03.c., applicable items in Sections 511, 541, 547, and Sections 500 to 552 should be evaluated for their relevance to the project. ()

i. Well house. Include information on the anticipated construction and well house equipment such as heating, ventilation, interior lighting, and drain(s). ()

ii. Water Level. Provide a brief description of the means for measuring the water level in the well. ()

iii. Well pump. Include information on the proposed or planned pump, including the pump curve. ()

iv. Controls. Describe the equipment and controls for the well and pump house. This includes but is not limited to system control and data acquisition, variable frequency drive, and other manual or automated controls within the well house. ()

v. Piping and appurtenances including but not limited to sample taps, discharge piping, flow meters, check valves, and pressure gauges. Describe the receiving system for the pump to waste volume of water including an evaluation of the capacity of the receiving system and, if applicable, provide documentation that the system owner will accept the estimated volume of water and any limitations the owner places upon that acceptance. ()

vi. Well vent. Describe the well vent if applicable. ()

vii. Casings and well caps. Describe the anticipated casing and well cap type and materials. ()

viii. Pitless adapters and units. Describe the anticipated pitless adapter for the well. ()

ix. Soil and water conditions. Describe the soil and ground water conditions that may affect the design and construction of proposed structure(s). ()

d. Reservoir and storage construction projects. In addition to items listed in Subsection 503.03.a., preliminary engineering reports for reservoir and storage construction projects shall include all items listed in Subsection 503.03.d., applicable items in Sections 544, and Sections 500 to 552 should be evaluated for their relevance to the project. ()

i. Sizing. Describe the required storage capacity and the related components of finished water storage. ()

ii. Overflow. Describe the anticipated overflow system for the water storage project and where the overflow will discharge. ()

iii. Vents. Describe the venting system used for the water storage project if applicable. ()

iv. Construction materials. Describe the construction materials used for the storage project. ()

v. Protection from freezing. Describe the protection of storage facility features from freezing especially riser pipes, overflows, and vents. ()

vi. Grading. Describe any site work or grading that may be necessary. ()

vii. Corrosion prevention. Provide a discussion on methods to prevent corrosion such as coatings, cathodic protection, corrosion resistant materials, and encasement. ()

viii. Disinfection. Describe the methods to be used to disinfect the storage facility and the testing to

check for proper disinfection. ()

e. Surface water and ground water under the direct influence of surface water (GWUDI) treatment construction projects. In addition to items listed in Subsection 503.03.a., preliminary engineering reports for surface water treatment and GWUDI construction projects shall include all items listed in Sections 503.03.e., applicable items in Sections 515 through 540, and Sections 500 to 552 should be evaluated for their relevance to the project. ()

i. Intake structures. Describe the intake structures that will be used. ()

ii. Off-stream raw water storage. If applicable, describe the proposed off-stream raw water storage. ()

iii. Treatment methods. Describe the treatment methods and potential alternatives including the removal of pathogens, disinfection, enhanced disinfection, water quality monitoring, and redundancy provisions. ()

iv. Treatment Wastes. Characterize the various wastes from the water treatment processes and, if applicable, their volumes, constituents, and proposed treatment and disposal. If discharging to a sanitary sewage system, verify that the system is capable of handling the flow to the treatment works and that the treatment works is capable and willing to accept the additional loading. ()

v. Monitoring Results. Provide applicable raw water monitoring results as required by these rules including anticipated turbidity ranges, microbiological, physical, chemical, radiological, and other parameters as determined by the Department. ()

vi. Potential contamination. An assessment of the degree of hazard to the supply by agricultural, industrial, recreational, and residential activities in the watershed, and by accidental spillage of materials that may be toxic, harmful or detrimental to treatment processes. ()

vii. Waste discharge. Assess all waste discharges and activities that could impact the water supply. The location of each waste discharge shall be shown on a scale map. ()

viii. Hydrological and historical stream flow data. Provide any available records and data. ()

ix. Water rights and water quantity. A copy of the appropriate permit(s) or application(s) from the Idaho Department of Water Resources regarding authorization to appropriate public waters of the state of Idaho in sufficient quantity to meet the design requirements of the system. ()

x. Turbidity. Anticipated turbidity range. ()

xi. Watershed. Assessment of the degree of control the water system will be able to exercise over the watershed. ()

xii. Projected future uses of impoundments or reservoirs within the watershed. ()

xiii. Water quality. Submit source water sample data over a sufficient period of time to assess the microbiological, physical, chemical and radiological characteristics of the water. ()

xiv. Stream characteristics. Provide consideration of currents, wind and ice conditions, and the effect of confluent streams. ()

504. FACILITY AND DESIGN STANDARDS: REVIEW OF PLANS AND SPECIFICATIONS.

The facility and design standards set forth in these rules shall be applied in the review of plans and specifications for public water system facilities. If design issues are not addressed by the facility and design standards set out in these rules, then guidance documents, some of which are listed in Subsection 002.02, shall be used as guidance in the design and review of plans and specifications for public drinking water facilities. See also Section 013. ()

01. Ownership. Documentation of the ownership and responsibility for operating the proposed system shall be made available to the Department prior to or concurrent with the submittal of plans and specifications as required in Subsection 504.03. The documentation must show organization and financial arrangements adequate to assure construction, operation and maintenance of the system according to these rules. Documentation shall also include the name of the water system, the name, address, and phone number of the supplier of water, the system size, and the name, address, and phone number of the system operator. ()

02. Connection to an Existing System. If the proposed project is to be connected to an existing public water system, a letter from the purveyor must be submitted to the Department stating that the purveyor will be able to provide services to the proposed project. The Department may require documentation supporting the ability of the purveyor to provide service to the new system without diminishing quality of service to existing customers. This letter must be submitted prior to or concurrent with the submittal of plans and specifications as required in Subsection 504.03. ()

03. Plans and Specifications Required. ()

a. Prior to construction of new public drinking water systems, new drinking water systems designed to serve fifteen (15) or more service connections, or material modifications of existing public water systems, plans and specifications must be submitted to the Department for review and approval. Construction should commence as soon as practical after approval, and if construction is not completed within twelve (12) months of the Department's final approval, an extension or re-approval must be obtained from the Department. The Department may require re-submittal of all or part of the plans and specifications prior to issuing an extension or re-approving the plans and specifications. ()

b. Plans and specifications for simple water main extensions shall not require pre-construction approval by the Department when such extensions will be owned and operated by a city, county, quasi-municipal corporation or regulated public utility, provided that such plans and specifications are reviewed and approved by a QLPE who was not involved in the preparation of the plans and specifications being reviewed to verify compliance with the requirements of these rules prior to initiation of construction. Any plans and specifications approved pursuant to Subsection 504.03.b. shall be transmitted to the Department at the time construction is authorized and shall be marked or stamped as "Approved for Construction." Along with the plans and specifications, the transmittal must include the items listed in Subsections 504.03.b.i. through 504.03.b.vii. The plans and specifications must bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer, and the approval or transmittal letter must be sealed, signed, and dated by the QLPE that is approving the plans and specifications. ()

i. A statement that the author of the transmittal letter is the QLPE representing the city, county, quasi-municipal corporation or regulated public entity. ()

ii. A statement that the extension project complies with the current facility plan or preliminary engineering report, or a statement that the water system has adequate capacity. Please see Subsection 502.01.b. for further information. ()

iii. A statement from the city, county, quasi-municipal corporation or regulated public entity or its authorized agent that the water system purveyor will serve the project. ()

iv. A statement from the city, county, quasi-municipal corporation or regulated public entity or its authorized agent that the water system purveyor will own and operate the project after construction is complete. ()

v. A statement by the QLPE that the plans and specifications are approved for construction. ()

vi. A statement by the QLPE that the plans and specifications comply with the facility standards within these rules. ()

vii. A statement recommending whether sanitary restrictions can be released or should remain in force. ()

()

c. Subsections 504.03.c.i. through 504.03.c.vi. outline the projects which QLPEs may approve and which QLPEs may not approve. ()

i. A QLPE may approve plans and specifications for simple water main extensions that are able to connect to an existing water system owned by a city, county, quasi-municipal corporation, or regulated public utility at the time the extension is approved for construction by the QLPE. ()

ii. A QLPE may approve plans for simple water main extensions which will connect to an existing water system, but are unable to connect to the system at the time the extension is approved for construction by the QLPE, provided sanitary restrictions remain in force for the proposed extension. ()

iii. A QLPE may not approve plans and specifications which include mechanical systems such as booster stations. ()

iv. A QLPE may not approve plans and specifications for projects which the QLPE was the design engineer or otherwise involved in the design. ()

v. A QLPE employed by a city, county, quasi-municipal corporation, or regulated public utility may approve a design that was prepared by a subordinate engineer or an engineer from a separate design group within the city, county, quasi-municipal corporation, or regulated public utility. ()

vi. A QLPE who is not employed by a city, county, quasi-municipal corporation, or regulated public utility, but is retained by a city, county, quasi-municipal corporation, or regulated public utility for the purpose of plan and specification review may not approve projects designed by the company with which the QLPE is employed. ()

d. At the discretion of the city, county, quasi-municipal corporation or regulated public utility, the plans addressed by Subsection 504.03.b. may be referred to the Department for review and approval prior to initiation of construction. ()

04. Criteria for Review. The Department shall review plans and specifications to determine compliance with these rules and engineering standards of care. If the plans and specifications comply with these rules and engineering standards of care, the Department shall not substitute its judgment for that of the owner's design engineer concerning the manner of compliance with the rule. ()

05. Schedule for Review. The Department shall review plans and specifications and endeavor to resolve design issues within forty-two (42) calendar days of submittal such that approval can be granted. If the Department and applicant have not resolved design issues within forty-two (42) calendar days or at any time thereafter, the applicant may file a written demand to the Department for a decision. Upon receipt of such written demand, the Department shall deliver a written decision to the applicant within no more than seven (7) calendar days explaining any reasons for disapproval. The Department shall maintain records of all written demands for decision made pursuant to Subsection 504.05 with such records including the final decision rendered and the timeliness thereof. ()

06. Engineer's Seal Required. Plans and specifications submitted to the Department shall bear the imprint of an Idaho licensed professional engineer's seal; except that the Department will accept the seal of an Idaho licensed professional geologist on the following: ()

a. Well source, spring source, or infiltration gallery site evaluation reports, as specified in Subsections 510 and 514. ()

b. Plans and specifications for well construction and results of field inspection and testing, as specified in Section 510. ()

07. Contents of Plans and Specifications. Plans and specifications shall, where pertinent, provide the

- following: ()
- a. General layout, including: ()
 - i. Suitable title. ()
 - ii. Name of municipality or other entity or person responsible for the water supply. ()
 - iii. Area or institution to be served. ()
 - iv. Scale of drawings. ()
 - v. North arrow. ()
 - vi. Datum used. ()
 - vii. General boundaries of municipality or area to be served. ()
 - viii. Date, name, and address of the designing engineer. ()
 - ix. Legible prints suitable for reproduction. ()
 - x. Location and size of existing water mains, if applicable. ()
 - xi. For systems undergoing material modification, location and nature of existing water works structures and appurtenances affecting the proposed improvements. ()
 - b. Detailed plans, including: ()
 - i. Stream crossings, providing profiles with elevations of the stream bed and the estimated normal and extreme high and, where appropriate, low water levels. ()
 - ii. Location and size of the property to be used for the development with respect to known references such as roads, streams, section lines, or streets. ()
 - iii. Topography and arrangement of present or planned wells or structures. ()
 - iv. Elevations of the one hundred (100) year flood level in relation to the floor of structures, upper termination of protective casings, and grade surrounding facilities. ()
 - v. Details of well construction, including diameter and depth of drill holes, casing and liner diameters and depths, grouting depths, elevations, and designation of geological formations, water levels and other data as specified in Section 510. ()
 - vi. Location of all known existing and potential sources of pollution within five hundred (500) feet of water sources or underground treated storage facilities. ()
 - vii. Size, length, and materials of proposed water mains. ()
 - viii. Location of existing or proposed streets; water sources, ponds, lakes, and drains; storm sanitary, combined and house sewers; septic tanks, disposal fields and cesspools. ()
 - ix. Schematic flow diagrams and hydraulic profiles showing the flow through various plant units. ()
 - x. Piping in sufficient detail to show flow through the plant including waste lines. ()

- xi. Locations of all chemical storage areas, chemical feeding equipment, and points of chemical application. ()
 - xii. All appurtenances, specific structures, equipment, water treatment plant waste disposal units and points of discharge having any relationship to the plans for water mains or water works structures. ()
 - xiii. Locations of sanitary or other facilities, such as lavatories, showers, toilets, and lockers, when applicable or required by the Department. ()
 - xiv. Locations, dimensions, and elevations of all proposed plant facilities. ()
 - xv. Locations of all sampling taps owned by the water system. ()
 - xvi. Adequate description of any significant features not otherwise covered by the specifications that may impact public safety or welfare. ()
 - c. Complete, detailed technical specifications shall be supplied for the proposed project, including: ()
 - i. A program for keeping existing water works facilities in operation during construction of additional facilities so as to minimize interruption of service. ()
 - ii. Laboratory facilities and equipment. ()
 - iii. Description of chemical feeding equipment. ()
 - iv. Procedures for flushing, disinfection and testing, as needed, prior to placing the project in service. All wells, pipes, tanks, and equipment which can convey or store potable water shall be disinfected in accordance with AWWA Standards, incorporated into these rules at Subsection 002.01. Plans or specifications shall outline the procedure and include the disinfectant dosage, contact time, and method of testing the results of this procedure. ()
 - v. Materials or proprietary equipment for sanitary or other facilities, including any necessary backflow or back-siphonage protection. ()
 - d. Complete design criteria, as set forth in these rules. ()
 - e. The Department may require additional information which is not part of the construction drawings, including, but not limited to, head loss calculations, proprietary technical data, and copies of contracts. ()
- 08. Notification of Material Deviations.** As set forth in Subsection 504.03, during construction or modification, the reviewing authority must be notified of any material deviation from the approved plans. The reviewing authority's prior written approval is required before any material deviation is allowed. ()
- 09. Record Plans and Specifications Required.** ()
- a. Within thirty (30) calendar days of the completion of construction of facilities for which plans are required to be reviewed pursuant to Subsection 504.03, record plans and specifications based on information provided by the construction contractor and field observations made by the engineer or the engineer's designee depicting the actual construction of facilities performed, must be submitted to the Department by the engineer representing the city, county, quasi-municipal corporation or regulated public utility that owns the project, or by the design engineer or owner-designated substitute engineer if the facilities will not be owned and operated by a city, county, quasi-municipal corporation or regulated public utility. Such submittal by the professional engineer must confirm material compliance with the approved plans and specifications or disclose any material deviations therefrom. If the construction does not materially deviate from the approved plans and specifications, the owner may have a statement to that effect prepared by an Idaho licensed professional engineer and filed with the Department in lieu of submitting a complete and accurate set of record drawings. ()

b. Record plans and specifications, or a statement submitted in lieu of record plans and specifications, must bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. ()

c. The Department will accept the seal and signature of an Idaho licensed professional geologist on record plans and specifications, or a statement bearing the seal and signature of an Idaho licensed professional geologist in lieu of record plans and specifications, for record plans and specifications for well construction and results of field inspection and testing, as specified in Section 510. ()

10. **Exception.** The Department may waive the plan and specification approval required of any particular facility or category of facilities when doing so will have no significant impact on public health or the environment. ()

11. **Requirement to Have Approved Plans and Specifications and Approval Letter On-Site During Construction.** It is the responsibility of the owner to maintain one (1) copy of the approved plans and specifications and the approval letter from the reviewing authority on-site during construction at all times. ()

12. **Construction.** Except as provided in Subsection 504.03.b., no construction shall commence until all of the necessary approvals have been received from the Department. The owner shall provide for the inspection of the construction of a public drinking water system facility by an Idaho licensed professional engineer to the extent required to confirm material compliance with the approved plans and to produce accurate record documents as required by Subsection 504.09. ()

505. -- 509. (RESERVED)

510. FACILITY AND DESIGN STANDARDS: SITING AND CONSTRUCTION OF WELLS.

Written approval by the Department is required before water from any new or reconstructed well may be served to the public. Any supplier of water for a public water system served by one (1) or more wells shall ensure that the following requirements are met: ()

01. **Site Approval.** Prior to drilling, the site of a public water system well must be approved in writing by the Department. The Department shall require the supplier of water to submit a well site evaluation report that takes into account the proposed size, depth, and location of the well. The evaluation may include, but is not limited to the following types of information: ()

a. An evaluation of the quality of anticipated ground water. ()

b. Identification of the known aquifers and the extent of each aquifer, based on the stratigraphy, sedimentation, and geologic structure beneath the proposed well site. ()

c. An estimate of hydrologic and geologic properties of each aquifer and confining layers. ()

d. Prediction of the sources of water to be extracted by the well and the drawdown of existing wells, springs, and surface water bodies that may be caused by pumping the proposed well. This prediction may be based on analytical or numerical models as determined by the Idaho Department of Water Resources permitting process. ()

e. Demonstration of the extent of the capture zone of the well, based on the well's design discharge and on aquifer geology, using estimates of hydraulic conductivity and storativity. ()

f. Description of potential sources of contamination within five hundred (500) feet of the well site. ()

02. **Location.** Each well shall be staked by the design engineer or licensed professional geologist prior to drilling, be located a minimum of fifty (50) feet from the nearest property line, be located a minimum of fifty (50) feet from any potential source of contamination, and be no closer to specified sources of contamination than set forth

in Subsection 900.01. In vulnerable settings, the Department may require engineering or hydrologic analysis to determine if the required setback distance is adequate to prevent contamination. ()

03. Construction Standards. In addition to meeting the requirements of these rules, all wells shall be constructed in accordance with IDAPA 37.03.09, "Well Construction Standards Rules," and related rules and laws administered by the Idaho Department of Water Resources. All wells shall comply with the drilling permit requirements of Section 42-235, Idaho Code. ()

a. Casing that meets the requirements set forth in Subsection 900.02 (Table 2). The use of plastic well casing for public water system wells may be considered on a case-by-case basis. Plastic casing shall meet or exceed ASTM Standard F480-02 and ANSI/NSF Standard 61. ()

b. Public water system wells shall have no less than fifty-eight (58) feet of annular seal of not less than one and one-half (1 ½) inches thickness as measured from land surface to the bottom of the seal unless: ()

i. It can be demonstrated to the Department's satisfaction that there is a confining layer at lesser depth that is capable of preventing unwanted water from reaching the intake zone of the well; or ()

ii. The best and most practical aquifer at a particular site is less than fifty-eight (58) feet deep; or; ()

iii. The Department specifies a different annular seal depth based on local hydrologic conditions. ()

iv. More stringent standards are required by applicable Rules of the Idaho Water Resources Board, referenced in Subsection 002.02. ()

c. Specifications shall include allowable tolerances for plumbness and alignment in accordance with AWWA Standards, incorporated by reference into these rules at Subsection 002.01, or as otherwise approved by the Department. If the well fails to meet these requirements, it may be accepted by the Department if it does not interfere with the installation or operation of the pump or uniform placement of grout. ()

d. Geological data shall be collected at each pronounced change in formation and shall be recorded in the driller's log. Supplemental data includes, but is not limited to, accurate geographical location such as latitude and longitude or GIS coordinates, and other information on accurate records of drillhole diameters and depths, assembled order of size and length of casing, screens and liners, grouting depths, formations penetrated, and water levels. ()

e. The owner of each well shall retain all records pertaining to each well until the well has been properly abandoned. ()

f. Wells with intake screens shall: ()

i. Be constructed of materials resistant to damage by chemical action of ground water or cleaning operations. ()

ii. Have openings based on sieve analysis of formation or gravel pack materials. ()

iii. Have sufficient length and diameter to provide adequate specific capacity and aperture entrance velocity not to exceed point three (0.3) feet per second, or as otherwise approved by the Department. ()

iv. Be installed so that the pumping water level remains above the screen under all operating conditions, or otherwise approved by the Department. Where a bottom plate or sump is utilized, it shall be of the same material as the screen, or as otherwise approved by the Department. Where a washdown assembly, tailpipe or sump is used below the screen, it may be made of a different material than the screen. ()

g. Permanent well casing shall be surrounded by a minimum of one and one-half (1 ½) inches of grout

to the depth required by Subsection 510.03.b. of these rules, or by the Rules of the Idaho Water Resources Board referenced in Subsection 002.02, whichever is greater. All casing identified in plans and specifications as temporary casing shall be removed prior to well completion. ()

i. Neat cement grout consisting of cement that conforms to AWWA Standard A-100, and water, with not more than six (6) gallons of water per ninety-four (94) pounds of cement, shall be used for one and one-half (1 ½) inch openings. Additives may be used to enhance effectiveness and are subject to approval by the reviewing authority and the Idaho Department of Water Resources on a case-by-case basis. ()

ii. Bentonite grout shall have a solids content not less than twenty-five (25) percent by weight when mixed with water and be specifically manufactured for use in sealing of well casing. Bentonite grout shall not contain weighting agents to increase solids content. Bentonite grout shall not be used above the water table. All bentonite grout shall be installed by positive displacement from the bottom up through a tremmie or float shoe. ()

iii. Where a dry annular space is to be sealed, a minimum of two (2) inches on all sides of the casing shall be required to place bentonite to depths not greater than one hundred (100) feet, using #8 mesh granular bentonite. All dry pour granular bentonite shall be tagged at appropriate intervals to verify placement. If a bridge occurs, a tremmie pipe shall be washed or jetted through the bridge to allow for pumping of grout. Bentonite chips shall be of sufficient size to accommodate proper placement for the existing subsurface conditions. ()

iv. Dry granular bentonite used in wells where a dry annular space is to be sealed with depths greater than one hundred (100) feet shall require an annulus of at least three (3) inches on all sides of the casing, or as approved by the reviewing authority and the Idaho Department of Water Resources. If a bridge occurs, a tremmie pipe shall be washed or jetted through the bridge to allow for pumping of grout. Bentonite chips shall be of sufficient size to accommodate proper placement for the existing subsurface conditions. ()

v. All chip bentonite seals installed through water shall only be used in annular spaces of at least four (4) inches on all sides of the casing. If a bridge occurs, a tremmie pipe shall be washed or jetted through the bridge to allow for pumping of grout. Bentonite chips shall be of sufficient size to accommodate proper placement for the existing subsurface conditions. Chip bentonite seals installed through water shall be: ()

(1) Installed in accordance with manufacturer's specifications; or ()

(2) Installed by pouring chips over a one-quarter (1/4) inch mesh screen for three-eighths (3/8) inch chips to remove fines to prevent bridging at the water table; or ()

(3) Installed using coated pellets to retard hydration if approved by the reviewing authority and the Idaho Department of Water Resources. ()

vi. Concrete may be approved on a case-by-case basis by the reviewing authority and the Idaho Department of Water Resources. Upon such approval, the approved method shall use a six (6) sack minus one-half (1/2) inch Portland cement concrete and shall be installed by positive displacement from the bottom up through a tremmie pipe. ()

04. Disinfection. All tools, bits, pipe, and other materials to be inserted in the borehole shall be cleaned and disinfected in accordance with the Well Construction Standards and permitting requirements of the Idaho Water Resources Board, referenced in Subsection 002.02 This applies to new well construction and repair of existing wells. ()

05. Well Completion Report Required. Upon completion of a well, and prior to its use as a drinking water source, the following information and data must be submitted by the water system to the Department. The well completion report must be submitted to the Department prior to or concurrent with the submittal of the preliminary engineering report for well house construction/modification. The well completion report shall bear the imprint of an Idaho licensed professional engineer's or an Idaho licensed professional geologist's seal that is both signed and dated by the engineer or geologist: ()

a. A copy of all well logs; ()

- b. Results of test pumping, as specified in Subsection 510.06; ()
 - c. As constructed plans showing at least the following: ()
 - i. Annular seal, including depth and sealant material used and method of application; ()
 - ii. Casing perforations, results of sieve analysis used in designing screens installed in sand or gravel aquifers, gravel packs; and ()
 - iii. Recommended pump location. ()
 - d. Other information as may be specified by the Department. ()
 - e. Sampling results for iron, manganese, corrosivity, and other secondary contaminants specified by the Department. Other monitoring requirements are specified in Subsections 510.05.e.i. through 510.05.e.iii. ()
 - i. Community Systems. Results of analysis for total coliform, inorganic chemical contaminants, organic chemicals, and radionuclide contaminants set forth in Subsections 050.01, 050.02, 050.05, 100.01, 100.03, 100.04, 100.05, and 100.06, unless analysis is waived pursuant to Subsection 100.07. ()
 - ii. Nontransient Noncommunity Systems. Results of analysis for total coliform and inorganic and organic chemical contaminants listed in Subsections 050.01, 050.02, 100.01, 100.03, 100.04, unless analysis is waived pursuant to Subsection 100.07. ()
 - iii. Transient Noncommunity Systems. Results of a total coliform, nitrite, and nitrate analysis listed in Subsections 050.01, 100.01 and 100.03. ()
- 06. Test Pumping.** Upon completion of a ground water source, test pumping shall be conducted in accordance with the following procedures to meet the specified requirements: ()
- a. The well shall be test pumped at the desired yield (design capacity) of the well for at least twenty-four (24) consecutive hours after the drawdown trend has stabilized, as determined by the supervising engineer or geologist. Alternatively, the well may be pumped at a rate of one hundred fifty percent (150%) of the desired yield for at least six (6) continuous hours after the drawdown trend has stabilized, as determined by the supervising engineer or geologist. The field pumping equipment must be capable of maintaining a constant rate of discharge during the test. Discharge water must be piped an adequate distance to prevent recharge of the well during the test. If the well fails the test protocol, design of the water system shall be re-evaluated and submitted to the Department for approval. ()
 - b. Upon completion of well development, the well shall be tested for sand production. Fifteen (15) minutes after the start of the test pumping (at or above the design production rate), the sand content of a new well shall not be more than five (5) parts per million. Sand production shall be measured by a centrifugal sand sampler or other means acceptable to the Department. If sand production exceeds five (5) ppm, the well shall be screened gravel packed, or re-developed. ()
 - c. The following data shall be provided: ()
 - i. Static water level in the well prior to test pumping; ()
 - ii. Well yield in gpm and duration of the pump test, including a discussion of any discrepancy between the desired yield and the yield observed during the test; ()
 - iii. Water level in the well recorded at regular intervals during pumping; ()
 - iv. Profile of water level recovery from the pumping level projected to the original static water level. ()

- v. Depth at which the test pump was positioned in the well; ()
- vi. Test pump capacity and head characteristics; ()
- vii. Sand production data. ()
- viii. Results of analysis based on the drawdown and recovery test pertaining to aquifer properties, long term sustained yield, and boundary conditions affecting drawdown. ()

d. The Department may allow the use of other pump test protocols that are generally accepted by engineering firms with specialized experience in well construction, by the well drilling industry, or as described in national standards (such as ANSI/AWWA A100-97), as long as the minimum data specified in Subsection 510.06.c. are provided. The Department welcomes more extensive data about the well, such as step-drawdown evaluations used in determining well capacity for test pumping purposes, zone of influence calculations, and any other information that may be of use in source protection activities or in routine water system operations. ()

e. Where aquifer yield, sustainability, or water quality are questionable, the Department, at its discretion, may require additional site specific investigations that could include test well construction, long-term pumping tests, or other means to demonstrate that the aquifer yield is sufficient to meet the long-term water requirements of the project. ()

07. Conversion of Non-Public Water System Wells for Public Water System Use. Any existing well constructed for use other than as a public water system source may be considered for use as a public water system source on a case-by-case basis. The owner of such a well must demonstrate to the Department's satisfaction that the well site conforms to the requirements of Subsections 510.01, 510.02, and Section 512, the well is constructed in a manner that is protective of public health and that both the quantity and quality of water produced by the well meet public water system standards set forth in these rules. ()

08. Observation Wells. If observation wells are used and are intended to remain in service after completion of the water supply well, the observation wells shall be constructed in accordance with the requirements for permanent wells and be protected at the upper terminal to preclude entrance of foreign materials. See Rules of the Idaho Water Resources Board referenced in Subsection 002.02. ()

09. Well Abandonment. Any water supply well that will no longer be used must be abandoned by sealing the borehole carefully to prevent pollution of the ground water, eliminate any physical hazard, conserve aquifer yield, maintain confined head conditions in artesian wells, and prevent mixing of waters from different aquifers. The objective of proper well abandonment procedures is to restore, as far as possible, the original hydrogeologic conditions. The services of a licensed well driller are required. Instructions for abandoning various types of wells may be obtained from the Idaho Department of Water Resources. See Rules of the Idaho Water Resources Board referenced in Subsection 002.02. ()

511. FACILITY AND DESIGN STANDARDS: WELL PUMPS, DISCHARGE PIPING, AND APPURTENANCES.

01. Sample Tap Required. A sample tap suitable for collecting bacteriological samples shall be provided on the discharge piping from every well at a point where pressure is maintained but prior to any treatment. This sample tap shall be of the smooth-nosed type without interior or exterior threads, shall not be of the mixing or petcock type, and shall not have a screen, aerator, or other such appurtenance. The sample tap for collecting bacteriological samples may be used for other sampling purposes. In addition, threaded hose bib taps may also be used for collecting samples, other than bacteriological samples, if equipped with an appropriate backflow prevention device as may be necessary to protect the public water system from contamination. ()

02. Discharge Piping. The discharge line shall be equipped with the necessary valves and appurtenances to allow a well to be pumped to waste at the design capacity of the well via an approved air gap through an approved non-corrodible screen at a location prior to the first service connection, and shall meet the following requirements: ()

- a. Be designed to minimize friction loss. ()
 - b. Have control valves and appurtenances located above the pump house floor when an above-ground discharge is provided. ()
 - c. Be protected against contamination. ()
 - d. Vertical turbine pumps shall be equipped with an air release-vacuum relief valve, or equivalent, located upstream from the check valve, with exhaust/relief piping terminating in a down-turned position at least eighteen (18) inches above the floor and covered with a twenty-four (24) mesh corrosion resistant screen. ()
 - e. Have all exposed piping, valves and appurtenances protected against physical damage and freezing. ()
 - f. Be properly anchored to prevent movement, and protected against surge or water hammer. ()
 - g. The pump to waste discharge piping shall be valved to ensure that other system components that could be negatively affected by the quality of the discharged water are not pressurized by the water that is being pumped to waste. ()
 - h. Where two (2) or more wells are connected to a common well house, the discharge piping shall be designed to ensure that each well can be pumped to waste independently without affecting the ability of the other well or wells to pressurize the system. ()
- 03. Pressure Gauge Required.** A pressure gauge shall be provided on all discharge piping. ()
- 04. Flow Meter and Check Valve.** Unless otherwise approved by the Department based on documentation provided by the design engineer, an instantaneous and totalizing flow meter equipped with nonvolatile memory shall be installed on the discharge line of each well in accordance with the manufacturer's specifications. Meters installed on systems with variable frequency drives shall be capable of accurately reading the full range of flow rates. An accessible check valve, which is not located in the pump column, shall be installed in the discharge line of each well between the pump and the shut-off valve. Additional check valves shall be located in the pump column as necessary. ()
- 05. Well Vent.** All wells shall be vented, unless it can be demonstrated that the drawdown under maximum pumping conditions will not exceed ten (10) feet. ()
- a. For wells not in a pump house, the open end of the vent shall be screened with a twenty-four (24) mesh or similar non-corrodible screen and terminated downward at least eighteen (18) inches above the final ground surface. ()
 - b. If the well is in a pump house, the open end of the vent shall be screened with a twenty-four (24) mesh or similar non-corrodible screen and must terminate at least twelve (12) inches above the pump house floor. ()
 - c. Artesian wells equipped with pumps may need venting or an air valve as determined by the Department. ()
- 06. Casings and Sanitary Well Caps.** The following requirements apply to well casings and sanitary caps: ()
- a. Casings shall extend at least eighteen (18) inches above the final ground surface. If the well is located within a pump house, casings shall extend least twelve (12) inches above the pump house floor. For a well located in an area subject to flooding, the Department may require an extension of the casing above the one hundred (100) year or highest known flood level, whichever is higher. ()

b. Wells shall be cased and provided with an approved cap in such a manner that surface water cannot enter the well. ()

c. For community water systems, a permanent means for measuring water level within the casing must be provided. For other water systems, a temporary means to measure water levels should be made available. All equipment required for conducting water level measurements shall be purchased and made available to the water system operator at the time the well is put into service. Where pneumatic or electronic water level measuring equipment is used, it shall be made using corrosion resistant materials attached firmly to the drop pipe or pump column and in such a manner as to prevent entrance of foreign materials. ()

07. Well Houses. For regulatory purposes, a well house is considered a pump house as defined in Section 003. Well houses must meet the requirements for pump houses as set forth in Section 541. All above ground discharge piping shall be contained in a well house or otherwise protected from freezing. ()

08. Pitless Adapters and Units. Pitless adapters or pitless units: ()

a. Shall be of the type marked approved by the National Sanitation Foundation or Pitless Adapter Division of the Water Systems Council. ()

b. Shall be designed, constructed and installed to be watertight including the cap, cover, casing extension and other attachments. ()

c. Shall be field tested for leaks before being put into service. The procedure outlined in "Manual of Individual and Non-Public Water Supply Systems," referenced in Subsection 002.02, or other procedure approved by the Department shall be followed. ()

d. Pitless adapters with a two (2) inch or smaller discharge line shall be provided with a swing joint outside the pitless adapter unit to reduce strain, deformation, and possible leakage of the pitless seal caused by settling soils in the trench. The orientation of swing joints shall be such that any settling that occurs will tighten the threads. The hole in the casing shall be cut with a saw rather than a torch with an opening large enough to allow seating of gaskets. ()

e. Shall be provided with a contamination-proof entrance connection for electrical cable. ()

f. In the case of pitless adapters: ()

i. Threaded adapters shall be installed by drilling a hole not more than one quarter (1/4) inch larger than the outer diameter of the pitless shank. No torch-cut holes shall be accepted. The orientation of swing joints shall be such that any settling that occurs will tighten the threads. ()

ii. The only field welding permitted will be that needed to connect a pitless adapter to the casing. ()

g. In the case of pitless units: ()

i. Shall be shop-fabricated from the point of connection with the well casing to the unit cap or cover. ()

ii. Shall be constructed of materials and weight at least equivalent to and compatible with the well casing. ()

iii. Shall be threaded or welded to the well casing. Threaded units shall be installed by drilling a hole not more than one quarter (1/4) inch larger than the outer diameter of the pitless shank. No torch-cut holes shall be accepted. If the connection to the casing is by field weld, the shop-assembled unit must be designed specifically for field welding to the casing. ()

iv. Shall terminate at least eighteen (18) inches above final ground elevation or three (3) feet above the

100-year flood level or the highest known flood elevation, whichever is higher, or as otherwise approved by the Department. ()

v. Shall be provided with access to disinfect the well. ()

vi. Shall have field connection to the lateral discharge from the pitless unit of threaded, flanged, or mechanical joint connection. ()

h. After installation of a pitless adapter or unit, the disturbed well seal shall be repaired or replaced to meet original seal specifications unless otherwise proposed by the design engineer and approved by the Department. The engineering proposal shall ensure that the material surrounding the final seal is moisture controlled and compacted such that it equals or exceeds the characteristics of the native soil prior to being disturbed. ()

09. Wells Not Allowed in Pits. Wells shall not be located in pits. Exceptions to this requirement will be granted by the Department if the well was constructed prior to November 5, 1964, and the installation is constructed or reconstructed in accordance with the requirements of the Department to provide watertight construction of pit walls and floors, floor drains and acceptable pit covers. ()

10. Discharge Pumps. Discharge pumps shall be subject to the following requirements: ()

a. Line shaft pumps shall. ()

i. Have the casing firmly connected to the pump structure or have the casing inserted into a recess extending at least one-half (1/2) inch into the pump base. ()

ii. Have the pump foundation and base designed to prevent water from coming into contact with the joint. ()

iii. Use lubricants that meet ANSI/NSF Standard 61. ()

b. When a submersible pump is used: ()

i. The top of the casing shall be effectively sealed against the entrance of water under all conditions of vibration or movement of conductors or cables. ()

ii. The electrical cable shall be firmly attached to the drop pipe at twenty-one (21) foot intervals or less, or at each coupling or joint. ()

512. FACILITY AND DESIGN STANDARDS: WELL LOT.

A well lot shall be provided for wells constructed after November 1, 1977. The well lot shall be owned in fee simple by the supplier of water or controlled by lease or easement with a term of not less than the useful life of the well and be large enough to provide a minimum distance of fifty (50) feet between the well and the nearest property line. ()

01. Use of Chemicals on the Well Lot. No pesticides, herbicides, or fertilizers shall be applied to a well lot without prior approval from the Department. ()

02. Storage of Hazardous Materials on the Well Lot. No pesticides, herbicides, fertilizers, portable containers of petroleum products, or other materials known to be toxic or hazardous shall be stored on a well lot, except that: ()

a. An internal combustion engine to drive either a generator for emergency standby power or a pump to provide fire flows, and an associated fuel tank, may be placed on the well lot. ()

b. A propane or natural gas powered generator is preferable to reduce risk of fuel spillage. ()

c. If a diesel or gasoline-fueled engine is used, the fuel tank and connecting piping must be approved

by the Underwriter's Laboratory, Inc., double-walled, meet the requirements of the local fire jurisdiction, and include both spill prevention and overflow protection features. The tank must be above ground and may be contained within the structural base of the generator unit. A licensed water system operator shall be present during filling of the tank following a period of usage, or during periodic extraction and replacement of outdated fuel. ()

d. Should the internal combustion engine be located within the pump house, the floor of the pump house shall be constructed so as to contain all petroleum drips and spills so that they will not be able to reach the floor drain(s). Engine exhaust shall be directly discharged outside the pump house. ()

e. A spill containment structure shall surround all fuel tanks and be sized to contain at least one hundred ten percent (110%) of the fuel tank volume. The Department may require additional containment capacity in settings where accumulation of snow, ice, or rain water could be expected to diminish the usable capacity of the structure. ()

03. Location of Hydrants. Hydrants of the frost free type shall be placed in the buried piping system at a minimum of five (5) feet away from the well casing to prevent drain water from accumulating and compromising the grout seal surrounding the well casing. ()

04. Parking Lots and Vehicle Storage. No public parking or vehicle storage shall be allowed on the well lot, except that operation/maintenance vehicles may be temporary parked on the well lot during the normal course of business. ()

513. FACILITY AND DESIGN STANDARDS: NUMBER OF GROUND WATER SOURCES REQUIRED – EXISTING SYSTEMS.

Existing community water systems served by ground water and intending to serve more than twenty-five (25) connections or equivalent dwelling units are subject to the following requirements for the number of ground water sources required. ()

01. Existing System with All Sources Constructed Prior to July 1, 1985. A community water system served by ground water and with all existing sources constructed prior to July 1, 1985 will be required to comply with Subsection 501.17 upon substantially modifying the system after July 2002. ()

02. Existing System with Any Sources Constructed After July 1, 1985. A community water system served by ground water with any sources constructed after July 1, 1985 is required to comply with Subsection 501.17 when a modification is made to the system which increases the population served or number of service connections, increases the length of transmission and distribution water mains, or increases the peak or average water demand. ()

514. FACILITY AND DESIGN STANDARDS: SPRING SOURCES.

Written approval by the Department is required before water from any new or reconstructed spring source may be served to the public. For new spring sources, the Department shall require a site evaluation report containing applicable required information listed in Subsection 510.01. This information includes, but is not limited to, the following: an evaluation of the potability and quality of anticipated spring water; an estimate of hydrologic and geologic properties of the aquifer; and a description of potential sources of contamination within five hundred (500) feet of the spring. Any supplier of water for a public water system served by one (1) or more springs shall ensure that the following requirements are met: ()

01. Protection of the Spring. Springs shall be housed in a permanent structure and protected from contamination including the entry of surface water, animals, and dust. ()

02. Spring Box or Combined Spring Box/Finished Water Storage Design. To facilitate efficient design and review of spring box or combined spring box/finished water storage designs, these site-specific designs should be coordinated in advance with the Department. Specific issues to be addressed are: ()

a. The inlet shall be screened as determined by the Department and located above the floor of the collection chamber. ()

b. Unless otherwise approved by the Department based on documentation provided by the design engineer, the spring box or combined spring box/finished water storage tank shall meet the applicable design requirements of Section 544 - Facility and Design Standards: General Design of Finished Water Storage. ()

03. Sample Tap Required. A sample tap suitable for collecting bacteriological samples shall be provided. This sample tap shall be of the smooth-nosed type without interior or exterior threads, shall not be of the mixing or petcock type, and shall not have a screen, aerator, or other such appurtenance. The sample tap for collecting bacteriological samples may be used for other sampling purposes. In addition, threaded hose bib taps may also be used for collecting samples, other than bacteriological samples, if equipped with an appropriate backflow prevention device as may be necessary to protect the public water system from contamination. ()

04. Flow Measurement. A flow meter or other flow measuring device shall be provided. ()

05. Protected Area. The entire area within a one hundred (100) foot radius of the spring box shall be owned by the supplier of water or controlled by a long term lease, fenced to prevent trespass of livestock and void of buildings, dwellings and sources of contamination. Surface water shall be diverted from this area. ()

515. FACILITY AND DESIGN STANDARDS: SURFACE SOURCES AND GROUND WATER SOURCES UNDER THE DIRECT INFLUENCE OF SURFACE WATER.

Written approval by the Department is required before water from any new surface source or ground water source that is under the direct influence of surface water may be served to the public. Infiltration collection lines or galleries are considered ground water under the direct influence of surface water unless demonstrated otherwise. Infiltration galleries that are not directly influenced by surface water shall meet the requirements of Section 514. The area around infiltration lines shall be under the control of the water purveyor for a distance acceptable to the Department. ()

01. Intake Structures. Design of intake structures shall provide for: ()

a. Withdrawal of water from more than one (1) level if quality varies with depth. ()

b. Separate facilities for release of less desirable water held in storage. ()

c. Where frazil ice may be a problem, holding the velocity of flow into the intake structure to a minimum, generally not to exceed point five (0.5) feet per second. Frazil ice is made up of randomly distributed ice crystals that are formed in flowing water that has cooled below thirty-two (32) degrees Fahrenheit and is prevented from forming into ice sheets by the movement of the water. ()

d. Inspection manholes every one thousand (1000) feet for pipe sizes large enough to permit visual inspection. ()

e. Cleaning the intake line as needed. ()

f. Adequate protection against rupture by dragging anchors, ice, or other hazards. ()

g. Ports located above the bottom of the stream, lake or impoundment, but at sufficient depth to be kept submerged at low water levels. ()

h. Where shore wells are not provided, a diversion device capable of keeping large quantities of fish or debris from entering an intake structure. ()

i. If necessary, provisions shall be made in the intake structure to control the influx of nuisance aquatic organisms. Specific control methods must be approved by the reviewing authority. ()

j. When buried surface water collectors are used, sufficient intake opening area must be provided to minimize inlet headloss. Particular attention shall be given to the selection of backfill material in relation to the collector pipe slot size and gradation of the native material over the collector system. ()

- 02. Raw Water Pumps.** Raw water pumping wells shall: ()
- a.** Have motors and electrical controls located above grade (except for submersible pumps), and protected from flooding as required by the reviewing authority. ()
 - b.** Be accessible and designed to prevent flotation. ()
 - c.** Be equipped with removable or traveling screens before the pump suction well. ()
 - d.** Provide for introduction of chlorine or other chemicals in the raw water transmission main if necessary for quality control. ()
 - e.** Where practical, have intake valves and provisions for back flushing or cleaning by a mechanical device and testing for leaks. ()
 - f.** Have provisions for withstanding surges where necessary. ()
- 03. Offstream Raw Water Storage.** An off-stream raw water storage reservoir is a facility into which water is pumped during periods of good quality and high stream flow for future release to treatment facilities. These off-stream raw water storage reservoirs shall be constructed to assure that: ()
- a.** Water quality is protected by controlling runoff into the reservoir. ()
 - b.** Dikes are structurally sound and protected against wave action and erosion. ()
 - c.** Intake structures and devices meet requirements of Subsection 515.01. ()
 - d.** Point of influent flow is separated from the point of withdrawal. ()
 - e.** Separate pipes are provided for influent to and effluent from the reservoir. ()
- 04. Reservoirs.** Impoundments and reservoirs shall provide, where applicable: ()
- a.** Removal of brush and trees to high water elevation. ()
 - b.** Protection from floods during construction. ()
 - c.** Abandonment of all wells which will be inundated, in accordance with requirements of the Idaho Department of Water Resources. See Rules of the Idaho Water Resources Board referenced in Subsection 002.02. ()

516. -- 517. (RESERVED)

518. FACILITY AND DESIGN STANDARDS: ADDITIONAL DESIGN CRITERIA FOR SURFACE WATER TREATMENT.

Performance criteria for surface water treatment facilities are specified in National Primary Drinking Water Regulations, as set forth in Sections 300, 301, and 310 of these rules. Surface water treatment systems must comply with applicable general design requirements in Section 503. In addition, the following design requirements apply specifically to surface water treatment facilities: ()

01. Engineering Design Requirements. The system shall ensure that filtration and disinfection facilities for surface water or ground water directly influenced by surface water sources are designed, constructed and operated in accordance with all applicable engineering practices designated by the Department. The design of the water treatment plant must consider the worst raw water quality conditions that are likely to occur during the life of the facility. ()

02. Removal of Pathogens. Filtration facilities (excluding disinfection) shall be designed, constructed

and operated to achieve at least two (2) log removal of *Giardia lamblia* cysts, two (2) log removal of *Cryptosporidium* oocysts, and one (1) log removal of viruses, except as allowed under Subsection 518.09.b. ()

03. Disinfection. Disinfection facilities shall be designed, constructed and operated so as to achieve at least point five zero (0.50) log inactivation of *Giardia lamblia* cysts; and ()

a. Two (2) log inactivation of viruses if using conventional and slow sand filtration technology; or ()

b. Three (3) log inactivation of viruses if using direct and diatomaceous earth filtration technology; or ()

c. Four (4) log inactivation of viruses if using alternate filtration technology. ()

d. Four (4) log inactivation of viruses if filtration treatment is not used. ()

04. Enhanced Disinfection. Higher levels of disinfection than specified under Subsection 518.03 may be required by the Department in order to provide adequate protection against *Giardia lamblia* and viruses. ()

05. Filter to Waste. For plants constructed after December 31, 1992, each filter unit must be capable of filter to waste. For plants constructed prior to December 31, 1992, each filter unit must be capable of filter to waste unless the system demonstrates through continuous turbidity monitoring or other means acceptable to the Department that water quality is not adversely affected following filter backwashing, cleaning or media replacement. ()

06. Continuous Turbidity Monitoring. For conventional, direct, membrane, and diatomaceous earth filtration technology, equipment must be provided to continuously measure the turbidity of each filter unit. ()

07. Continuous Monitoring of Disinfectant. Equipment must be provided and operated for continuous measurement of disinfectant residual prior to entry to the distribution system, unless the system serves fewer than three thousand three hundred (3,300) people. ()

08. Continuous Operation Required. Diatomaceous earth filtration facilities shall include an alternate power source with automatic startup and alarm, or be designed in a manner to ensure continuous operation. ()

09. Acceptable Technology. The purveyor shall select a filtration technology acceptable to the Department. ()

a. Conventional, direct, membrane, slow sand, diatomaceous earth, and membrane filtration technologies are generally acceptable to the Department on a case-by-case basis. ()

b. Alternate filtration technologies may be acceptable if the purveyor demonstrates all of the following to the satisfaction of the Department: ()

i. That the filtration technology: ()

(1) Is certified and listed by the National Sanitation Foundation (NSF) under Standard 53, Drinking Water Treatment Units - Health Effects, as achieving the NSF criteria for cyst reduction; or ()

(2) Removes at least ninety-nine percent (99%) (two (2) logs) of *Cryptosporidium* oocysts or surrogate particles and removes or inactivates at least ninety-nine percent (99%) (two (2) logs) of *Giardia lamblia* cysts or *Giardia lamblia* cyst surrogate particles in a challenge study acceptable to the Department. ()

ii. Based on field studies or other means acceptable to the Department, it must be demonstrated that the filtration technology has the following capabilities: ()

(1) In combination with disinfection treatment, consistently achieves at least ninety-nine percent (99%) (two (2) logs) removal of *Cryptosporidium* oocysts or surrogate particles and at least ninety-nine and nine tenths

percent (99.9%) (three (3) logs) removal or inactivation of *Giardia lamblia* cysts and ninety-nine and ninety-nine hundredths percent (99.99%) (four (4) logs) removal or inactivation of viruses; and ()

(2) Meets the turbidity performance requirements of 40 CFR 141.73 (b). ()

10. Pilot Studies. The system shall conduct pilot studies in accordance with the following requirements and in accordance with Subsection 501.19 for all proposed filtration facilities and structural modifications to existing filtration facilities, unless the Department modifies the requirements in writing: ()

a. The system shall obtain the Department's approval of the pilot study plan before the pilot filter is constructed and before the pilot study is undertaken. ()

b. The design and operation of the pilot study shall be overseen by an Idaho licensed professional engineer. ()

c. The system's pilot study plan shall identify at a minimum: ()

i. The objectives of the pilot study; ()

ii. Pilot filter design; ()

iii. Water quality and operational parameters to monitor; ()

iv. Amount of data to collect; and ()

v. Qualifications of the pilot plant operator. ()

d. The system shall ensure that the pilot study is: ()

i. Conducted to simulate conditions of the proposed full-scale design; ()

ii. Conducted for at least twelve (12) consecutive months or for a shorter period upon approval by the Department; ()

iii. Conducted to evaluate the reliability of the treatment system to achieve applicable water quality treatment criteria specified for filtration systems in 40 CFR 141.72 and 40 CFR 141.73; and ()

iv. Designed and operated in accordance with good engineering practices documented in references acceptable to the Department. ()

11. Redundant Disinfection. Surface water systems constructed after July 1, 1985, are required to install redundant disinfection components or maintain a backup unit on site as required to maintain constant application of disinfectant whenever water is being delivered to the distribution system. ()

519. FACILITY AND DESIGN STANDARDS: SURFACE WATER TREATMENT; DESIGN STANDARDS FOR MICROSCREENING.

A microscreen may be used to reduce nuisance organisms and organic loadings. It shall not be used in place of filtration or coagulation in the preparation of water for filtration. ()

01. Design Considerations. The following shall be taken into account during design: ()

a. The nature of the suspended matter to be removed. ()

b. The corrosiveness of the water. ()

c. The effect of chlorination, when required as pre-treatment. ()

- d. The duplication of units for continuous operation during equipment maintenance. ()
- e. Automated backflushing operation when used in conjunction with microfiltration treatment. ()
- 02. Design Requirements.** Design shall provide the following: ()
 - a. A durable, corrosion-resistant screen. ()
 - b. A by-pass arrangement. ()
 - c. Protection against back-siphonage when potable water is used for washing. ()
 - d. Proper disposal of water used to wash the microscreen. ()

520. FACILITY AND DESIGN STANDARDS: SURFACE WATER TREATMENT: CLARIFICATION PROCESSES.

Treatment facilities designed to include clarification for processing surface water shall meet the following requirements: ()

01. Two Units Required. A minimum of two (2) units for redundancy shall be provided for flocculation and sedimentation such that plant design capacity can be maintained with any component out of service for maintenance or repairs. ()

02. Parallel or Serial Operation. The units shall be capable of being operated either in series or parallel where softening is performed. ()

03. Independent Units. The units shall be constructed in such a way that each can be taken out of service without disrupting operation, and with drains or pumps sized to allow dewatering in a reasonable period of time. ()

04. Manual Start-Up. The units shall be started manually following shutdown. ()

05. Pre-Treatment. Waters exhibiting high turbidity may require pretreatment, usually sedimentation with or without the addition of coagulation chemicals. When presedimentation is provided, the following requirements must be met: ()

a. Incoming water shall be dispersed across the full width of the line of travel as quickly as possible. Short circuiting must be prevented. ()

b. Provisions for bypassing pre-sedimentation basins shall be included. ()

c. The need for redundant pretreatment components shall be evaluated according to the type and necessity of the pretreatment. ()

06. Rapid Mix. Unless otherwise approved by the Department based on documentation provided by the design engineer, a rapid mix device or chamber is required prior to flocculation, clarification, sedimentation, and settler units. The need for redundant rapid mix components shall be evaluated. Rapid mix shall mean the rapid dispersion of chemicals throughout the water to be treated, usually by violent agitation. The engineer shall submit the design basis for the velocity gradient (G value) selected, considering the chemicals to be added and water temperature, color and other related water quality parameters. Basins or mixing chambers shall be equipped with devices capable of providing adequate mixing for all treatment flow rates. ()

07. Flocculation. Flocculation shall mean the gathering together of fine particles in water by gentle mixing after the addition of coagulant chemicals to form larger particles. ()

a. Basin inlet and outlet design shall minimize short-circuiting and destruction of floc. A drain,

pumps, or a combination of both drain and pumps shall be provided to accomplish dewatering and sludge removal. ()

b. The flow-through velocity shall not be less than one-half (0.5) nor greater than one and one-half (1.5) feet per minute with a detention time for floc formation of at least thirty (30) minutes unless otherwise approved by the Department. ()

c. Agitators shall be driven by variable speed drives. ()

d. Flocculation and sedimentation basins shall be as close together as possible. The velocity of flocculated water through pipes or conduits to settling basins shall be not less than one-half (0.5) nor greater than one and one-half (1.5) feet per second. Allowances must be made to minimize turbulence at bends and changes in direction. ()

08. Small Systems May Use Baffling. Baffling may be used to provide for flocculation in small plants upon approval by the Department. ()

09. Sedimentation Units. The following criteria apply to conventional sedimentation units: ()

a. A minimum of two (2) hours of settling time shall be provided following flocculation unless adequate settling in less time can be demonstrated. ()

b. Inlets shall be designed to distribute the water equally and at uniform velocities. ()

c. Outlet weirs or submerged orifices shall maintain velocities suitable for settling in the basin and minimize short-circuiting. Outlet weirs shall be designed so that the rate of flow over the outlet weirs or through the submerged orifices shall not exceed twenty-thousand (20,000) gallons per day per foot of the outlet launder. The entrance velocity through the submerged orifices shall not exceed one-half (0.5) feet per second. ()

d. The velocity through settling basins shall not exceed one-half (0.5) feet per minute. The basins must be designed to minimize short-circuiting. Fixed or adjustable baffles must be provided as necessary to achieve the maximum potential for clarification. ()

e. When an overflow weir or pipe is provided the overflow shall discharge by gravity with a free fall at a location where the discharge will be noted. ()

f. Adequate sludge collection equipment that ensures proper basin coverage shall be provided and basins must be provided with a means for dewatering. ()

g. Flushing lines or hydrants shall be provided and must be equipped with backflow prevention devices acceptable to the Department. ()

h. Sludge removal design shall provide that sludge pipes are not less than three (3) inches in diameter and arranged so as to facilitate cleaning. Entrance to sludge withdrawal piping shall be designed to prevent clogging. Provision shall be made for the operator to observe and sample sludge being withdrawn from the unit. ()

i. Sludge shall be disposed of in accordance with applicable regulations, as set forth in Section 540. ()

10. Solids Contact Clarifiers. Solids contact clarifiers are generally acceptable for combined softening and clarification where water characteristics, especially temperature, do not fluctuate rapidly, flow rates are uniform and operation is continuous. A minimum of two (2) units are required for surface water treatment as required in Subsection 520.01. ()

a. Chemicals shall be applied at such points and by such means as to ensure satisfactory mixing of the chemicals with the water. ()

b. Unless otherwise approved by the Department based on documentation provided by the design engineer, a rapid mix device or chamber ahead of the solids contact clarifier is required to assure proper mixing of the chemicals applied. Mixing devices employed shall be constructed so as to provide good mixing of the raw water with previously formed sludge particles and prevent deposition of solids in the mixing zone. ()

c. Flocculation equipment shall be adjustable as to speed, pitch, or a combination of speed and pitch and must provide for coagulation in a separate chamber or baffled zone within the unit. ()

d. Sludge removal design shall provide that sludge pipes are not less than three (3) inches in diameter and arranged so as to facilitate cleaning. Entrance to sludge withdrawal piping shall be designed to prevent clogging. Provision shall be made for the operator to observe and sample sludge being withdrawn from the unit. ()

e. Blow-off outlets and drains must terminate and discharge at places acceptable to the Department in regard to control of potential cross connections. Cross connection control must be included for the potable water lines used to backflush sludge lines. ()

f. The detention time shall be established on the basis of the raw water characteristics and other local conditions that affect the operation of the unit. The Department may request data to support decisions made with respect to detention times. The Department may alter detention time requirements. ()

g. Controls for sludge withdrawal which minimize water losses shall be provided. ()

h. Unless otherwise approved by the Department based on documentation provided by the design engineer, weirs shall be adjustable and at least equivalent in length to the perimeter of the tank. Weir loading shall not exceed ten (10) gallons per minute per foot of weir length for units used as clarifiers or twenty (20) gallons per minute per foot of weir length for units used for softening. Where orifices are used, the loading rates per foot of launder rates shall be equivalent to weir loadings. Either shall produce uniform rising rates over the entire area of the tank. ()

i. Upflow rates shall not exceed one (1) gallon per minute per square foot of area at the sludge separation line for units used as clarifiers or one and three-quarters (1.75) gallons per minute per foot of area at the slurry separation line for units used as softeners. The Department may consider higher rates if supporting data is provided. ()

11. Settler Units. Settler units consisting of variously shaped tubes or plates installed in multiple layers and at an angle to the flow may be used for sedimentation following flocculation. ()

a. Inlets and outlets shall be designed to maintain velocities suitable for settling in the basin and to minimize short-circuiting. Plate units shall be designed to minimize unequal distribution across the units. ()

b. Drain piping from the settler units must be sized to facilitate a quick flush of the settler units and to prevent flooding other portions of the plant. ()

c. Although most units will be located within a plant, outdoor installations must provide sufficient freeboard above the top of settlers to prevent freezing in the units. ()

d. Water shall be applied to tube settlers at a maximum rate of two (2) gallons per minute per square foot of cross-sectional area for tube settlers, unless higher rates are justified through pilot plant or in-plant demonstration studies. See Subsection 501.19 for general information on conducting pilot studies. ()

e. Water shall be applied to plate settlers at a maximum plate loading rate of one-half (0.5) gallons per minute per square foot, based on eighty (80) percent of the projected horizontal plate area. ()

f. Flushing lines shall be provided to facilitate maintenance and must be properly protected against backflow or back siphonage. ()

12. High Rate Clarification. High rate clarification processes may be approved upon demonstrating

satisfactory performance under on-site pilot plant conditions or documentation of full scale plant operation with similar raw water quality conditions. Reductions in detention times and/or increases in weir loading rates shall be justified. See Subsection 501.19 for general information on conducting pilot studies. Examples of such processes include dissolved air flotation, ballasted flocculation, contact flocculation/clarification, and helical upflow. ()

521. FACILITY AND DESIGN STANDARDS: SURFACE WATER TREATMENT: FILTRATION USING RAPID RATE GRAVITY FILTERS.

01. Pretreatment. The use of rapid rate gravity filters shall require pretreatment in the form of coagulation, flocculation, and sedimentation. ()

02. Rate of Filtration. The filter rate must be proposed and justified by the design engineer to the satisfaction of the Department prior to the preparation of final plans and specifications. ()

03. Number of Units. A minimum of two (2) units for redundancy shall be provided for filtration such that plant design capacity can be maintained with any component out of service for maintenance or repairs. Where declining rate filtration is provided, the variable aspect of filtration rates, and the number of filters must be considered when determining the design capacity for the filters. ()

04. Structure and Hydraulics. The filter structure shall be designed to provide for: ()

a. Vertical walls within the filter. There shall be no protrusion of the filter walls into the filter media. ()

b. Cover by superstructure with sufficient headroom to permit normal inspection and operation. ()

c. Minimum depth of filter box of eight and one-half (8.5) feet. ()

d. Minimum water depth over the surface of the filter media of three (3) feet. ()

e. Trapped effluent to prevent backflow of air to the bottom of the filters. ()

f. Prevention of floor drainage to the filter with a minimum four (4) inch curb around the filters. ()

g. Prevention of flooding by providing overflow. ()

h. Maximum velocity of treated water entering the filters of two (2) feet per second. ()

i. Cleanouts and straight alignment for influent pipes or conduits where solids loading is heavy, or following lime-soda softening. ()

j. Washwater drain capacity to carry maximum flow. ()

k. Walkways around filters to be not less than twenty-four (24) inches wide and equipped with safety handrails or walls. ()

l. Construction so as to prevent cross connections and common walls between potable water and non-potable fluids. ()

05. Washwater Troughs. Washwater troughs shall be constructed to have: ()

a. The bottom elevation above the maximum level of expanded media during washing. ()

b. A two (2) inch freeboard at the maximum rate of wash. ()

c. The top edge level and all at the same elevation. ()

- d. Spacing so that each trough serves the same number of square feet of filter area. ()
 - e. Maximum horizontal travel of suspended particles to reach the trough not to exceed three (3) feet. ()
- 06. Filter Material.** The media shall be clean silica sand or other natural or synthetic media free from detrimental chemical or bacterial contaminants, approved by the Department, and having the following characteristics: ()
- a. A total depth of not less than twenty-four (24) inches and generally not more than thirty (30) inches. ()
 - b. An effective size range of the smallest material no greater than forty-five hundredths (0.45) of a millimeter to fifty-five hundredths (0.55) of a millimeter. ()
 - c. A uniformity coefficient of the smallest material not greater than one and sixty-five hundredths (1.65). ()
 - d. A minimum of twelve (12) inches of media with an effective size range no greater than forty-five hundredths (0.45) of a millimeter to fifty-five hundredths (0.55) of a millimeter and a specific gravity greater than other filtering materials within the filter. ()
 - e. Types of filter media are as follows: ()
 - i. Clean, crushed anthracite or a combination of anthracite and other media may be considered on the basis of experimental data specific to the project. The anthracite shall have the following characteristics: ()
 - (1) Effective size of forty-five hundredths (0.45) of a millimeter to fifty-five hundredths (0.55) of a millimeter with uniformity coefficient not greater than sixty-five hundredths (1.65) when used alone. ()
 - (2) Effective size of eight tenths (0.8) of a millimeter to one and two-tenths (1.2) millimeters with a uniformity coefficient not greater than one and eighty-five hundredths (1.85) when used as a cap. ()
 - (3) Effective size for anthracite used as a single media on potable ground water for iron and manganese removal only shall be a maximum of eight tenths (0.8) of a millimeter (effective sizes greater than this may be approved based upon onsite pilot plant studies or other demonstration acceptable to the Department). See Subsection 501.19 for general information on conducting pilot studies. ()
 - ii. Sand media shall have the following characteristics: ()
 - (1) Effective size of forty-five hundredths (0.45) of a millimeter to fifty-five hundredths (0.55) of a millimeter. ()
 - (2) Uniformity coefficient of not greater than one and sixty-five hundredths (1.65). ()
 - (3) Larger size sand media may be allowed by the Department where full-scale tests have demonstrated that treatment goals can be met under all conditions. ()
 - iii. Granular activated carbon (GAC) as a single media may be considered for filtration only after pilot or full-scale testing and with prior approval of the Department. See Subsection 501.19 for general information on conducting pilot studies. The design shall include the following: ()
 - (1) The media must meet the basic specifications for filter media as given in Subsections 521.06.a. through d., except that larger size media may be allowed where full scale tests have demonstrated that treatment goals can be met under all conditions. ()

- (2) There must be a means for periodic treatment of filter material for control of bacterial and other growth. ()
- (3) Provisions must be made for frequent replacement or regeneration. ()
- iv. Other media will be considered based on experimental data and operating experience. ()
- v. A three (3) inch layer of torpedo sand shall be used as a supporting media for filter sand where supporting gravel is used, and shall have an effective size of eight-tenths (0.8) millimeters to two (2.0) millimeters, and a uniformity coefficient not greater than one and seven-tenths (1.7). ()

vi. Gravel, when used as the supporting media, shall consist of cleaned and washed, hard, durable, rounded silica particles and shall not include flat or elongated particles. The coarsest gravel shall be two and one-half (2.5) inches in size when the gravel rests directly on a lateral system and must extend above the top of the perforated laterals. Not less than four (4) layers of gravel shall be provided in accordance with the size and depth distribution specified in the table below. Reduction of gravel depths and other size gradations may be considered upon justification to the reviewing authority for slow sand filtration or when proprietary filter bottoms are specified.

| Size of Gravel | Depth |
|---------------------|---------------|
| 2 ½ to 1 ½ inches | 5 to 8 inches |
| 1 ½ to ¾ inches | 3 to 5 inches |
| ¾ to ½ inches | 3 to 5 inches |
| ½ to 3/16 inches | 2 to 3 inches |
| 3/16 to 3/32 inches | 2 to 3 inches |

()

07. Filter Bottoms and Strainer Systems. Departure from the standards set out in Subsection 521.07 may be acceptable for high rate filters and for proprietary bottoms. Porous plate bottoms shall not be used where iron or manganese may clog them or with waters softened by lime. The design of manifold-type collection systems shall:

()

- a. Minimize loss of head in the manifold and laterals. ()
- b. Ensure even distribution of wash water and even rate of filtration over the entire area of the filter. ()
- c. Provide the ratio of the area of the final openings of the strainer systems to the area of the filter at about three-thousandths (0.003), ()
- d. Provide the total cross-sectional area of the laterals at about twice the total area of the final openings. ()
- e. Provide the cross-sectional area of the manifold at one and one-half (1.5) to two (2) times the total area of the laterals. ()
- f. Lateral perforations without strainers shall be directed downward. ()

08. Surface or Subsurface Wash. Surface or subsurface wash facilities are required except for filters used exclusively for iron or manganese removal, and may be accomplished by a system of fixed nozzles or a revolving-type apparatus. All devices shall be designed with:

()

- a. Provision for water pressures of at least forty-five (45) pounds per square inch. ()

b. A properly installed vacuum breaker or other approved device to prevent back siphonage if connected to the treated water system. ()

c. Rate of flow of two (2.0) gallons per minute per square foot of filter area with fixed nozzles or one-half (0.5) gallon per minute per square foot with revolving arms. ()

d. Air wash can be considered based on experimental data and operating experiences. ()

09. Air Scouring. Air scouring can be considered in place of surface wash provided the following conditions are met: ()

a. Air flow for air scouring the filter must be three (3) to five (5) standard cubic feet per minute square foot of filter area when the air is introduced in the underdrain; a lower air rate must be used when the air scour distribution system is placed above the underdrains. ()

b. A method for avoiding excessive loss of the filter media during backwashing must be provided. ()

c. Air scouring must be followed by a fluidization wash sufficient to re-stratify the media. ()

d. Air must be free from contamination. ()

e. Air scour distribution systems shall be placed below the media and supporting bed interface with the following exception: if placed at the interface the air scour nozzles shall be designed to prevent media from clogging the nozzles or entering the air distribution system. ()

f. Piping for the air distribution system shall not be flexible hose which will collapse when not under air pressure and shall not be a relatively soft material which may erode at the orifice opening with the passage of air at high velocity. ()

g. Air delivery piping shall not pass down through the filter media nor shall there be any arrangement in the filter design which would allow short circuiting between the applied unfiltered water and the filtered water. ()

h. The backwash water delivery system must be capable of fifteen (15) gallons per minute per square foot of filter surface area (37 m/hr); however, when air scour is provided the backwash water rate must be variable and should not exceed eight (8) gallons per minute per square foot (20 m/hr) unless operating experience shows that a higher rate is necessary to remove scoured particles from filter media surfaces. ()

i. The filter underdrains shall be designed to accommodate air scour piping when the piping is installed in the underdrain. ()

10. Filter Appurtenances. The following shall be provided for every filter: ()

a. Influent and effluent sampling taps. ()

b. A gauge capable of indicating loss of head. ()

c. A meter indicating rate-of flow. A modified rate controller which limits the rate of filtration to a maximum rate may be used. However, equipment that simply maintains a constant water level on the filters is not acceptable, unless the rate of flow onto the filter is properly controlled. A pump or a flow meter in each filter effluent line may be used as the limiting device for the rate of filtration only if approved by the Department on a site-specific basis. ()

11. Backwash. Provisions shall be made for washing filters as follows: ()

- a. A minimum backwash rate such that a fifty (50) percent expansion of the filter bed is achieved. ()
 - b. Filtered water provided at the required rate by wash water tanks, a wash water pump, from the high service main, or a combination of these. ()
 - c. Wash water pumps in duplicate unless an alternate means of obtaining wash water is available. ()
 - d. Not less than fifteen (15) minutes wash of one filter at the design rate of wash. ()
 - e. A wash water regulator or valve on the main wash water line to obtain the desired rate of filter wash with the wash water valves on the individual filters open wide. ()
 - f. A rate-of-flow indicator, preferably with a totalizer, on the main wash water line, located so that it can be easily read by the operator during the washing process. ()
 - g. Design to prevent rapid changes in backwash water flow. Backwash shall be operator initiated. Automated systems shall be operator adjustable. ()
- 12. Roof Drainage.** Roof drains shall not discharge into the filters or basins and conduits preceding the filters. ()

522. FACILITY AND DESIGN STANDARDS: SURFACE WATER TREATMENT: FILTRATION USING DIATOMACEOUS EARTH.

The use of these filters may be considered for application to surface waters with low turbidity and low bacterial contamination, and may be used for iron removal for ground waters providing the removal is effective and the water is of satisfactory sanitary quality before treatment. ()

01. Conditions of Use. Diatomaceous earth filters are expressly excluded from consideration for the following conditions: ()

- a. Bacteria removal; ()
- b. Color removal; ()
- c. Turbidity removal where either the gross quantity of turbidity is high or the turbidity exhibits poor filterability characteristics; or ()
- d. Filtration of waters with high algae counts. ()

02. Treated Water Storage. Treated water storage capacity in excess of normal requirements shall be provided to allow operation of the filters at a uniform rate during all conditions of system demand at or below the approved filtration rate, and guarantee continuity of service during adverse raw water conditions without by-passing the system. ()

03. Number of Units. A minimum of two (2) units for redundancy shall be provided for filtration such that plant design capacity can be maintained with any component out of service for maintenance or repairs. ()

04. Precoat. A uniform precoat shall be applied hydraulically to each septum by introducing a slurry to the tank influent line and employing a filter-to-waste recirculation system. ()

05. Body Feed. A body feed system to apply additional amounts of diatomaceous earth slurry during the filter run is required to avoid short filter runs or excessive head losses. ()

- a. The rate of body feed is dependent on raw water quality and characteristics and must be determined in the pilot plant study. See Subsection 501.19 for general information on conducting pilot studies. ()

- b. Continuous mixing of the body feed slurry is required. ()
- 06. Filtration Requirements.** ()
 - a. Rate of filtration shall be controlled by a positive means. ()
 - b. Head loss shall not exceed thirty (30) psi for pressure diatomaceous earth filters, or a vacuum of fifteen (15) inches of mercury for a vacuum system. ()
 - c. A recirculation or holding pump shall be employed to maintain differential pressure across the filter when the unit is not in operation in order to prevent the filter cake from dropping off the filter elements. A minimum recirculation rate of one-tenth (0.1) gallon per minute per square foot of filter area shall be provided. ()
 - d. The septum or filter elements shall be structurally capable of withstanding maximum pressure and velocity variations during filtration and backwash cycles, and shall be spaced such that no less than one (1) inch is provided between elements or between any element and a wall. ()
 - e. The filter influent shall be designed to prevent scour of the diatomaceous earth from the filter element. ()
- 07. Backwash.** A satisfactory method to thoroughly remove and dispose of spent filter cake shall be provided. ()
- 08. Appurtenances.** The following shall be provided for every filter: ()
 - a. Sampling taps for raw and filtered water. ()
 - b. Loss of head or differential pressure gauge. ()
 - c. Rate-of-flow indicator. ()
 - d. A throttling valve used to reduce rates below normal during adverse raw water conditions. ()
 - e. Evaluation of the need for body feed, recirculation, and any other pumps. ()
 - f. Provisions for filtering to waste with appropriate measures for backflow prevention. ()
- 09. Monitoring.** A continuous monitoring turbidimeter with recorder is required on each filter effluent for plants treating surface water. ()

523. FACILITY AND DESIGN STANDARDS: SURFACE WATER TREATMENT: SLOW SAND FILTRATION.

The use of these filters shall require prior engineering studies to demonstrate the adequacy and suitability of this method of filtration for the specific water supply. Slow Sand Filtration and Diatomaceous Earth Filtration for Small Water Systems, Manual on Slow Sand Filtration, and Slow Sand Filtration referenced in Subsection 002.02, may be used as guidance in design of slow sand filtration facilities. ()

01. Quality of Raw Water. Slow rate gravity filtration shall be limited to waters having maximum turbidities of ten (10) nephelometric units and maximum color of fifteen (15) units; such turbidity must not be attributable to colloidal clay. Raw water quality data must include examinations for algae. For source water having variable turbidity, the potential use of a roughing filter or other pretreatment technology should be evaluated. The Department may allow the use of a pretreatment technology on raw waters that exceed the normal limits for turbidity and color, if it can be demonstrated to the Department's satisfaction that pretreatment will enable slow sand filtration to properly operate and comply with these Rules. ()

02. Number of Units. A minimum of two (2) units for redundancy shall be provided for filtration such that plant design capacity can be maintained with any component out of service for maintenance or repairs. The

Department may allow a single bed filter if it can be demonstrated to the Department's satisfaction that an alternative water source is available such that the water system can provide plant design capacity with the filter taken out of service for maintenance and repairs. ()

03. Structural Details and Hydraulics. Slow rate gravity filters shall be so designed as to provide a cover, unless otherwise approved by the Department based on documentation provided by the design engineer, headroom to permit normal movement by operating personnel for scraping and sand removal operations, adequate access hatches and access ports for handling of sand and for ventilation, filtration to waste, an overflow at the maximum filter water level, and protection from freezing. A permanent means of determining sand depth shall be provided. ()

04. Underdrains. Each filter unit shall be equipped with a main drain and an adequate number of lateral underdrains to collect the filtered water. The underdrains shall be so spaced that the maximum velocity of the water flow in the underdrain will not exceed three-fourths (0.75) feet per second. The maximum spacing of laterals shall not exceed three (3) feet if pipe laterals are used. ()

05. Filter Material. The following requirements apply: ()

a. A minimum depth of thirty (30) inches of filter sand shall be placed on graded gravel layers. ()

b. The effective size shall be between fifteen hundredths (0.15) of a millimeter and thirty-five hundredths (0.35) of a millimeter. Larger sizes may be considered by the Department based on the results of a pilot study. See Subsection 501.19 for general information on conducting pilot studies. ()

c. The uniformity coefficient shall not exceed three point zero (3.0). ()

d. The sand shall be cleaned and washed free from foreign matter. ()

e. The sand shall be rebedded to the original minimum depth of thirty (30) inches when scraping has reduced the bed depth to no less than twenty-four (24) inches. Where sand is to be reused in order to provide biological seeding and shortening of the ripening process, rebedding shall utilize a "throw over" technique whereby new sand is placed on the support gravel and existing sand is replaced on top of the new sand. The maximum filtration rate shall not exceed zero point one (0.1) gallon per minute per square foot for each individual bed. ()

06. Filter Sand Support. ()

a. A three (3)-inch layer of sand shall be used as a supporting media for filter sand. The supporting sand shall have an effective size of zero point eight (0.8) millimeters to two point zero (2.0) millimeters and a uniformity coefficient not greater than one point seven (1.7). ()

b. Gravel shall consist of cleaned and washed, hard, durable, rounded rock particles and shall not include flat or elongated particles. The coarsest gravel shall be two and one-half (2.5) inches in size when the gravel rests directly on a lateral system and must extend above the top of the perforated laterals. Not less than four (4) layers of gravel shall be provided in accordance with the size and depth distribution specified in the table below. Reduction of gravel depths and other size gradations may be considered upon justification to the Department.

| Size of Gravel | Depth |
|-----------------------|---------------|
| 2 1/2 to 1 1/2 inches | 5 to 8 inches |
| 1 1/2 to 3/4 inches | 3 to 5 inches |
| 3/4 to 1/2 inches | 3 to 5 inches |
| 1/2 to 3/16 inches | 2 to 3 inches |
| 3/16 to 3/32 inches | 2 to 3 inches |

()

07. Depth of Water Over Filter Beds. The design shall provide a depth of at least three (3) to six (6) feet of water over the sand. Influent water shall not scour the sand surface. ()

08. Control Appurtenances. Each filter shall be equipped with a loss of head gauge, an orifice, Venturi meter, or other suitable means of discharge measurement installed on each filter to control the rate of filtration, and an effluent pipe designed to maintain the water level above the top of the filter sand. The effluent piping must not be directly interconnected with the other filter beds. A sample tap shall be provided for each filter bed. ()

09. Ripening. Slow sand filters must be filtered-to-waste until they are biologically mature before being put into service following construction, scraping, re-sanding, or reopening after extended shutdown. The period of filter-to-waste shall be as follows: ()

a. Filters shall be filtered-to-waste after scraping or cleaning until the effluent turbidity falls consistently below the pre-cleaning level, unless otherwise approved by the Department based on documentation provided by the design engineer. ()

b. Filters shall be filtered-to-waste following construction, re-sanding, or extended shutdown based on project specific protocols that have been approved by the Department and then incorporated into a Department approved operation and maintenance manual. These protocols may be based on factors from standard literature such as those listed in Subsection 002.02 but typically include factors such as minimum filter-to-waste time periods, bacteriological testing, and effluent turbidity. Sampling results from the filter-to-waste period shall be provided to the Department for review and the Department must provide authorization prior to restarting service to the public. ()

10. Supernatant Drain Required. Filter beds shall be equipped with a supernatant drain to allow for quick removal of water standing over sand that has become impermeable because it requires scraping or rebedding. ()

11. Filter Bed Control and Minimum Rate of Flow. Each filter bed shall be controlled separately and filters must be operated at a constant filtration rate with any changes made gradually. The minimum rate of filtration shall be at least two hundredths (0.02) gallons per minute per square foot. ()

524. FACILITY AND DESIGN STANDARDS: SURFACE WATER TREATMENT: DIRECT FILTRATION.

Direct filtration, as used herein, refers to the filtration of a surface water following chemical coagulation and possibly flocculation but without prior settling. The nature of the treatment process will depend upon the raw water quality. A full scale direct filtration plant shall not be constructed without prior pilot studies which are acceptable to the reviewing authority. In-plant demonstration studies are required where conventional treatment plants are converted to direct filtration. Where direct filtration is proposed, an engineering report shall be submitted prior to conducting pilot plant or in-plant demonstration studies. See Subsection 501.19 for general information on conducting pilot studies. ()

01. Filtration Requirements. ()

a. Filters shall be rapid rate gravity filters with dual or mixed media. The final filter design shall be based on the pilot plant or in-plant demonstration studies, and all portions of Section 518 apply. Pressure filters or single media sand filters shall not be used. ()

b. A continuous recording turbidimeter shall be installed on each filter effluent line and on the composite filter effluent line. ()

c. Additional continuous monitoring equipment such as particle counting or streaming current metering to assist in control of coagulant dose may be required by the reviewing authority. ()

02. Siting Requirements. The plant design and land ownership surrounding the plant shall allow for modifications of the plant. ()

03. Redundancy. A minimum of two (2) units shall be provided for filtration such that plant capacity can be maintained with any component out of service for maintenance or repairs. ()

525. FACILITY AND DESIGN STANDARDS: LOW PRESSURE MEMBRANE FILTRATION.

Low pressure filtration, as used herein, refers to microfiltration or ultrafiltration processes. Low pressure membrane systems can provide greater than 3-log removal of *Giardia lamblia* and *Cryptosporidium*, and ultrafiltration systems can also provide up to 2-log virus removal. The Department will determine maximum available removal credits for the specific membrane under consideration. The actual log removal credit that a low pressure membrane filtration system will receive is the lower of the values determined by the following: the removal efficiency demonstrated during challenge testing, or the maximum log removal that can be verified by direct integrity testing required during the course of normal operation. Membrane systems shall contain sufficient design to allow for offline direct integrity testing of all units or modules at the required interval while retaining the capability to supply maximum day demand to the water system. Membrane systems shall have at least two (2) units unless it can be demonstrated to the satisfaction of the Department that a secondary source or treatment component can supply the required minimum plant design capacity. ()

01. Membrane Selection and Design Considerations. ()

a. Challenge Testing. Challenge testing involves seeding feed water with an organism or particulate and measuring the log reduction of the organism or particulate between the feed and filtrate. It is a one-time product-specific test event performed by an approved third party designed to demonstrate the removal ability of the membrane. Challenge testing shall be conducted by the third party entity in general conformance with the USEPA Membrane Filtration Guidance Manual referenced in Subsection 002.02 (Membrane Filtration Guidance Manual). The challenge test report shall be submitted to the Department along with the preliminary engineering report for the project. The Department may accept another state's challenge test report approval. ()

b. Water Quality Considerations for Design. A review of historical source water data shall be conducted to determine the degree of pretreatment needed if any, the feasibility of membrane filtration, and an estimated cost of the system. At a minimum, the following parameters shall be investigated: Seasonal temperature and turbidity profiles, total organic loading, occurrence of algae, microbial activity, iron, manganese, and hardness levels, and any other inorganic or physical parameters determined to be necessary by the Department. The data shall be used to determine anticipated fouling and scaling, backwash and cleaning cycles and regimens, acceptable trans-membrane pressure differentials, and design flux, especially during lowest anticipated water temperature. ()

c. Pilot Study. A pilot study shall be conducted for a period that shall be determined by the design engineer and approved by the Department. The duration should include the season of lowest water temperatures and the season including the highest anticipated turbidity, algal bloom, TOC, and iron/manganese event or otherwise cover four seasons of source water quality conditions. The Department may approve a shorter duration proof pilot to verify design criteria that affect the reliable production capacity of the membrane system. The Department may approve the use of a full scale pilot study where the full scale facility will act as the pilot study. The Department may also waive the pilot study requirement. Proof pilot studies, full scale pilot studies, and the waiving of the pilot study requirement will only be approved in circumstances where source water conditions and fouling characteristics are already well understood. Such source waters include but are not limited to ground water under the influence of surface water, waters with existing membrane plants, waters where sufficient pilot test data has already been generated, and extensively used or tested membrane products where production or test data on similar waters is available (i.e., same lake, reservoir, or same reach for stream sources). In addition to the requirements in Subsection 501.19, the pilot study shall include: ()

- i. A means to identify the best membrane to use for the anticipated water quality; ()
- ii. Analysis of any need for pretreatment; ()
- iii. Range of anticipated flux rates; ()

- iv. Operating and transmembrane pressure; ()
 - v. Fouling and scaling potential; ()
 - vi. Backwash and recovery cleaning, cleaning processes, and intervals; ()
 - vii. Efficiency and process mass balance; ()
 - viii. Waste stream volume, characterization, and disposal method; ()
 - ix. Turbidity; and ()
 - x. Integrity testing results and procedures. ()
- 02. Monitoring and Compliance Requirements for Membranes.** Public drinking water systems that use low pressure membrane filtration must comply with the following requirements. ()
- a. Initial Start-Up.** ()
 - i. The Department shall be notified at least one (1) week in advance of the planned start-up date. ()
 - ii. The design engineer shall oversee start-up procedures. ()
 - iii. All monitoring equipment shall be calibrated prior to start-up. ()
 - iv. The system shall pass direct integrity testing prior to going on-line and producing water for distribution. ()
 - v. A method for the disposal of start-up water shall be approved by the Department prior to start-up. ()
 - b. Direct Integrity Testing.** ()
 - i. Scale of Testing. Testing must be conducted on each membrane skid in service at least daily for the first year of operation. ()
 - ii. Resolution. The test method used must have a resolution of three (3) μm or less for *Cryptosporidium* and *Giardia lamblia* removal credit. ()
 - iii. Sensitivity. The test method used must have sensitivity sufficient to verify the ability of the membrane filtration system to remove the constituent at a level commensurate with the credit awarded by the Department. ()
 - (1) Formulae for sensitivity calculation for pressure-based tests are available in the Membrane Filtration Guidance Manual referenced in Subsection 002.02. The volumetric concentration factor used in the calculation may be either calculated or determined experimentally. ()
 - (2) Formulae for sensitivity calculation for marker-based tests are available in the Membrane Filtration Guidance Manual referenced in Subsection 002.02. ()
 - iv. Control Limit. A control limit must be established within the sensitivity limits of the direct integrity test that is indicative of an integral membrane unit capable of achieving the log removal credit awarded by the Department. ()
 - (1) If the direct integrity test results exceed the control limit for any membrane unit, that unit must be removed from service. ()

(2) Any unit taken out of service for exceeding a direct integrity test control limit cannot be returned to service until repairs are confirmed by subsequent direct integrity test results that are within the control limit. ()

v. Frequency. Direct integrity testing must be conducted on each membrane unit at a frequency of at least once per day that the unit is in operation. The Department may extend testing frequency up to a duration of once per week after one (1) year of daily testing showing a less than five percent (5%) testing failure rate for the previous year. During weekly testing, if at any time the system fails more than two (2) direct integrity tests within a three (3) month period, the system shall return to daily testing. ()

c. Indirect Integrity Monitoring. ()

i. Scale of Testing. Testing must be conducted on each membrane unit in service. ()

ii. Monitoring Method. Continuous indirect integrity monitoring must be conducted using turbidity monitoring unless the Department approves an alternative method. ()

iii. Frequency. Continuous indirect integrity monitoring must be conducted at a frequency of at least one (1) reading every fifteen (15) minutes. The Department may allow a time delay in reporting compliance turbidity measurements if it can be demonstrated that elevated turbidity readings above fifteen hundredths (0.15) NTU immediately following direct integrity testing or maintenance are the result of factors related to entrained air or membrane wettability and are not related to membrane integrity. ()

iv. Control Limit. If the continuous indirect integrity monitoring results exceed the specified control limit for any membrane unit for a period greater than fifteen (15) minutes (i.e., two (2) consecutive readings at fifteen (15) minute intervals), direct integrity testing must be immediately conducted on that unit. ()

(1) The control limit for turbidity monitoring is fifteen hundredths (0.15) NTU. ()

(2) Control limits for Department approved alternative methods shall be established by the Department. ()

d. Operations Plan. A project specific operation and maintenance manual shall be provided as required in Subsection 501.12. See definition of Operation and Maintenance Manual in Section 003 for the typical contents of an operation and maintenance manual and the included operations plan. The operations plan in the operation and maintenance manual for membrane systems shall include, but is not limited to the following information: ()

i. Filtration: ()

(1) Control of feed flow to the membrane system; ()

(2) Measurement of inlet/outlet pressures and filtrate flows; ()

(3) Measurement of transmembrane pressure changes during filter run; and ()

(4) Feed flow control in response to temperature changes. ()

ii. Membrane backwashing: ()

(1) Programming automated frequency; ()

(2) Proper backwash venting and disposal; see Section 540; ()

(3) Appropriate backwash rate; and ()

(4) Monitoring during return of filter to service. ()

- iii. Chemical cleaning: ()
 - (1) Selection of proper chemical washing sequence; ()
 - (2) Proper procedures for dilution of chemicals; ()
 - (3) Monitoring of pH through chemical cleaning cycle; ()
 - (4) Rinsing of membrane system following chemical clean; and ()
 - (5) Return of filter to service. ()
- iv. Chemical feeders (in the case that chemical pretreatment is applied): ()
 - (1) Calibration check; ()
 - (2) Settings and adjustments (how they should be made); and ()
 - (3) Dilution of chemicals and polymers (proper procedures). ()
- v. Monitoring and observing operation: ()
 - (1) Observation of feed water or pretreated water turbidity; ()
 - (2) Observation of trans-membrane pressure increase between backwashes; ()
 - (3) Filtered water turbidity; ()
 - (4) Procedures to follow if turbidity breakthrough occurs. ()
- vi. Troubleshooting. A troubleshooting checklist or guide shall be included. Suggested troubleshooting items include but are not limited to the following: ()
 - (1) No raw water (feed water) flow to plant; ()
 - (2) Can't control rate of flow of water through equipment; ()
 - (3) Valving configuration for direct flow and cross-flow operation modes; ()
 - (4) Poor raw water quality (raw water quality falls outside the performance range of the equipment); ()
 - (5) Poor filtrate quality; ()
 - (6) Failed membrane integrity test; ()
 - (7) Low pump feed pressure; ()
 - (8) Automatic operation (if provided) not functioning; ()
 - (9) Filtered water turbidity too high; ()
 - (10) Head loss builds up excessively rapidly; ()
 - (11) Reduced flux; ()

- (12) Machine will not start and “Power On” indicator off; ()
- (13) Machine will not start and “Power On” indicator on; ()
- (14) Pump cavitation; ()
- (15) Valve stuck or won’t operate; and ()
- (16) No electric power. ()

e. Reporting. The sensitivity, resolution, and frequency of the direct integrity test proposed for use with the full-scale facility must be reported to the Department prior to initial operation. The following shall be reported to the Department on a monthly basis: ()

i. Any direct integrity test results exceeding the control limit, as well as the corrective action taken in response, must be reported to the Department within ten (10) days of the end of the monthly monitoring cycle on a Department reporting form. The form is available at www.deq.idaho.gov; ()

ii. Any continuous indirect integrity monitoring results triggering direct integrity testing, as well as any corrective action taken in response, must be reported to the Department within ten (10) days of the end of the monthly monitoring cycle on a Department reporting form. The form is available at www.deq.idaho.gov; ()

iii. Any additional information considered necessary by the Department on a case-specific basis to verify proper operation and maintenance of the membrane filtration process; and ()

iv. All direct integrity test results and continuous indirect integrity monitoring results must be retained for a minimum of three (3) years. ()

526. -- 528. (RESERVED)

529. FACILITY AND DESIGN STANDARDS: DISINFECTION OF DRINKING WATER, ULTRAVIOLET LIGHT.

01. General. ()

a. Ultraviolet (UV) light technology is a primary disinfectant typically used for Cryptosporidium, Giardia lamblia, and virus inactivation of both surface water and ground water supplies. Reactor performance in terms of inactivation of any particular organism is a function of the delivered dose which is determined by validation testing. ()

b. UV disinfection credit will be awarded for filtered systems and unfiltered systems if the system meets the requirements for unfiltered systems in 40 CFR 141.71. Systems will receive Cryptosporidium, Giardia lamblia, and virus treatment credits by achieving the corresponding UV dose values for the appropriate target pathogen and log reduction shown in Subsection 529.03, calculated to take into account the validation factor and reduction equivalent dose. The target pathogen and the target log inactivation shall be used to identify the corresponding required UV dose. ()

c. For water systems using UV light to meet microbial treatment requirements, at least ninety-five percent (95%) of the water delivered to the public every month must be treated by UV reactors operating within validated conditions for the required UV dose. ()

d. When reviewing proposed UV disinfection projects, the Department will use the USEPA UV Disinfection Guidance Manual for the Final Long Term 2 Enhanced Surface Water Treatment Rule referenced in Subsection 002.02 (UV Disinfection Guidance Manual) for guidance. ()

02. Pilot Studies and Validation. ()

a. The Department may allow on-site pilot studies on a case by case basis. Pilot studies are usually used to determine how much fouling occurs on site, to evaluate UV system reliability (e.g. UV sensors, UV transmittance (UVT) monitors, ballast reliability) and to provide operators experience running a UV system. They may also be used to assess lamp aging or impacts of power quality. See Subsection 501.19 for general information on conducting pilot studies. ()

b. Validation testing determines the operating conditions and monitoring algorithms that the UV system will use to define how much UV dose is being delivered by the reactor during operation. The validated dose as determined through validation testing is compared to the required dose in the UV Dose Table (Subsection 529.03) to determine inactivation credit. The validated dose is calculated by dividing the determined reduction equivalent dose by a validation factor to account for biases and experimental uncertainty. UV light treatment reactors shall be validated by a third party entity approved by the Department. At a minimum, validation testing must account for the following: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line UV sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps and other critical system components; inlet and outlet piping configuration of the UV reactor; lamp and UV sensor locations; and other parameters required by the Department. The Department may allow alternative test microbes such as MS2 phage where the UV dose response better matches that of Cryptosporidium and Giardia lamblia to provide more accurate and efficient UV dose monitoring. Additional guidance is available in the UV Disinfection Guidance Manual, referenced in Subsection 002.02, or another validation standard as approved by the Department. ()

c. Validation testing shall be conducted on full scale testing of a reactor that conforms uniformly to the UV reactors used by the system and inactivation of a test microorganism whose dose response characteristics have been quantified with a low pressure mercury vapor lamp. ()

d. Validation testing must determine and establish validated operating conditions under which the reactor delivers the required UV dose in Subsection 529.03. Validated operating conditions include: ()

- i. Flow rate; ()
 - ii. UV Intensity as measured by a UV sensor; ()
 - iii. UV lamp operating status. ()
- e.** The department may approve an alternative approach to validation testing. ()

03. UV Dose Table. The treatment credits listed in the dose table are based on UV light at a wavelength of two hundred fifty-four (254) nm as produced by a low pressure mercury vapor lamp. To receive treatment credit for other lamp types, the system shall demonstrate an equivalent germicidal dose through validation testing.

| UV Dose Table (millijoules per square centimeter) | | | |
|--|------------------------|------------------------|--------------|
| Log | Cryptosporidium | Giardia lamblia | Virus |
| 0.5 | 1.6 | 1.5 | 39 |
| 1.0 | 2.5 | 2.1 | 58 |
| 1.5 | 3.9 | 3.0 | 79 |
| 2.0 | 5.8 | 5.2 | 100 |
| 2.5 | 8.5 | 7.7 | 121 |
| 3.0 | 12 | 11 | 143 |
| 3.5 | 15 | 15 | 163 |
| 4.0 | 22 | 22 | 186 |

()

04. Reactor Design. Inlet and outlet conditions shall ensure that UV dose delivery at the plant is equal to or exceeds that utilized during validation. At a minimum, design criteria shall address target pathogen(s), required log inactivation and UV dose, flow rate, UVT, and lamp aging and fouling factors. UVT and flow rate shall be selected to account for seasonal changes in UVT. Lamp aging and fouling factors shall be supported by documentation or pilot study data. Recommended approaches of the UV Disinfection Guidance Manual, referenced in Subsection 002.02, shall be used in meeting this requirement. ()

a. The reactor systems must be designed to monitor and record parameters to verify the operation within the validated operating conditions approved by the Department. The system must be equipped with facilities to monitor and record UV intensity as measured by a UV sensor, flow rate, lamp status, UVT, and other parameters designated by the Department. ()

b. The ultraviolet treatment device shall be designed to provide a UV light dose equal to or greater than that specified in the UV Dose Table for the required log reduction. The UV Disinfection Guidance Manual, referenced in Subsection 002.02, shall be utilized in evaluating the appropriate dose required for the target microbe. The reactor shall also deliver the target dose while operating within the validated operating conditions for that particular unit. ()

c. The ultraviolet treatment assemblies shall be designed to allow for cleaning and replacement of the lamp, lamp sleeves, and sensor window or lens. ()

d. All ultraviolet treatment device designs shall evaluate lamp fouling and aging issues and manufacturer's recommendations regarding fouling, aging, and replacement shall be discussed in the Operation and Maintenance Manual. ()

e. For in-situ cleaning of the lamp sleeve, the design shall protect the potable water from cleaning solutions. ()

f. When off-line chemical cleaning systems are used, the UV enclosure shall be removed from service, drained, flushed with an NSF/ANSI Standard 60 certified solution, drained, and rinsed before being placed back in service. ()

g. On-line systems that use wipers or brushes may use chemical solutions provided they are NSF/ANSI Standard 60 certified. ()

h. An automatic shutdown valve shall be installed in the water supply line from the ultraviolet treatment device such that if power is not provided to the reactor or valve, the valve shall be in the closed position. ()

i. The design of the inlet and outlet piping configuration and the locations of expansions, bends, tees and valves shall assure that the UV dose delivery is equal to or greater than the required UV dose. Approach length prior to each reactor included in the credited dose calculations, downstream length following each reactor, and locations of any cleaning device/mechanism shall be based on validation testing. ()

j. For parallel trains, the flow to each reactor shall be equally distributed and metered or otherwise account for uneven flows in the design to ensure that the required UV dose is delivered to each train under varying flow conditions. ()

k. Valves shall be provided to allow isolating and removing from service each UV reactor. ()

l. Reactors shall be provided with air relief and pressure control valves per manufacturer requirements. ()

m. UVT analyzers shall be provided if UVT is part of the dose monitoring strategy. It is recommended that UVT be monitored on a regular basis for all systems to assess UVT variability. ()

n. A single train with a standby reactor or a sufficient number of parallel ultraviolet treatment devices shall be installed to ensure that adequate disinfection is provided when one unit is out of service. The Department may approve an alternate method that provides adequate disinfection such as standby chlorination. Any system that produces water on an irregular schedule may provide documentation for the Department's review and approval that a single reactor would be an acceptable design by demonstrating there would be adequate for time for maintenance and cleaning during operation shutdowns. ()

o. No bypass of the ultraviolet treatment process may be installed unless an alternate method of providing adequate disinfection is provided. ()

05. Controls. ()

a. A delay mechanism shall be installed to provide sufficient lamp warm-up prior to allowing water to flow from the ultraviolet treatment unit. ()

b. An automatic shutdown shall be designed to activate the shutdown valve in cases where the ultraviolet light dose falls below the approved design dose or outside of the validated specifications. ()

06. Reliability. The system must be capable of producing the plant design capacity at all times. ()

a. Standby equipment. Unless otherwise approved by the Department based on documentation provided by the design engineer and in accordance with Subsection 529.04.n., a minimum of two (2) reactors is required to maintain disinfection when one unit is taken out of service. Each reactor must be sized to deliver the required UV dose under the operating conditions of flow and UVT that occur at the plant. The conditions shall fall within the validated range of the reactor as determined during validation testing. ()

b. Power supply. The quality and reliability of the power supply shall be analyzed and back-up power supplies shall be discussed in the contingency plan. ()

c. Validated operating conditions. If UVT is above the validated range of UVT, the UV dose monitoring algorithm shall default to the maximum of the validated range. If UVT is below the validated range, the UV system operation shall be recorded as outside of the validated operating conditions. When UVT falls outside of ranges identified in the validated operating conditions, the contingency plan shall be enacted if UVT is part of the dose monitoring strategy. ()

d. Contingency plan. A contingency plan for total UV disinfection failure, loss of power, or in the event that water quality changes produce water quality unsuitable for UV disinfection shall be described in the preliminary engineering report. ()

07. Monitoring. Water systems using UV light must monitor for the parameters necessary to demonstrate operation within the validated conditions of the required UV dose. PWSs must check the calibration of UV sensors and online UVT monitors and recalibrate in accordance with a protocol approved by the Department. At a minimum, the following parameters must be monitored: ()

a. Flow rate. If the flow rate is below the validated range, then the UV dose monitoring algorithm shall default to the validated range. If the flow rate is above the validated range, then the UV system operation shall be recorded as outside of the validated operating conditions; ()

b. UV intensity as measured by UV sensors; ()

c. UVT if UVT is part of the dose monitoring strategy; and ()

d. Lamp status. ()

08. Alarms. The settings or predetermined set points for the alarms shall be specified in the

preliminary engineering report. The report shall also specify the alarms that shall activate the contingency plan response. At a minimum, the following alarms are required: ()

- a. Low UV intensity; ()
- b. High turbidity if required by the Department; ()
- c. Low UVT; ()
- d. Low UV dose; ()
- e. Lamp failure; ()
- f. UVT monitor failure; ()
- g. UV sensor failure; ()
- h. Low water level; and ()
- i. High flow rate. ()

09. Initial Startup. The following items shall be tested and verified before UV disinfected water is distributed: ()

- a. Electrical components; ()
- b. Water level; ()
- c. Flow split between reactor trains if applicable; ()
- d. Controls and alarms; and ()
- e. Instrument calibration. ()

10. Operation and Maintenance Manual. A project specific operation and maintenance manual shall be provided as required in Subsection 501.12. See definition of Operation and Maintenance Manual in Section 003 for the typical contents of an operation and maintenance manual and the included operations plan. The operations plan in the operation and maintenance manual shall include, but is not limited to the following information: ()

- a. Lamp aging and replacement intervals. Lamp replacement intervals may be based on the degree of lamp aging as indicated by the UV sensors; ()
- b. Lamp fouling analysis and cleaning procedures; ()
- c. Lamp replacement; and ()
- d. Lamp breakage. ()

530. FACILITY AND DESIGN STANDARDS: DISINFECTION OF DRINKING WATER, DISINFECTING AGENTS.

Disinfection may be accomplished with gas and liquid chlorine, calcium or sodium hypochlorites, chlorine dioxide, ozone, or ultraviolet light. Other disinfecting agents will be considered, providing reliable application equipment is available and testing procedures for a residual are recognized in "Standard Methods for the Examination of Water and Wastewater," referenced in Subsection 002.02, or an equivalent means of measuring effectiveness exists. The required amount of primary disinfection needed shall be specified by the Department. Consideration must be given to the formation of disinfection by-products (DBP) when selecting the disinfectant. See Section 531, Facility Design Standards - Design Standards for Chemical Application. For public water systems using only ground water and that voluntarily chlorinate, see Subsection 552.04. ()

- 01. Chlorination.** ()
- a.** In addition to the requirements of Section 531, chlorination equipment shall meet the following requirements: ()
- i.** Solution-feed gas chlorinators or hypochlorite feeders of the positive displacement type must be provided. ()
 - ii.** Standby or backup equipment of sufficient capacity shall be available to replace the largest unit. Spare parts shall be on hand to replace parts subject to wear and breakage. ()
 - iii.** Automatic proportioning chlorinators are required where the rate of flow or chlorine demand is not reasonably constant. ()
 - iv.** Each eductor (submerged jet pump) must be selected for the point of application with particular attention given to the quantity of chlorine to be added, the maximum injector waterflow, the total discharge back pressure, the injector operating pressure, and the size of the chlorine solution line. ()
 - v.** The chlorine solution injector/diffuser must be compatible with the point of application to provide a rapid and thorough mix with all the water being treated. ()
 - vi.** Automatic switch-over of chlorination treatment units shall be provided, where necessary, to assure continuous disinfection. ()
- b.** Effective contact time and point of application requirements are as follows: ()
- i.** Effective contact time sufficient to achieve the inactivation of target pathogens under the expected range of raw water pH and temperature variation must be demonstrated through tracer studies or other evaluations or calculations acceptable to the Department. Improving Clearwell Design for CT Compliance, referenced in Section 002.02, contains information that may be used as guidance for these calculations. Additional baffling can be added to new or existing basins to minimize short circuiting and increase contact time. ()
 - ii.** At least two (2) contactors shall be provided which are each capable of providing the required effective contact time at one-half (1/2) of the plant design capacity. Alternatively, a single contactor that can provide effective contact time at plant design capacity may be designed with separate sections and bypass piping to allow sections to be cleaned or maintained individually during low flow conditions. Any system that produces water on an irregular schedule may provide documentation for the Department's review and approval that a single contactor would be an acceptable design by demonstrating there would be adequate time for maintenance and cleaning during operation shutdowns. ()
 - iii.** At plants treating surface water, except slow sand filtration systems: ()
 - (1) Unless otherwise approved by the Department, in addition to the injection point prior to the disinfection contact tank, injection points shall also be provided for applying the disinfectant to the raw water, settled water, and water entering the distribution system. ()
 - (2) Unless otherwise approved by the Department, chemical piping or tubing shall be installed from the disinfectant feed system to each injection system during the initial construction. ()
 - iv.** For pipeline contactors, provision shall be made to drain accumulated sediment from the bottom of the contactor if the discharge from the contactor is not located at the bottom. ()
- c.** Chlorine residual test equipment recognized in the "Standard Methods for the Examination of Water and Wastewater," referenced in Subsection 002.02, shall be provided for use by the operator. All surface water treatment plants that serve a population greater than three thousand three hundred (3,300) must have equipment to measure chlorine residuals continuously entering the distribution system. A sample tap shall be provided to measure

chlorine residual and shall be located at a point after receiving the required contact time and at or prior to the first service connection. ()

d. Chlorinator piping requirements: ()

i. Cross connection protection: The chlorinator water supply piping shall be designed to prevent contamination of the treated water supply by sources of questionable quality. At all facilities treating surface water, pre- and post-chlorination systems must be independent to prevent possible siphoning of partially treated water into the clear well. The water supply to each eductor shall have a separate shut-off valve. No master shut-off valve will be allowed. ()

ii. The pipes carrying elemental liquid or dry gaseous chlorine under pressure must be Schedule 80 seamless steel tubing or other materials recommended by the Chlorine Institute (never use PVC). Rubber, PVC, polyethylene, or other materials recommended by the Chlorine Institute must be used for chlorine solution piping and fittings. Nylon products are not acceptable for any part of the chlorine solution piping system. ()

02. Disinfection with Ozone. Systems that are required to maintain a disinfectant residual in the distribution system shall supplement ozone disinfection with a chemical disinfectant. ()

a. The following are requirements for feed gas preparation: ()

i. Feed gas can be air, oxygen enriched air, or high purity oxygen. Sources of high purity oxygen include purchased liquid oxygen conforming with AWWA Standard B-304; on site generation using cryogenic air separation; or temperature, pressure or vacuum swing (adsorptive separation) technology. In all cases, the design engineer must ensure that the maximum dew point of -76°F (-60°C) will not be exceeded at any time. ()

ii. Air compression: ()

(1) Air compressors shall be of the liquid-ring or rotary lobe, oil-less, positive displacement type for smaller systems or dry rotary screw compressors for larger systems. ()

(2) The air compressors shall have the capacity to simultaneously provide for maximum ozone demand, provide the air flow required for purging the desiccant dryers (where required) and allow for standby capacity. ()

(3) Air feed for the compressor shall be drawn from a point protected from rain, condensation, mist, fog and contaminated air sources to minimize moisture and hydrocarbon content of the air supply. ()

(4) A compressed air after-cooler, entrainment separator, or a combination of the two (2) with automatic drain shall be provided prior to the dryers to reduce the water vapor. ()

(5) A back-up air compressor must be provided so that ozone generation is not interrupted in the event of a break-down. ()

iii. Air drying: ()

(1) Dry, dust-free and oil-free feed gas must be provided to the ozone generator. Dry gas is essential to prevent formation of nitric acid, to increase the efficiency of ozone generation and to prevent damage to the generator dielectrics. Sufficient drying to a maximum dew point of -76°F (-60°C) must be provided at the end of the drying cycle. ()

(2) Drying for high pressure systems may be accomplished using heatless desiccant dryers only. For low pressure systems, a refrigeration air dryer in series with heat-reactivated desiccant dryers shall be used. ()

(3) A refrigeration dryer capable of reducing inlet air temperature to 40°F (4°C) shall be provided for low pressure air preparation systems. The dryer can be of the compressed refrigerant type or chilled water type. ()

(4) For heat-reactivated desiccant dryers, the unit shall contain two (2) desiccant filled towers complete with pressure relief valves, two (2) four-way valves and a heater. In addition, external type dryers shall have a cooler unit and blowers. The size of the unit shall be such that the specified dew point will be achieved during a minimum adsorption cycle time of sixteen (16) hours while operating at the maximum expected moisture loading conditions. ()

(5) Multiple air dryers shall be provided so that the ozone generation is not interrupted in the event of dryer breakdown. ()

(6) Each dryer shall be capable of venting “dry” gas to the atmosphere, prior to the ozone generator, to allow start-up when other dryers are “on-line.” ()

iv. Air filters: ()

(1) Air filters shall be provided on the suction side of the air compressors, between the air compressors and the dryers and between the dryers and the ozone generators. ()

(2) The filter before the desiccant dryers shall be of the coalescing type and be capable of removing aerosol and particulates larger than 0.3 microns in diameter. The filter after the desiccant dryer shall be of the particulate type and be capable of removing all particulates greater than 0.1 microns in diameter, or smaller if specified by the generator manufacturer. ()

v. Piping in the air preparation system can be common grade steel, seamless copper, stainless steel or galvanized steel. The piping must be designed to withstand the maximum pressures in the air preparation system. ()

b. The following requirements apply to the ozone generator: ()

i. Capacity. ()

(1) The production rating of the ozone generators shall be stated in pounds per day and kWhr per pound at a maximum cooling water temperature and maximum ozone concentration. ()

(2) The design shall ensure that the minimum concentration of ozone in the generator exit gas will not be less than one (1) percent (by weight). ()

(3) Generators shall be sized to have sufficient reserve capacity so that the system does not operate at peak capacity for extended periods of time resulting in premature breakdown of the dielectrics. ()

(4) The production rate of ozone generators will decrease as the temperature of the coolant increases. If there is to be a variation in the supply temperature of the coolant throughout the year, then pertinent data shall be used to determine production changes due to the temperature change of the supplied coolant. The design shall ensure that the generators can produce the required ozone at maximum coolant temperature. ()

(5) Appropriate ozone generator backup equipment must be provided. ()

ii. Electrical. The generators can be low, medium or high frequency type. Specifications shall require that the transformers, electronic circuitry and other electrical hardware be proven, high quality components designed for ozone service. ()

iii. Cooling. Adequate cooling shall be provided. The cooling water must be properly treated to minimize corrosion, scaling and microbiological fouling of the water side of the tubes. Where cooling water is treated, cross connection control shall be provided to prevent contamination of the potable water supply. ()

iv. Materials. To prevent corrosion, the ozone generator shell and tubes shall be constructed of Type 316L stainless steel. ()

- c. The following requirements apply to ozone contactors: ()
 - i. Bubble diffusers. ()
 - (1) Where disinfection is the primary application, a minimum of two (2) contact chambers, each equipped with baffles to prevent short circuiting and induce countercurrent flow, shall be provided. Ozone shall be applied using porous-tube or dome diffusers. ()
 - (2) The minimum contact time shall be ten (10) minutes. A shorter contact time (CT) may be approved by the Department if justified by appropriate design and “CT” considerations. ()
 - (3) Where taste and odor control is of concern, multiple application points and contactors shall be considered. ()
 - (4) Contactors shall be separate closed vessels that have no common walls with adjacent rooms. The contactor must be kept under negative pressure and sufficient ozone monitors shall be provided to protect worker safety. ()
 - (5) Contact vessels can be made of reinforced concrete, stainless steel, fiberglass or other material which will be stable in the presence of residual ozone and ozone in the gas phase above the water level. If contact vessels are made of reinforced concrete, all reinforcement bars shall be covered with a minimum of one and one-half (1.5) inches of concrete. ()
 - (6) Where necessary, a system shall be provided between the contactor and the off-gas destruct unit to remove froth from the air and return the other to the contactor or other location acceptable to the reviewing authority. If foaming is expected to be excessive, then a potable water spray system shall be placed in the contactor head space. ()
 - (7) All openings into the contactor for pipe connections, hatchways, etc. shall be properly sealed using welds or ozone resistant gaskets such as Teflon or Hypalon. ()
 - (8) Multiple sampling ports shall be provided to enable sampling of each compartment's effluent water and to confirm “CT” calculations. ()
 - (9) A pressure/vacuum relief valve shall be provided in the contactor and piped to a location where there will be no damage to the destruction unit. ()
 - (10) The depth of water in bubble diffuser contactors shall be a minimum of eighteen (18) feet. The contactor shall also have a minimum of three (3) feet of freeboard to allow for foaming. ()
 - (11) All contactors shall have provisions for cleaning, maintenance and drainage of the contactor. Each contactor compartment shall also be equipped with an access hatchway. ()
 - (12) Aeration diffusers shall be fully serviceable by either cleaning or replacement. ()
 - ii. Other contactors, such as the venturi or aspirating turbine mixer contactor, may be approved by the Department provided adequate ozone transfer is achieved and the required contact times and residuals can be met and verified. ()
- d. The following requirements apply to ozone destruction units: ()
 - i. A system for treating the final off-gas from each contactor must be provided in order to meet safety and air quality standards. Acceptable systems include thermal destruction and thermal/catalytic destruction units. ()
 - ii. The maximum allowable ozone concentration in the discharge is 0.1 ppm (by volume). ()

- iii. At least two (2) units shall be provided which are each capable of handling the entire gas flow. ()
- iv. Exhaust blowers shall be provided in order to draw off-gas from the contactor into the destruct unit. ()
- v. Catalysts must be protected from froth, moisture and other impurities which may harm the catalyst. ()
- vi. The catalyst and heating elements shall be located where they can easily be reached for maintenance. ()
- e. Piping materials: Only low carbon 304L and 316L stainless steels shall be used for ozone service with 316L preferred. ()
- f. The following requirements apply to joints and connections: ()
 - i. Connections on piping used for ozone service are to be welded where possible. ()
 - ii. Connections with meters, valves or other equipment are to be made with flanged joints with ozone resistant gaskets, such as Teflon or Hypalon. Screwed fittings shall not be used because of their tendency to leak. ()
 - iii. A positive closing plug or butterfly valve plus a leak-proof check valve shall be provided in the piping between the generator and the contactor to prevent moisture reaching the generator. ()
- g. The following requirements apply to instrumentation: ()
 - i. Pressure gauges shall be provided at the discharge from the air compressor, at the inlet to the refrigeration dryers, at the inlet and outlet of the desiccant dryers, at the inlet to the ozone generators and contactors, and at the inlet to the ozone destruction unit. ()
 - ii. Each generator shall have a trip which shuts down the generator when the wattage exceeds a certain preset level. ()
 - iii. Dew point monitors shall be provided for measuring the moisture of the feed gas from the desiccant dryers. Where there is potential for moisture entering the ozone generator from downstream of the unit or where moisture accumulation can occur in the generator during shutdown, post-generator dew point monitors shall be used. ()
 - iv. Air flow meters shall be provided for measuring air flow from the desiccant dryers to each of the other ozone generators, air flow to each contactor, and purge air flow to the desiccant dryers. ()
 - v. Temperature gauges shall be provided for the inlet and outlet of the ozone cooling water and the inlet and outlet of the ozone generator feed gas and, if necessary, for the inlet and outlet of the ozone power supply cooling water. ()
 - vi. Water flow meters shall be installed to monitor the flow of cooling water to the ozone generators and, if necessary, to the ozone power supply. ()
 - vii. Ozone monitors shall be installed to measure ozone concentration in both the feed-gas and off-gas from the contactor and in the off-gas from the destruct unit. For disinfection systems, monitors shall also be provided for monitoring ozone residuals in the water. The number and location of ozone residual monitors shall be such that the amount of time that the water is in contact with the ozone residual can be determined. ()
 - viii. A minimum of one ambient ozone monitor shall be installed in the vicinity of the contactor and a minimum of one shall be installed in the vicinity of the generator. Ozone monitors shall also be installed in any areas

where ozone gas may accumulate. ()

h. Safety requirements are as follows: ()

i. The maximum allowable ozone concentration in the air to which workers may be exposed must not exceed one-tenth part per million (0.1 ppm) by volume. ()

ii. Noise levels resulting from the operating equipment of the ozonation system shall be controlled to within acceptable limits by special room construction and equipment isolation. ()

iii. Emergency exhaust fans must be provided in the rooms containing the ozone generators to remove ozone gas if leakage occurs. ()

iv. A sign shall be posted indicating "No smoking, oxygen in use" at all entrances to the treatment plant. In addition, no flammable or combustible materials shall be stored within the oxygen generator areas. ()

03. Disinfection with Chlorine Dioxide. Chlorine dioxide may be considered as a primary and residual disinfectant, a pre-oxidant to control tastes and odors, to oxidize iron and manganese, and to control hydrogen sulfide and phenolic compounds. When choosing chlorine dioxide, consideration must be given to formation of the regulated by-products, chlorite and chlorate. ()

a. Chlorine dioxide generation equipment shall be factory assembled pre-engineered units with a minimum efficiency of ninety-five (95) percent. The excess free chlorine shall not exceed three (3) percent of the theoretical stoichiometric concentration required. ()

b. Other design requirements include: ()

i. The design shall comply with all applicable portions of Subsections 530.01.a. through 530.01.d. ()

ii. The maximum residual disinfectant level allowed shall be zero point eight (0.8) milligrams per liter (mg/l), even for short term exposures. ()

iii. Notification of a change in disinfection practices and the schedule for the changes shall be made known to the public; particularly to hospitals, kidney dialysis facilities and fish breeders, as chlorine dioxide and its by-products may have effects similar to chloramines. ()

04. Other Disinfecting Agents. Proposals for use of disinfecting agents other than those listed shall be submitted to the Department for approval prior to preparation of final plans and specifications. ()

531. FACILITY AND DESIGN STANDARDS: DESIGN STANDARDS FOR CHEMICAL APPLICATION.

01. General Equipment Design. General equipment design shall be such that: ()

a. Feeders will be able to supply, at all times, the necessary amounts of chemicals at an accurate rate, throughout the range of feed. ()

b. Chemical-contact materials and surfaces are resistant to the aggressiveness of the chemical solution. ()

c. Corrosive chemicals are introduced in such a manner as to minimize potential for corrosion. ()

d. Chemicals that are incompatible are not stored or handled together. At facilities where more than one (1) chemical is stored or handled, tanks and pipelines shall be clearly labeled to identify the chemical they contain. ()

- e. All chemicals are conducted from the feeder to the point of application in separate conduits. ()
 - f. Chemical feeders are as near as practical to the feed point. ()
 - g. Chemical feeders and pumps shall operate at no lower than twenty percent (20%) of the feed range unless two fully independent adjustment mechanisms such as pump pulse rate and stroke length are fitted when the pump shall operate at no lower than ten percent (10%) of the rated maximum. ()
 - h. Spare parts shall be on hand for parts of feeders that are subject to frequent wear and damage. ()
 - i. Redundant chemical feeders with automatic switchover shall be provided when necessary to ensure adequate treatment. If the water treatment system includes at least two (2) process trains of equipment so that the plant design capacity can be maintained with any component out of service, redundant chemical feeders are not required on each process train. ()
- 02. Facility Design.** ()
- a. Where chemical feed is necessary for the protection of the supply, such as disinfection, coagulation or other essential processes, a minimum of two feeders shall be provided and a separate feeder shall be used for each chemical applied. ()
 - b. Chemical application control systems shall meet the following requirements: ()
 - i. Feeders may be manually or automatically controlled, with automatic controls being designed so as to allow override by manual controls. ()
 - ii. Chemical feeders shall be controlled by a flow sensing device so that injection of the chemicals will not continue when the flow of water stops. ()
 - iii. Automatic proportioning chlorinators are required where the rate of flow or chlorine demand is not reasonably constant. ()
 - iv. A means to measure water flow must be provided in order to determine chemical feed rates. ()
 - v. Provisions shall be made for measuring the quantities of chemicals used. ()
 - vi. Weighing scales shall be provided for weighing cylinders at all plants utilizing chlorine gas, fluoride solution feed. ()
 - vii. Weighing scales shall be capable of providing reasonable precision in relation to average daily dose. ()
 - viii. Where conditions warrant, for example with rapidly fluctuating intake turbidity, coagulant and coagulant aid addition may be made according to turbidity, streaming current or other sensed parameter. ()
 - c. Dry chemical feeders shall measure chemicals volumetrically or gravimetrically, provide adequate solution water and agitation of the chemical in the solution pot, and completely enclose chemicals to prevent emission of dust to the operating room. ()
 - d. Positive displacement type solution feed pumps must be capable of operating at the required maximum head conditions found at the point of injection. ()
 - e. Liquid chemical feeders shall be such that chemical solutions cannot be siphoned or overfed into

the water supply, by assuring discharge at a point of positive pressure, or providing vacuum relief, or providing a suitable air gap, or providing other suitable means or combinations as necessary. ()

- f.** Cross connection control must be provided to assure that the following requirements are satisfied. ()

 - i.** The service water lines discharging to solution tanks shall be properly protected from backflow. ()
 - ii.** No direct connection exists between any sewer and a drain or overflow from the feeder, solution chamber or tank by providing that all drains terminate at least six (6) inches or two pipe diameters, whichever is greater, above the overflow rim of a receiving sump, conduit or waste receptacle. ()
- g.** Chemical feed equipment shall be readily accessible for servicing, repair, and observation of operation. ()

 - h.** In-plant water supply for chemical mixing shall be: ()

 - i.** Ample in quantity and adequate in pressure. ()
 - ii.** Provided with means for measurement when preparing specific solution concentrations by dilution. ()
 - iii.** Properly treated for hardness, when necessary. ()
 - iv.** Properly protected against backflow. ()
 - v.** Obtained from a location sufficiently downstream of any chemical feed point to assure adequate mixing. ()
 - i.** Chemical storage facilities shall satisfy the following requirements: ()

 - i.** Storage tanks and pipelines for liquid chemicals shall be specified for use with individual chemicals and not used for different chemicals. Off-loading areas must be clearly labeled to prevent accidental cross-contamination. ()
 - ii.** Chemicals shall be stored in covered or unopened shipping containers, unless the chemical is transferred into an approved storage unit. ()
- j.** Bulk liquid storage tanks shall comply with the following requirements: ()

 - i.** A means which is consistent with the nature of the chemical solution shall be provided in a solution tank to maintain a uniform strength of solution. Continuous agitation shall be provided to maintain slurries in suspension. ()
 - ii.** Means shall be provided to measure the liquid level in the tank. ()
 - iii.** Bulk liquid storage tanks shall be kept covered. Bulk liquid storage tanks with access openings shall have such openings curbed and fitted with overhanging covers. ()
 - iv.** Subsurface locations for bulk liquid storage tanks shall be free from sources of possible contamination, and assure positive drainage for ground waters, accumulated water, chemical spills and overflows. ()
 - v.** Bulk liquid storage tanks shall be vented, but shall not vent through vents common with day tanks. Acid storage tanks must be vented to the outside atmosphere, but not through vents in common with day tanks. ()

- vi. Each bulk liquid storage tank shall be provided with a valved drain, protected against backflow. ()
- vii. Bulk liquid storage tanks shall have an overflow that is turned downward with the end screened with a twenty-four (24) mesh or similar non-corrodible screen, have a free fall discharge, and be located where noticeable. ()
- viii. Bulk liquid storage tanks shall be provided with secondary containment so that chemicals from equipment failure, spillage, or accidental drainage shall be fully contained. A common receiving basin may be provided for each group of compatible chemicals. The bulk liquid storage tank basin or the common receiving basin shall provide a secondary containment volume sufficient to hold one hundred ten percent (110%) of the volume of the largest storage tank. Piping shall be designed to minimize or contain chemical spills in the event of pipe ruptures. ()
- ix. Where chemical feed is necessary for the protection of the supply, a means to assure continuity of chemical supply while servicing a bulk liquid storage tank shall be provided. ()
- k.** Day tanks are subject to the requirements in Subsections 531.02.k.i. through 531.02.k.iv. For the purposes of Section 531, day tanks are defined as liquid chemical tanks holding no more than a thirty (30) hour chemical supply. ()
 - i. Day tanks shall be provided where bulk storage of liquid chemicals are provided. The Department may allow chemicals to be fed directly from shipping containers no larger than fifty-five (55) gallons. ()
 - ii. Day tanks shall meet all the requirements of Subsection 531.02.j., with the exception of Subsection 531.02.j.viii. Shipping containers do not require overflow pipes or drains as required by Subsection 531.02.j. and are not subject to the requirements of Subsection 531.02.j.viii. ()
 - iii. Where feasible, secondary containment shall be provided so that chemicals from equipment failure, spillage, or accidental drainage of day tanks shall be fully contained. A common receiving basin may be provided for each group of compatible chemicals. The common receiving basin shall provide a secondary containment volume sufficient to hold the volume of the largest storage tank. If secondary containment is not feasible, day tanks shall be located and protective curbing provided so that chemicals from equipment failure, spillage, or accidental drainage of day tanks shall not enter the water in conduits, treatment, or storage basins. Secondary containment is not required for a day tank if an Idaho licensed professional engineer demonstrates to the Department that the chemical concentration and volume, if spilled, will not be a safety hazard to employees, will not be hazardous to the public health, and will not harm the environment. ()
 - iv. Day tanks and the tank refilling line entry points shall be clearly labeled with the name of the chemical contained. ()
- l.** Provisions shall be made for measuring quantities of chemicals used to prepare feed solutions. ()
- m.** Vents from feeders, storage facilities and equipment exhaust shall discharge to the outside atmosphere above grade and remote from air intakes. ()
- 03. Chemicals.** Chemical shipping containers shall be fully labeled to include chemical name, purity and concentration, supplier name and address, and evidence of ANSI/NSF certification where applicable. ()
- 04. Safety Requirements for Chemical Facilities.** ()
 - a.** The following requirements apply to chlorine gas feed and storage rooms: ()
 - i. Each storage room shall be enclosed and separated from other operating areas. They shall be constructed in such a manner that all openings between the chlorine room and the remainder of the plant are sealed,

and provided with doors equipped with panic hardware, assuring ready means of exit and opening outward only to the building exterior. ()

- ii. Each room shall be provided with a shatter resistant inspection window installed in an interior wall. ()
 - iii. Each room shall have a ventilating fan with a capacity which provides one (1) complete air change per minute when the room is occupied. Where this is not appropriate due to the size of the room, a lesser rate may be allowed by the Department on a site specific basis. ()
 - iv. The ventilating fan shall take suction near the floor as far as practical from the door and air inlet, with the point of discharge so located as not to contaminate air inlets to any rooms or structures. Air inlets shall be through louvers near the ceiling. ()
 - v. Louvers for chlorine room air intake and exhaust shall facilitate airtight closure. ()
 - vi. Separate switches for the fan and lights shall be located outside of the chlorine room and at the inspection window. Outside switches shall be protected from vandalism. A signal light indicating fan operation shall be provided at each entrance when the fan can be controlled from more than one (1) point. ()
 - vii. Vents from feeders and storage shall discharge to the outside atmosphere, above grade. ()
 - viii. Where provided, floor drains shall discharge to the outside of the building and shall not be connected to any internal drainage systems or external drainage systems unless the external drainage systems drain to an approved discharge point. ()
 - ix. Chlorinator rooms shall be heated to sixty degrees Fahrenheit (60°F) and be protected from excessive heat. Cylinders and gas lines shall be protected from temperatures above that of the feed equipment. ()
 - x. Pressurized chlorine feed lines shall not carry chlorine gas beyond the chlorinator room. ()
 - xi. Critical isolation valves shall be conspicuously marked and access kept unobstructed. ()
 - xii. All chlorine rooms, buildings, and areas shall be posted with a prominent danger sign warning of the presence of chlorine. ()
 - xiii. Full and empty cylinders of chlorine gas shall be isolated from operating areas and stored in definitely assigned places away from elevators, stairs, or gangways. They shall be restrained in position to prevent being knocked over or damaged by passing or falling objects. In addition, they shall be stored in rooms separate from ammonia storage, out of direct sunlight, and at least twenty (20) feet from highly combustible materials. Cylinders shall not be kept in unventilated enclosures such as lockers and cupboards. ()
- b.** Where acids and caustics are used, they shall be kept in closed corrosion-resistant shipping containers or storage units. Acids and caustics shall not be handled in open vessels, but shall be pumped in undiluted form from original containers through suitable hose to the point of treatment or to a covered day tank. ()
- c.** Sodium chlorite for chlorine dioxide generation. Proposals for the storage and use of sodium chlorite shall be approved by the Department prior to the preparation of final plans and specifications. Provisions shall be made for proper storage and handling of sodium chlorite to eliminate any danger of fire or explosion associated with its oxidizing nature. ()
- i. Chlorite (sodium chlorite) shall be stored by itself in a separate room. It must be stored away from organic materials. The storage structure shall be constructed of noncombustible materials. If the storage structure must be located in an area where a fire may occur, water must be available to keep the sodium chlorite area cool enough to prevent heat-induced explosive decomposition of the chlorite. ()

ii. Care shall be taken to prevent spillage. An emergency plan of operation shall be available for the clean up of any spillage. Storage drums shall be thoroughly flushed prior to recycling or disposal. ()

d. Where ammonium hydroxide is used, an exhaust fan shall be installed to withdraw air from high points in the room and makeup air shall be allowed to enter at a low point. The feed pump, regulators, and lines shall be fitted with pressure relief vents discharging outside the building away from any air intake and with water purge lines leading back to the headspace of the bulk storage tank. ()

e. Where anhydrous ammonia is used, the storage and feed systems (including heaters where required) shall be enclosed and separated from other work areas and constructed of corrosion resistant materials. ()

i. Pressurized ammonia feed lines shall be restricted to the ammonia room. ()

ii. An emergency air exhaust system, as described in Subsection 531.04.a., but with an elevated intake, shall be provided in the ammonia storage room. ()

iii. Leak detection systems shall be fitted in all areas through which ammonia is piped. ()

iv. Special vacuum breaker/regulator provisions must be made to avoid potentially violent results of backflow of water into cylinders or storage tanks. ()

v. Consideration shall be given to the provision of an emergency gas scrubber capable of absorbing the entire contents of the largest ammonia storage unit whenever there is a risk to the public as a result of potential ammonia leaks. ()

05. Operator Safety. The Idaho General Safety and Health Standards, referenced in Subsection 002.02, may be used as guidance in designing facilities to ensure the safety of operators. The following requirements are in addition to the requirements of Subsection 501.12. ()

a. Respiratory protection equipment, meeting the requirements of the National Institute for Occupational Safety and Health (NIOSH) shall be available where chlorine gas is handled, and shall be stored at a convenient heated location, but not inside any room where chlorine is used or stored. The units shall use compressed air, have at least a thirty (30) minute capacity, and be compatible with or exactly the same as units used by the fire department responsible for the plant. ()

b. Chlorine leak detection. A bottle of concentrated ammonium hydroxide (fifty-six (56) per cent ammonia solution) shall be available for chlorine leak detection. Where ton containers are used, a leak repair kit approved by the Chlorine Institute shall be provided. ()

c. Protective equipment. ()

i. At least one pair of rubber gloves, a dust respirator of a type certified by NIOSH for toxic dusts, an apron or other protective clothing, and goggles or face mask shall be provided for each operator. ()

ii. A deluge shower and eyewashing device shall be installed where strong acids and alkalis are used or stored. A water holding tank that will allow water to come to room temperature shall be installed in the water line feeding the deluge shower and eyewashing device. Other methods of water tempering will be considered on an individual basis. ()

iii. For chemicals other than strong acids and alkalis, an appropriate eye washing device or station shall be provided. ()

iv. Other protective equipment shall be provided as necessary. ()

06. Design Requirements for Specific Applications. In addition to Subsection 531.01 through 531.03, the following design requirements apply for the specific applications within Subsection 531.06 of this rule. ()

a. Sodium chlorite for chlorine dioxide generation. Positive displacement feeders shall be provided. Tubing for conveying sodium chlorite or chlorine dioxide solutions shall be Type 1 PVC, polyethylene or materials recommended by the manufacturer. Chemical feeders may be installed in chlorine rooms if sufficient space is provided. Otherwise, facilities meeting the requirements of chlorine rooms shall be provided. Feed lines shall be installed in a manner to prevent formation of gas pockets and shall terminate at a point of positive pressure. Check valves shall be provided to prevent the backflow of chlorine into the sodium chlorite line. ()

b. Hypochlorite facilities shall meet the following requirements: ()

i. Hypochlorite shall be stored in the original shipping containers or in hypochlorite compatible containers. Storage containers or tanks shall be sited out of the sunlight in a cool and ventilated area. ()

ii. Stored hypochlorite shall be pumped undiluted to the point of addition. Where dilution is unavoidable, deionized or softened water shall be used. ()

iii. Storage areas, tanks, and pipe work shall be designed to avoid the possibility of uncontrolled discharges and a sufficient amount of appropriately selected spill absorbent shall be stored on-site. ()

iv. Hypochlorite feeders shall be positive displacement pumps with compatible materials for wetted surfaces. ()

v. To avoid air locking in smaller installations, small diameter suction lines shall be used with foot valves and degassing pump heads. In larger installations flooded suction shall be used with pipe work arranged to ease escape of gas bubbles. Calibration tubes or mass flow monitors which allow for direct physical checking of actual feed rates shall be fitted. ()

vi. Injectors shall be made removable for regular cleaning where hard water is to be treated. ()

c. When ammonium sulfate is used, the tank and dosing equipment contact surfaces shall be made of corrosion resistant non-metallic materials. Provision shall be made for removal of the agitator after dissolving the solid. The tank shall be fitted with a lid and vented outdoors. Injection of the solution should take place in the center of treated water flow at a location where there is high velocity movement. ()

d. When aqua ammonia (ammonium hydroxide) is used, the feed pumps and storage shall be enclosed and separated from other operating areas. The aqua ammonia room shall be equipped as required for chlorinator rooms with the following changes: ()

i. A corrosion resistant, closed, unpressurized tank shall be used for bulk storage, vented through an inert liquid trap to a high point outside and an incompatible connector, or lockout provisions shall be made to prevent accidental addition of other chemicals to the storage tank. ()

ii. The storage tank shall be designed to avoid conditions where temperature increases cause the ammonia vapor pressure over the aqua ammonia to exceed atmospheric pressure. This capability can be provided by cooling/refrigeration or diluting or mixing the contents with water without opening the system. ()

iii. The aqua ammonia shall be conveyed direct from storage to the treated water stream injector without the use of a carrier water stream unless the carrier stream is softened. ()

iv. The point of delivery to the main water stream shall be placed in a region of turbulent water flow. ()

v. Provisions shall be made for easy access for removal of calcium scale deposits from the injector. ()

532. FACILITY AND DESIGN STANDARDS: DESIGN STANDARDS FOR SOFTENING.

The softening process selected must be based upon the mineral qualities of the raw water and the desired finished

water quality in conjunction with requirements for disposal of sludge or brine waste (see Section 540), cost of plant, cost of chemicals, and plant location. Applicability of the process chosen shall be demonstrated. ()

01. Lime or Lime-Soda Process. Rapid mix, flocculation, and sedimentation processes shall meet the requirements of Section 520. In addition the following requirements must be met: ()

a. When split treatment is used, an accurate means of measuring and splitting the flow must be provided. ()

b. Rapid mix basins must provide not more than thirty (30) seconds detention time with adequate velocity gradients to keep the lime particles dispersed. ()

c. Equipment for stabilization of water softened by the lime or lime-soda process is required, see Section 537. ()

d. Mechanical sludge removal equipment shall be provided in the sedimentation basin. ()

e. Provisions must be included for proper disposal of softening sludges; see Section 540. ()

f. The plant processes must be manually started following shut-down. ()

02. Cation Exchange Process. ()

a. Pre-treatment is required when the content of iron, manganese, or a combination of the two, is one milligram per liter (1 mg/l) or more. ()

b. The units may be of pressure or gravity type, of either an upflow or downflow design. Automatic regeneration based on volume of water softened shall be used unless manual regeneration is justified and is approved by the Department. A manual override shall be provided on all automatic controls. ()

c. Rate-of-flow controllers or the equivalent shall be used to control the hydraulic loading of cation exchange units. ()

d. The bottoms, strainer systems and support for the exchange resin shall conform to the criteria provided for rapid rate gravity filters in Section 521. ()

e. Cross Connection Control. Backwash, rinse and air relief discharge pipes shall be installed in such a manner as to prevent any possibility of back-siphonage. ()

f. A bypass must be provided around softening units to produce a blended water of desirable hardness. Totalizing meters must be installed on the bypass line and on each softener unit. The bypass line must have a shutoff valve. ()

g. When the applied water contains a chlorine residual, the cation exchange resin shall be a type that is not damaged by residual chlorine. ()

h. Smooth-nose sampling taps must be provided for the collection of representative samples. The taps shall be located to provide for sampling of the softener influent, effluent, blended water, and on the brine tank discharge piping. The sampling taps for the blended water shall be at least twenty (20) feet downstream from the point of blending. Petcocks are not acceptable as sampling taps. ()

i. Brine and salt storage tanks shall meet the following requirements: ()

i. Salt dissolving or brine tanks and wet salt storage tanks must be covered and must be corrosion-resistant. ()

ii. The make-up water inlet must be protected from back-siphonage. ()

- iii. Wet salt storage basins must be equipped with manholes or hatchways for access and for direct dumping of salt from truck or railcar. Openings must be provided with raised curbs and watertight covers having overlapping edges similar to those required for finished water reservoirs. ()
- iv. Overflows, where provided, must be protected with twenty-four (24) mesh or similar non-corrodible screens, and must terminate with either a turned down bend having a proper free fall discharge or a self-closing flap valve. ()
- v. The salt shall be supported on graduated layers of gravel placed over a brine collection system. ()
- vi. Alternative designs which are conducive to frequent cleaning of the wet salt storage tank may be considered. ()
- vii. An eductor may be used to transfer brine from the brine tank to the softeners. If a pump is used, a brine measuring tank or means of metering shall be provided to obtain the proper dilution. ()
- j. Suitable disposal must be provided for brine waste; see Section 540. Where the volume of spent brine must be reduced, consideration may be given to using a part of the spent liquid concentrate for a subsequent regeneration. ()
- k. Pipes and contact materials must be resistant to the aggressiveness of salt. Plastic and red brass are acceptable piping materials. Steel and concrete must be coated with a non-leaching protective coating which is compatible with salt and brine. ()
- l. Bagged salt and dry bulk salt storage shall be enclosed and separated from other operating areas in order to prevent damage to equipment. ()

533. FACILITY AND DESIGN STANDARDS: DESIGN STANDARDS FOR TASTE AND ODOR CONTROL.

Provision shall be made for the control of taste and odor. Chemicals shall be added sufficiently ahead of other treatment processes to assure adequate contact time for an effective and economical use of the chemicals. Where severe taste and odor problems are encountered, in-plant studies, pilot plant studies, or both in-plant and pilot plant studies may be required. See Subsection 501.19 for general information on conducting pilot studies. ()

01. Chlorination. When using chlorination as a method of taste and odor control adequate contact time must be provided to complete the chemical reactions involved. ()

02. Chlorine Dioxide. Provisions shall be made for proper storing and handling of the sodium chlorite, so as to eliminate any danger of explosion. ()

03. Powdered Activated Carbon. ()

a. The carbon can be added as a pre-mixed slurry or by means of a dry-feed machine as long as the carbon is properly wetted. ()

b. Continuous agitation or resuspension equipment is necessary to keep the carbon from depositing in the slurry storage tank. ()

c. Provision shall be made for adequate dust control. ()

d. Powdered activated carbon shall be handled as a potentially combustible material. ()

04. Granular Activated Carbon. Replacement of anthracite with GAC may be considered as a control measure for geosmin and methyl isoborneol (MIB) taste and odors from algae blooms in surface water applications. Demonstration studies are required by the Department. ()

05. Copper Sulfate and Other Copper Compounds. Continuous or periodic treatment of surface water with copper compounds to kill algae or other growths shall be controlled to prevent copper in excess of one point zero (1.0) milligrams per liter as copper in the plant effluent or distribution system. Care shall be taken to assure an even distribution of the chemical within the treatment area. ()

06. Potassium Permanganate. Application of potassium permanganate may be considered, providing the treatment shall be designed so that the products of the reaction are not visible in the finished water. ()

07. Ozone. Ozonation may be used as a means of taste and odor control. Adequate contact time must be provided to complete the chemical reactions involved. ()

08. Other Methods. Other methods of taste and odor control shall be made only after pilot plant tests and approval of the Department. ()

534. FACILITY AND DESIGN STANDARDS: AERATION PROCESSES.

Public water systems that install aeration treatment are subject to the Rules of the Department of Environmental Quality, IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho." The system owner or the design engineer shall contact one of the Department's regional offices for information on obtaining a permit or an exemption for the emissions resulting from the aeration process. General information may be found on the DEQ website <http://www.deq.idaho.gov>. ()

01. Natural Draft Aeration. Design shall provide: ()

a. Perforations in the distribution pan three sixteenths to one-half ($3/16 - 1/2$) inches in diameter, spaced one to three (1-3) inches on centers to maintain a six (6) inch water depth. ()

b. For distribution of water uniformly over the top tray. ()

c. Discharge through a series of three (3) or more trays with separation of trays not less than twelve (12) inches. ()

d. Loading at a rate of one to five (1-5) gallons per minute for each square foot of total tray area. ()

e. Trays with slotted, heavy wire (1/2 inch openings) mesh or perforated bottoms. ()

f. Construction of durable material resistant to aggressiveness of the water and dissolved gases. ()

g. Protection from insects by twenty-four (24) mesh or similar non-corrodible screen. ()

02. Forced or Induced Draft Aeration. Devices shall be designed to: ()

a. Include a blower with a weatherproof motor in a tight housing and screened enclosure. ()

b. Ensure adequate counter current of air through the enclosed aerator column. ()

c. Exhaust air directly to the outside atmosphere. ()

d. Include a down-turned and twenty-four (24) mesh or similar non-corrodible screened air outlet and inlet. ()

e. Be such that air introduced in the column shall be as free from obnoxious fumes, dust, and dirt as possible. ()

f. Be such that sections of the aerator can be easily reached or removed for maintenance of the ()

interior or installed in a separate aerator room. ()

g. Provide loading at a rate of one to five (1-5) gallons per minute for each square foot of total tray area. ()

h. Ensure that the water outlet is adequately sealed to prevent unwarranted loss of air. ()

i. Discharge through a series of five (5) or more trays with separation of trays not less than six (6) inches or as approved by the Department. ()

j. Provide distribution of water uniformly over the top tray. ()

k. Be of durable material resistant to the aggressiveness of the water and dissolved gases. ()

03. Spray Aeration. Design shall provide: ()

a. A hydraulic head of between five (5) and twenty-five (25) feet. ()

b. Nozzles, with the size, number, and spacing of the nozzles being dependent on the flowrate, space, and the amount of head available. ()

c. Nozzle diameters in the range of one (1) to one and one-half (1.5) inches to minimize clogging. ()

d. An enclosed basin to contain the spray. Any openings for ventilation must be protected with a twenty-four (24) mesh or similar non-corrodible screen. ()

04. Pressure Aeration. Pressure aeration may be used for oxidation purposes only if the pilot plant study indicates the method is applicable; it is not acceptable for removal of dissolved gases. See Subsection 501.19 for general information on conducting pilot studies. Filters following pressure aeration must have adequate exhaust devices for release of air. Pressure aeration devices shall be designed to give thorough mixing of compressed air with water being treated and provide twenty-four (24) mesh or similar non-corrodible screened and filtered air, free of obnoxious fumes, dust, dirt and other contaminants. ()

05. Packed Tower Aeration. Packed tower aeration may be used for the removal of volatile organic chemicals, trihalomethanes, carbon dioxide, and radon. Final design shall be based on the results of pilot studies and be approved by the Department. ()

a. Process design criteria. ()

i. Justification for the design parameters selected (i.e., height and diameter of unit, air to water ratio, packing depth, surface loading rate, etc.) shall be provided to the Department for review. The pilot study shall evaluate a variety of loading rates and air to water ratios at the peak contaminant concentration. Special consideration shall be given to removal efficiencies when multiple contaminations occur. Where there is considerable past performance data on the contaminant to be treated and there is a concentration level similar to previous projects, the Department may approve the process design based on use of appropriate calculations without a pilot study. ()

ii. The tower shall be designed to reduce contaminants to below the maximum contaminant level and to the lowest practical level. ()

iii. The type and size of the packing used in the full scale unit shall be the same as that used in the pilot study. ()

iv. The maximum air to water ratio for which credit will be given is 80:1. ()

v. The design shall consider potential fouling problems from calcium carbonate and iron precipitation and from bacterial growth. It may be necessary to provide pretreatment. Disinfection capability shall be provided

- prior to and after packed tower aeration. ()
- vi. The effects of temperature shall be considered. ()
 - vii. Redundant packed tower aeration capacity at the design flowrate shall be provided. ()
- b.** The tower may be constructed of stainless steel, concrete, aluminum, fiberglass or plastic. Uncoated carbon steel is not allowed. Towers constructed of light-weight materials shall be provided with adequate support to prevent damage from wind. Packing materials shall be resistant to the aggressiveness of the water, dissolved gases and cleaning materials and shall be suitable for contact with potable water. ()
- c.** Water flow system. ()
- i. Water shall be distributed uniformly at the top of the tower using spray nozzles or orifice-type distributor trays that prevent short circuiting. ()
 - ii. A mist eliminator shall be provided above the water distributor system. ()
 - iii. A side wiper redistribution ring shall be provided at least every ten (10) feet in order to prevent water channeling along the tower wall and short circuiting. ()
 - iv. Sample taps shall be provided in the influent and effluent piping. The sample taps shall satisfy the requirements of Subsection 501.09. ()
 - v. The effluent sump, if provided, shall have easy access for cleaning purposes and be equipped with a drain valve. The drain shall not be connected directly to any storm or sanitary sewer. ()
 - vi. The design shall prevent freezing of the influent riser and effluent piping when the unit is not operating. ()
 - vii. The water flow to each tower shall be metered. ()
 - viii. An overflow line shall be provided which discharges twelve (12) to fourteen (14) inches above a splash pad or drainage inlet. Proper drainage shall be provided to prevent flooding of the area. ()
 - ix. Means shall be provided to prevent flooding of the air blower. ()
- d.** Air flow system. ()
- i. The air inlet to the blower and the tower discharge vent shall be down-turned and protected with a non-corrodible twenty-four (24) mesh screen to prevent contamination from extraneous matter. ()
 - ii. The air inlet shall be in a protected location. ()
 - iii. An air flow meter shall be provided on the influent air line or an alternative method to determine the air flow shall be provided. ()
 - iv. A positive air flow sensing device and a pressure gauge must be installed on the air influent line. The positive air flow sensing device must be a part of an automatic control system which will turn off the influent water if positive air flow is not detected. The pressure gauge will serve as an indicator of fouling buildup. ()
 - v. A backup motor for the air blower must be readily available. ()
- e.** Other features that shall be provided: ()
- i. A sufficient number of access ports with a minimum diameter of twenty-four (24) inches to facilitate inspection, media replacement, media cleaning and maintenance of the interior. ()

- ii. A method of cleaning the packing material when iron, manganese, or calcium carbonate fouling may occur. ()
- iii. Tower effluent collection and pumping wells constructed to clearwell standards. ()
- iv. Provisions for extending the tower height without major reconstruction. ()
- v. No bypass shall be provided unless specifically approved by the Department. ()
- vi. Disinfection and adequate contact time after the water has passed through the tower and prior to the distribution system. ()
- vii. Adequate packing support to allow free flow of water and to prevent deformation with deep packing heights. ()
- viii. Operation of the blower and disinfectant feeder equipment during power failures. ()
- ix. Adequate foundation to support the tower and lateral support to prevent overturning due to wind loading. ()
- x. Fencing and locking gate to prevent vandalism. ()
- xi. An access ladder with safety cage for inspection of the aerator including the exhaust port and demister. ()
- xii. Electrical interconnection between blower, disinfectant feeder and supply pump. ()

06. Other Methods of Aeration. Other methods of aeration may be used if applicable to the treatment needs. Such methods include but are not restricted to spraying, diffused air, cascades and mechanical aeration. The treatment processes are subject to the approval of the Department. ()

07. Protection of Aerators. All aerators except those discharging to lime softening or clarification plants shall be protected from contamination by birds, insects, wind borne debris, rainfall and water draining off the exterior of the aerator. ()

08. Disinfection. Ground water supplies exposed to the atmosphere by aeration must receive disinfection as described in Section 530 as the minimum additional treatment. ()

535. FACILITY AND DESIGN STANDARDS: DESIGN STANDARDS FOR IRON AND MANGANESE CONTROL SYSTEMS.

Iron and manganese control, as used herein, refers solely to treatment processes designed specifically for this purpose. The treatment process used will depend upon the character of the raw water. The selection of one (1) or more treatment processes must meet specific local conditions as determined by engineering investigations, including chemical analyses of representative samples of water to be treated, and receive the approval of the Department. The Department may require a pilot plant study in order to gather all information pertinent to the design. See Subsection 501.19 for general information on conducting pilot studies. ()

01. Removal by Oxidation, Detention and Filtration. ()

a. Oxidation may be by aeration or by chemical oxidation with chlorine, potassium permanganate, ozone or chlorine dioxide. ()

b. Detention time: ()

i. A minimum detention time of thirty (30) minutes shall be provided following aeration to ensure that the oxidation reactions are as complete as possible. This minimum detention may be omitted only where a pilot

plant study indicates no need for detention. The detention basin may be designed as a holding tank without provisions for sludge collection but with sufficient baffling to prevent short circuiting. ()

ii. Sedimentation basins shall be provided when treating water with high iron or manganese content, or where chemical coagulation is used to reduce the load on the filters. Provisions for sludge removal shall be made. ()

c. Filtration. Rapid rate pressure filters are normally used for iron and manganese removal. Pressure filters shall not be used in the filtration of surface or other polluted waters or following lime-soda softening. ()

i. The rate of filtration shall not exceed three (3) gallons per minute per square foot of filter area except where in-plant testing as approved by the Department has demonstrated satisfactory results at higher rates. ()

ii. The filters shall be designed to provide for: ()

(1) Loss of head gauges on the inlet and outlet pipes of each battery of filters. ()

(2) An easily readable meter or flow indicator on each battery of filters. ()

(3) Filtration and backwashing of each filter individually with an arrangement of piping as simple as possible to accomplish these purposes. ()

(4) Minimum side wall shell height of five (5) feet. A corresponding reduction in side wall height is acceptable where proprietary bottoms permit reduction of the gravel depth. ()

(5) The top of the wash water collectors to be at least eighteen (18) inches above the surface of the media, ()

(6) The underdrain system to efficiently collect the filtered water and to uniformly distribute the backwash water at a rate not less than fifteen (15) gallons per minute per square foot of filter area. ()

(7) Backwash flow indicators and controls that are easily readable while operating the control valves. ()

(8) An air release valve on the highest point of each filter. ()

(9) An accessible manhole to facilitate inspection and repairs for filters thirty-six (36) inches or more in diameter. Sufficient handholds shall be provided for filters less than thirty-six (36) inches in diameter. ()

(10) A means to observe the wastewater during backwashing and construction to prevent cross connection. ()

02. Removal by Manganese Coated Media Filtration. This process consists of a continuous or batch feed of potassium permanganate to the influent of a manganese coated media filter. ()

a. Other oxidizing agents or processes such as chlorination or aeration may be used prior to the permanganate feed to reduce the cost of the chemical. ()

b. An anthracite media cap of at least six (6) inches or more as required by the Department shall be provided over manganese coated media. ()

c. Normal filtration rate shall be three (3) gallons per minute per square foot. ()

d. Normal wash rate shall be eight (8) to ten (10) gallons per minute per square foot with manganese greensand and fifteen (15) to twenty (20) gallons per minute with manganese coated media. ()

e. Sample taps shall be provided prior to application of permanganate, immediately ahead of filtration, at points between the anthracite media, and at the filter effluent. The sample taps shall satisfy the requirements of Subsection 501.09. ()

03. Removal by Ion Exchange. This process is not acceptable where either the raw water or wash water contains dissolved oxygen or other oxidants. ()

04. Biological Removal. Biofiltration to remove manganese, iron, or a combination of manganese and iron requires on-site piloting testing to establish effectiveness. The final filter design shall be based on the on-site pilot plant studies. ()

05. Sequestration by Polyphosphates. This process shall not be used when iron, manganese or a combination thereof exceeds one point zero (1.0) mg/l. The total phosphate applied shall not exceed ten (10) mg/l as PO₄. Where phosphate treatment is used, satisfactory chlorine residuals shall be maintained in the distribution system. Possible adverse affects on corrosion must be addressed when phosphate addition is proposed for iron sequestering. ()

a. Stock phosphate solution must be kept covered and disinfected by carrying approximately ten (10) mg/l free chlorine residual unless it is demonstrated to the satisfaction of the Department that the phosphate solution is not able to support bacterial growth and the phosphate solution is being fed from the covered shipping container or an approved disinfected tank. Phosphate solutions having a pH of two point zero (2.0) or less may also be exempted from this requirement by the Department. ()

b. Polyphosphates shall not be applied ahead of iron and manganese removal treatment. The point of application shall be prior to any aeration, oxidation or disinfection if no iron or manganese removal treatment is provided. ()

06. Sequestration by Sodium Silicates. Sodium silicate sequestration of iron and manganese is allowed only for ground water supplies prior to air contact. On-site pilot studies are required to determine the suitability of sodium silicate for the particular water and the minimum feed needed. Rapid oxidation of the metal ions such as by chlorine or chlorine dioxide must accompany or closely precede the sodium silicate addition. ()

a. Sodium silicate addition is applicable to waters containing up to two (2) mg/l of iron, manganese or combination thereof. ()

b. Chlorine residuals shall be maintained throughout the distribution system to prevent biological breakdown of the sequestered iron. ()

c. The amount of silicate added shall be limited to twenty (20) mg/l as SiO₂, but the amount of added and naturally occurring silicate shall not exceed sixty (60) mg/l as SiO₂. ()

d. Sodium silicate shall not be applied ahead of iron or manganese removal treatment. ()

07. Sampling Taps. Smooth-nosed sampling taps shall be provided for control purposes. Taps shall be located on each raw water source, each treatment unit influent and each treatment unit effluent. The sample taps shall satisfy the requirements of Subsection 501.09. ()

536. FACILITY AND DESIGN STANDARDS: DESIGN STANDARDS FOR FLUORIDATION.

01. Chemical Feed Equipment and Methods. In addition to the requirements in Section 531, fluoride feed equipment shall meet the following requirements: ()

a. Scales, loss-of-weight recorders or liquid level indicators, as appropriate, accurate to within five (5) percent of the average daily change in reading shall be provided for chemical feeds. ()

b. The accuracy of chemical feeders used for fluoridation shall be plus or minus five (5) percent of the intended dose. ()

- c. Unsealed storage units for fluorosilicic acid shall be vented to the atmosphere at a point outside any building. ()
 - d. Fluoride compound shall not be added before lime-soda softening or ion exchange softening. ()
 - e. The point of application of fluorosilicic acid, if into a horizontal pipe, shall be in the lower half of the pipe. ()
 - f. A fluoride solution shall be applied by a positive displacement pump having a stroke rate not less than twenty (20) strokes per minute, and at a feed rate not less than twenty (20) percent of the rated capacity of the feed pump. ()
 - g. A spring opposed diaphragm type anti-siphon device shall be provided for all fluoride feed lines and dilution water lines. ()
 - h. Except for constant flow systems, a device to measure the flow of water to be treated is required. ()
 - i. The dilution water pipe shall terminate at least two (2) pipe diameters above the solution tank. ()
 - j. Water used for sodium fluoride dissolution shall be softened if hardness exceeds seventy-five (75) mg/l as calcium carbonate. ()
 - k. Fluoride solutions shall be injected at a point of continuous positive pressure or a suitable air gap provided. ()
 - l. The electrical outlet used for the fluoride feed pump shall be interconnected with the well or service pump. ()
 - m. Consideration shall be given to providing a separate room for fluorosilicic acid storage and feed. ()
- 02. Secondary Controls.** Secondary control systems for fluoride chemical feed devices shall be provided as a means of reducing the possibility for overfeed; these may include flow or pressure switches or other devices. ()
- 03. Dust Control.** Provision must be made for the transfer of dry fluoride compounds from shipping containers to storage bins or hoppers in such a way as to minimize the quantity of fluoride dust which may enter the room in which the equipment is installed. The enclosure shall be provided with an exhaust fan and dust filter which places the hopper under a negative pressure. Air exhausted from fluoride handling equipment shall discharge through a dust filter to the outside atmosphere of the building. ()

537. FACILITY AND DESIGN STANDARDS: DESIGN STANDARDS FOR STABILIZATION.

Water that is unstable due either to natural causes or to subsequent treatment shall be stabilized. The expected treated water quality shall be evaluated to determine what, if any, treatment is necessary. ()

- 01. Carbon Dioxide Addition.** ()
- a. Recarbonation basin design shall provide the following: ()
 - i. A total detention time of twenty (20) minutes. ()
 - ii. A mixing compartment having a detention time of at least three (3) minutes. ()

- iii. A reaction compartment. ()
- iv. The mixing and reaction compartments shall have a depth sufficient to provide a diffuser submergence of not less than seven and one-half (7.5) feet and no greater than the manufacturer's recommendation. ()

b. Where liquid carbon dioxide is used, adequate precautions must be taken to prevent carbon dioxide from entering the plant from the recarbonation process. ()

c. Recarbonation tanks shall be located outside or be sealed and vented to the outside with adequate seals and adequate purge flow of air to ensure workers safety. ()

d. Provisions shall be made for draining the recarbonation basin and removing sludge. ()

02. Phosphates. The feeding of phosphates may be used for sequestering calcium, for corrosion control, and in conjunction with alkali feed following ion exchange softening. ()

a. Stock phosphate solution must be kept covered and disinfected by carrying approximately ten (10) mg/l free chlorine residual unless the phosphate is not able to support bacterial growth and the phosphate is being fed from the covered shipping container. Phosphate solutions having a pH of two point zero (2.0) or less are exempted from this requirement. ()

b. Satisfactory chlorine residuals shall be maintained in the distribution system when phosphates are used. ()

03. Split Treatment. Raw water may be blended with lime-softened water to partially stabilize the water prior to secondary clarification and filtration. Treatment plants designed to utilize split treatment shall also contain facilities for further stabilization by other methods. ()

04. Water Unstable Due to Biochemical Action in Distribution System. Unstable water resulting from the bacterial decomposition of organic matter in water (especially in dead end mains), the biochemical action within tubercles, and the reduction of sulfates to sulfides shall be prevented by the maintenance of a free or combined chlorine residual throughout the distribution system. ()

538. – 539. (RESERVED)

540. FACILITY AND DESIGN STANDARDS: DESIGN STANDARDS FOR TREATMENT AND DISPOSAL OF TREATMENT PLANT WASTE RESIDUALS.

Provisions must be made for proper disposal of water treatment plant waste such as sanitary, laboratory, clarification sludge, softening sludge, iron sludge, filter backwash water, and liquid concentrates. In locating waste disposal facilities, due consideration shall be given to preventing potential contamination of the water supply. ()

01. Sanitary Waste. The sanitary waste from water treatment plants, pumping stations, and other waterworks installations must receive treatment. Waste from these facilities shall be discharged directly to a sanitary sewer system, when available and feasible, or to an adequate on-site waste treatment facility approved under the provisions of IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules." ()

02. Liquid Concentrates. ()

a. Waste from ion exchange plants, demineralization plants, reverse osmosis, on-site chlorine generators, or other plants which produce liquid concentrates may be disposed of by the following methods: ()

i. Liquid concentrates that contain radionuclides must be further treated to remove the radioactive constituents as sludge. See Subsection 540.03.e. for disposal requirements for sludge that contains radionuclides. The residual liquids from which radionuclides have been removed may be disposed of in accordance with Subsections 540.02.a.ii. through 540.02.a.iv. ()

ii. Controlled discharge to a stream or other receiving water body if adequate dilution is available. Such discharge will require a National Pollution Elimination System Permit from the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, WA 98101, Telephone (206) 553-1200. ()

iii. Liquid concentrates may be discharged to a sanitary sewer, if available and feasible. Acceptance of such waste must be approved by the sewer authority. ()

iv. Subsurface disposal or land application of liquid concentrates may be permitted, but only if such discharge meets the requirements of IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules" for subsurface disposal or the requirements of IDAPA 58.01.17, "Recycled Water Rules" for land application. ()

b. Should the nature of the liquid concentrate cause it to be ineligible for permitted discharge as described in Subsection 540.02.a., further onsite treatment of the liquid concentrate may be required in order to produce sludge and liquid waste that will meet the permit criteria for one (1) or more of the disposal options. ()

03. Sludge Waste. Sludge is the solid waste resulting from coagulation, precipitation, or passive settling of liquid concentrates. Depending on composition, liquids remaining after sludge removal may be disposed of by methods described in Subsection 540.02, recycled through the treatment plant, or may be pure enough to be unregulated. The following methods of treatment and disposal apply to sludge: ()

a. Precipitative Softening Sludge. ()

i. At least two (2) temporary storage lagoons must be provided in order to give flexibility in operation. Provisions must be made for convenient cleaning. An acceptable means of final sludge disposal must be provided. ()

ii. Liquid or dewatered precipitative softening sludge may be applied to farm land if heavy metals or other contaminants do not exceed the requirements of IDAPA 58.01.02, "Water Quality Standards." ()

iii. Dewatered precipitative softening sludge may be disposed of in a sanitary landfill in accordance with the requirements of IDAPA 58.01.06, "Solid Waste Management Rules." Acceptance of such waste is at the discretion of the landfill authority. ()

b. Alum or Ferric Sludge. ()

i. Temporary storage lagoons must contain at least two (2) compartments to facilitate independent filling and dewatering operations. Mechanical concentration may be considered. If mechanical dewatering is used, it shall be preceded by sludge concentration and chemical pre-treatment. A pilot plant study is required before the design of a mechanical dewatering installation. See Subsection 501.19 for general information on conducting pilot studies. ()

ii. Alum or ferric sludge may be discharged to a sanitary sewer if available and feasible. Acceptance of such waste must be approved by the sewer authority. ()

iii. Dewatered alum or ferric sludge may be disposed of in a sanitary landfill in accordance with the requirements of IDAPA 58.01.06, "Solid Waste Management Rules." Acceptance of such waste is at the discretion of the landfill authority. ()

iv. Alum or ferric sludge may be disposed of by land application if the permitting requirements of IDAPA 58.01.02, "Water Quality Standards," and IDAPA 58.01.17, "Recycled Water Rules," are met. ()

v. Water removed from alum or ferric sludge may be disposed of in the same manner as liquid concentrates, as described in Subsection 540.02. ()

c. Red Water. Red water is the waste filter wash water from iron and manganese removal plants.

- ()
- i. If sand filters are used they shall have the following features: ()
 - (1) Total filter area shall be sufficient to adequately dewater applied solids. Unless the filter is small enough to be cleaned and returned to service in one (1) day, two (2) or more cells are required. ()
 - (2) The “red water” filter shall have sufficient capacity to contain, above the level of the sand, the entire volume of wash water produced by washing all of the production filters in the plant, unless the production filters are washed on a rotating schedule and the flow through the production filters is regulated by true rate of flow controllers. Then sufficient volume shall be provided to properly dispose of the wash water involved. ()
 - (3) Where freezing is a problem, provisions should be made for covering the filters during the winter months. ()
 - (4) “Red water” filters shall not have common walls with finished water. ()
 - ii. Subsurface infiltration lagoons may be permitted, but only if such discharge meets the requirements of IDAPA 58.01.03, “Individual/Subsurface Sewage Disposal Rules.” ()
 - iii. “Red water” may be discharged to a sanitary sewer if available and feasible. Acceptance of such waste must be approved by the sewer authority. Design shall prevent cross connections and there shall be no common walls between potable and non-potable fluid. ()
- d. Filter Backwash Water.** ()
- i. Recycling is permitted if the backwash waters are returned to the head of the treatment plant or another entry point if supported by engineering studies. Backwash water shall be held for a sufficient time prior to recycling to allow solids to settle out. ()
 - ii. Dewatered sludge from backwash water clarification processes may be disposed of in a sanitary landfill in accordance with the requirements of IDAPA 58.01.06, “Solid Waste Management Rules.” Acceptance of such waste must be approved by the landfill authority. ()
- e. Radioactive Sludge.** Waste residuals containing radioactive substances, including, but not limited to granular activated carbon used for radon removal or ion-exchange regeneration waste from uranium removal, must be disposed of in accordance with IDAPA 58.01.10, “Rules Regulating the Disposal of Radioactive Materials Not Regulated Under The Atomic Energy Act of 1954, As Amended.” ()
- i. The buildup of radioactive materials such as uranium or radon and its decay products shall be considered and adequate shielding and safeguards shall be provided for operators and visitors. ()
 - ii. Waste residuals containing naturally occurring radioactive materials that have been concentrated by human activities must be disposed of in an approved hazardous waste landfill (Class D), in accordance with the IDAPA 58.01.10, “Rules Regulating the Disposal of Radioactive Materials not Regulated Under the Atomic Energy Act of 1954, as Amended,” and IDAPA 58.01.06, “Solid Waste Management Rules.” ()
 - iii. Waste residuals containing greater than point zero five (.05) percent by weight of uranium are subject to licensing and disposal under the regulations of the U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011, Phone 817-860-8299. ()
- f. Arsenic Sludge.** Solid waste residuals containing arsenic at a concentration less than five (5) mg/l may be disposed of at a sanitary landfill if permitted under IDAPA 58.01.06, “Solid Waste Management Rules.” Solid waste containing arsenic at a concentration greater than five (5) mg/l must be disposed of at an approved hazardous waste landfill. Liquid wastes generated by arsenic treatment processes are subject to the handling and disposal requirements for liquid concentrates, as discussed under Subsection 540.02. ()

04. Spent Media. Exhausted ion exchange media, adsorption media, disposable filters, and other components of treatment processes that contain concentrated contaminants shall be disposed of in accordance with IDAPA 58.01.06, "Solid Waste Management Rules," and/or IDAPA 58.01.10, "Rules Regulating the Disposal of Radioactive Materials not Regulated Under the Atomic Energy Act of 1954, as Amended." ()

541. FACILITY AND DESIGN STANDARDS: PUMPING FACILITIES.

Pumping facilities shall be designed to maintain the sanitary quality of pumped water. ()

01. Pump Houses. Unless otherwise approved by the Department based on documentation provided by the design engineer, pump house components shall be located above-grade. The following requirements apply to pump houses as defined in Section 003 unless it can be shown that some or all of these requirements are not needed to protect the combination of system components in a given structure: ()

a. Pump houses shall be readily accessible for operation, maintenance, and repair at all times and under all weather conditions unless permitted to be out of service for a period of inaccessibility. ()

b. Pump houses shall be protected from flooding and shall be adequately drained. The ground surface shall be graded so as to lead surface drainage away from the pump house. Unless otherwise approved by the Department based on documentation provided by the design engineer, the floor surface shall be at least six (6) inches above the final ground surface and pump house components shall be located at least six (6) inches above the floor surface. ()

c. Pump houses shall be of durable construction, fire and weather resistant, and with outward-opening doors. All underground structures shall be waterproofed. ()

d. Provisions shall be made for adequate heating for the comfort of the operator and the safe and efficient operation of the equipment. In pump houses not occupied by personnel, only enough heat need be provided to prevent freezing of equipment or treatment processes. ()

e. Ventilation shall conform to existing local and/or state codes. Adequate ventilation shall be provided for all pumping stations for operator comfort and dissipation of excess heat and moisture from the equipment. In all cases, measures must be taken to minimize corrosion of metallic and electrical components. ()

f. Pump houses shall be provided with a locking door or access to prohibit unauthorized entrance and shall be protected to prevent vandalism and entrance by animals. Plans and specifications for pump houses must provide enough detail to enable the reviewing engineer to determine that the facility is secure, safe, accessible, and that it conforms to electrical and plumbing codes. ()

g. Pump houses shall be kept clean and in good repair and shall not be used to store toxic or hazardous materials other than those materials required for treatment processes. ()

h. A suitable outlet shall be provided for drainage from pump glands without discharging onto the floor. ()

i. Floor drains shall not be connected to sewers, storm drains, chlorination room drains, or any other source of contamination unless otherwise approved by the Department based on documentation provided by the design engineer. Gas chlorination room drains shall not be connected to any other drainage system and should terminate in a properly located below ground sump. Sumps for pump house floor drains shall not be closer than thirty (30) feet from any well. ()

j. Adequate space shall be provided for the installation of potential additional units and for the safe and efficient servicing of all equipment. ()

k. Suction basins shall be watertight, have floors sloped to permit removal of water and settled solids, be covered or otherwise protected against contamination, and have two (2) pumping compartments or other means to allow the suction basin to be taken out of service for inspection maintenance or repair. ()

l. Pump houses shall be designed to allow efficient equipment servicing. Crain-ways, hoist beams, eyebolts, or other adequate facilities for servicing or removal of pumps, motors or other heavy equipment shall be provided. Openings in floors, roofs or wherever else shall be provided as needed for removal of heavy or bulky equipment. ()

m. All remote controlled stations shall be electrically operated and controlled and shall have signaling apparatus of proven performance. Signaling apparatus shall report automatically when the station is out of service. ()

n. Any threaded hose bib installed in the pump house must be equipped with an appropriate backflow prevention device. ()

02. Pumping Units. At least two (2) pumping units shall be provided for raw water and surface source pumps. Pumps using seals containing mercury shall not be used in public drinking water system facilities. With any pump out of service, the remaining pump or pumps shall be capable of providing the peak hour demand of the system or a minimum of the maximum day demand plus equalization storage. See Subsection 501.18 for general design requirements concerning fire flow capacity and Subsection 501.07 regarding reliability and emergency operation. The pumping units shall meet the following requirements: ()

a. The pumps shall have ample capacity to supply the maximum demand against the required pressure without dangerous overloading. ()

b. The pumps shall be driven by prime movers able to meet the maximum horsepower condition of the pumps. ()

c. The pumps shall be provided with readily available spare parts and tools. ()

d. The pumps shall be served by control equipment that has proper heater and overload protection for air temperature encountered. ()

e. Suction lift shall be avoided if possible. When suction lift is used, it shall be within the limits allowed by the manufacturer of the pumps, and provision shall be made for priming the pumps. ()

f. Prime water must not be of lesser sanitary quality than that of the water being pumped. Means shall be provided to prevent either backpressure or backsiphonage backflow. When an air-operated ejector is used, the twenty-four (24) mesh or similar non-corrodible screened intake shall draw clean air from a point at least ten (10) feet above the ground or other source of possible contamination, unless the air is filtered by an apparatus approved by the reviewing authority. Vacuum priming may be used. ()

03. Appurtenances. The following appurtenances shall be provided for all water pumps. Additional requirements specific to well pumps are provided in Section 511. ()

a. Pumps shall be protected against freezing and valved to permit satisfactory operation, maintenance, and repair of the equipment. If foot valves are necessary, they shall have a net valve area of at least two and one-half (2.5) times the area of the suction pipe and they shall be screened. Each pump shall have an accessible check valve on the discharge side between the pump and the shut-off valve or a combination valve that performs both control valve and check valve functions. Surge relief measures shall be designed to minimize hydraulic transients. ()

b. In general, piping shall be designed so that it will have watertight joints, be protected against surge or water hammer, be provided with suitable restraints where necessary, be designed so that friction losses will be minimized, and not be subject to contamination. Each pump shall have an individual suction line or the suction lines shall be manifolded such that they will ensure similar hydraulic and operating conditions. ()

c. Each pump station shall have a standard pressure gauge on its discharge line and suction line. ()

d. Water seals shall not be supplied with water of a lesser sanitary quality than that of the water being pumped. Where pumps are sealed with potable water and are pumping water of lesser sanitary quality, the seal shall: ()

i. Be provided with either an approved reduced pressure principle backflow preventer or a break tank open to atmospheric pressure, ()

ii. Where a break tank is provided, have an air gap of at least six (6) inches or two (2) pipe diameters, whichever is greater, between the feeder line and the flood rim of the tank. ()

e. Pumps, their prime movers, and accessories shall be controlled in such a manner that they will operate at rated capacity without dangerous overload. Where two (2) or more pumps are installed, provision shall be made for alternation. Provision shall be made to prevent energizing the motor in the event of a backspin cycle. Equipment shall be provided or other arrangements made to prevent surge pressures from activating controls which switch on pumps or activate other equipment outside the normal design cycle of operation. ()

04. Booster Pumps. In addition to other applicable requirements in Section 541, booster pumps must comply with the following: ()

a. In-line booster pumps shall maintain an operating pressure that is consistent with the requirements specified in Subsection 552.01, and shall be supplied with an automatic cutoff when intake pressure is less than or equal to five (5) psi. ()

b. Booster pumps with a suction line directly connected to any storage reservoirs shall be protected by an automatic cutoff to prevent pump damage and avoid excessive reservoir drawdown. ()

c. Each booster pumping station shall contain not less than two (2) pumps with capacities such that peak hour demand, or a minimum of the maximum day demand plus equalization storage, can be satisfied with any pump out of service. See Subsection 501.18 for general design requirements concerning fire flow capacity. ()

542. FACILITY AND DESIGN STANDARDS - DISTRIBUTION SYSTEM.

01. Protection from Contamination. The distribution system shall be protected from contamination and be designed to prevent contamination by steam condensate or cooling water from engine jackets or other heat exchange devices. ()

02. Installation of Water Mains. Division 400 of "Idaho Standards for Public Works Construction," referenced in Subsection 002.02, may be used as guidance for installation of water mains. In addition, the following provisions shall apply: ()

a. Installed pipe shall be pressure tested and leakage tested in accordance with the applicable AWWA Standards, incorporated by reference into these rules at Subsection 002.01. ()

b. New, cleaned, and repaired water mains shall be disinfected in accordance with AWWA Standard C651, incorporated by reference into these rules at Subsection 002.01. The specifications shall include detailed procedures for the adequate flushing, disinfection, and microbiological testing of all water mains. ()

c. In areas where aggressive soil conditions are suspected or known to exist, analyses shall be performed to determine the actual aggressiveness of the soil. If soils are found to be aggressive, action shall be taken to protect metallic joint restraints and the water main, such as encasement in polyethylene, provision of cathodic protection, or use of corrosion resistant materials. ()

d. The Department must approve any interconnection between potable water supplies, taking into account differences in water quality between the two systems. ()

e. A continuous and uniform bedding shall be provided in the trench for all buried pipe. Backfill material shall be tamped in layers around the pipe and to a sufficient height above the pipe to adequately support and

protect the pipe. Stones found in the trench shall be removed for a depth of at least six (6) inches below the bottom of the pipe. ()

f. Water mains shall be covered with sufficient earth or other insulation to prevent freezing. ()

g. All tees, bends, plugs and hydrants shall be provided with reaction blocking, tie rods or joints designed to prevent movement. ()

03. Pressure Relief Valves. All pumps connected directly to the distribution system shall be designed in conjunction with a water pressure relief valve of type, size, and material approved by the Department unless the Department approves another method that will prevent excessive pressure development. ()

04. Flow Meter Required. Unless otherwise approved by the Department based on documentation provided by the design engineer, all source pumps and booster pumps connected directly to the distribution system shall have an instantaneous and totalizing flow meter, equipped with nonvolatile memory, installed in accordance with manufacture's specifications. ()

05. Pipe and Jointing Materials. Pipe and jointing materials comply with the standards set forth in Subsection 501.01. Pipe shall be manufactured of materials resistant internally and externally to corrosion and not imparting tastes, odors, color, or any contaminant into the system. Where distribution systems are installed in areas of ground water contaminated by organic compounds: ()

a. Pipe and joint materials which do not allow permeation of the organic compounds shall be used; and ()

b. Non-permeable materials shall be used for all portions of the system including pipe, joint materials, hydrant leads, and service connections. ()

06. Size of Water Mains. When fire hydrants are provided, they shall not be connected to water mains smaller than six (6) inches in diameter, and fire hydrants shall not be installed unless fireflow volumes are available. If fire flow is not provided, water mains shall be no less than three (3) inches in diameter. Any departure from this minimum standard shall be supported by hydraulic analysis and detailed projections of water use. ()

07. Separation of Potable, Non-Potable, and Raw Water Pipelines. The requirements for the protection of potable mains from contamination by non-potable pipelines are described in Subsections 542.07.a. through 542.07.c. For the purposes of Subsection 542.07, the term "pipeline" applies to both mains and services. The Department will use the Memorandum of Understanding with the Plumbing Bureau as guidance in determining the relative responsibilities for reviewing service lines. The conditions of Subsections 542.07.a. and 542.07.b. shall apply to all potable services constructed or reconstructed after April 15, 2007 and where the Department or the QLPE is the reviewing authority. Raw water pipelines must be protected from contamination from non-potable pipelines, and must not contaminate potable pipelines. They shall therefore meet equivalent separation distances shown below from either potable or non-potable pipelines. ()

a. Parallel installation requirements. ()

i. Potable mains in relation to non-potable mains. ()

(1) Greater than ten (10) feet separation: no additional requirements. ()

(2) Ten (10) feet to six (6) feet separation: separate trenches, with the bottom of the potable main above the top of the non-potable main, and non-potable main constructed with potable water class pipe. ()

(3) Less than six (6) feet separation: design engineer to submit data to the Department for review and approval showing that this installation will protect public health and the environment, non-potable main to be constructed of potable water class pipe, and with the bottom of the potable main above the top of the non-potable main. ()

- (4) Non-potable mains are prohibited from being located in the same trench as potable mains. ()
- (5) Pressure wastewater mains or other pressurized mains or lines containing non-potable fluids shall be no closer horizontally than ten (10) feet from potable mains. ()
 - ii. New potable services in relation to non-potable services, new potable services in relation to non-potable mains, and new non-potable services in relation to potable mains. ()
 - (1) Greater than six (6) feet separation: no additional requirements based on separation distance. ()
 - (2) Less than six (6) feet separation: design engineer to submit data that this installation will protect public health and the environment and non-potable service constructed with potable water class pipe. ()
 - (3) New potable services are prohibited from being located in the same trench as non-potable mains or non-potable services. ()
- b.** Requirements for potable water mains or services crossing non-potable water mains or services. ()
 - i. If there is eighteen (18) inches or more vertical separation with the potable water pipeline above the non-potable pipeline, then the potable pipeline joints must be as far as possible from the non-potable water pipeline. ()
 - ii. If there is eighteen (18) inches or more vertical separation with the potable water pipeline below the non-potable pipeline, then the potable pipeline joints must be as far as possible from the non-potable pipeline, and the non-potable pipeline must be supported through the crossing to prevent settling. ()
 - iii. Less than eighteen (18) inches vertical separation: ()
 - (1) Potable pipeline joint to be as far as possible from the non-potable pipeline; and either: ()
 - (a) Non-potable pipeline constructed with potable water class pipe for a minimum of ten (10) feet either side of potable pipeline with a single twenty (20) foot section of potable water class pipe centered on the crossing; or ()
 - (b) Sleeve non-potable or potable pipeline with potable water class pipe for ten (10) feet either side of crossing. Use of hydraulic cementitious materials such as concrete, controlled density fill, and concrete slurry encasement is not allowed as a substitute for sleeving. ()
 - (2) If potable pipeline is below non-potable pipeline, the non-potable pipeline must also be supported through the crossing to prevent settling. ()
 - iv. Pressure wastewater mains or other pressurized mains or lines containing non-potable fluids shall be no closer vertically than eighteen (18) inches from potable mains. ()
- c.** Existing potable services in relation to new non-potable mains, existing non-potable services in relation to new potable mains, and existing potable services in relation to new non-potable services shall meet the requirements of Subsection 542.07.b., where practical, based on cost, construction factors, and public health significance. If the Department determines that there are significant health concerns with these services, such as where a large existing service serves an apartment building or a shopping center, then the design shall conform with Subsection 542.07.b. ()

08. Separation from Subsurface Wastewater Systems and Other Sources of Contamination. A minimum horizontal distance of twenty-five (25) feet shall be maintained between any potable water pipe and a septic tank or subsurface wastewater disposal system. Guidance on separation from other potential sources of contamination, such as stormwater facilities, may be found on the DEQ website <http://www.deq.idaho.gov>.

()

09. Dead End Mains. All dead end water mains shall be equipped with a means of flushing and shall be flushed at least semiannually at a water velocity of two and one-half (2.5) feet per second. ()

a. Dead ends shall be minimized by making appropriate tie-ins whenever practical in order to provide increased reliability of service and reduce head loss. ()

b. Flushing shall be performed in such a way as to minimize any erosion of unprotected areas and, if applicable, shall be coordinated with the owner of the receiving system. No water main flushing device shall be directly connected to any sewer. ()

c. Stub outs for future main connections shall meet all requirements for dead end mains listed in Subsection 542.09 as determined by the Department. Flushing devices may be temporary in nature. ()

10. Repair of Leaks. Leaking water mains shall be repaired or replaced upon discovery and disinfected in accordance with American Water Works Association (AWWA) Standards, incorporated by reference into these rules at Subsection 002.01. ()

11. Separation from Structures. Water mains shall be separated by at least five (5) feet from buildings, industrial facilities, and other permanent structures. ()

12. Meter Vault Required. All new public water systems shall include a meter vault at each service connection. A lockable shut-off valve shall be installed in the meter vault. This requirement shall also apply to extensions of the distribution system of existing public water systems. ()

13. Minimum Pressure at Building Sites. Any public water system constructed or undergoing material modification where topographical relief may affect water pressure at the customers' premises shall provide the Department with an analysis which demonstrates that the pressure at each designated building site will be at least forty (40) psi, based on dynamic pressure in the main, as set forth in Subsections 552.01.b.i. and 552.01.b.v., plus a static compensation from the elevation of the main to the elevation of each building site. ()

a. If forty (40) psi cannot be provided at each designated building site, the Department may require that reasonable effort be made to provide notification to existing and potential customers of the expected pressure. ()

b. The Department will not authorize a service connection at any designated building site where analysis indicates that pressure will be less than twenty (20) psi static pressure (or twenty-six point five (26.5) psi for two (2) story buildings). ()

14. Isolation Valves. A sufficient number of valves shall be provided on water mains to minimize inconvenience and sanitary hazards during repairs. ()

15. Air Valves. At high points in water mains where air can accumulate, provisions shall be made to remove the air by means of air release and vacuum relief valves or combination air release/vacuum relief valves. Air release valves, vacuum relief valves, or combination air release/vacuum relief valves may not be required if vacuum relief and air release functions in the pipeline can be adequately handled by approved appurtenances such as fire hydrants. ()

a. The open end of an air valve shall be extended to at least one (1) foot above grade and provided with a twenty-four (24) mesh or similar non-corrodible screened, downward-facing elbow. When the air vent on an air relief valve cannot be practically installed above ground, the vent may be below grade provided that the valve is manually operated and the air vent is extended to the top of the valve vault and provided with a twenty-four (24) mesh or similar non-corrodible screened, downward-facing elbow. In addition, for below ground vents, the valve vault must be rated for appropriate traffic loading in traffic areas and the vault drained to daylight or provided with adequate drainage to prevent flooding of the vault. ()

b. Discharge piping from air valves or combination air release/vacuum relief valves shall not connect directly to any storm drain, storm sewer, or sanitary sewer. ()

16. Backflow Protection. Automatic air relief valves shall be equipped with a means of backflow protection. ()

17. Surface Water Crossings. For the purposes of Subsection 542.17, surface water is defined as all surface accumulations of water, natural or artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. This includes, but is not limited to, rivers, streams, canals, ditches, lakes, and ponds. Surface water crossings, whether over or under water, shall be constructed as follows: ()

a. Above water crossings: the pipe shall be adequately supported and anchored, protected from damage and freezing, and shall be accessible for repair or replacement. ()

b. Under water crossings: A minimum cover of two (2) feet shall be provided over the pipe. When crossing a water course that is greater than fifteen (15) feet in width, the following shall be provided: ()

i. The pipe shall be of special construction, having flexible, restrained, or welded water-tight joints; and ()

ii. Valves shall be provided at both ends of water crossings so that the section can be isolated for testing or repair; the valves shall be easily accessible and not subject to flooding; and ()

iii. Permanent taps or other provisions to allow insertion of a small meter to determine leakage and obtain water samples shall be made on each side of the valve closest to the supply source. ()

543. FACILITY AND DESIGN STANDARDS: CROSS CONNECTION CONTROL.

There shall be no connection between the distribution system and any pipes, pumps, hydrants, water loading stations, or tanks whereby unsafe water or other contaminating materials may be discharged or drawn into a public water system. The water purveyor is responsible through its cross connection control program to take reasonable and prudent measures to protect the water system against contamination and pollution from cross connections through premises isolation or containment, internal or in-plant isolation, fixture protection, or some combination of premises isolation, internal isolation, and fixture protection. ()

01. Testable Assemblies. All double check valve backflow prevention assemblies, reduced pressure principle backflow prevention assemblies, spill resistant vacuum breakers, and pressure vacuum breakers used must pass a performance test conducted by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research (USC Foundation) and be included on the USC Foundation "List of Approved Assemblies." ()

02. Atmospheric Vacuum Breakers. All atmospheric vacuum breakers used shall be marked approved either by the International Association of Plumbing and Mechanical Officials (IAPMO) or by the American Society of Sanitation Engineers (ASSE). ()

03. Replacement Parts and Components. All replacement parts and components, including resilient seated shutoff valves, shall meet original manufacturer's specifications or otherwise be approved by the USC Foundation as replacement parts or components for use on double check valve backflow prevention assemblies, reduced pressure principle backflow prevention assemblies, pressure vacuum breakers, and spill resistant pressure vacuum breakers. The design, material, or operational characteristics of any assembly must not be altered during maintenance or repair. ()

04. Assembly Selection. Appropriate and adequate backflow prevention assembly types for various facilities, fixtures, equipment, and uses of water should be selected from the AWWA Pacific Northwest Section Cross Connection Control Manual, the Uniform Plumbing Code, the AWWA Recommended Practice for Backflow Prevention and Cross Connection Control (M14), the USC Foundation Manual of Cross Connection Control, or other sources deemed acceptable by the Department. The selected assembly manufacturer model number must be included

on the USC Foundation “List of Approved Assemblies” and must comply with local ordinances. ()

544. FACILITY AND DESIGN STANDARDS: GENERAL DESIGN OF FINISHED WATER STORAGE.

The materials and designs used for finished water storage structures shall provide stability and durability as well as protect the quality of the stored water. Finished water storage structures shall be designed to maintain water circulation and prevent water stagnation. Steel structures and facilities such as steel tanks, standpipes, reservoirs, and elevated tanks shall be designed and constructed in accordance with applicable AWWA Standards, incorporated by reference into these rules at Subsection 002.01. Other materials of construction are acceptable when properly designed to meet the requirements of Section 544. ()

01. Sizing and Isolation Requirements. ()

a. Storage facilities shall have sufficient capacity, as determined from engineering studies that consider peak flows, fire flow capacity, and analysis of the need for various components of finished storage as defined under the term “Components of Finished Water Storage” in Section 003. The requirement for storage may be reduced when the source and treatment facilities have sufficient capacity with standby power to supply peak demands of the system. ()

b. All storage structures which provide pressure directly to the distribution system, such as elevated storage structures or ground level storage structures with associated pumping systems, shall be designed so they can be isolated and drained for cleaning or maintenance without causing a loss of pressure in the distribution system. ()

02. Location. Storage facilities shall be located in a manner that protects against contamination, ensures structural stability, protects against flooding, and provides year-round access by vehicles and equipment needed for repair and maintenance. ()

a. If the bottom elevation of a storage reservoir must be below normal ground surface, it shall be placed above the seasonal high ground water table. ()

b. Non-potable mains and services, standing water, and similar sources of possible contamination must be kept at least fifty (50) feet from any partially buried or below-ground storage structure or facility, except that non-potable mains and services constructed of potable water class pipe are allowed as close as twenty (20) feet from a partially buried or below-ground storage structure or facility. Partially buried or below-ground storage structures or facilities shall be located a minimum of fifty (50) feet from the nearest property line. ()

c. No public water supply storage tank shall be located within five hundred (500) feet of any municipal or industrial wastewater treatment plant or any land which is spray irrigated with wastewater or used for sludge disposal. ()

d. The top of a partially buried storage structure shall not be less than two (2) feet above normal ground surface. ()

e. Ground-level or above-ground storage structures or facilities shall be located a minimum of twenty (20) feet from the nearest property line and a minimum of twenty (20) feet from any potential source of contamination. ()

03. Protection from Contamination. All finished water storage structures shall have suitable watertight roofs which exclude birds, animals, insects, and excessive dust. The installation of appurtenances, such as antennas, shall be done in a manner that ensures no damage to the tank, coatings or water quality, or corrects any damage that occurred. ()

04. Protection from Trespassers. Fencing, locks on access manholes, and other necessary precautions shall be provided to prevent trespassing, vandalism, and sabotage. ()

05. Drains. No drain on a water storage structure may have a direct connection to a sewer or storm drain. The design shall allow draining the storage facility for cleaning or maintenance without causing loss of

pressure in the distribution system. ()

06. Overflow. Overflow pipes of any storage structure or facility shall discharge to daylight in a way that will preclude the possibility of backflow to the reservoir and, where practical, be provided with an expanded metal screen installed within the pipe that will exclude rodents and deter vandalism. The overflow pipe shall be of sufficient diameter to permit waste of water in excess of the filling rate. The overflow shall discharge over a drainage inlet structure or a splash plate and, when practical, discharge at an elevation between twelve (12) and twenty-four (24) inches above the receiving surface. ()

a. When an internal overflow pipe is used on above-ground tanks, it shall be located in the access tube. ()

b. The overflow for ground-level, partially buried, or below-ground storage structures or facilities shall have a vertical section of pipe at least two (2) pipe diameters in length and either: ()

i. Be screened with a twenty-four (24) mesh non-corrodible screen installed within the pipe when practical or an expanded metal screen installed within the pipe plus a weighted flapper valve or check; or ()

ii. Be an equivalent system acceptable to the Department. ()

07. Access. Finished water storage structures shall be designed with reasonably convenient access to the interior for cleaning and maintenance. At least two (2) manholes shall be provided above the waterline at each water compartment where space permits, as determined by the Department. One (1) manhole may be allowed on smaller tanks on a case-by-case basis. ()

a. The following access requirements apply to above-ground and ground-level storage structures. Each access manhole shall be framed a minimum of four (4) inches above the surface of the roof at the opening. The actual height above the surface of the roof must be sufficient to prevent incidental contamination from snow accumulation, storm water runoff or accumulation, irrigation water, or other potential sources of contamination. ()

b. The following access requirements apply to, partially buried or below-ground storage structures. Each access manhole shall be elevated a minimum of twenty-four (24) inches above the surface of the roof or the ground level, whichever is higher. The actual height above the surface of the roof or the ground level must be sufficient to prevent incidental contamination from snow accumulation, storm water runoff or accumulation, irrigation water, or other potential sources of contamination. ()

c. Each manhole shall be fitted with a solid water tight cover designed to prevent the entrance of contaminants. Each cover shall be hinged only on one (1) side and shall have a locking device. Unless otherwise approved by the Department based on documentation provided by the design engineer, each cover shall have a framed opening with the lid extending down around the frame at least two (2) inches, and the frame shall be at least four (4) inches high. ()

08. Vents. Finished water storage structures shall be vented. The overflow pipe shall not be considered a vent. Open construction between the sidewall and roof is not permissible. Vents shall: ()

a. Prevent the entrance of surface water and rainwater and extend twelve (12) inches above the roof. ()

b. Exclude birds and animals. ()

c. Exclude insects and dust, as much as this function can be made compatible with effective venting. ()

d. On ground-level, partially buried, or below-ground structures, open downward with the opening at least twenty-four (24) inches above the roof or the ground level and covered with twenty-four (24) mesh non-corrodible screen. The screen shall be installed within the pipe at a location least susceptible to vandalism. ()

e. On above-ground tanks and standpipes, open downward, and be fitted with twenty-four (24) mesh or similar non-corrodible screen. ()

09. Roof and Sidewall. The roof and sidewalls of all water storage structures must be watertight with no openings except properly constructed vents, manholes, overflows, risers, drains, pump mountings, control ports, or piping for inflow and outflow. Particular attention shall be given to the sealing of roof structures which are not integral to the tank body. ()

a. Any pipes running through the roof or sidewall of a metal storage structure must be welded, or properly gasketed. In concrete tanks, these pipes shall be connected to standard wall castings which were poured in place during the forming of the concrete. ()

b. Openings in the roof of a storage structure designed to accommodate control apparatus or pump columns shall be curbed and sleeved with proper additional shielding to prevent contamination from surface or floor drainage. ()

c. The roof of the storage structure shall be sloped to facilitate drainage. Downspout pipes shall not enter or pass through the reservoir. Parapets, or similar construction which would tend to hold water and snow on the roof, will not be approved unless adequate waterproofing and drainage are provided. ()

d. Reservoirs with pre-cast concrete roof structures must be made watertight with the use of a waterproof membrane or similar product. ()

10. Construction Materials. Materials used in storage facility construction shall meet the requirements for water contact surfaces set forth in Subsection 501.01. Porous materials such as wood or concrete block are not acceptable for use in storage construction. ()

11. Protection from Freezing. Finished water storage structures and their appurtenances, especially the riser pipes, overflows, and vents, shall be designed to prevent freezing which will interfere with proper functioning. ()

12. Internal Catwalk. Every catwalk over finished water in a storage structure shall have a solid floor with sealed raised edges, designed to prevent contamination from shoe scrapings and dirt. ()

13. Silt Stops. Removable silt stops shall be provided to prevent sediment from entering the reservoir discharge pipe. ()

14. Grading. The area surrounding a ground-level, partially buried, or below-ground structures shall be graded in a manner that will prevent surface water from standing within fifty (50) feet of it. ()

15. Coatings and Cathodic Protection. Proper protection shall be given to metal surfaces by paints or other protective coatings, by cathodic protective devices, or by both. ()

16. Disinfection. Storage facilities shall be disinfected in accordance with AWWA Standard C652, incorporated by reference into these rules at Subsection 002.01. Two (2) or more successive sets of samples, taken at twenty-four (24) hour intervals, shall indicate microbiologically satisfactory water before the facility is placed into operation. ()

17. Abandonment. All unused subsurface storage tanks shall be removed and backfilled, or abandoned by extracting residual fluids and filling the structure with sand or fine gravel. ()

545. FACILITY AND DESIGN STANDARDS: TREATMENT PLANT STORAGE FACILITIES. The design standards of Section 544 shall apply to treatment plant storage. ()

01. Filter Wash Water. Filter wash water tanks shall be sized, in conjunction with available pump units and finished water storage, to provide the backwash water required by Section 521. Consideration must be given

to the backwashing of several filters in rapid succession. ()

02. Clearwell. When finished water storage is used to provide disinfectant contact time special attention must be given to tank size and baffling. An overflow and vent shall be provided. A minimum of two (2) clearwell compartments shall be provided to allow for cleaning or maintenance. Clearwells constructed under filters may be exempt from the requirements set out in Subsection 544.02.d. when the design provides adequate protection from contamination. ()

03. Adjacent Storage. Finished or treated water must not be stored or conveyed in a compartment adjacent to untreated or partially treated water when the two (2) compartments are separated by a single wall, unless approved by the reviewing authority. ()

04. Other Treatment Plant Storage Tanks. Unless otherwise allowed by the reviewing authority, other treatment plant storage tanks/basins such as detention basins, backwash reclaim tanks, receiving basins, and pump wet-wells for finished water shall be designed as finished water storage structures. In addition, these tanks/basins shall be designed to allow for cleaning or maintenance through temporary tanks, standby pumping capabilities, or other means approved by the Department. ()

546. FACILITY AND DESIGN STANDARDS: DISTRIBUTION SYSTEM STORAGE FACILITIES.

01. Design. The applicable design standards of Section 544 shall be followed for distribution system storage. ()

02. Isolation. Finished water storage structures which provide pressure directly to the distribution system shall be designed so they can be isolated from the distribution system and drained for cleaning or maintenance without causing a loss of pressure in the distribution system. This requirement may be met through available temporary tanks, redundant pumping capabilities, or other temporary means approved by the Department. If the finished water storage structure provides fire flow for the water system, the water system owner shall provide the local fire authority advance notification of cleaning or maintenance events which isolate the structure from the distribution system and reduce available fire flow to less than the minimum required by the local fire authority. ()

03. Drain. Drains shall discharge to daylight in a way that will preclude the possibility of backflow to the reservoir and, where practical, be provided with an expanded metal screen installed within the pipe that will exclude rodents and deter vandalism. The drain shall, when practical, discharge at an elevation between twelve (12) and twenty-four (24) inches above the receiving surface, and discharge over a drainage inlet structure or a splash plate. ()

04. Level Controls. Adequate controls shall be provided to maintain levels in distribution system storage structures. Level indicating devices shall be provided at a central location. ()

547. FACILITY AND DESIGN STANDARDS: HYDROPNEUMATIC TANK SYSTEMS.

Hydropneumatic tanks use compressed air to regulate pump cycling and to absorb pressure surges (water hammer). These tanks do not provide true storage. Systems serving more than one-hundred-fifty (150) homes are generally better served by providing reservoir storage, as set forth in Sections 544, 545 and 546. ()

01. General Design of Hydropneumatic Systems. ()

a. Tanks shall be located above normal ground surface and be completely housed. ()

b. Tanks shall have bypass piping to permit operation of the system while the tank is being repaired or painted. Exterior surfaces and accessible interior surfaces shall be provided with protective coatings and shall be maintained in good condition. Supports beneath tanks shall be structurally sound. ()

c. Tanks shall be sized to limit pump cycles to not more than six (6) per hour unless a pump manufacturer's warranty specifically supports more frequent cycling. The number of pump cycles may be increased in systems with multiple pumps if a means to automatically alternate pumps is provided. The Franklin Electric AIM

manual, referenced in Subsection 002.02, Chapter 11 of the Washington State Department of Health Water System Design Manual, referenced in Subsection 002.02, or manufacturer's recommendations may be used as guidance in calculating the size of hydropneumatic tanks. ()

d. Tanks of greater than one-hundred twenty (120) gallons volume shall conform with the American Society of Mechanical Engineers (ASME) specifications code for unfired pressure vessels. Tanks of less than one hundred twenty (120) gallons volume shall meet the ASME code or be certified by a nationally recognized testing agency to be capable of withstanding twice the maximum allowable working pressure. ()

02. Requirements Specific to Conventional Hydropneumatic Tanks. Conventional tanks are those that have a direct air to water interface and require periodic air recharge to compensate for absorption of air into the water. ()

a. Each tank shall have an access manhole, a drain, and control equipment consisting of a pressure gauge, water sight glass, automatic or manual air blow-off, means for adding air that is filtered or otherwise protected from contamination, and pressure operated start-stop controls for the pumps. If tank size allows, the access manhole shall be at least twenty-four (24) inches in diameter. ()

b. The gross volume of tanks in systems served by variable speed pumps may be less than that required for systems served by constant speed pumps. Design volumes shall be approved by the Department on a site-specific basis. ()

03. Requirements Specific to Bladder Tanks. Bladder tanks have a membrane that separates air and water inside the tank. ()

a. Bladder tanks must be pre-charged with air to a pressure of five (5) psi below the setting at which the pump turns on (the low operating pressure for the system). ()

b. Each manifold assembly shall have a pressure gauge and pressure operated start-stop controls for the pumps. ()

c. The procedure for sizing bladder tanks is to determine the number of a selected size of tanks that are needed to provide pump protection. Reduced tank volume in systems served by variable speed pumps shall be approved by the Department on a site specific basis. ()

548. FACILITY AND DESIGN STANDARDS: DISINFECTION OF FACILITIES PRIOR TO USE. Any supplier of water for a public water system shall ensure that new construction or modifications to an existing system shall be flushed and disinfected in accordance with American Water Works Association (AWWA) Standards, incorporated by reference into these rules at Subsection 002.01, prior to being placed into service. ()

549. -- 551. (RESERVED)

552. OPERATING CRITERIA FOR PUBLIC WATER SYSTEMS.

01. Quantity and Pressure Requirements. Design requirements regarding pressure analysis are found in Section 542.13. ()

a. Minimum Capacity. The capacity of a public drinking water system shall be at least eight hundred (800) gallons per day per residence. ()

i. The minimum capacity of eight hundred (800) gallons per day shall be the design maximum day demand rate exclusive of irrigation and fire flow requirements. ()

ii. The minimum capacity of eight hundred (800) gallons per day is only acceptable if the public drinking water system has equalization storage of finished water in sufficient quantity to compensate for the difference between a water system's maximum pumping capacity and peak hour demand. ()

iii. The design capacity of a public drinking water system for material modifications may be less than eight hundred (800) gallons per day per residence if the water system owner provides information that demonstrates to the Department's satisfaction the maximum day demand for the system, exclusive of irrigation and fire flows, is less than eight hundred (800) gallons per day per residence. ()

b. Pressure. All public water systems shall meet the following requirements: ()

i. Any public water system shall be capable of providing sufficient water during maximum day demand conditions, including fire flow where provided, to maintain a minimum pressure of twenty (20) psi throughout the distribution system, at ground level, as measured at the service connection or along the property line adjacent to the consumer's premises. ()

ii. Public Notification. ()

(1) During unplanned or emergency situations, when water pressure within the system is known to have fallen below twenty (20) psi, the water supplier must notify the Department, provide public notice to the affected customers within twenty-four (24) hours, and disinfect or flush the system as appropriate. When sampling and corrective procedures have been conducted and after determination by the Department that the water is safe, the water supplier may re-notify the affected customers that the water is safe for consumption. The water supplier shall notify the affected customers if the water is not safe for consumption. ()

(2) During planned maintenance or repair situations, when water pressure within the system is expected to fall below twenty (20) psi, the water supplier must provide public notice to the affected customers prior to the planned maintenance or repair activity and shall ensure that the water is safe for consumption. ()

iii. If an initial investigation by the water supplier fails to discover the causes of inadequate or excessive pressure, the Department may require the water supplier to conduct a local pressure monitoring study to diagnose and correct pressure problems. Compliance with these requirements by water systems that do not have a meter vault or other point of access at the service connection or along the property line adjacent to the consumer's premises where pressure in the distribution system can be reliably measured shall be determined by measurements within the consumer's premises, or at another representative location acceptable to the Department. ()

iv. Copies of pressure monitoring study reports required under Subsection 552.01.b.iii. detailing study results and any resulting corrective actions planned or performed by the public water system shall be submitted to the Department in accordance with these rules. ()

v. The following public water systems or service areas of public water systems shall maintain a minimum pressure of forty (40) psi throughout the distribution system, during peak hour demand conditions, excluding fire flow, measured at the service connection or along the property line adjacent to the consumer's premises. ()

(1) Any public water system constructed or substantially modified after July 1, 1985. ()

(2) Any new service areas. ()

(3) Any public water system that is undergoing material modification where it is feasible to meet the pressure requirements as part of the material modification. ()

vi. Any public water system shall keep static pressure within the distribution system below one hundred (100) psi and should ordinarily keep static pressure below eighty (80) psi. Pressures above one hundred (100) psi shall be controlled by pressure reducing valve stations installed in the distribution main. In areas where failure of installed pressure reducing valve stations would result in extremely high pressure, pressure relief valves may be required. The Department may approve the use of pressure reducing devices at individual service connections on a case by case basis, if it can be demonstrated that higher pressures in portions of the distribution system are required for efficient system operation. If system modification will cause pressure to routinely exceed eighty (80) psi, or if a check valve or an individual pressure reducing device is added to the service line, the water system owner shall notify affected customers. Notification may include reasons for the elevated pressure, problems or damage that

elevated pressure can inflict on appliances or plumbing systems, and suggested procedures or mitigation efforts affected property owners may initiate to minimize problems or damage. ()

vii. The Department may allow the installation of booster pump systems at individual service connections on a case by case basis. However, such an installation may only occur with the full knowledge and agreement of the public water system, including assurance by the water system that the individual booster pump will cause no adverse effects on system operation. ()

viii. For elevated storage tanks, pressure calculations during peak hour demand shall be based on the lowest water level after both operational storage and equalization storage have been exhausted. Pressure calculations during fire flow demands shall be based on the lowest water level after operational storage, equalization storage, and fire suppression storage have been exhausted. ()

ix. For hydropneumatic tanks, pressure calculations shall be based on the lowest pressure of the pressure cycle and this requirement shall be noted in the operation and maintenance manual. ()

c. Fire Flows. Any public water system designed to provide fire flows shall ensure that such flows are compatible with the water demand of existing and planned fire-fighting equipment and fire fighting practices in the area served by the system. ()

d. Irrigation Flows. ()

i. Any public water system constructed after November 1, 1977, shall be capable of providing water for uncontrolled, simultaneous foreseeable irrigation demand, which shall include all acreage that the system is designed to irrigate. ()

(1) The Department must concur with assumptions regarding the acreage to be irrigated. In general, an assumption that no outside watering will occur is considered unsound and is unlikely to be approved. ()

(2) An assumption of minimal outside watering, as in recreational subdivisions, may be acceptable if design flows are adequate for maintenance of "green zones" for protection against wildland fire. ()

ii. The requirement of Subsection 552.01.d.i. may be modified by the Department if: ()

(1) A separate irrigation system is provided; or ()

(2) The supplier of water can regulate the rate of irrigation through its police powers, and the water system is designed to accommodate a regulated rate of irrigation flow. The Department may require the water system to submit a legal opinion addressing the enforceability of such police powers. ()

iii. If a separate non-potable irrigation system is provided for the consumers, all mains, hydrants and appurtenances shall be easily identified as non-potable. The Department must concur with a plan to ensure that each new potable water service is not cross-connected with the irrigation system. ()

02. Ground Water. ()

a. Public water systems constructed after July 1, 1985, and supplied by ground water, shall treat water within the system by disinfection if the ground water source is not protected from contamination. ()

b. The Department may, in its discretion, require disinfection for any existing public water system supplied by ground water if the system has repeated coliform present samples or E.coli MCL exceedances, and if the system does not appear adequately protected from contamination. Adequate protection will be determined based upon at least the following factors: ()

i. Location of possible sources of contamination; ()

ii. Size of the well lot; ()

- iii. Depth of the source of water; ()
- iv. Bacteriological quality of the aquifer; ()
- v. Geological characteristics of the area; and ()
- vi. Adequacy of development of the source. ()

03. Operating Criteria. The operating criteria for systems that provide filtration shall be as follows: ()

a. A project specific operation and maintenance manual shall be provided as required in Subsection 501.12. See definition of Operation and Maintenance Manual in Section 003 for the typical contents of an operation and maintenance manual and the included operations plan. For the operations plan in the operation and maintenance manual, additional guidance for several types of filtration systems can be found in the Department's SWTR Compliance Guidance referenced in Subsection 002.02. ()

b. The system shall conduct monitoring specified by the Department before serving water to the public in order to protect the health of consumers served by the system. ()

c. New treatment facilities shall be operated in accordance with Subsection 552.03.a., and the system shall conduct monitoring specified by the Department for a trial period specified by the Department before serving water to the public in order to protect the health of consumers served by the system. ()

04. Chlorination. Systems that regularly add chlorine to their water are subject to the provisions of Section 320. Systems using surface water or ground water under the direct influence of surface water, are subject to the disinfection requirements of Sections 300 and 518. ()

a. Systems using only ground water that add chlorine for the purpose of disinfection, as defined in Section 003, are subject to the following requirements: ()

i. Chlorinator and chlorine contact tank capacity shall be such that the system is able to demonstrate that it is routinely achieving four (4) logs (ninety-nine point ninety-nine percent) (99.99%) inactivation/removal of viruses. The required effective contact time will be specified by the Department. This condition must be attainable even when the plant design capacity coincides with anticipated maximum chlorine demands. ()

ii. A detectable chlorine residual shall be maintained throughout the distribution system. ()

iii. Automatic proportioning chlorinators are required where the rate of flow or chlorine demand is not reasonably constant. ()

iv. Analysis for free chlorine residual shall be conducted at a location at or prior to the first service connection at least daily and records of these analyses shall be kept by the supplier of water for at least one (1) year. A report of all daily chlorine residual measurements for each calendar month shall be submitted to the Department no later than the tenth day of the following month. The frequency of measuring free chlorine residuals shall be sufficient to detect variations in chlorine demand or changes in water flow. ()

v. If gas chlorination equipment is provided, a separate and ventilated room is required. ()

vi. The Department may, in its discretion, require a treatment rate higher than that specified in Subsection 552.04.a.i. ()

vii. When chlorine gas is used, chlorine leak detection devices and safety equipment shall be provided and equipped with both an audible alarm and a warning light. ()

viii. The Department may require redundant chlorine pumping capabilities with automatic switchover

for systems with documented source water contamination problems and that lack adequate storage to supply the system during a pump failure. ()

b. Systems using only ground water that add chlorine for the purpose of maintaining a disinfectant residual in the distribution system, when the source(s) is not at risk of microbial contamination, are subject to the following requirements: ()

i. Automatic proportioning chlorinators are required where the rate of flow or chlorine demand is not reasonably constant. ()

ii. Analysis for free chlorine residual shall be made at a frequency that is sufficient to detect variations in chlorine demand or changes in water flow. ()

c. Systems using only ground water that add chlorine for other purposes, such as oxidation of metals or taste and odor control, when the source(s) is known to be free of microbial contamination, must ensure that chlorine residual entering the distribution system after treatment is less than four (4.0) mg/L. The requirements in Subsection 552.04.b.ii. also apply if the system maintains a chlorine residual in the distribution system. ()

05. Fluoridation. ()

a. Commercial sodium fluoride, sodium silico fluoride and hydrofluosilicic acid which conform to the applicable American Water Works Association (AWWA) Standards, incorporated by reference into these rules at Subsection 002.01, are acceptable. Use of other chemicals shall be specifically approved by the Department. ()

b. Fluoride compounds shall be stored in covered or unopened shipping containers. ()

c. Provisions shall be made to minimize the quantity of fluoride dust. Empty bags, drums, or barrels shall be disposed of in a manner that will minimize exposure to fluoride dusts. ()

d. Daily records of flow and amounts of fluoride added shall be kept. An analysis for fluoride in finished water shall be made at least weekly. Records of these analyses shall be kept by the supplier of water for five (5) years. ()

06. Cross Connection Control Program - Community Water Systems. The water purveyor is responsible through its cross connection control program to take reasonable and prudent measures to protect the water system against contamination and pollution from cross connections through premises isolation, internal or in-plant isolation, fixture protection, or some combination of premises isolation, internal isolation, and fixture protection. Pursuant to Section 543, all suppliers of water for community water systems shall implement a cross connection control program to prevent the entrance to the system of materials known to be toxic or hazardous. The water purveyor is responsible to enforce the system's cross connection control program. The program will at a minimum include: ()

a. An inspection program to locate cross connections and determine required suitable protection. For new connections, suitable protection must be installed prior to providing water service. ()

b. Required installation and operation of adequate backflow prevention assemblies. Appropriate and adequate backflow prevention assembly types for various facilities, fixtures, equipment, and uses of water should be selected from the AWWA Pacific Northwest Section Cross Connection Control Manual, the Uniform Plumbing Code, the AWWA Recommended Practice for Backflow Prevention and Cross Connection Control (M14), the USC Foundation Manual of Cross Connection Control, or other sources deemed acceptable by the Department. The assemblies must meet the requirements of Section 543 and comply with local ordinances. ()

c. Annual inspections and testing of all installed backflow prevention assemblies by a tester licensed by a licensing authority recognized by the Department. Testing shall be done in accordance with the test procedures published by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research. See the USC Foundation Manual of Cross-Connection Control referenced in Subsection 002.02. ()

d. Discontinuance of service to any structure, facility, or premises where suitable backflow protection has not been provided for a cross connection. ()

e. Assemblies that cannot pass annual tests or those found to be defective shall be repaired, replaced, or isolated within ten (10) business days. If the failed assembly cannot be repaired, replaced, or isolated within ten (10) business days, water service to the failed assembly shall be discontinued. ()

07. Cross Connection Control - Non-Community Water Systems. All suppliers of water for non-community water systems shall ensure that cross connections do not exist or are isolated from the potable water system by an approved backflow prevention assembly. Backflow prevention assemblies shall be inspected and tested annually for functionality by an Idaho licensed tester, as specified in Subsections 552.06.c. and 552.06.e. ()

08. Start-up Procedures For Seasonal Systems Subject To Subsections 100.01.a., c., and d. ()

a. All seasonal system owners and operators must demonstrate completion of a Department approved start-up procedure, including start-up sampling, prior to serving water to the public. The system owner or operator must submit information on a Department provided or approved form that includes a statement certifying that the system owner or operator followed proper start-up procedures. The form shall be submitted to the Department within 30 (thirty) days following the system's start-up date. ()

b. The Department may exempt any seasonal system from Subsection 552.08.a. if the entire distribution system remains pressurized during the entire period that the system is not operating, except that the systems that monitor less frequently than monthly must still monitor during the vulnerable period designated by the Department. The Department may exempt a seasonal system from Subsection 552.08.a. if the owner or operator of the system meets all of the following conditions: ()

i. Requests an exemption in writing to the Department for approval; ()

ii. Demonstrates a clean compliance history as defined in Section 003 for a minimum of five (5) years; ()

iii. Has no uncorrected significant deficiencies from the most recent sanitary survey; and ()

iv. Total coliform samples submitted to a certified laboratory within 30 (thirty) days prior to serving water to the public demonstrate the absence of total coliform. ()

553. CLASSIFICATION OF WATER SYSTEMS.

01. System Classification Required. The Department shall classify community, nontransient noncommunity, and surface water systems based on indicators of potential health risks. ()

a. The owner or designee of every community and nontransient noncommunity public water system shall submit proof of the current conditions related to the classification of the system every five (5) years or more frequently if required by the Department. ()

b. The owner or designee of all surface water systems shall submit proof of the current conditions related to the classification of the system every five (5) years or more frequently if required by the Department. ()

02. Classification Criteria. Systems shall be classified under a system that uses the following criteria: ()

a. Complexity, size, and type of source water for treatment facilities. ()

b. Complexity and size of distribution systems. ()

- c. Other criteria deemed necessary to completely classify systems. ()
- d. The Department shall develop guidelines for applying the criteria set forth in Section 553. ()

554. LICENSE REQUIREMENTS.

01. Licensed Operator Required. ()

a. Owners of all community and nontransient noncommunity public drinking water systems must place the direct supervision of their drinking water system, including each treatment facility and distribution system, under the responsible charge of a properly licensed operator. ()

b. Owners of all surface water systems must place the direct supervision of their public drinking water system under the responsible charge of a properly licensed operator. ()

02. Responsible Charge Operator License Requirement. An operator in responsible charge of a public drinking water system must hold a valid license equal to or greater than the classification of the public water system where the responsible charge operator is in responsible charge. Responsible charge means active, daily on-site or on-call responsibility for the performance of operations or active, on-going, on-site, or on-call direction of employees and assistants. ()

03. Substitute Responsible Charge Operator License Requirement. At such times as the responsible charge operator is not available, a substitute responsible charge operator shall be designated to replace the responsible charge operator. A substitute responsible charge operator of a public water system must hold a valid license equal to or greater than the classification of the public water system where the substitute responsible charge operator is in responsible charge. ()

04. Shift Operator Requirement. Any public drinking water system subject to these requirements with multiple operating shifts must have a designated properly licensed operator available for each operating shift. An on-duty designated shift operator does not replace the requirements in Subsections 554.01 and 554.03 for responsible charge operator coverage during all operating shifts. ()

05. Water Operator License Requirement. All operating personnel at public drinking water systems subject to these requirements making process control/ system integrity decisions about water quality or quantity that affect public health must hold a valid and current license. ()

555. -- 559. (RESERVED)

560. CONTRACTING FOR SERVICES.

Public water systems may contract with persons to provide responsible charge operators and substitute responsible charge operators. Proof of such contract shall be submitted to the Department prior to the contracted person performing any services at the public water system. ()

561. -- 562. (RESERVED)

563. ADVISORY GROUP.

Stakeholder Involvement. Ongoing stakeholder involvement will be provided through the existing drinking water advisory committee at the Department. ()

564. -- 899. (RESERVED)

900. TABLES.

01. Table 1 -- Minimum Distances From a Public Water System Well.

| Minimum Distances from a Public Water System Well | |
|---|------------------------------------|
| Gravity wastewater line | 50 feet |
| Any potential source of contamination | 50 feet |
| Pressure wastewater line | 100 feet |
| Class A Municipal Reclaimed Wastewater Pressure distribution line | 50 feet |
| Individual home septic tank | 100 feet |
| Individual home disposal field | 100 feet |
| Individual home seepage pit | 100 feet |
| Privies | 100 feet |
| Livestock | 50 feet |
| Drainfield - standard subsurface disposal module | 100 feet |
| Absorption module - large soil absorption system | 150 - 300 feet, see IDAPA 58.01.03 |
| Canals, streams, ditches, lakes, ponds and tanks used to store non-potable substances | 50 feet |
| Storm water facilities disposing storm water originating off the well lot | 50 feet |
| Municipal or industrial wastewater treatment plant | 500 feet |
| Reclamation and reuse of municipal and industrial wastewater sites | See IDAPA 58.01.17 |
| Biosolids application site | 1,000 feet |

()

02. Table 2 - Well Casing Standards for Public Water System Wells.

| STEEL PIPE | | | | | |
|-------------------|----------|----------|--------------------|--------------------------|----------------------------|
| | | | | WEIGHT PER FOOT (pounds) | |
| DIAMETER (inches) | | | THICKNESS (inches) | Plain Ends | With Threads and Couplings |
| SIZE | External | Internal | | (calculated) | (nominal) |
| 6 (id) * | 6.625 | 6.065 | 0.280 | 18.97 | 19.18 |
| 8 | 8.625 | 7.981 | 0.322 | 28.55 | 29.35 |
| 10 | 10.750 | 10.020 | 0.365 | 40.48 | 41.85 |
| 12 | 12.750 | 12.000 | 0.375 | 49.56 | 51.15 |

| STEEL PIPE | | | | | |
|------------|--------|--------|-------|--------|-------|
| 14 (od) * | 14.000 | 13.250 | 0.375 | 54.57 | 57.00 |
| 16 | 16.000 | 15.250 | 0.375 | 62.58 | |
| 18 | 18.000 | 17.250 | 0.375 | 70.59 | |
| 20 | 20.000 | 19.250 | 0.375 | 78.60 | |
| 22 | 22.000 | 21.000 | 0.500 | 114.81 | |
| 24 | 24.000 | 23.000 | 0.500 | 125.49 | |
| 26 | 26.000 | 25.000 | 0.500 | 136.17 | |
| 28 | 28.000 | 27.000 | 0.500 | 146.85 | |
| 30 | 30.000 | 29.000 | 0.500 | 157.53 | |
| 32 | 32.000 | 31.000 | 0.500 | 168.21 | |
| 34 | 34.000 | 33.000 | 0.500 | 178.89 | |
| 36 | 36.000 | 35.000 | 0.500 | 189.57 | |

* id = inside diameter
od = outside diameter

()

901. -- 999. (RESERVED)

58.01.09 – RULES REGULATING SWINE FACILITIES

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Idaho Board of Environmental Quality the authority to promulgate Rules Regulating Swine Facilities pursuant to Sections 39-104A, 39-105, and 39-107, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 58.01.09, “Rules Regulating Swine Facilities.” ()

02. Scope. These rules establish the procedures and requirements for the issuance of a permit to construct, operate, close or expand swine facilities of a defined capacity. The intent of these rules is to ensure animal waste from swine facilities are properly controlled so as not to adversely affect public health or the environment. ()

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. ()

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ()

004. -- 009. (RESERVED)

010. DEFINITIONS.

01. Animal Unit. An animal unit equals two and a half (2.5) swine, each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds), or ten (10) weaned swine, each weighing under twenty-five (25) kilograms. Total animal units are calculated by adding the number of swine weighing over twenty-five (25) kilograms multiplied by four-tenths (.4) plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (.1). ()

02. Animal Waste. Animal excrement, feed wastes, process wastewater or any other waste associated with the confinement of swine. ()

03. Animal Waste Management System. Any structure or system that provides for the collection, treatment, disposal, distribution, or storage of animal waste. ()

04. Certified Planner. A person who has completed the nutrient management certification in accordance with the Nutrient Management Standard. ()

05. Department. The Idaho Department of Environmental Quality. ()

06. Director. The Director of the Department of Environmental Quality or his designee. ()

07. Existing Facility. A facility built and in operation one (1) year or more prior to the original effective date of these rules. ()

08. Expanding Facility. A swine facility of less than two thousand (2,000) animal units that increases its one-time animal unit capacity to two thousand (2,000) or more animal units or an existing facility that increases its one-time animal unit capacity by ten percent (10%). ()

09. Facility or Swine Facility. Any place, site or location or part thereof where swine are kept, handled, housed, or otherwise maintained and includes but is not limited to buildings, lots, pens, and animal waste management system, and which has the one-time animal unit capacity of two thousand (2000) or more animal units. ()

10. Land Application. The spreading on or incorporation of animal waste into the soil mantle primarily for beneficial purposes. ()

11. Nutrient Management Plan. A plan prepared in compliance with the Nutrient Management

Standard or other equally protective standard approved by the Director for managing the amount, source, placement, form, and timing of the land application of nutrients and soil amendments for plant production and to minimize the potential for environmental degradation, particularly impairment of water quality. ()

12. Nutrient Management Standard. The United States Department of Agriculture-Natural Resource Conservation Service Code 590 or the Idaho Agricultural Pollution Abatement Plan-Nutrient Management Standard Component Practice. ()

13. One-Time Animal Unit Capacity. The maximum number of animal units that a facility is capable of housing at any given point in time. ()

14. Operate. Confine, feed, propagate, house, or otherwise sustain swine. ()

15. Permit. A written authorization by the Director to construct, operate, or expand a swine facility. ()

16. Permittee. The person in whose name a permit is issued. ()

17. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity which is recognized by law as the subject of rights and duties. ()

18. Process Wastewater. Any water used in the facility that comes into contact with any manure, litter, bedding, raw, intermediate, or final material or product used in or resulting from the production of swine and any products directly or indirectly used in the operation of a facility, such as spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, or spray cooling of animals; and dust control and any precipitation which comes into contact with animals or animal waste. ()

19. Unauthorized Discharge. A release of animal waste to the environment or waters of the state that is not authorized by the permit or the terms of an NPDES permit issued by the federal EPA. ()

20. Waters of the State. All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. ()

011. -- 099. (RESERVED)

100. APPLICABILITY.

01. Permit Required. No person shall construct, operate, or expand a regulated swine facility without first obtaining a permit issued by the Director as provided in these rules. ()

02. Regulated Facilities. New swine facilities having a one-time animal unit capacity of two thousand (2,000) or more animal units and expanding facilities are required to be permitted as provided in these rules. ()

03. Common Control. Two (2) or more swine facilities under common control of the same person may be considered, for purposes of permitting, to be a single facility, even though separately their capacity is less than two thousand (2,000) animal units, if they use a common animal waste management system or land application site. ()

04. Existing Swine Facilities. Those swine facilities built and in operation one (1) year or more prior to the original effective date of these rules are exempt from the requirements of these rules except as provided in Section 210. ()

101. -- 199. (RESERVED)

200. PERMIT APPLICATION.

01. Permit Application. Every person requiring a permit under these rules shall submit a permit application to the Department. A permit application will be used to determine if the construction, operation, and closure of a swine facility will be in conformance with these and other applicable rules. ()

02. Preapplication Conference. Prospective applicants are encouraged to meet with the Department to discuss application requirements and procedures. ()

03. Contents of Application. Each application shall include, in the format set forth by the Director and when determined applicable by the Director, the following information in Subsections 200.04 through 200.08 in sufficient detail to allow the Director to make necessary application review decisions concerning design, environmental protection and public health. ()

04. Relevant Information. ()

a. Name, mailing address and phone number of the facility owner. ()

b. Name, mailing address and phone number of the facility operator. ()

c. Name and mailing address of the facility. ()

d. Legal description of the facility location. ()

e. The legal structure of the entity owning the facility, including the names and addresses of all directors, officers, registered agents and partners. ()

f. The names and locations of all swine facilities owned and/or operated by the applicant within the last ten (10) years. ()

g. The one-time animal unit capacity of the facility. ()

h. The type of animals to be confined at the facility. ()

i. Evidence that a valid water right exists to supply adequate water for the proposed facility or a copy of either an application for permit to appropriate water or an application to change the point of diversion, place, period and nature of use of an existing water right that has been filed with the Idaho Department of Water Resources which, if approved, will supply adequate water for the proposed operation. ()

j. Proof of financial capability to perform remedial actions and to meet the conditions of an approved closure plan for a facility. The mechanism used to demonstrate financial capability must be legally valid, binding and enforceable under applicable law and must insure that the funds necessary to meet the costs of remediation and closure will be available whenever they are needed in accordance with Section 205. The mechanisms include, but are not limited to, trust funds, surety bonds, letters of credit, insurance and corporate guarantees. ()

k. The facility's biosecurity and sanitary standards. ()

l. A statement of estimated annual income and operating expenses that demonstrate, to the satisfaction of the Department, financial capability to operate the facility. ()

05. Construction Plan. Plans and specifications for the facility's animal waste management system that include the following information: ()

a. Vicinity map(s) prepared on one (1) or more seven and one-half minute (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following: ()

i. Layout of the facility, including buildings and animal waste management system; ()

ii. The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant; ()

iii. The location of occupied dwellings, public and private gathering places, such as schools, churches and parks, and incorporated municipalities which are within a two (2) mile radius of the facility; and ()

iv. Private and community domestic water wells, irrigation wells, irrigation conveyance and drainage structures, monitoring wells, wetlands, streams, springs, and reservoirs which are within a one (1) mile radius of the facility. ()

b. Facility construction specifications including: ()

i. A site plan showing: ()

(1) Building locations; ()

(2) Waste facilities; ()

(3) All waste conveyance systems; and ()

(4) All irrigation systems used for land application, including details of approved water supply protection devices. ()

ii. Building plans showing: ()

(1) All wastewater collection systems in housed units; ()

(2) All freshwater supply systems, including details of approved water supply protection devices; ()

and (3) Detailed drawings of wastewater collection and conveyance systems and containment construction; ()

(4) Detailed construction and installation procedures. ()

06. Site Characterization. A characterization of the facility and any land application site(s) owned or operated by the applicant, prepared by a registered professional geologist, a registered professional engineer or a qualified ground water hydrologist, that includes the following information: ()

a. A description of monitoring methods, frequency, and reporting components related to either leak detection systems and/or ground water monitoring wells; ()

b. The climatic, hydrogeologic, and soil characteristics; ()

c. The depth to water and a potentiometric map for the uppermost and regional aquifer; ()

d. The vertical and horizontal conductivity, gradient, and ground water flow direction and velocity; ()

e. Estimates of recharge to the uppermost aquifer; ()

f. Information which characterizes the relationship between the ground water and adjacent surface waters; and ()

g. A summary of local ground water quality data. ()

07. Nutrient Management Plan. A plan prepared by a Certified Planner demonstrating compliance

with the Nutrient Management Standard for land application. ()

08. Closure Plan. A plan describing the procedures for final closure of a facility that ensures no adverse impacts to the environment and waters of the state and that includes: ()

a. The estimated length of operation of the facility; and ()

b. A description of the procedures, methods, and schedule to be implemented at the facility for final disposal, handling, management and/or treatment of all animal waste. ()

09. Other Information. An applicant shall provide any other information relative to Subsections 200.04 through 200.08 deemed necessary by the Director to assess protection of human health and the environment ()

10. Application Fee. A fee shall be submitted with each permit application as follows: ()

a. Three thousand dollars (\$3,000) for facilities that have a one-time animal unit capacity of less than five-thousand (5,000) animal units; ()

b. Five thousand dollars (\$5,000) for facilities that have a one-time animal unit capacity of five thousand to ten thousand (5,000-10,000) animal units; and ()

c. Ten thousand dollars (\$10,000) for facilities that have a one-time animal unit capacity over ten thousand (10,000) animal units. ()

201. -- 204. (RESERVED)

205. FINANCIAL ASSURANCE REQUIREMENTS.

01. Written Estimate of Costs. The owner of a swine facility shall submit, as part of the permit application, a detailed written estimate, in current dollars, of the cost of hiring a third party to: ()

a. Remediate potential contamination caused by the operation of the facility or of any potential spill or breach, including, without limitation, remediation pursuant to the facility's Spill Contingency Plan; and ()

b. Close the facility in accordance with an approved closure plan. ()

c. The Department must approve the cost estimate as reasonable prior to the issuance of a permit. ()

02. Financial Assurance Mechanisms. The owner shall submit as part of the permit application evidence of financial assurance to cover the approved remediation and closure cost estimates. However, if the Department has determined, prior to October 19, 2000, that a complete application has been submitted, the owner shall submit the remediation and closure cost estimates and financial assurance mechanism to the Department for approval prior to the issuance of a permit. The mechanism used to demonstrate financial assurance shall be submitted to the Department for approval and shall ensure that the funds necessary to meet the approved costs of remediation and closure will be available whenever they are needed. The financial assurance mechanisms allowed for swine facilities shall include any mechanism or a combination of mechanisms meeting the criteria set forth below or other mechanism approved by the Department. ()

a. Trust Fund. ()

i. An owner may satisfy the requirements of Subsection 205.02 by establishing a trust fund and submitting an originally signed duplicate of the trust agreement to the Department. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. ()

ii. After the trust fund is established, whenever the current remediation and closure cost estimates change, the owner must compare the new estimates with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner, within sixty (60) days after the change in the cost estimate, must either deposit an amount equal into the fund so that its value after this deposit at least equals the amount of the current remediation or closure cost estimate, or obtain other financial assurance as specified in Subsection 205.02 to cover the difference. ()

iii. If the value of the trust fund is greater than the total amount of the current remediation or closure cost estimate, the owner may submit a written request to the Department for release of the amount in excess of the current remediation or closure cost estimate. ()

iv. If an owner substitutes other financial assurance as specified in Subsection 205.02 for all or part of the trust fund, he may submit a written request to the Department for release of the amount in excess of the current remediation or closure cost estimate covered by the trust fund. ()

b. Surety Bond. ()

i. An owner may satisfy the requirements of Subsection 205.02 by obtaining a payment or performance surety bond and submitting a certified copy of the bond to the Department. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. ()

ii. The penal sum of the bond must be in an amount at least equal to the current remediation and closure cost estimates. ()

iii. Under the terms of the bond, the surety will become liable on the bond obligation when: ()

(1) The owner fails to perform as guaranteed by the bond; or ()

(2) The Department notifies the owner that he has failed to meet requirements of these rules. ()

iv. Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and the Department one hundred twenty (120) days in advance of cancellation. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the Department, as evidenced by the return receipt. The surety shall remain liable on the bond for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure. ()

c. Letter of Credit. ()

i. An owner may satisfy the requirements of Subsection 205.02 by obtaining an irrevocable standby letter of credit and submitting a certified copy of the letter to the Department. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency. ()

ii. The letter of credit must be accompanied by a letter from the owner referring to the letter of credit by number, issuing institution, and date, and providing the following information: the type of facility, name and address of the facility, and the amount of funds assured for remediation and closure of the facility by the letter of credit. ()

iii. The letter of credit must be irrevocable and issued for a period of at least one (1) year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner and the Department by certified mail of a decision not to extend the expiration date. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the Department, as evidenced by the return receipt. The issuing institution shall remain liable on the letter of credit for

costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure. ()

iv. The letter of credit must be issued in an amount at least equal to the current remediation and closure cost estimates. ()

d. Insurance. ()

i. An owner may satisfy the requirements of Subsection 205.02 by obtaining remediation and closure insurance and submitting a certificate of such insurance to the Department. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one (1) or more states. ()

ii. The insurance policy must be issued for a face amount at least equal to the current remediation and closure cost estimates. The term “face amount” means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer’s future liability will be lowered by the amount of the payments. ()

iii. Each insurance policy must contain a provision allowing assignment of the policy to a successor. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused. ()

iv. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. The insurer may cancel the policy by sending notice by certified mail to the owner and the Department one hundred twenty (120) days in advance. Cancellation may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by the Department, as evidenced by the return receipt. The insurer shall remain liable on the policy for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure. ()

e. Corporate Guarantee. ()

i. An owner may satisfy the requirements of Subsection 205.02 by obtaining a written guarantee and submitting a certified copy of the guarantee and appropriate letter from the guarantor. The guarantor must be the direct or higher-tier parent corporation of the owner, a firm whose parent corporation is also the parent corporation of the owner, or a firm with a “substantial business relationship” with the owner. ()

ii. If the guarantor’s parent company is also the parent corporation of the owner, a letter from the guarantor’s chief financial officer must describe the value received in consideration of the guarantee. ()

iii. If the guarantor is a firm with a “substantial business relationship” with the owner, the letter must describe the “substantial business relationship” and the value received in consideration of the guarantee. ()

iv. The terms of the guarantee shall provide that if the owner fails to perform remediation or closure of a facility covered by the guarantee, the guarantor will: ()

(1) Perform, or pay a third party to perform, remediation and closure as required (performance guarantee); or ()

(2) Establish a fully funded trust fund as specified in Subsection 205.02.a. in the name of the owner (payment guarantee). ()

v. The guarantee shall remain in force for as long as the owner must comply with the applicable financial assurance requirements of Subsection 205.02 unless the guarantor sends notice of cancellation by certified mail to the owner and to the Department one hundred twenty (120) days in advance. Cancellation may not occur,

however, during the one hundred twenty (120) days beginning on the date of receipt of the notice by the Department, as evidenced by the return receipt. The guarantor shall remain liable on the guarantee for costs of remediation and closure unless the owner obtains a replacement financial assurance mechanism, approved by the Department in accordance with Subsection 205.02.f., that covers both the existing and future costs of remediation and closure. ()

f. If a financial assurance mechanism is cancelled by the issuing entity, the owner shall obtain alternate financial assurance, within sixty (60) days of receipt of notice of cancellation by the Department, which shall be submitted to the Department for approval. The alternate financial assurance must become effective not later than the effective date of cancellation or termination of the existing financial assurance. An owner may only cancel a financial assurance mechanism after first obtaining an alternative mechanism approved by the Department. ()

03. Continuous Coverage. The owner shall provide continuous coverage for remediation and closure until released from financial assurance requirements by the Department. ()

04. Adjustment of Financial Assurance Amounts. The following provisions apply to the adjustment of the amount of financial assurance: ()

a. The owner shall increase the remediation and closure cost estimates and the amount of financial assurance if changes to the closure plan or facility conditions or operations increase the cost estimates at any time during the active life of the facility. The cost estimates and financial assurance shall also be adjusted to reflect inflation. Increased cost estimates and financial assurance shall be submitted to the Department for approval. ()

b. The owner may reduce the remediation and closure cost estimates and the amount of financial assurance if the cost estimates exceed the maximum cost of remediation or closure at any time during the active life of the facility. The owner shall first notify the Department and obtain its approval of the justification for the reduction of the remediation and closure cost estimates. ()

05. Release from Financial Assurance Requirements. When remediation and closure conditions required by a permit are complete, financial assurance shall be released by the Department as follows: ()

a. When the Department determines that initial closure activities have been completed, financial assurance, less identified retainages, shall be released. ()

b. A sufficient amount of financial assurance shall be retained by the Department, up to five (5) years after closure, to ensure proper remediation and closure of a facility. ()

c. Release of any amount of financial assurance shall not release the owner from any responsibility for meeting remediation or closure requirements. ()

06. Owner Liability. Nothing in these rules shall relieve the owner of liability for remediation and closure costs. The use of all financial assurance shall not relieve the owner from responsibility and liability for remediation and closure costs. ()

206. -- 209. (RESERVED)

210. EXISTING FACILITIES.

01. Registration Requirement. Existing facility owners shall register with the Department within three (3) months after the original effective date of these rules. Registration shall include the information in Subsection 200.04 except for Subsection 200.04.j. Nothing in Section 210 shall be construed to deny an existing facility the opportunity to apply for, and receive, a permit under these rules. ()

02. Plan Requirement. Existing facilities shall submit a nutrient management plan and closure plan to the Director for approval within two (2) years of the original effective date of these rules in accordance with Subsections 200.07 and 200.08. An application fee shall not be required unless the facility is expanding. ()

03. Expanding Facility. The owner of an existing facility shall not increase the one-time animal unit capacity of the facility by ten percent (10%) or more without first obtaining a permit for the expansion as required by these rules. The ten percent (10%) increase is measured cumulatively from the original effective date of these rules. ()

211. -- 249. (RESERVED)

250. REQUIREMENTS FOR WATER QUALITY PROTECTION.

The following minimum design and performance standards are intended as a baseline for protection of public health and the waters of the state. These standards shall apply to all facilities and be reflected in the permit unless the Director approves, based on an applicant's site specific information, that compliance with a specific standard is not required to protect water quality and the public health. Other conditions, as determined by the Director to be necessary to protect water quality, may be included in a permit. ()

01. Animal Waste Management System Design Criteria. A facility's animal waste management system shall be designed and constructed in accordance with the NRCS and the American Society of Agricultural Engineers standards, whichever is most stringent and shall: ()

a. Contain the maximum expected operating water balance and the twenty-five (25) year twenty-four (24) hour rainfall event and the one (1) in five (5) year winter runoff. ()

b. Provide capacity to store the peak volume of process wastewater that will be generated during a six (6) month period. ()

c. Provide a one (1) foot freeboard in addition to the storage requirements, specified in Subsections 250.01.a. and 250.01.b. ()

d. Impoundments, other than for emergency runoff, containing or designed to contain process wastewater shall be designed for efficient leak detection and shall not be located in the one-hundred (100) year floodplain. ()

e. Seepage rates for impoundments shall be no greater than 1×10^{-7} cm/sec. ()

02. Water Quality Monitoring. Ground water and/or leak detection monitoring shall be conducted for every facility with a liquid storage impoundment and shall be designed to give the earliest possible detection of an unauthorized discharge to ground water. ()

03. Discharges. Facilities shall be constructed, operated and maintained to not cause unauthorized discharges. ()

04. Spill Contingency Plan. Facilities shall prepare a discharge response strategy that describes procedures and methods to be implemented for the abatement and cleanup of any pollutant. ()

05. Stockpile Areas. Animal waste stockpile areas, including compost areas, shall be constructed to ensure that all water and precipitation, which comes into contact with the stockpiles, does not enter waters of the state. ()

251. -- 299. (RESERVED)

300. APPLICATION PROCESSING PROCEDURE.

01. Application Completeness. Within thirty (30) days of receipt of an application, the Director shall provide written notice to the applicant as to whether the application meets all the requirements of Section 200. The Department shall provide public notice of the receipt of a complete application. An application which does not, on its face, meet all the requirements of Section 200 of these rules shall be returned to the applicant by the Director with a written list of the deficiencies. The Director will not process an application until it is determined to be complete in accordance with these rules. ()

02. Notice of Environmental Suitability of Facility Location. Within thirty (30) days of the Director's notice that the application is complete, the Director shall determine whether the facility is environmentally suitable for the selected location. In making this decision, the Director shall review the location of the facility relative to flood zones, dwellings, wells, surface and ground water and those other items the applicant must identify on the vicinity map. Written notice of the Director's determination will be sent to the applicant, with a copy sent to the appropriate county and city officials for the selected location, along with a Department analysis that includes the following: ()

a. A brief description of the proposed facility, its animal waste management system and its nutrient management plan; ()

b. A brief summary of the basis for the determination on environmental suitability including references to applicable requirements and supporting materials; ()

c. A description of the schedule for issuing a permit; and ()

d. The name and phone number of the Department staff to contact for additional information. ()

03. Draft Permit. Within sixty (60) days of the Director's determination that a facility is environmentally suitable for its proposed location, the Director shall either issue a draft permit or a notice of denial of a permit to the applicant. The draft permit shall be in the same form as a final permit and shall specify conditions of construction, operation and closure. ()

04. Public Comments. The Department shall provide notice to the public of its issuance of a draft permit. The public may provide written comments for a time period and in a manner specified in the Department's notice. The Department may, in its discretion, provide an opportunity for the public to provide oral comments. ()

05. Permit Denial. The Director may deny a permit if: ()

a. The owner of a facility is not in substantial compliance with a final agency order or any final order or judgement of a court secured by any state or federal agency relating to the operation of a swine facility; ()

b. The application is inaccurate; ()

c. The facility as proposed cannot meet the requirements set forth in these rules or cannot be constructed, operated and closed in a manner that protects human health and the environment; or ()

d. The appropriate county or city does not approve the location of the facility. ()

06. Final Permit. Within sixty (60) days of the issuance of a draft permit, the Director shall issue a final permit to the applicant, however, a permit shall not be issued by the Director until the applicant has received final approval from the appropriate county or city for the location of the facility and has received approval for a water right from the Department of Water Resources. The permit shall be effective for a fixed term of not more than five (5) years, and may be reissued upon receipt of an updated application and demonstration of compliance with the rules and permit requirements existing at the time of reissuance. ()

07. Additional Information. At any time during the application process an applicant shall provide the Director with additional information the Director deems necessary to process a permit, within thirty (30) days of the Director's request. The time period within which the Director must act with regard to the permit shall be stayed until the information requested is provided. If an applicant fails to provide the information within this time period, unless a longer time period is allowed by the Director, the Director may cease the application process and require the applicant to submit a new application. ()

301. -- 399. (RESERVED)

400. PERMIT CONDITIONS.

The following conditions shall apply to all permittees. ()

01. Compliance Required. The permittee shall comply with all conditions of the permit. The permit shall not relieve the permittee of the responsibility to comply with all other applicable local, state, and federal laws. ()

02. Financial Capability. Permittees shall have the financial capability to perform remedial actions and to meet the conditions of an approved closure plan for a facility. ()

03. Construction and Operation of Facility. The permittee shall ensure that construction, operation and maintenance of the facility proceed according to the construction plans and specifications and the approved monitoring, nutrient management and closure plans, and comply with the following: ()

a. Within thirty (30) days of completion of construction, submit as built plans. ()

b. Apply appropriate management practices as approved by the Director. ()

c. The facility or operations associated with the facility shall not create a public health hazard or nuisance conditions including odors. ()

d. The facility shall not dispose of any material not approved for disposal under the permit into the animal waste management system including, but not limited to, human waste. ()

e. The removal of animal waste from an impoundment or storage structure shall be performed in a manner to not damage the integrity of the liner. ()

f. Dead animals shall be removed from the facility for rendering, cremation, burial, composting or other disposal in accordance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." ()

g. Nutrient management plans shall be amended if modifications to the facility operation, as outlined in the Nutrient Management Standard or other conditions, warrant the amendment. ()

h. Soil tests shall be conducted on all land application sites owned or leased by the permittee every year to determine compliance with the nutrient management plan and Nutrient Management Standard. The Director may require more frequent soil tests if deemed necessary. ()

04. Provide Information. The permittee shall furnish to the Director within a reasonable time, any information including copies of records required by the permit or other applicable rules, which the Director may reasonably require to determine whether cause exists for modifying or revoking the permit or to determine compliance with the permit or other applicable rules. ()

05. Entry and Access. The permittee shall allow the Director, consistent with Title 39, Chapter 1, Idaho Code, and in compliance with the biosecurity and sanitary standards of a facility, so long as the standards and requirements do not inhibit reasonable access, to: ()

a. Enter at reasonable times upon the premises of a permitted facility or where records are kept; ()

b. Have access to and copy at reasonable times any records that must be kept under conditions of the permit; ()

c. Inspect any facility or land application site; and ()

d. Sample or monitor at reasonable times, substances or parameters directly related to compliance with the permit or these rules. ()

06. Reporting. The permittee shall report to the Director under the circumstances and in the manner specified in Section 400: ()

a. Orally, no later than twenty-four (24) hours from the time the permittee knows or should reasonably know of any noncompliance which may endanger the public health or the environment; and ()

b. In writing, within five (5) working days from the time a permittee knows or should reasonably know of any event which has resulted or which may result in noncompliance with these rules. The report shall contain: ()

i. A description of the event and its cause or if the cause is not known, steps taken to investigate and determine the cause; ()

ii. The period of the event including, to the extent possible, times and dates; ()

iii. Measures taken to mitigate the event or eliminate the event and protect the public health; and ()

iv. Steps taken to prevent recurrence of the event. ()

c. In writing, when the permittee knows or should reasonably know of material relevant facts not submitted or incorrect information submitted in a permit application or any report or notice to the Director. ()

07. Begin Construction. If a permittee fails to begin construction or expansion of a facility within two (2) years of the effective date of a permit, the Director may void the permit and require a new application. ()

08. Permit Renewal. If a permittee intends to continue operation of the permitted facility after expiration of an existing permit, the permittee shall apply for a new permit at least one hundred eighty (180) days prior to the expiration of any permit issued pursuant to these rules. ()

401. -- 449. (RESERVED)

450. SPECIFIC PERMIT CONDITIONS.

01. Basis for Specific Permit Conditions. Conditions necessary for the protection of the environment and the public health may differ from facility to facility because of varying environmental conditions and animal waste compositions. The Director may establish, on a case-by-case basis, specific permit conditions. Specific conditions shall be established in consideration of characteristics specific to a facility and inherent hazards of those characteristics. Such characteristics include, but are not limited to, the following: ()

a. Chemical, biological, physical and volumetric characteristics of the process wastewater; ()

b. Geological and climatic nature of the facility site; ()

c. Size of the site and its proximity to population centers and to ground and surface water; ()

d. Legal considerations relative to land use and water rights; ()

e. Techniques used in process wastewater distribution and the disposition of that vegetation exposed to process wastewaters; and ()

f. The need for monitoring and record keeping to determine if the facility is being operated in conformance with its design and if its design is adequate to protect the environment and the public health. ()

02. Limitations to Operation. Conditions of the permit may specify or limit: ()

- a. Process wastewater composition; ()
- b. Method, manner and frequency of process wastewater treatment; ()
- c. Physical, chemical and biological characteristics of a facility; ()
- d. An odor management plan; and ()
- e. Any other condition the Director finds necessary to protect public health or the environment. ()

03. Compliance Schedules. The Director may establish a compliance schedule for facilities as part of the permit conditions including: ()

- a. Specific steps or actions to be taken by the permittee to achieve compliance with applicable requirements or permit conditions; and ()
- b. Dates by which those steps or actions are to be taken. ()

04. Monitoring Requirements. Any facility may be subject to monitoring requirements including, but not limited to, the following: ()

- a. The type, installation, use and maintenance of monitoring equipment; ()
- b. Monitoring or sampling methodology, frequency and locations; ()
- c. Monitored substances or parameters; ()
- d. Testing and analytical procedures; and ()
- e. Reporting requirements including both frequency and form. ()

451. -- 499. (RESERVED)

500. PERMIT MODIFICATION.

01. Minor Modifications. Minor modifications are those which do not have a potential affect to the environment or the public health. Such modifications shall be made by the Director. Minor modifications are generally limited to: ()

- a. The correction of typographical errors; ()
- b. Transfer of ownership or operational control in accordance with Section 550; or ()
- c. Certain minor changes in monitoring or operational conditions. ()

02. Major Modifications. All modifications not considered minor shall be considered major modifications. The procedure for making major modifications shall be the same as that used for a new permit under these rules. ()

501. -- 549. (RESERVED)

550. TRANSFER OF PERMITS.

01. Transfer Application. A new owner or operator of a facility shall submit a transfer application to the Director that includes at least the following: ()

- a. The relevant information required by Subsection 200.04; and ()
- b. Any change of conditions at the facility resulting from the transfer of ownership or operation. ()
- c. The Director shall review the transfer application and within sixty (60) days of its receipt either approve or deny the transfer. ()

02. Transfer Approval. An approved permit transfer shall be a minor modification in accordance with Subsection 500.01 as long as there are no major changes of conditions at the facility. Major changes of conditions at a facility will be subject to the provisions of Subsection 500.02. ()

03. Transfer Denial. A notification of a permit denial shall set forth the reasons for the denial, steps necessary to meet the requirements for a permit transfer and the opportunity for the applicant to request a hearing. ()

04. Permit Obligations. The new permittee assumes all rights and responsibilities of the transferred permit. ()

551. -- 599. (RESERVED)

600. VIOLATIONS.

01. Failure to Comply. Failure by a permittee to comply with the provisions of these rules or with any permit condition shall be deemed a violation of these rules. ()

02. Falsification of Statements and Records. It shall be a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application report, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of a permit. ()

03. Discharges. Any unauthorized discharge from a facility shall be a violation of these rules. ()

04. Penalties. Any person violating any provision of these rules or any permit or order issued thereunder shall be liable for a civil or criminal penalty in accordance with Title 39, Chapter 1, Idaho Code. ()

05. Permit Revocation. The Director may revoke a permit for: ()

a. A material violation of any condition of a permit; or ()

b. If the permit was obtained by misrepresentation or failure to disclose all relevant facts. ()

06. Revocation Hearing. Prior to revoking a permit, the Director shall issue a notice of intent which shall become final unless the permittee timely requests an administrative hearing in writing. Such hearing shall be conducted in accordance with Section 003 of these rules. ()

601. -- 998. (RESERVED)

999. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 74-114, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality." ()

58.01.11 – GROUND WATER QUALITY RULE

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Board of Environmental Quality authority to promulgate the Ground Water Quality Rule pursuant to Sections 39-105, 39-107, 39-120, and 39-126, Idaho Code. The authority to formulate and adopt rules as are necessary and feasible to protect the environment and health of the citizens of the state is vested in the Director and Board pursuant to Sections 39-105 and 39-107, Idaho Code. Under Section 39-120, Idaho Code, the Board is authorized to adopt, by rule, ambient ground water quality standards. Under Section 39-126, Idaho Code, all state agencies shall incorporate the Ground Water Quality Plan, adopted by the legislature, in the administration of their programs and are granted authority to promulgate rules to protect ground water quality as necessary to administer such programs. ()

001. TITLE AND SCOPE.

01. Title. This rule is titled IDAPA 58.01.11, Rules of the Department of Environmental Quality, IDAPA 58.01.11, “Ground Water Quality Rule.” ()

02. Scope. Under Section 39-120, Idaho Code, the Department of Environmental Quality is designated as the primary agency to coordinate and administer ground water quality protection programs for the state. This rule establishes minimum requirements for protection of ground water quality through standards and an aquifer categorization process. The requirements of this rule shall serve as a basis for the administration of programs which address ground water quality. This rule does not in and of itself create a permit program. ()

002. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ()

003. WRITTEN INTERPRETATIONS.

The Department of Environmental Quality may have written statements which pertain to the interpretation of the rules of this chapter. If available, such written statements can be inspected and copied, at cost, at the Department of Environmental Quality, 1410 North Hilton, Boise, ID 83706-1255. ()

004. -- 005. (RESERVED)

006. POLICIES.

It is the intent of the Department to implement, through this rule, the following policies from the Protection and Prevention Sections of the Idaho Ground Water Quality Plan, adopted by the legislature, 1992 Session Law, Chapter 310, Page 922. These policies are: ()

01. Ground Water Quality Protection. It is the policy of the state of Idaho to maintain and protect the existing high quality of the state’s ground water. ()

02. Existing and Projected Future Beneficial Uses. The policy of the state of Idaho is that existing and projected future beneficial uses of ground water shall be maintained and protected, and degradation that would impair existing and projected future beneficial uses of ground water and interconnected surface water shall not be allowed. ()

03. Categorization of Ground Water. The policy of the state of Idaho is to provide differential protection for the state’s ground water resources. A ground water categorization system should be established for aquifers or portions of aquifers. The categorization system should be based on vulnerability of the ground water, existing and projected future beneficial uses of the ground water, existing quality of the ground water, and social and economic considerations. ()

04. Ground Water Quality Standards. The policy of the state of Idaho is to establish ground water quality standards for biological, radiological, and chemical constituents. ()

05. Prevention of Ground Water Contamination. The policy of the state of Idaho is to prevent contamination of ground water from all regulated and nonregulated sources of contamination to the maximum extent practical. ()

06. Mining. The policy of the state of Idaho is to protect ground water and allow for the extraction of minerals above and within ground water. ()

007. DEFINITIONS.

- 01. Agricultural Chemical.** Any pesticide, nutrient or fertilizer used for the benefit of agricultural production or pest management. ()
- 02. Aquifer.** A geological unit of permeable saturated material capable of yielding economically significant quantities of water to wells and springs. ()
- 03. Beneficial Uses.** Various uses of ground water in Idaho including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, aquacultural water supplies, and mining. A beneficial use is defined as actual current or projected future uses of ground water. ()
- 04. Best Available Method.** Any system, process, or method which is available to the public for commercial or private use to minimize the impact of point or nonpoint sources of contamination on ground water quality. ()
- 05. Best Management Practice.** A practice or combination of practices determined to be the most effective and practical means of preventing or reducing contamination to ground water and interconnected surface water from nonpoint and point sources to achieve water quality goals and protect the beneficial uses of the water. ()
- 06. Best Practical Method.** Any system, process, or method that is established and in routine use which could be used to minimize the impact of point or nonpoint sources of contamination on ground water quality. ()
- 07. Board.** The Idaho Board of Environmental Quality. ()
- 08. Cleanup.** The removal, treatment or isolation of a contaminant from ground water through the directed efforts of humans or the removal or treatment of a contaminant in ground water through management practice or the construction of barriers, trenches and other similar facilities for prevention of contamination, as well as the use of natural processes such as ground water recharge, natural decay and chemical or biological decomposition. ()
- 09. Constituent.** Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance occurring in ground water. ()
- 10. Contaminant.** Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance which does not occur naturally in ground water or which naturally occurs at a lower concentration. ()
- 11. Contamination.** The direct or indirect introduction into ground water of any contaminant caused in whole or in part by human activities. ()
- 12. Crop Root Zone.** The zone that extends from the surface of the soil to the depth of the deepest crop root and is specific to a species of plant, group of plants, or crop. ()
- 13. Degradation.** The lowering of ground water quality as measured in a statistically significant and reproducible manner. ()
- 14. Department.** The Department of Environmental Quality. ()
- 15. Extraction.** Physical removal of ore or waste rock from mineral-bearing deposits. Extraction does not include processing, which is the removal of target minerals from ores by physical or chemical methods. ()
- 16. Ground Water.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. ()

17. Ground Water Quality Standard. Values, either numeric or narrative, assigned to any constituent for the purpose of establishing minimum levels of protection. ()

18. Highly Vulnerable Ground Water. Ground water characterized by a relatively high potential for contaminants to enter and/or be transported within the flow system. Determinations of ground water vulnerability will include consideration of land use practices and aquifer characteristics. ()

19. Irreplaceable Source. A ground water source serving a beneficial use(s) where the reliable delivery of comparable quality and quantity of water from an alternative source in the region would be economically infeasible or precluded by institutional constraints. ()

20. Mine Operator. Any person authorized to engage in mining activities, including without limitation those authorized by law, lease, contract, permit, or plan of operation. It does not include a governmental agency that grants mineral leases or similar contracts or permits unless the agency is engaged in mining activities. ()

21. Mining Activity. Recovery of a mineral from mineral-bearing deposits, which includes reclamation, extraction, excavation, overburden placement, disposal of tailings resulting from processing, and disposal of mineral extraction wastes, including tailings that are the result of extraction, waste rock, and other extraction wastes uniquely associated with mining. ()

22. Mining Area. The area on or within which one (1) or more mining activities occur. The Department shall determine the boundaries of the mining area as provided in Section 401. Distinct mining activities may constitute separate mining areas. ()

23. Natural Background Level. The level of any constituent in the ground water within a specified area as determined by representative measurements of the ground water quality unaffected by human activities. ()

24. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity which is recognized by law as the subject of rights and duties. ()

25. Point of Compliance. The vertical surface where the Department determines compliance with ground water quality standards as provided in Subsection 400.05 and Section 401. ()

26. Practical Quantitation Level. The lowest concentration of a constituent that can be reliably quantified among laboratories within specified limits of precision and accuracy during routine laboratory operating conditions. Specified limits of precision and accuracy are the criteria listed in the calibration specifications or quality control specifications of an analytical method. ()

27. Projected Future Beneficial Uses. Various uses of ground water, such as drinking water, aquaculture, industrial, mining or agriculture, that are practical and achievable in the future based on hydrogeologic conditions, water quality, future land use activities and social/economic considerations. ()

28. Recharge Area. An area in which water infiltrates into the soil or geological formation from, including but not limited to precipitation, irrigation practices and seepage from creeks, streams, and lakes, and percolates to one (1) or more aquifers. ()

29. Reclamation. The process of restoring an area affected by a mining activity 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. ()

30. Remediation. Any action taken (1) to control the source of contamination, (2) to reduce the level of contamination, (3) to mitigate the effects of contaminants, and/or (4) to minimize contaminant movement. Remediation includes providing alternate drinking water sources when needed. ()

31. Site Background Level. The ground water quality at the hydraulically upgradient site boundary. ()

008. -- 010. (RESERVED)

011. INCORPORATION BY REFERENCE.

Codes, standards and regulations may be incorporated by reference in this rule pursuant to Section 67-5229, Idaho Code. Such incorporation by reference shall constitute full adoption by reference, including any notes or appendices therein, unless expressly provided otherwise in this rule. Codes, standards or regulations adopted by reference throughout this rule are available in the following locations: ()

01. Department of Environmental Quality. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. ()

02. Law Library. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051. ()

03. U.S. Government Printing Office. U.S. Government Printing Office, Superintendent of Documents, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194 Federal Bldg., 915 Second Ave., Seattle, WA 98174. ()

012. -- 149. (RESERVED)

150. IMPLEMENTATION.

This rule establishes minimum requirements to maintain and protect ground water quality. This rule applies to all activities with the potential to degrade ground water quality. ()

01. Ground Water Quality Standards. The numerical and narrative standards in Sections 200 and 301 identify minimum levels of protection for ground water quality and shall be used as a basis for: ()

a. Evaluating or comparing ground water quality when developing or modifying best available methods, best management practices, or best practical methods; ()

b. Identifying permit conditions; ()

c. Establishing cleanup levels; and ()

d. Determining appropriate actions when ground water quality standards are exceeded. ()

02. Aquifer Categorization. Aquifers of the state shall be categorized based on vulnerability of the ground water, existing and projected future beneficial uses of the ground water, existing water quality, and social and economic considerations. There shall be three aquifer categories, Sensitive Resource, General Resource, and Other Resource, to provide different levels of protection. The level of protection required for each category and application of standards to these categories are shown in Table I.

| Table 1. Level of Protection and Application of Standards to Aquifer Categories | | |
|--|--|---|
| Category | Level of Protection | Application of Standards |
| Sensitive Resource | Apply best management practices and best available methods. This category provides the highest level of ground water protection. | May apply stricter standards than in Section 200. |
| General Resource | Apply best management practices and best practical methods to the maximum extent practical. | Apply numerical and narrative standards in Section 200. |

| Category | Level of Protection | Application of Standards |
|----------------|---|--|
| Other Resource | Apply best management practices and best practical methods to the maximum extent practical. | May apply less strict standards than in Section 200. |

()

a. All aquifers where there are activities with the potential to degrade ground water quality are categorized in Section 300. Those aquifers where no activities with the potential to degrade ground water quality are occurring will remain uncategorized until such activities are commenced. If no action is taken to categorize an aquifer when an activity(ies) with the potential to degrade ground water quality is initiated, the aquifer will automatically be categorized as General Resource.

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b. Categorization should be considered when an activity with the potential to degrade ground water quality is proposed over an aquifer or portion of an aquifer which presently has no such activities and, based on the criteria in Section 350, the aquifer may be most appropriately categorized as Sensitive Resource or Other Resource.

()

c. Recategorization should be considered when information on vulnerability of the ground water, existing and projected future beneficial uses of the ground water, existing quality of the ground water, and social and economic considerations, in conjunction with one or more of the criteria in Section 350, demonstrates that the aquifer or portion of an aquifer may be more appropriate in another category.

()

03. Ground Water-Surface Water Interconnection. The beneficial uses of interconnected surface water shall be recognized when evaluating ground water quality protection. The implementation of water quality programs shall ensure that the quality of ground water that discharges to surface water does not impair the identified beneficial uses of the surface water and that surface water infiltration does not impair beneficial uses of ground water.

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04. Interagency Coordination. The Department will coordinate with other federal, state, and local agencies to pursue interagency agreements when necessary to ensure implementation of this rule for activities which have the potential to degrade ground water quality.

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151. -- 199. (RESERVED)

200. GROUND WATER QUALITY STANDARDS.

The following numerical and narrative standards apply to all ground water of the state and shall not be exceeded unless otherwise allowed in this rule.

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01. Numerical Ground Water Quality Standards.

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a. The Primary Constituent Standards are based on protection of human health and are identified in Table II.

| Chemical Abstract Service Number | Constituent | Standard (mg/l unless otherwise specified) |
|----------------------------------|-------------|--|
| 7440-36-0 | Antimony | 0.006 |
| 7440-38-2 | Arsenic | 0.05 |

| Table II - Primary Constituent Standards | | |
|--|---------------------------------|--|
| Chemical Abstract Service Number | Constituent | Standard (mg/l unless otherwise specified) |
| 1332-21-4 | Asbestos | 7 million fibers/l longer than 10 um |
| 7440-39-3 | Barium | 2 |
| 7440-41-7 | Beryllium | 0.004 |
| 7440-43-9 | Cadmium | 0.005 |
| 7440-47-3 | Chromium | 0.1 |
| 7440-50-8 | Copper | 1.3 |
| 57-12-5 | Cyanide | 0.2 |
| 16984-48-8 | Fluoride | 4 |
| 7439-92-1 | Lead | 0.015 |
| 7439-97-6 | Mercury | 0.002 |
| *1 | Nitrate (as N) | 10 |
| *1 | Nitrite (as N) | 1 |
| *1 | Nitrate and Nitrite (both as N) | 10 |
| 7782-49-2 | Selenium | 0.05 |
| 7440-28-0 | Thallium | 0.002 |
| 15972-60-8 | Alachlor | 0.002 |
| 1912-24-9 | Atrazine | 0.003 |
| 71-43-2 | Benzene | 0.005 |
| 50-32-8 | Benzo(a)pyrene (PAH) | 0.0002 |
| 75-27-4 | Bromodichloromethane (THM) | 0.1 |
| 75-25-2 | Bromoform (THM) | 0.1 |
| 1563-66-2 | Carbofuran | 0.04 |
| 56-23-5 | Carbon Tetrachloride | 0.005 |
| 57-74-9 | Chlordane | 0.002 |
| 124-48-1 | Chlorodibromomethane (THM) | 0.1 |
| 67-66-3 | Chloroform(THM) | 0.002 |
| 94-75-7 | 2,4-D | 0.07 |
| 75-99-0 | Dalapon | 0.2 |
| 103-23-1 | Di(2-ethylhexyl) adipate | 0.4 |
| 96-12-8 | Dibromochloropropane | 0.0002 |
| 541-73-1 | Dichlorobenzene m- | 0.6 |

| Table II - Primary Constituent Standards | | |
|--|--|--|
| Chemical Abstract Service Number | Constituent | Standard (mg/l unless otherwise specified) |
| 95-50-1 | Dichlorobenzene o- | 0.6 |
| 106-46-7 | 1,4(para)-Dichlorobenzene or Dichlorobenzene p- | 0.075 |
| 107-06-2 | 1,2-Dichloroethane | 0.005 |
| 75-35-4 | 1,1-Dichloroethylene | 0.007 |
| 156-59-2 | cis-1, 2-Dichloroethylene | 0.07 |
| 156-60-5 | trans-1, 2-Dichloroethylene | 0.1 |
| 75-09-2 | Dichloromethane | 0.005 |
| 78-87-5 | 1,2-Dichloropropane | 0.005 |
| 117-81-7 | Di(2-ethylhexyl)phthalate | 0.006 |
| 88-85-7 | Dinoseb | 0.007 |
| 85-00-7 | Diquat | 0.02 |
| 145-73-3 | Endothall | 0.1 |
| 72-20-8 | Endrin | 0.002 |
| 100-41-4 | Ethylbenzene | 0.7 |
| 106-93-4 | Ethylene dibromide | 0.00005 |
| 1071-83-6 | Glyphosate | 0.7 |
| 76-44-8 | Heptachlor | 0.0004 |
| 1024-57-3 | Heptachlor epoxide | 0.0002 |
| 118-74-1 | Hexachlorobenzene | 0.001 |
| 77-47-4 | Hexachlorocyclopentadiene | 0.05 |
| 58-89-9 | Lindane | 0.0002 |
| 72-43-5 | Methoxychlor | 0.04 |
| 108-90-7 | Monochlorobenzene | 0.1 |
| 23135-22-0 | Oxamyl (Vydate) | 0.2 |
| 87-86-5 | Pentachlorophenol | 0.001 |
| 1918-02-1 | Picloram | 0.5 |
| 1336-36-3 | Polychlorinated biphenyls (PCBs) | 0.0005 |
| 122-34-9 | Simazine | 0.004 |
| 100-42-5 | Styrene | 0.1 |
| 1746-01-6 | 2,3,7,8-TCDD (Dioxin) | 3.0 x 10 ⁻⁸ |
| 127-18-4 | Tetrachloroethylene | 0.005 |

| Table II - Primary Constituent Standards | | |
|---|---|---|
| Chemical Abstract Service Number | Constituent | Standard (mg/l unless otherwise specified) |
| 108-88-3 | Toluene | 1 |
| *1 | Total Trihalomethanes [the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform)] | 0.1 |
| 8001-35-2 | Toxaphene | 0.003 |
| 93-72-1 | 2,4,5-TP (Silvex) | 0.05 |
| 120-82-1 | 1,2,4-Trichlorobenzene | 0.07 |
| 71-55-6 | 1,1,1-Trichloroethane | 0.2 |
| 79-00-5 | 1,1,2-Trichloroethane | 0.005 |
| 79-01-6 | Trichloroethylene | 0.005 |
| 75-01-4 | Vinyl Chloride | 0.002 |
| 1330-20-7 | Xylenes (total) | 10 |
| *1 | Gross alpha particle activity (including radium -226, but excluding radon and uranium) | 15 pCi/l |
| *1 | Combined beta/photon emitters | 4 millirems/year effective dose equivalent |
| *1 | Combined Radium - 226 and radium 228 | 5 pCi/l |
| *1 | Strontium 90 | 8 pCi/l |
| *1 | Tritium | 20,000 pCi/l |
| *1 | Total Coliform ² | 1 colony forming unit/100 ml |
| | Escherichia coliform (E. coli) | Less than 1 viable colony or colony forming unit/100 ml using any EPA approved method |
| | Fecal coliform | Less than 1 viable colony or colony forming unit/100 ml using any EPA approved method |
| Table Footnotes | | |
| *1 No Chemical Abstract Service Number exists for this constituent. | | |
| ² An exceedance of the primary ground water quality standard for total coliform is not a violation of these rules. If the primary ground water quality standard for total coliform is exceeded, additional analysis for fecal coliform or E. coli will be conducted. An exceedance of the primary ground water quality standards for either fecal coliform or E. coli is a violation of these rules. | | |

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b. The Secondary Constituent Standards are generally based on aesthetic qualities and are identified in Table III.

| TABLE III - SECONDARY CONSTITUENT STANDARDS | |
|--|---|
| Constituent | Standard (mg/l unless otherwise specified) |
| Aluminum | 0.2 |
| Chloride | 250 |
| Color | 15 Color Units |
| Foaming Agents | 0.5 |
| Iron | 0.3 |
| Manganese | 0.05 |
| Odor | 3.0 Threshold Odor Number |
| pH | 6.5 to 8.5 (no units apply) |
| Silver | 0.1 |
| Sulfate | 250 |
| Total Dissolved Solids | 500 |
| Zinc | 5 |

()

c. Sample preservation and analytical procedures to determine compliance with the standards identified in Subsection 200.01 shall be in accordance with the following, except that cyanide shall be analyzed as weak acid dissociable cyanide using a method approved by the Department: ()

i. Environmental Protection Agency, Code of Federal Regulations, Title 40, Parts 141 and 143, revised as of July 2001; or ()

ii. Another method approved by the Department. ()

02. Narrative Ground Water Quality Standards. Contaminant concentrations, alone or in combination with other contaminants or properties, shall not cause the ground water to be hazardous, deleterious, carcinogenic, mutagenic, teratogenic, or toxic. Determinations of specific numerical levels when applying this standard shall be based on: ()

a. Best scientific information currently available on adverse effects of the contaminant(s); ()

b. Protection of a beneficial use; or ()

c. Practical quantitation levels for the contaminant(s), if they exceed the levels identified in Subsection 200.02.a. or 200.02.b. ()

03. Natural Background Level. If the natural background level of a constituent exceeds the standard in this section, the natural background level shall be used as the standard. ()

201. -- 299. (RESERVED)

300. CATEGORIZED AQUIFERS OF THE STATE.

Aquifers or portions of aquifers in the state are categorized as follows: ()

01. Sensitive Resource. ()

a. Spokane Valley -- Rathdrum Prairie Aquifer. ()

i. In addition to the ground water quality standards in Section 200, the following narrative standard applies: the aquifer shall not be degraded, as it relates to beneficial uses, as a result of point source or nonpoint source activity unless it is demonstrated by the person proposing the activity that such change is justifiable as a result of necessary economic or social development. ()

02. General Resource. All aquifers or portions of aquifers where there are activities with the potential to degrade ground water quality of the aquifer, unless otherwise listed in Subsection 300.01 or 300.03. Once an activity with the potential to degrade the ground water quality of an uncategorized aquifer or portion of an aquifer is initiated, the uncategorized aquifer shall automatically become General Resource unless petitioned into the Sensitive Resource or Other Resource category. ()

03. Other Resource. ()

301. MANAGEMENT OF ACTIVITIES WITH THE POTENTIAL TO DEGRADE AQUIFERS.

01. Sensitive Resource Category Aquifers. ()

a. Activities with the potential to degrade Sensitive Resource aquifers shall be managed in a manner which maintains or improves existing ground water quality through the use of best management practices and best available methods except when a point of compliance is set pursuant to Section 401. ()

b. Numerical and narrative standards identified in Section 200 shall apply to aquifers or portions of aquifers categorized as Sensitive Resource. In addition, stricter numerical and narrative standards, for specified constituents, may be adopted pursuant to Section 350 on a case by case basis and listed in Section 300. ()

02. General Resource Category Aquifers. ()

a. Activities with the potential to degrade General Resource aquifers shall be managed in a manner which maintains or improves existing ground water quality through the use of best management practices and best practical methods to the maximum extent practical except when a point of compliance is set pursuant to Section 401. ()

b. Numerical and narrative standards identified in Section 200 shall apply to aquifers or portions of aquifers categorized as General Resource. ()

03. Other Resource Category Aquifers. ()

a. Activities with the potential to degrade Other Resource aquifers shall be managed in a manner which maintains existing ground water quality, except for those identified constituents which may have a less stringent standard, through the use of best management practices and best practical methods to the maximum extent practical except when a point of compliance is set pursuant to Section 401. ()

b. Numerical and narrative standards identified in Section 200 shall apply to aquifers or portions of aquifers categorized as Other Resource. In addition, less strict numerical and narrative standards, for specified constituents, may be adopted pursuant to Section 350 on a case by case basis and listed in Section 300. ()

302. -- 349. (RESERVED)

350. PROCEDURES FOR CATEGORIZING OR RECATEGORIZING AN AQUIFER.

The following process shall be used for categorizing or recategorizing an aquifer. ()

01. Criteria for Aquifer Categories. The following criteria shall be considered when a petition to categorize or recategorize aquifers or portions of aquifers is submitted to the Board: ()

a. For Sensitive Resource aquifers: ()

i. The ground water in an aquifer or portion of an aquifer is of a better quality than the ground water quality standards in Section 200 and maintenance of this quality is needed to protect an identified beneficial use(s); ()

ii. The ground water in an aquifer or portion of an aquifer is considered highly vulnerable; ()

iii. The ground water in an aquifer or portion of an aquifer represents an irreplaceable source for the identified beneficial use(s); ()

iv. The ground water quality in an aquifer or portion of an aquifer has been degraded and there is a need for additional protection measures to maintain or improve the water quality or prevent impairment of a beneficial use; ()

v. The ground water within an aquifer or portion of an aquifer is shown to be hydrologically interconnected with surface water and additional protection is needed to maintain the quality of either surface or ground water. Hydrologic interconnections can include either natural or induced ground water recharge or discharge areas; or ()

vi. The ground water within an aquifer or portion of an aquifer demonstrates other criteria which justify the need for additional protection. ()

b. For General Resource aquifers: ()

i. An activity with the potential to degrade ground water quality is initiated over an aquifer or portion of an aquifer which presently has no such activities; ()

ii. The ground water in an aquifer or portion of an aquifer is currently being used for drinking water or another beneficial use which requires similar protection; or ()

iii. The ground water in an aquifer or portion of an aquifer has a projected future beneficial use of drinking water or another beneficial use which requires similar protection. ()

c. For other resource aquifers: ()

i. The ground water quality within an aquifer or portion of an aquifer does not meet one or more of the ground water quality standards in Section 200; and allowing the ground water quality to remain at this level does not impair existing or projected future beneficial uses within the aquifer or portion of an aquifer; ()

ii. The projected ground water quality within an aquifer or portion of an aquifer will not meet one or more of the ground water quality standards in Section 200 as a result of activities over or within the aquifer or portion of an aquifer; and allowing the proposed degradation will not impair existing or projected future beneficial uses; ()

iii. Human caused conditions or sources of contamination have resulted in ground water quality standards in Section 200 being exceeded, and the contamination cannot be remedied for economical or technical reasons, or remediation would cause more environmental damage to correct than to leave in place; or ()

iv. The ground water within an aquifer or portion of an aquifer demonstrates other criteria which justify the need for categorization as an Other Resource. ()

02. Petition Process. The Department or any other person may petition the Board to initiate

rulemaking to categorize or recategorize an aquifer or portion of an aquifer pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” In addition to the information required in a rulemaking Petition pursuant to IDAPA 58.01.23, the following information shall be submitted in writing by the Petitioner for the identified aquifer or portion of an aquifer: ()

- a. Current category, if applicable; ()
- met; b. Proposed category and an explanation of how one or more of the criteria in Subsection 350.01 are ()
- c. An explanation of why the categorization or recategorization is being proposed; ()
- d. Location, description and areal extent; ()
- e. General location and description of existing and projected future ground water beneficial uses; ()
- f. Documentation of the existing ground water quality; ()
- g. Documentation of aquifer characteristics, where available, including, but not limited to: ()
 - i. Depth to ground water; ()
 - ii. Thickness of the water bearing section; ()
 - iii. Direction and rate of ground water flow; ()
 - iv. Known recharge and discharge areas; and ()
 - v. Geology of the area; ()
- h. Identification of any proposed standards, for specified constituents, which would be stricter or less strict than the ground water quality standards in Section 200, or any standards to be applied in addition to those in Section 200; and a rationale for the proposed standards. ()

03. Preliminary Department Review. Prior to submission of a petition to the Board to categorize or recategorize an aquifer, any person may seek a preliminary review of the petition from the Department. The Department shall respond to the petitioner with comments within forty-five (45) days. ()

351. -- 399. (RESERVED)

400. GROUND WATER CONTAMINATION.

01. Releases Degrading Ground Water Quality. No person shall cause or allow the release, spilling, leaking, emission, discharge, escape, leaching, or disposal of a contaminant into the environment in a manner that: ()

- a. Causes a ground water quality standard to be exceeded; ()
- b. Injures a beneficial use of ground water; or ()
- c. Is not in accordance with a permit, consent order or applicable best management practice, best available method or best practical method. ()

02. Measures Taken in Response to Degradation. ()

- a. Except when a point of compliance is set pursuant to Section 401, when a numerical standard is not

exceeded, but degradation of ground water quality is detected and deemed significant by the Department, the Department shall take one (1) or more of the following actions: ()

- i. Require a modification of regulated activities to prevent continued degradation; ()
- ii. Coordinate with the appropriate agencies and responsible persons to develop and implement prevention measures for activities not regulated by the Department; ()

iii. Allow limited degradation of ground water quality for the constituents identified in Subsection 200.01.a. if it can be demonstrated that: ()

(1) Best management practices, best available methods or best practical methods, as appropriate for the aquifer category, are being applied; and ()

(2) The degradation is justifiable based on necessary and widespread social and economic considerations; or ()

iv. Allow degradation of ground water quality up to the standards in Subsection 200.01.b., if it can be demonstrated that: ()

(1) Best management practices are being applied; and ()

(2) The degradation will not adversely impact a beneficial use. ()

b. The following criteria shall be considered when determining the significance of degradation: ()

i. Site specific hydrogeologic conditions; ()

ii. Water quality, including seasonal variations; ()

iii. Existing and projected future beneficial uses; ()

iv. Related public health issues; and ()

v. Whether the degradation involves a primary or secondary constituent in Section 200. ()

03. Contamination Exceeding a Ground Water Quality Standard. The discovery of any contamination exceeding a ground water standard that poses a threat to existing or projected future beneficial uses of ground water shall require appropriate actions, as determined by the Department, to prevent further contamination. These actions may consist of investigation and evaluation, or enforcement actions if necessary to stop further contamination or clean up existing contamination, as required under the Environmental Protection and Health Act, Section 39-108, Idaho Code. ()

04. Agricultural Chemicals. Agricultural chemicals found in intermittently saturated soils within the crop root zone will not be considered ground water contaminants as long as the chemicals remain within the crop root zone, and have been applied in a manner consistent with all appropriate regulatory requirements. ()

05. Site-Specific Ground Water Quality Levels or Points of Compliance. The Department may allow site-specific ground water quality levels, for any aquifer category, that vary from a standard(s) in Section 200 or Section 300, or may allow site-specific points of compliance, based on consideration of effects to human health and the environment, for: ()

a. Remediation conducted under the Department's oversight; ()

b. Permits issued by the Department; ()

- c. Situations where the site background level varies from the ground water quality standard; ()
- d. Dissolved concentrations of secondary constituents listed in Section 200 of this rule. The Department may allow the use of dissolved concentrations for secondary constituents if the requesting person demonstrates that doing so will not adversely affect human health and the environment; or ()
- e. Other situations authorized by the Department in writing. ()

401. MINING.

01. Request for Setting Point(s) of Compliance and Standards Applicable to Mining Activities. At the request of a mine operator, pursuant to this section, the Department shall set a point of compliance, or points of compliance, at which the mine operator shall protect current and projected future beneficial uses of the ground water and meet the ground water quality standards as described in Section 200 or as allowed under Subsection 400.05. Degradation of ground water is allowed at a point of compliance if the mine operator implements the level of protection during mining activities appropriate for the aquifer category as specified in Table 1 of Subsection 150.02. If a request is not made, the mine operator must meet the ground water quality standards as described in Subsection 150.01 in ground water both within and beyond the mining area unless the Department establishes the point(s) of compliance consistent with Subsection 401.03. ()

02. Application Process. ()

a. If the mine operator requests a point of compliance, or points of compliance, the mine operator shall make written application to the Department. The application shall be accompanied by a fee of two thousand five hundred dollars (\$2,500). The application shall include the following information in sufficient detail to allow the Department to establish point(s) of compliance: ()

- i. Name, location, and mailing address of the mining operation; ()
- ii. Name, mailing address, and phone number of the mine operator; ()
- iii. Land ownership status of the mining operation (federal, state, private or public); ()
- iv. The legal structure (corporation, partnership, etc.) and residence of the mine operator; ()
- v. The legal description, to the quarter-quarter section, of the location of the proposed mining operation; ()
- vi. Evidence the mine operator is authorized by the Secretary of State to conduct business in the state of Idaho; ()
- vii. A general description of the operational plans for the mining operation from construction through final reclamation. This description shall include any proposed phases for construction, operations, and reclamation and a map that identifies the location of all mining activities; ()

viii. A preconstruction topographic site map or aerial photos extending at least one (1) mile beyond the outer limits of the mining area, identifying and showing the location and extent of the following features: ()

- (1) All wells, perennial and intermittent springs, adit discharges, wetlands, surface waters and irrigation ditches; ()
- (2) All public and private drinking water supply source(s) within one (1) mile of the mining area; ()
- (3) All service roads and public roads; ()
- (4) All buildings and structures within one (1) mile of the mining area; ()

- (5) All special resource waters within one (1) mile of the mining area; and ()
- (6) All Clean Water Act Section 303(d) listed streams, and their listed impairments, within one (1) mile of the mining area; ()
- ix. To the extent such information is available, a description and location of underground mine workings and adits and a description of the structural geology that may influence ground water flow and direction; ()
- x. Information regarding the relevant factors set forth in Subsection 401.03; and ()
- xi. A proposed point of compliance, or points of compliance. ()
- b.** Within thirty (30) days of receipt of an application, the Department shall issue a written notice to the mine operator indicating: ()
 - i. That the application is complete; or ()
 - ii. That the Department is rejecting the application as incomplete. In such a case, the Department shall provide a list of deficiencies. Upon a determination that the application is incomplete, the Department shall refund one-half (1/2) of the application fee. ()
- c.** The Department shall establish the point(s) of compliance within one hundred eighty (180) days after receipt of a complete application unless the Department determines that additional time is necessary due to unusual circumstances. ()

03. Setting the Point(s) of Compliance. The point(s) of compliance shall be set as close as possible to the boundary of the mining area, taking into consideration the relevant factors set forth in Subsections 401.03.a. through 401.03.h., but in no event shall the point(s) of compliance be within the boundary of the mining area. The mining area boundary means the outermost perimeter of the mining area (projected in the horizontal plane) as it would exist at the completion of the mining activity. The point(s) of compliance shall be set so that, outside the mining area boundary, there is no injury to current or projected future beneficial uses of ground water and there is no violation of water quality standards applicable to any interconnected surface waters. The Department's determination regarding the point(s) of compliance shall be based on an analysis and consideration of all relevant factors including, but not limited to: ()

- a.** The hydrogeological characteristics of the mining area and surrounding land, including any dilution characteristics of the aquifer and any natural attenuation supported by site-specific data; ()
- b.** The concentration, volume, and physical and chemical characteristics of contaminants resulting from the mining activity, including the toxicity and persistence of the contaminants; ()
- c.** The quantity, quality, and direction of flow of ground water underlying the mining area; ()
- d.** The proximity and withdrawal rates of current ground water users; ()
- e.** A prediction of projected future beneficial uses; ()
- f.** The availability of alternative drinking water supplies; ()
- g.** The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water; and ()
- h.** Public health, safety, and welfare effects. ()

04. Ground Water Monitoring and Reporting. The Department shall require ground water

monitoring and reporting whenever the Department sets the point(s) of compliance. The Department shall not require ground water monitoring that duplicates ground water monitoring required by other state or federal agencies as long as the mine operator provides the data to the Department. ()

- a. A ground water monitoring system required under Subsection 401.04 shall be designed to: ()
 - i. Represent the quality of background ground water that has not been affected by the mining activity; and ()
 - ii. Represent the quality of ground water passing the point(s) of compliance in order to determine compliance with ground water quality standards or effectiveness of best management practices. ()
- b. When practicable, indicator monitoring wells or other devices may be required. Such indicator wells and other devices shall not be used to determine compliance with the ground water quality standards, but instead may be used to evaluate modeling results, to predict the quality of ground water at the point(s) of compliance, or to determine the effectiveness of best management practices. ()
- c. All monitoring wells shall be constructed (well depth, well screen size, well screen interval, gravel pack, etc.) and developed so that ground water samples represent the quality of ground water that is relevant to current and future beneficial uses. ()

05. Coordination with Other State or Federal Agencies/Public Notice. Before setting the point(s) of compliance or requiring ground water monitoring, the Department shall coordinate with and seek recommendations from other state or federal agencies that have regulatory authority over the mining activities. The Department may provide public notice and an opportunity for public comment prior to setting or changing the point(s) of compliance. The Department shall issue a public notice after it sets the point(s) of compliance. ()

06. Limitations. Section 401 addresses only those contaminants that naturally occur in the mining area ground water or in the surrounding rock or soil and are present in concentrations above the natural background level as a result of mining activities. ()

07. Application of Provisions. The provisions set out in Section 401 apply to new mining activities or to an expansion of existing mining activities commencing after July 1, 2009. All consent orders, compliance schedules, and other agreements adopted or issued by the Department prior to July 1, 2009 pertaining to ground water protection at mine sites shall remain in full force and effect. ()

08. Change in Point(s) of Compliance/Ground Water Monitoring. ()

a. A change in the point(s) of compliance may be requested by the mine operator when there is a change in, or new information regarding, the mining activity or any of the factors set forth in Subsection 401.03. A change requested by the mine operator shall include an identification of the new proposed point(s) of compliance, a description of the cause for the change and any data supporting the change. The mine operator's request shall be handled as an application submitted pursuant to Subsection 401.02.a. and shall be subject to all other provisions of Section 401. ()

b. The Department may initiate a change in the point(s) of compliance if there is a change in, or new information regarding, the mining activity or any of the factors set forth in Subsection 401.03, and the Department determines that the change is necessary to ensure there is no injury to current or projected future beneficial uses of ground water and no violation of water quality standards applicable to any interconnected surface waters. The Department shall notify the mine operator in writing of the Department's intent to change the point(s) of compliance. The Department shall make its final decision to change the point(s) of compliance within sixty (60) days of the notice to the mine operator unless the Department and the mine operator agree more time is necessary to make the decision. ()

c. The Department may require additional or new ground water monitoring or indicator wells when the Department changes the point(s) of compliance. The Department may also require additional or different ground water monitoring or indicator wells if the Department determines, based upon a change in or new information

regarding the mining activity or any of the factors listed in Subsection 401.03, that the monitoring no longer meets the requirements set forth in Subsection 401.04. The mine operator may also request a change in the monitoring.

()

402. -- 999. (RESERVED)

**58.01.12 – RULES FOR ADMINISTRATION OF WASTEWATER
AND DRINKING WATER LOAN FUNDS**

000. LEGAL AUTHORITY.

The Idaho Board of Environmental Quality, pursuant to authority granted in Chapters 1, 36, and 76, Title 39, Idaho Code, did adopt the following rules for the administration of the Wastewater and Drinking Water Loan Funds. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 58.01.12, “Rules for Administration of Wastewater and Drinking Water Loan Funds.” ()

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering two (2) state loan programs for providing financial assistance to eligible applicants of wastewater and drinking water projects. The U.S. Environmental Protection Agency provides annual capitalization grants to the state of Idaho for these programs. Financial assistance projects must be in conformance with the requirements of the Subchapter VI of the federal Clean Water Act (33 U.S.C. Sections 1381 et seq.) and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq.). ()

002. (RESERVED)

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ()

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. ()

02. Availability of Referenced Material. The “Clean Water State Revolving Fund Handbook” and the “Drinking Water Loan Account Handbook” (Handbooks) are available at the Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502, or DEQ website <http://www.deq.idaho.gov>. ()

005. CONFIDENTIALITY.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.” ()

006. POLICY.

It is the policy of the Idaho Board of Environmental Quality through the Idaho Department of Environmental Quality, to administer the Wastewater Loan Fund for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution and the Drinking Water Loan Fund for the purpose of providing assistance to eligible public drinking water systems for the planning, design, and construction of facilities to ensure safe and adequate drinking water. It is also the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects that will most significantly improve the quality of the waters of the state and most adequately protect the public health. ()

007. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: ()

01. Applicant.

a. When used in the context of wastewater loan fund, applicant is defined as a municipality or nonpoint source project sponsor that has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. ()

b. When used in the context of drinking water loan fund, applicant is defined as any eligible system making application for drinking water loan funds. ()

02. Best Management Practice. A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the most cost-effective and practicable means of preventing or reducing the amount of pollution

- generated by nonpoint sources to a level compatible with water quality needs. ()
- 03. Board.** The Idaho Board of Environmental Quality. ()
- 04. Categorical Exclusion (CE).** Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental information document nor an environmental impact statement is required. ()
- 05. Close or Closing.** The date on which the loan recipient issues and physically delivers to the Department the bond or note evidencing the loan to the loan recipient, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. ()
- 06. Collector Sewer.** That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. ()
- 07. Community Water System.** A public drinking water system that: ()
- a.** Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or ()
- b.** Regularly serves at least twenty-five (25) year-round residents. ()
- 08. Construction.** The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment or drinking water facilities, including preliminary planning to determine the economic and engineering feasibility, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of wastewater treatment or drinking water facilities; the inspection and supervision of the construction; and start-up of the associated facilities. ()
- 09. Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. ()
- 10. Department.** The Idaho Department of Environmental Quality. ()
- 11. Director.** The Director of the Idaho Department of Environmental Quality or his/her designee. ()
- 12. Disadvantaged Community.** The service area of a wastewater treatment facility or a public water system that meets affordability criteria established by the Department of Environmental Quality after public review and comment. ()
- 13. Disadvantaged Loans.** Loans made to a disadvantaged community. ()
- 14. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment that delivers water from the source(s), treatment facility(ies), or a combination of source(s) and treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. ()
- 15. Eligible Costs.** Costs which are necessary for planning, designing and/or constructing drinking water or wastewater treatment facilities, or implementation of water pollution control projects. To be eligible, costs must be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. ()
- 16. Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed construction project may significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The environmental review procedures contained in Chapter 5 of the Handbooks may be used as

guidance when preparing the EIS. ()

17. Environmental Information Document (EID). Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed wastewater or drinking water construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an EIS is warranted. ()

18. Financial Management System. Uniform method of recording, summarizing and analyzing financial information about the loan applicant. ()

19. Finding of No Significant Impact (FONSI). A document prepared by the Department presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an EIS will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. ()

20. Handbook(s). The “Clean Water State Revolving Fund Handbook” and/or the “Drinking Water Loan Account Handbook.” ()

21. Implementation Plan. Completed project implementation plan or work plan provides detailed documentation of the proposed project including list of tasks, schedule of tasks, agency/contractor/entity responsible for implementation of the project tasks, adequate time schedules for completion of all budget tasks, and the anticipated results of the project. ()

22. Ineligible Costs. Costs which are not eligible for funding pursuant to these rules. ()

23. Interceptor Sewer. That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. ()

24. Loan Recipient. An applicant who has been awarded a loan. ()

25. Managerial Capability. The capability of the loan applicant to support the proper financial and technical operation of the system. ()

26. Maximum Contaminant Level (MCL). The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. ()

27. Noncommunity Water System. A public water system that is not a community water system. ()

28. Nondomestic Wastewater. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. ()

29. Nonpoint Source Pollution. Water pollution that enters the waters of the state from nonspecific and diffuse sources and is the result of runoff, precipitation, drainage, seepage, hydrological modification or land disturbing activities. ()

30. Nonpoint Source Project Sponsor. Any applicant for wastewater loan funds to address nonpoint source pollution. ()

31. Operation and Maintenance Manual. For wastewater or drinking water facilities, a guidance and training manual outlining the optimum operation and maintenance of the facilities and their components. For nonpoint source water pollution control projects, a plan that incorporates applicable sections of the Natural Resources Conservation Service Field Office Technical Guide, for implementation of best management practices. ()

32. Planning Document. A document which describes the condition of a public wastewater or drinking water system and presents a cost effective and environmentally sound alternative to achieve or maintain regulatory compliance. Engineering reports and facility plans are examples of such planning documents. The

planning documents shall be prepared by or under the responsible charge of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Requirements for planning documents prepared using loan funds are provided in Section 030 of these rules and in the Handbooks. ()

33. Plan of Operation. A schedule of specific actions and completion dates for construction, start-up and operation of the facility or for implementation of wastewater or drinking water projects. ()

34. Point Source. Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged to the waters of the state. This term as used in these rules does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. ()

35. Pollutant. Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. ()

36. Priority List. An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020; or a list of proposed drinking water projects rated by severity of risk to public health, the necessity to ensure compliance with IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems, and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water. ()

37. Public Drinking Water System/Public Water System/Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system." ()

38. Readiness to Proceed. The progress which a loan applicant has made towards completion of time-consuming tasks necessary to complete a loan application (e.g. bond election, local improvement district formation, judicial confirmation towards debt authority, completion of facility plan). ()

39. Reserve Capacity. That portion of the facility that is designed and incorporated in the constructed facilities to handle future demand upon the system. ()

40. Sewer Use Ordinance/Sewer Use Resolution. An ordinance or resolution that requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. ()

41. State. The state of Idaho. ()

42. Supplemental Grants. A state funded grant awarded in conjunction with a loan from the water pollution control loan account. ()

43. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. ()

44. Sustainability. Sustainability will include efforts for energy and water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement. ()

45. Termination. An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. ()

46. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the installed equipment or structures. ()

47. Wastewater. A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. ()

48. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and appurtenances thereof, used for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems, land disposal systems; a sewage treatment plant. ()

49. Water Pollution Control Project. Any project that contributes to the removal, curtailment, or mitigation of pollution of the surface waters or groundwater of the state, or the restoration of the quality of said waters, and conforms to any applicable planning document which has been approved and/or adopted such as the State Water Quality Management Plan. This includes the planning, design, construction/implementation or any other distinct stage or phase of a project. ()

50. Water System Protection Ordinance. An ordinance adopted pursuant to Chapter 32, Title 42, Idaho Code, or other applicable law that requires new connections to be properly designed and constructed, which prohibits cross-connections with non-potable water sources and in all ways protects the water system from injection of contaminants, and that provides for fees for service from users or classes of users. ()

008. ELIGIBLE SYSTEMS.

01. Basic Drinking Water Considerations. Public and private community water systems and nonprofit noncommunity water systems. ()

02. Basic Wastewater Considerations. Municipal or non-profit owned wastewater point source treatment facilities, lagoons, reuse facilities, and systems using nonpoint source methodologies of wastewater disposal. ()

03. Assistance to Ensure Compliance. Public water systems not eligible for project loans may receive assistance if: ()

a. The use of the assistance will ensure compliance; ()

b. The owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures); ()

c. The Department determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with state and federal drinking water requirements over the long term; and ()

d. Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq.), the Department conducts a review to determine whether this section applies to the system. ()

009. INELIGIBLE SYSTEMS.

- 01. Basic Considerations.** Systems not eligible for project loans are described in Subsection 009.02. ()
- 02. Systems Not Eligible.** The following systems will not be considered eligible for project loans: ()
- a.** Wastewater systems that are owned by individuals or for-profits; ()
 - b.** Drinking water systems in significant noncompliance with any requirement of IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq.); ()
 - c.** Drinking water systems under disapproval designation as outlined in IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems”; or ()
 - d.** Systems delinquent in payment of fines, state revolving fund loans, penalties, or fee assessments due to DEQ. ()

010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for projects unless the applicant has demonstrated and certified that it has the legal, technical, managerial, and financial capabilities as provided for in these rules to ensure construction, operation and maintenance, and to repay principal and interest which would be due on a loan. ()

01. Information Needed. Before an application will be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with substantiating documentation. The information may include, but not be limited to, demographic information of the applicant, estimated construction or implementation costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project. ()

02. Incorporated Nonprofit Applicants. ()

a. In addition to all other information required to be submitted by these rules, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Department by its articles of incorporation and/or bylaws, that: ()

- i.** The corporation is nonprofit and lawfully incorporated pursuant to Chapter 3, Title 30, Idaho Code; ()
- ii.** The corporation is authorized to incur indebtedness to construct, improve or repair wastewater or drinking water facilities and/or implement water pollution control nonpoint source projects; ()
- iii.** The corporation is authorized to secure indebtedness by pledging corporation assets, including any revenues raised through a user charge system; ()
- iv.** The corporation exists either perpetually or for a period long enough to repay a project loan; and ()
- v.** The corporation is capable of raising revenues sufficient to repay a loan. ()

b. The Department may impose conditions on the making of a facility loan or water pollution control nonpoint source project to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and the provisions of Chapter 36 or 76, Title 39, Idaho Code. ()

03. Cost Allocation. An applicant proposing a wastewater, drinking water or nonpoint source project

designed to serve two (2) or more entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information: ()

- a. The basis upon which the costs are allocated; ()
- b. The formula by which the costs are allocated; and ()
- c. The manner in which the cost allocation system will be implemented. ()

04. Waivers. The requirement in Section 010 may be waived by the Department if the applicant can demonstrate: ()

- a. Such an agreement is already in place; ()
- b. There is documentation of a service relationship in the absence of a formal agreement; or ()
- c. An applicant exhibits sufficient financial strength to continue the project if one (1) or more of the applicants fails to participate. ()

011. -- 019. (RESERVED)

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Limited loan funds are awarded to projects based on priority ratings and readiness to proceed. Projects are rated by the Department on a standard priority rating form using public health, sustainability, the condition of the existing system and water quality criteria. ()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to wastewater and drinking water projects determined eligible for funding assistance under these rules. ()

02. Wastewater Priority Rating. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points: ()

a. Public health emergency or hazard certified by the Idaho Board of Environmental Quality, the Department, a District Health Department or by a District Board of Health – one hundred and fifty (150) points. ()

b. Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies at a wastewater facility) -- up to one hundred (100) points. ()

c. Watershed restoration (e.g., implementation of best management practices or initiation of construction at wastewater collection and treatment facilities as part of an approved total maximum daily load plan, implementation of nonpoint source management actions in protection of a threatened water, or is part of a special water quality effort) -- up to one hundred (100) points. ()

d. Watershed protection from impacts (e.g., improvement of beneficial use(s) in a given water body, evidence of community support, or recognition of the special status of the affected water body) -- up to one hundred (100) points. ()

e. Preventing impacts to uses (nonpoint source pollution projects) -- up to one hundred (100) points. ()

f. Sustainability efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) -- up to fifty (50) points. ()

- g.** Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points. ()
- 03. Drinking Water Priority Rating.** The priority rating system shall be based on a numerical points system. Priority criteria shall contain the following points. ()
- a.** Public Health Hazard. Any condition that creates, or may create, a danger to the consumer's health, which may include any one (1) or more of the following, may be awarded a maximum of one hundred (100) points: ()
- i.** Documented unresolved violations of the primary drinking water standards including maximum contaminant levels, action levels, and treatment techniques (to include maximum contaminant levels for acute and chronic contaminants); ()
- ii.** Documented unresolved violations of pressure requirements; ()
- iii.** Documented reduction in source capacity that impacts the system's ability to reliably serve water; ()
- iv.** Documented significant deficiencies (e.g., documented in a sanitary survey) in the physical system that are causing the system to not reliably serve safe drinking water; or ()
- v.** Documented unregulated contaminants that have been shown by EPA to be a risk to public health. ()
- b.** General Conditions of Existing Facilities. Points shall be given based on deficiencies, which would not constitute a public health hazard, for pumping, treating, and delivering drinking water - up to sixty (60) points. ()
- c.** Sustainability Efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) - up to fifty (50) points. ()
- d.** Consent Order, Compliance Agreement Schedule, or Court Order. Points shall be given if the system is operating under and in compliance with a Consent Order, Compliance Agreement Schedule, or Court Order and the proposed construction project will address the Consent Order, Compliance Agreement Schedule, or Court Order - up to thirty (30) points. ()
- e.** Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - up to ten (10) points. ()
- f.** Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. ()
- 04. Rating Forms.** Rating criteria for Section 020 set forth in rating forms that are available in the Handbooks. ()
- 05. Priority List.** A list shall be developed from projects rated according to Section 020, submitted for public review and comment, and submitted to the Board for approval. ()
- a.** Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. ()
- b.** Project Bypass. A project that does not or will not meet the Department schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest ranking project(s) that is

ready to proceed. An eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. ()

06. Amendment of a Priority List. The Director may amend a Priority List as set forth in Section 995 of these rules. ()

021. DISADVANTAGED LOANS.

Disadvantaged Loan Awards. In conjunction with the standard loans, the Department may award disadvantaged loans to applicants deemed disadvantaged using the following criteria: ()

01. Qualifying for a Disadvantaged Loan. In order to qualify for a disadvantaged loan, a loan applicant must have a residential user rate for either drinking water or wastewater services that exceed two percent (2%) of the applicant community's median household income or, if the user rate is between one and one-half percent (1½%) and two percent (2%) of the applicant community's median household income, the community must also have: unemployment that exceeds the state average; and a decreasing population. The applicant shall agree to a thirty (30) year loan unless the design life of the project is documented to be less than thirty (30) years. The annual user rate would be based on all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades). If the applicant's service area is not within the boundaries of a municipality, or if the applicant's service area's median household income is not consistent with the municipality as a whole, the applicant may use the census data for the county in which it is located or may use a representative survey, conducted by a Department approved, objective third party, to verify the median household income of the applicant's service area. ()

02. Adjustment of Loan Terms. DEQ will equally apportion funds available for principal forgiveness to all prospective disadvantaged loan recipients. For wastewater loan funding, the length of the repayment period is set at the borrower's discretion, up to the maximum repayment period of thirty (30) years. For drinking water loan funding, extensions of repayment term to thirty (30) years are only allowed for disadvantaged applicants. Consistent with achieving user rates as per the criteria set forth in Section 021, and where possible with available funds, loan terms may be adjusted in the following order: decreasing the interest rate and providing principal forgiveness. ()

a. Decreasing Interest Rate. The loan interest rate may be reduced from the rate established by the Director for standard loans to a rate that results in an annual user rate equaling the criteria set forth in Section 021. The interest rate may be reduced to as low as zero percent (0%). ()

b. Principal Forgiveness. If even at zero percent (0%) interest, the annual user rate per residential user still exceeds the criteria set forth in Section 021, then the principal that causes the user charge to exceed the criteria set forth in Section 021 may be partially forgiven or reduced. The principal reduction cannot exceed fifty percent (50%) of the total loan, unless the user rate will exceed \$100 per month (in which case the principal reduction may exceed fifty percent (50%)). Principal forgiveness terms may be revised (from initial estimates established in the annual Intended Use Plan) based upon final construction costs, such that loan terms do not result in user rates that are below the criteria set forth in Section 021. ()

022. SUPPLEMENTAL GRANTS.

In conjunction with loans, the Department may award state funded supplemental grants, not to exceed ninety percent (90%) of total eligible costs, to loan recipients in the following manner: ()

01. Projects Not Funded by Loans. Planning and design projects may receive grant assistance up to ninety percent (90%) funding of eligible costs not funded by a loan; and ()

02. Costs in Excess of Financial Ability. ()

a. Loan recipients may receive supplemental grant assistance for eligible costs that exceed the amount a loan recipient is able to pay. In order to qualify for a supplemental grant, a loan recipient must have the following: ()

i. An annual user rate per household which exceeds one and one-half percent (1 1/2%) of the median household income from the most recent census data. If the loan recipient's service area is not within the boundaries of

a municipality, the loan recipient may use the census data for the county in which it is located or may use an income survey approved by the Department; and ()

ii. The annual user rate includes all operating, maintenance, replacement and debt service costs, both for the existing system and for upgrades. ()

b. If a loan recipient meets the requirement of Section 022, a supplemental grant may be made for the amount of the project that causes the annual user rate for wastewater service per household to exceed one and one-half percent (1 1/2%) of the median household income, subject to available funds. ()

023. -- 029. (RESERVED)

030. PROJECT SCOPE AND FUNDING.

Loan funds awarded under this program may be used to prepare a facility planning document which identifies the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," the Safe Drinking Water Act, 42 U.S.C., Sections 300j et seq., IDAPA 58.01.16, "Wastewater Rules," and the Clean Water Act, 33 U.S.C. Sections 1381 et seq., and which is approvable by the Department. Loan funds may also be used for design and construction of the chosen alternative. ()

01. Nonpoint Source Implementation Funding. Eligible nonpoint source water pollution control projects may be funded when all of the following criteria are met: ()

a. Consistent with and implements the Idaho Nonpoint Source Management Plan. ()

b. Data is used to substantiate a nonpoint source pollutant problem or issue exists and is described or directly referenced. ()

c. Completed project implementation plan or work plan. ()

d. Project commitment documentation through demonstrated ability for loan repayment. ()

e. The project includes documentation that the project owner(s), manager(s), or the sponsoring agency will maintain the project for the life of the project (e.g., Maintenance Agreement). ()

f. The project provides adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project. ()

g. The project demonstrates nexus/benefit to municipality through a letter of support from one (1) or more affected municipalities. ()

02. Facility Funding. Projects may be funded in steps: ()

a. Step 1. Planning document prepared in accordance with the Handbook. ()

b. Step 2. Design which includes the preparation of the detailed engineering plans and specifications necessary for the bidding and construction of the project. ()

c. Step 3. Construction, which includes bidding and actual construction of the project. ()

d. Step 4. A combination of Step 2 and Step 3. ()

e. Combination Step Funding. Projects may be funded in any combination of the steps with the approval of the Department. Separate loans may be awarded for Step 1 or Step 2 projects. If a Step 1 or Step 2 project proceeds to construction, either the Step 1 or Step 2 loan, or both, may be consolidated with the Step 3 loan. If a project does not proceed to construction, outstanding Step 1 and Step 2 loans will be amortized and a repayment schedule prepared by the Department. ()

f. Cost Effective Requirement. Step 2, Step 3 or Step 4 loans shall not be awarded until a final cost effective and environmentally sound alternative has been selected by the Step 1 planning document and approved by the Department. If the planning document has not been completed pursuant to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Drinking Water and Wastewater Facilities," then the loan recipient shall provide an opportunity for the public to comment on the draft planning document. The public comment period shall be held after alternatives have been developed and the Department has approved the draft planning document. The loan recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the loan recipient during the public comment period. At the public meeting, the draft planning document shall be presented by the loan recipient with an explanation of the alternatives identified. The cost effective and environmentally sound alternative selected shall consider public comments received from those affected by the proposed project. After the public meeting and public comment period, the final alternative will be selected and the Environmental Information Document will be prepared. ()

g. Funding For Wastewater Reserve Capacity. Funding for reserve capacity of a treatment plant will not exceed a twenty (20) year population growth and funding for reserve capacity of an interceptor will not exceed a forty (40) year population growth as determined by the Department. ()

h. Funding for Drinking Water Reserve Capacity. Funding for reserve capacity of a drinking water system shall not exceed a twenty (20) year population growth, except that distribution and transmission lines which may be planned for a forty (40) year useful life. ()

031. LIMITATION OF PRELOAN ENGINEERING REVIEWS.

Preloan engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability insurance in accordance with Section 050. ()

032. LOAN FEE.

01. Loan Fee. The Department may elect to impose a loan fee when necessary to offset the costs of administering the loan program, to provide planning assistance, or to otherwise facilitate the operation of the loan efforts. The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. ()

02. Effect on Loan Interest Rate. The loan interest rate, as described in Section 050, will be reduced by the corresponding percentage of the loan fee. ()

03. Payment of Loan Fee. The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. ()

033. -- 039. (RESERVED)

040. LOAN APPLICATION AND REVIEW.

01. Submission of Application. Those eligible systems that received high priority ranking and are ready to proceed shall be invited to submit an application. The applicant shall submit to the Department, a completed application on a form as prescribed by the Department. ()

02. Application Requirements. Applications shall contain the following documentation, as applicable: ()

a. A lawful resolution passed by the governing body authorizing an elected official or officer of the applicant to execute a loan contract and sign subsequent loan disbursement requests; ()

b. Contracts for engineering or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041; ()

- c.** Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: ()
- i.** Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; ()
 - ii.** Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and ()
 - iii.** Be covered by professional liability insurance in accordance with Section 050 of these rules. A certification of liability insurance shall be included in the application; ()
- d.** A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041; ()
- e.** A demonstration that the obligation to pay the costs for which funding is requested is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code; ()
- f.** Step 1 -- Scope of work describing the work tasks to be performed in the preparation of the planning document if required in accordance with Section 030, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; ()
- g.** Step 2 -- Design, or Step 4 -- Design and Construction: ()
- i.** Planning document, including a final environmental document and decision in accordance with Section 042; ()
 - ii.** Financial and management capability analysis as provided in Section 010; and ()
 - iii.** Intermunicipal service agreements between all entities within the scope of the project, if applicable; ()
- h.** Step 3 -- Construction: ()
- i.** Documented evidence of all necessary easements and land acquisition; ()
 - ii.** Biddable plans and specifications of the approved wastewater treatment facility alternative; ()
 - iii.** A plan of operation and project schedule; ()
 - iv.** A user charge system, sewer use or water system protection ordinance and financial management system; and ()
 - v.** A staffing plan and budget; ()
- i.** Step 4 -- Design and Construction. Loan applicants must submit all documentation specified in Section 040 prior to advertising for bids on construction contracts; ()
- j.** Nonpoint Source Implementation Funding: ()
- i.** Information demonstrating that the project is consistent with and implements the Idaho Nonpoint Source Management Plan; ()

- ii. Data that substantiates a nonpoint source pollution problem or issue exists; ()
- iii. A project implementation plan or workplan; ()
- iv. Project commitment documentation that demonstrates the ability for loan repayment; ()
- v. Documentation that the project owner, manager or sponsoring agency will maintain the project for the life of the project; ()
- vi. A demonstration that there will be adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project; and ()
- vii. A description of the nexus/benefit to a municipality and a letter of support from one (1) or more affected municipalities. ()

03. Determination of Completeness of Application. The Department will review the application to determine whether it includes all of the information required by Section 040. ()

04. Notification of Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation will be sent to the applicant. The applicant may provide the missing documentation. ()

05. Reapplication for Loan. The action of disapproving, recalling or terminating a loan in no way precludes or limits the former applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. ()

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department will review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. ()

- 01. Eligible Costs.** Eligible costs are those determined by the Department to be: ()
 - a. Necessary costs; ()
 - b. Reasonable costs; and ()
 - c. Costs that are not ineligible as described in Section 041. ()

02. Necessary Costs. The Department will determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning documents, the project implementation plan or work plan for nonpoint source projects, and any other relevant information in the application that describes the scope of the project to be funded. ()

03. Reasonable Costs. Costs will be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. ()

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: ()

- a. Costs of salaries, benefits, and expendable material the applicant incurs in the project except ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; ()
- b. Costs under construction contracts bid and executed in compliance with state public works

- construction laws; ()
- c.** Professional and consulting services utilizing a lump sum contract, a negotiated hourly rate contract, a time and materials contract, or cost plus a fixed fee contract; ()
 - d.** Planning directly related to the projects; ()
 - e.** System evaluations; ()
 - f.** Financial and management capability analysis; ()
 - g.** Preparation of construction drawings, specifications, estimates, and construction contract documents; ()
 - h.** Landscaping; ()
 - i.** Removal and relocation or replacement of utilities for which the applicant is legally obligated to pay; ()
 - j.** Material acquired, consumed, or expended specifically for the project; ()
 - k.** A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; ()
 - l.** Preparation of an operation and maintenance manual; ()
 - m.** Preparation of a plan of operation; ()
 - n.** Start-up services; ()
 - o.** Project identification signs; ()
 - p.** Public participation for alternative selection; ()
 - q.** Development of user charge and financial management systems; ()
 - r.** Development of sewer use or water system protection ordinance; ()
 - s.** Staffing plans and budget development; ()
 - t.** Certain direct and other costs as determined eligible by the Department; ()
 - u.** Costs of complying with the Federal Water Pollution Control Act (P.L. 92-500) as amended, 33 USC Section 1251 et seq. and the Safe Drinking Water Act (42 U.S.C. Section 300j et seq, loan requirements applied to specific projects; and ()
 - v.** Site acquisition costs, including right of way, plant site, wastewater land application sites and sludge disposal areas. Land purchase shall be from a willing seller. ()
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: ()
- a.** Basin or area wide planning not directly related to the project; ()
 - b.** Bonus payments not legally required for completion of construction before a contractual completion date; ()

- c. Personal injury compensation or damages arising out of the project; ()
- d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; ()
- e. Costs outside the scope of the approved project; ()
- f. Ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; ()
- g. Construction of privately owned wastewater treatment facilities; ()
- h. Cost of land in excess of that needed for the proposed project; ()
- i. Cost of refinancing existing indebtedness; ()
- j. Engineering costs incurred without professional liability insurance; ()
- k. Costs of condemnation; ()
- l. Reserve funds; and ()
- m. Costs incurred prior to acceptance of the loan unless specifically approved in writing as eligible pre-award costs by the Department. ()

06. Notification Regarding Ineligible Costs. Prior to providing a loan offer, the Department will notify the applicant if certain costs are not eligible for funding and the reasons for the Department’s determination. If such costs are included in the engineering contract, the Department will also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. ()

07. Eligible Costs and the Loan Offer. The loan offer shall reflect those costs determined by the Department to be eligible costs. The loan offer, however, may include estimates of some eligible costs that have not yet been set, such as construction costs. Actual eligible costs may differ from such estimated costs set forth in the loan offer. In addition, loan disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. ()

042. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. Guidance on how to complete an environmental review is found in Chapter 5 of the applicable Handbook. For eligible projects funded solely with non-federal funds (e.g. State Revolving Loan Fund repayments), see Section 042. For eligible projects, the loan recipient shall complete an environmental review as part of and in conjunction with a planning document. Projects funded exclusively as nonpoint or estuary management projects may not be required to complete an environmental review. The loan recipient shall consult with the Department at an early stage in the loan process to determine the required level of environmental review. Based on review of existing information, and assessment of environmental impacts, the loan recipient shall complete one (1) of the following per the Department’s instruction: ()

- a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; ()
- b. Prepare an Environmental Information Document (EID) in a format specified by the Department; ()
- or
- c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. ()

02. Categorical Exclusions. If the loan recipient requests a CE, the Department will review the request and, based upon the supporting documentation, take one (1) of the following actions: ()

a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department will issue a notice of CE from substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper in the geographical area of the proposed project to inform the public of this action, following which the planning document can be approved and the loan award can proceed; or ()

b. Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If a CE is not issued, the Department will notify the loan recipient to prepare an EID. ()

03. Environmental Information Document Requirements. When an EID is required, the loan recipient shall prepare the EID in accordance with the following Department procedures: ()

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders; ()

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources; and ()

c. The Department will review the draft EID and either request additional information about one (1) or more potential impacts, or draft a “finding of no significant impact” (FONSI). ()

04. Final Finding of No Significant Impact. The Department will publish the draft FONSI in a local newspaper in the geographical area of the proposed project and will allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI will become final. The Department will assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the planning document. ()

05. Environmental Impact Statement (EIS) Requirements. If an (EIS) is required, the loan recipient shall: ()

a. Consult with all affected federal and state agencies, and other interested parties, to determine the required scope of the document; ()

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; ()

c. Conduct a public meeting which may be in conjunction with a planning document meeting; and ()

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. ()

06. Final EIS. Upon completion of the EIS by the loan recipient and approval by the Department of all requirements listed in Section 042, the Department will issue a record of decision, documenting the mitigation measures to be required of the loan recipient. The loan agreement can be completed once the final EIS has been approved by the Department. ()

07. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a system may be justified in advance of all environment review requirements for the remainder of the system. The Department will approve partitioning the environment review in accordance with established procedures. ()

08. Use of Environmental Reviews Conducted by Other Agencies. If environmental review for the

project has been conducted by another state, federal, or local agency, the Department may, at its discretion, issue its own determination by adopting the document and public participation process of the other agency. ()

09. Validity of Review. Environmental reviews, once completed by the Department, are valid for five (5) years from the date of completion. If a loan application is received for a project with an environmental review which is more than five (5) years old, the Department will reevaluate the project, environmental conditions and public views and will: ()

a. Reaffirm the earlier decision; or ()

b. Require supplemental information to the earlier EIS, EID, or request for CE. Based upon a review of the updated document, the Department will issue and distribute a revised notice of CE, FONSI, or record of decision. ()

10. Exemption From Review. Loan projects may be exempt from certain federal crosscutting authorities at the discretion of the Department as long as in any given year the annual amount of loans, equal to the most recent federal capitalization grant, complies with all of the federal crosscutting authorities. ()

043. -- 049. (RESERVED)

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers will be delivered to successful applicants by representatives of the Department or by registered mail. ()

02. Acceptance of Loan Offer. Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period the loan funds may be offered to the next project of priority. ()

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director and upon signature by the authorized representative of the eligible applicant, the loan offer shall become a contract. Upon accepting a loan offer, an eligible applicant becomes a loan recipient. The disbursement of funds pursuant to a loan contract is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. ()

04. Estimate of Reasonable Cost. All loan contracts will include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. ()

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: ()

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; ()

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; ()

c. Terms consistent with applicable state and federal laws pertaining to planning documents, design, and construction, including the Public Works Contractors License Act and the Public Contracts Bond Act, Chapter 19, Title 54, Idaho Code, and the federal Clean Water Act and Safe Drinking Water Act requirements for projects funded with loan moneys of federal origin; ()

d. Requirement for the prime engineering firm(s) and their principals retained for engineering

services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors and omissions of a professional nature. The total aggregate of the engineer's professional liability insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department; ()

e. The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the loan recipient has approved and adopted acceptable public works construction standards approved by the Department; ()

f. The loan interest rate for loans made during the state fiscal year beginning July 1 will be established by the Director. The interest rate will be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; ()

g. The loan fee pursuant to Section 032; ()

h. All loans must be fully amortized within a period not to exceed thirty (30) years after project completion. The loan contract will be appended with a schedule of loan repayments stating the due dates and the amount due upon project completion. The loan recipient may elect for either a schedule of semi-annual or annual repayments at the time the loan is finalized; and ()

i. Repayment default will occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. ()

051. ACCOUNTING AND AUDITING PROCEDURES.

Loan recipients must maintain project accounts in accordance with generally accepted accounting principles. Projects may be audited on an annual basis according to government auditing standards issued by the U.S. Governmental Accountability Office. ()

052. -- 059. (RESERVED)

060. DISBURSEMENTS.

01. Loan Disbursements. Requests to the Department for actual disbursement of loan proceeds will be made by the loan recipient on forms provided by the Department. ()

02. Loan Increases. An increase in the loan amount as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling. ()

03. Loan Decreases. If the actual eligible cost is determined by the Department to be lower than the estimated eligible cost the loan amount will be reduced proportionately. ()

04. Project Review to Determine Final Eligible Costs. A project review by the Department or a Department designee will determine the final eligible costs. ()

05. Final Disbursement. The final loan disbursement consisting of five percent (5%) of the total loan amount shall not be made until final inspection, final review, and a final loan repayment schedule have been completed. ()

061. LOAN CONSOLIDATION.

If two (2) or more loans are consolidated into one (1) loan, the interest rate for the consolidated loan will be at the same rate as the loan being consolidated with the lowest interest rate. ()

062. -- 079. (RESERVED)

080. SUSPENSION OR TERMINATION OF LOAN CONTRACTS.

01. Causes. The Director may suspend or terminate any loan contract prior to final disbursement for failure by the loan recipient or its agents, including engineering firm(s), contractor(s) or subcontractor(s) to perform. A loan contract may be suspended or terminated for good cause including, but not limited to, the following: ()

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or ()

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years' imprisonment or any crime involving or affecting the project; or ()

c. Violation(s) of any term of the loan contract; or ()

d. Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of engineering subagreements, or contracts for construction; or ()

e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. ()

02. Notice. The Director will notify the loan recipient in writing and by certified mail of the intent to suspend or terminate the loan contract. The notice of intent shall state: ()

a. Specific acts or omissions which form the basis for suspension or termination; and ()

b. That the loan recipient may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ()

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ()

04. Reinstatement of Suspended Loan. Upon written request by the loan recipient with evidence that the causes(s) for suspension no longer exists, the Director may, if funds are available reinstate the loan contract. If a suspended loan contract is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. ()

05. Reinstatement of Terminated Loan. No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. ()

081. -- 994. (RESERVED)

995. WAIVER OF REQUIREMENTS AND AMENDMENT OF PRIORITY LIST.

The Director may amend the Priority List and grant a waiver from the requirements of these rules on a case-by-case basis upon full demonstration by the loan recipient requesting the waiver that the following conditions exist. See also Section 020 of these rules. ()

01. Health Hazard. A significant public health hazard exists; ()

02. Water Contamination. A significant water contamination problem exists; ()

03. Pollution. A significant point source of pollution exists causing a violation of Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards"; or ()

04. Affordability Criteria Exceeded. The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted. ()

996. -- 999. (RESERVED)

58.01.13 – RULES FOR ORE PROCESSING BY CYANIDATION

000. LEGAL AUTHORITY.

Title 39, Chapter 1, Idaho Code, grants the authority to the Board of Environmental Quality to adopt rules, regulations and standards to protect the environment and the health of the State; grants authority to the Director to issue permits as prescribed by law and by the rules of the Board; and requires Department of Environmental Quality review and approval of plans and specifications for all new facilities, or for modifications or expansions to existing facilities, that process ore by cyanidation; and authorizes the Director to require reasonable fees for processing permit applications and for services rendered by the Department. ()

001. TITLE, SCOPE AND INTENT.

01. Title. These rules are titled IDAPA 58.01.13, “Rules for Ore Processing by Cyanidation.” ()

02. Scope and Intent. ()

a. These rules establish the procedures and requirements for the issuance and maintenance of a permit to construct, operate and close that portion of a cyanidation facility that is intended to contain, treat or dispose of process water or process-contaminated water containing cyanide. The provisions of these rules also establish requirements for water quality that address performance, construction, operation and closure of that portion of any cyanidation facility that is intended to contain, treat, or dispose of process water. These rules are intended to ensure that process water and process-contaminated water generated in ore processing operations that utilize cyanide as a primary leaching agent and pollutants associated with the cyanidation process are safely contained, controlled, and treated so that they do not interfere with the beneficial uses of waters and do not endanger public safety or the environment. ()

b. Compliance with a permit issued under these rules does not release the permittee from liability for any unauthorized discharge to or any unauthorized degradation of waters caused by the facility. ()

002. (RESERVED)

003. ADMINISTRATIVE PROVISIONS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ()

004. – 005. (RESERVED)

006. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 74, Chapter 1, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.” ()

007. DEFINITIONS.

The terms “cyanidation,” “cyanidation facility,” “Department,” “Director,” “State,” and “Waters” have the meaning provided for that term in [Section 39-103, Idaho Code](#). The term “ground water” has the meaning provided in [Section 39-121, Idaho Code](#). ()

01. Beneficial Use. As defined in IDAPA 58.01.02, “Water Quality Standards,” Section 010, as amended. ()

02. Best Management Practices (BMPs). As defined in IDAPA 58.01.02, “Water Quality Standards,” Section 010, as amended. ()

03. Degradation. When referring to surface water, “degradation” has the meaning provided in IDAPA 58.01.02, “Water Quality Standards,” Section 010. When referring to ground water, “degradation” has the meaning provided in IDAPA 58.01.11, “Ground Water Quality Rule,” Section 007. ()

04. Discharge. When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into waters. ()

05. Idaho Pollutant Discharge Elimination System (IPDES) Permit. A permit issued by the Department for the purpose of regulating discharges into surface waters. ()

06. Land Application. A process or activity involving application of liquids or slurries potentially containing cyanide from the cyanidation facility to the land surface for the purpose of treatment, neutralization, disposal, or ground water recharge. ()

07. Liner. A continuous layer of natural or man-made materials beneath and, if applicable, on the sides of ponds, tailings impoundments, or leach pads that restricts the downward and lateral movement of liquids. ()

08. Material Modification or Material Expansion. ()

a. Any change to a permitted cyanidation facility, except as provided in Subsection 007.08.b., that the Department determines will: ()

i. Cause or increase the potential to cause degradation of waters, such as a new cyanidation process or cyanidation facility component; ()

ii. Significantly change the capacity, location, or process of an existing cyanidation facility component; or ()

iii. Change the site condition in a manner that is not adequately described in the original permit application. ()

b. Reclamation and closure related activities at a cyanidation facility with an existing permit that did not actively add cyanide after January 1, 2005 is not material modification or material expansion of the cyanidation facility. ()

09. Material Stabilization. Managing or treating spent ore, tailings or other solids and/or sludges resulting from the cyanidation process to minimize water or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility to ensure that all discharges comply with all applicable standards and criteria. ()

10. Neutralization or Neutralized. Treatment of process water such that discharge or final disposal of the process water does not, or will not, violate any applicable standards and criteria. ()

11. Outstanding Resource Water (ORW). A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been designated by the legislature and subsequently listed in IDAPA 58.01.02, "Water Quality Standards." ORW constitutes an outstanding national or state resource that requires protection from point and nonpoint source activities that may lower water quality. ()

12. Permanent Closure. Those activities that result in neutralization, material stabilization and decontamination of cyanidation facilities and the facilities' final reclamation. ()

13. Permanent Closure Plan. A description of the procedures, methods, and schedule that will be implemented to treat and dispose 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 in manner that meets the intent and purpose of Section 39-118A, Idaho Code; Chapter 15, Title 47, Idaho Code; and all applicable rules. ()

14. Permit. When used without qualification, any written authorization by the Director, issued pursuant to the application, public participation and appeal procedures in these rules, governing 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. ()

15. Permittee. The person in whose name a permit is issued and who is to be the principal party responsible for compliance with these rules and the conditions of a permit. ()

16. Person. An individual, corporation, partnership, association, state, municipality, commission, ()

federal agency, special district or interstate body. ()

17. Pollutant. Chemicals, chemical waste, process water, biological materials, radioactive materials, or other materials that, when discharged, cause or contribute adverse effects to any beneficial use, or for any other reason, may impact waters. ()

18. Pond. A process component that stores, confines, or otherwise significantly impedes the horizontal and downward movement of process water. This term does not include tailings impoundments or non-earth containers such as vats and tanks. ()

19. Post-Closure. The period of time after completion of permanent closure when the permittee is monitoring the effectiveness of the closure activities. Post-closure lasts 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 requirements of Chapter 15, Title 47, Idaho Code, and all applicable rules. ()

20. Process Water. Any liquid intentionally or unintentionally introduced into any portion of the cyanidation process. Such liquid 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. ()

21. Seasonal Closure. Annual cessation of operations that is due to weather. ()

22. Sensitive Resource Aquifer. Any aquifer or portion of an aquifer listed in IDAPA 58.01.11, Ground Water Quality Rule, Subsection 300.01. ()

23. Tailings Impoundment. A process component that is the final depository for processed ore from the mining, milling, or chemical extraction process. ()

24. Temporary Closure. Any cessation of operations exceeding thirty (30) days, other than seasonal or permanent. ()

25. Treatment or Treated. Any method, technique or process, including neutralization, that changes the physical, chemical, or biological character or composition of a waste for the purpose of disposal, or the end result of such action. ()

26. 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. ()

27. 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 unless permitted or otherwise approved by the Department. ()

28. Weak Acid Dissociable (WAD) Cyanide. The cyanide concentration as determined by Method C, Weak Acid Dissociable Cyanide, D2036 of American Society of Testing Materials Book of Standards, "Standard Methods for the Examination of Water and Wastewater," Method 4500-CN- I, or other methods accepted by the scientific community and deemed appropriate by the Department. ()

008. -- 009. (RESERVED)

010. APPLICABILITY TO FACILITIES WITH EXISTING PERMITS.

A cyanidation facility with an existing permit approved by the Department prior to July 1, 2005, is subject to the applicable laws and rules for ore processing by cyanidation in effect on June 30, 2005. Material modifications or material expansions of such facilities are subject to Section 39-118A, Idaho Code. ()

011. -- 049. (RESERVED)

050. PRE-APPLICATION PROCESS AND PRELIMINARY DESIGN.

01. Pre-application Conference. Any person who intends to apply for a permit or proposes to construct or operate a facility that is intended to contain, treat, or dispose of process water and process-contaminated water generated in ore processing operations that utilize cyanide as a primary leaching agent should contact the Department during the initial stages of site characterization to schedule a pre-application conference. Prospective applicants are encouraged to begin meeting with agents of the Department at least one (1) year in advance of preliminary design submittal to discuss, at a minimum, the following. ()

a. Environmental baseline data requirements; waste characterization requirements; siting requirements; operation and maintenance plans; emergency and spill response plans; quality assurance/quality control plans; required contents for permit applications; agency cyanidation facility visits. ()

b. The proposed water quality monitoring and reporting required in Subsection 200.11 and the monitoring well siting and construction plans required in Subsection 200.12. The applicant is encouraged to submit a report describing the purpose, objectives, location, and proposed construction of monitoring wells to the Department for review and comment during the initial stages of site characterization. ()

c. The preliminary design report and alternative design proposals required prior to application submittal under Subsection 050.02. ()

d. The permitting process, application procedures, public review and comment periods, and permit schedule. ()

e. The timing of additional pre-application meetings. The pre-application conference may trigger a period of collaborative effort between the applicant, the Department, and the Idaho Department of Lands to develop an application that complies with rule requirements and ensures the facility will not interfere with the beneficial uses of waters and will not endanger public safety or the environment. ()

f. The cost recovery agreement required under Subsection 100.04. ()

02. Information Required for Preliminary Design Report. Submittal of a preliminary design report is mandatory. Upon submittal, the preliminary design report must include sufficient detail to determine the following: ()

a. The general framework and design criteria for the project; ()

b. How the project will address each applicable requirement in Subsection 100.03 and Sections 200 through 205, or why a specific requirement in Subsection 100.03 and Sections 200 through 205 is not applicable; ()

c. How the design criteria were identified, or the approach the applicant will use to determine design criteria for which insufficient data is available at the time of the preliminary design; ()

d. How the requirements of these rules will be met in the final permit application; and ()

e. How design, construction, operation, and closure will ensure the facility will not interfere with the beneficial uses of waters and will not endanger public safety or the environment. ()

03. Notice of Preliminary Design Approval or Disapproval. Unless otherwise provided in this Subsection 050.03, the Director will notify the applicant in writing of the decision to approve or disapprove a preliminary design report within thirty (30) days after the Department receives all information required by Subsection 050.02. For alternative design proposals submitted under Section 205, the Director will notify the applicant in writing of the decision for alternative design approval or disapproval within ninety (90) days after the Department receives all information required by Section 205. The time required to review and, if appropriate, approve the preliminary design

report is separate from and not included as part of the one hundred eighty (180) day period for issuing notice of rejection or notice of approval of the permit under Section 39-118A(2)(b), Idaho Code. Approval of the preliminary design report does not authorize the construction, modification, or operation of the cyanidation facility. ()

051. -- 099. (RESERVED)

100. PERMIT AND PERMIT APPLICATION.

01. Permit Required. No person may construct a new cyanidation facility prior to obtaining a permit from the Director. No person may materially expand or materially modify a cyanidation facility prior to obtaining a modified permit for such expansion or modification pursuant to Section 750. ()

02. Permit Application. The owner or proposed operator of a cyanidation facility or the owner's or operator's authorized representative must: ()

a. Make application to the Director in writing and in a manner or form prescribed herein; and ()

b. Provide five (5) paper copies of the application to the Director, unless otherwise agreed to by the Department and the applicant. ()

03. Contents of Application. A permit application and its contents will be used to determine if an applicant can locate, construct, operate, maintain, close, and monitor the proposed cyanidation facility in conformance with these and other applicable rules including, but not limited to, IDAPA 58.01.02, "Water Quality Standards"; IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems"; IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; IDAPA 58.01.06, "Solid Waste Management Rules"; IDAPA 58.01.11, "Ground Water Quality Rule"; and IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program." The application must include all of the following information in sufficient detail to allow the Director to make necessary application review decisions concerning compliance with Sections 200 through 205 as applicable and protection of human health and the environment: ()

a. Name, location, and mailing address of the cyanidation facility. ()

b. Name, mailing address, and phone number of the applicant, and a registered agent. ()

c. Land ownership status of the cyanidation facility (federal, state, private, or public). ()

d. Name, mailing address, and phone number of the applicant's construction and operations manager. ()

e. The legal structure (corporation, partnership, etc.) and residence of the applicant. ()

f. The legal description, to the quarter-quarter section, of the location of the proposed cyanidation facility. ()

g. Evidence the applicant is authorized by the Secretary of State to conduct business in the State of Idaho. ()

h. A general description of the operational plans for the cyanidation facility from construction through permanent closure. This description must include any proposed phases for construction, operations, and permanent closure. ()

i. The design maximum daily throughput of ore through the cyanidation facility and the total projected volume of material to be processed during the life of the operation. ()

j. Cyanidation facility layouts including water management systems designed to segregate storm water from process water. ()

k. A geotechnical evaluation of all process water and process chemical containment systems within

the proposed cyanidation facility. ()

l. A preconstruction topographic site map or aerial photos extending at least one (1) mile beyond the outer limits of the cyanidation facility, identifying and showing the location and extent of the following features: ()

i. All wells, perennial and intermittent springs, adit discharges, wetlands, surface waters, and irrigation ditches that may be affected by the cyanidation facility; ()

ii. All process water supply source(s); ()

iii. All public and private drinking water supply source(s) within at least one (1) mile of the cyanidation facility; ()

iv. Identified floodplain areas (shown on USGS sectional Quadrangle maps); ()

v. All service roads and public roads; ()

vi. All buildings and structures within half (1/2) a mile of the cyanidation facility; ()

vii. All outstanding resource waters and sensitive resource aquifers within one (1) mile of the cyanidation facility; and ()

viii. All Clean Water Act Section 303(d) listed streams, and their listed impairments, within ten (10) miles of the site boundary that may be affected by the cyanidation facility. ()

m. To the extent such information is available, a description and location of underground mine workings and adits and a description of the structural geology that may influence ground water flow and direction. ()

n. A description of the proposed land application site. The description must include a potentiometric map, surface and subsurface soil characteristics, geology, hydrogeology and ground water quality. The description of these characteristics must be sufficient to determine anticipated impacts to the affected soils, associated vadose zone as well as anticipated changes in geochemistry that may affect surface and ground water quality. ()

o. Siting diagram for land application sites, monitoring wells, lysimeters, surface or ground water discharge sites, or surface water monitoring locations. ()

p. A description of measures to protect wildlife that may be affected by the facility. ()

q. Proposed post-construction topographic maps. ()

r. Engineering plans and specifications for all portions of the cyanidation facility must be submitted to the Department for review and approval. Preliminary designs for future phases of the cyanidation facility may be submitted as part of the permit application, provided that, pursuant to Subsection 500.02, the Department review and approval of final plans and specifications is required before construction of those phases may begin. All cyanidation facility engineering plans and specifications must bear the imprint of an Idaho licensed professional engineer that is both signed and dated by the engineer. These plans and specifications must, at a minimum, include all of the following information applicable to the proposed facility. ()

i. Designs meeting applicable criteria in Sections 200 through 204. ()

ii. Any alternative design approved by the Department under Section 205. ()

iii. The water balance, ore flow, and processing calculations demonstrating the logic behind sizing of facilities. ()

- iv. The general ore processing overview and analyses of chemical compatibility of containment materials with process chemicals and wastes, including a chemical mass balance at inputs and outputs from the cyanidation facility. ()
- v. Geotechnical data and analyses demonstrating the logic for plans and specifications of foundation materials and placement. ()
- vi. Requirements for site preparation. ()
- vii. Pumping and dewatering requirements. ()
- viii. Procedures for materials selection and placement for backfilling foundation areas. ()
- ix. Criteria for caps and covers used as source control measures. ()
- x. Criteria for ensuring stability of embankments for pads, ponds and tailings impoundments. ()
- xi. Procedures to classify and modify, if necessary, excavated fill, bedding and cover materials for buildings, pads, ponds, and tailings impoundments. ()
- xii. Plumbing and conveyance schematics and component specifications. ()
- xiii. Plan views and cross-section drawings of leach pad, permanent heaps, vats, process water storage ponds, tailings impoundments, and spent ore disposal areas. ()
- xiv. Leak detection and collection system plans and specifications including, but not limited to, schematics and narratives describing liner and geotextile material specifications, sumping capacity and layout, location of monitoring port(s), monitoring port components, construction operation and maintenance procedures for monitoring ports and pumping systems, including backup system, triggers for containment repairs, replacement or other contingency mitigation, frequency of monitoring, and monitoring parameters. ()
- xv. Provisions to protect containment systems from heavy equipment, fires, earthquakes, and other natural phenomena. ()
- xvi. Quality assurance/quality control procedures. ()
- xvii. The identity and qualifications of the person(s) directly responsible for supervising construction and quality assurance/quality control. ()
- s. Operation and maintenance plans that include all of the following. ()
 - i. Maintenance plans, including routine service procedures for containment systems, process chemical storage, and disposal of contaminated water or soils, including petroleum-contaminated soils. ()
 - ii. A water management plan that provides for handling and containment of process water including the methods to manage and/or treat all process water and pollutants, run-off or run-on water, emergency releases, and excess water due to flood, rain, snowmelt, or other similar events. The plan must include the basis for the designed containment volumes and estimations of the need for and operation of a land application site, injection wells, infiltration galleries or leach fields, or the need for an IPDES permit. The permittee will update the plan on a regular basis to reflect the reconciliation of the water balance changes in the project through construction, operation, maintenance, and permanent closure, including modifications to the cyanidation facility. ()
 - iii. A proposed water quality monitoring plan. ()
 - iv. An emergency and spill response plan that describes procedures and methods to be implemented for the abatement and clean up of any pollutant that may be discharged from the cyanidation facility during use, handling or disposal of processing chemicals, petrochemicals and/or fuels, and any other deleterious materials. ()

()

v. A seasonal/temporary closure plan, if applicable, that describes the procedures, methods, and schedule to be implemented for the treatment and disposal of process water and pollutants, the control of drainage from the cyanidation facility during the period of closure, the control of drainage from the surrounding area, and the secure storage of process chemicals. ()

t. The permanent closure plan must be the same as the plan submitted to the Idaho Department of Lands pursuant to the Idaho Mine Land Reclamation Act, Chapter 15, Title 47, Idaho Code, and the rules promulgated thereunder. ()

u. Characterization of pollutants contained in or released from the cyanidation facility, including the potential for the pollutants to cause degradation of waters. ()

04. Cost Recovery Agreement. Prior to submittal of the preliminary design report, an applicant must enter into an agreement with the Department for actual costs incurred to review the preliminary design report, process the permit application or any permit modification requests, issue a final permit or permit modification, and review final facility designs prior to construction if such designs were not included in the permit application. The cost recovery agreement may provide for actual costs incurred by the Department for any other service rendered pursuant to these rules or a permit so long as agreed to in advance by the applicant. ()

101. -- 199. (RESERVED)

200. REQUIREMENTS FOR WATER QUALITY PROTECTION.

The following design and performance standards are intended as the minimum criteria for protection of public health and waters. These standards apply to all facilities unless the Department determines that other site-specific criteria, including an alternative design approved under Section 205, are appropriate to protect water quality and the public health. ()

01. Professional Engineer. Plans and specifications for construction, alteration or expansion of any cyanidation facility must be prepared by or under the supervision of an Idaho licensed professional engineer and bear the imprint of the engineer's seal. Construction must be observed by an Idaho licensed professional engineer or a person under the supervision of an Idaho licensed professional engineer. ()

02. Plans and Specifications. Final plans and specifications for the construction of a cyanidation facility must be submitted to and approved by the Department before construction may begin. All construction must be in compliance with the plans and specifications approved by the Department. Within thirty (30) days of the completion of such construction, modification or expansion, complete and accurate plans and specifications depicting that actual construction, modification or expansion does not deviate from the original approved plans and specifications must be submitted to the Department. ()

03. Manufacturer's Specifications. Manufacturer's specifications for materials and equipment necessary to meet the requirements of Subsection 100.03.r. and Sections 200 through 205 for containment of process water must be submitted to the Department with the plans and specifications required in Subsection 200.02 before construction may begin. ()

04. Siting and Preparation. All cyanidation facilities including, but not limited to, the process building, laboratories, process chemical storage and containment facilities, plumbing fixtures that support process water, untreated or treated process water ponds, tailings impoundments, ore stock piles, and spent ore disposal areas must be appropriately sited and prepared for construction. Siting criteria must ensure that, at a minimum, the facilities are structurally sound and that containment systems can be adequately protected against factors such as wild fires, floods, land slides, storm water run-on, erosion, migrating stream channels, high ground water table, equipment operation, subsidence of underground workings, public access and public activities. All sites must be properly prepared prior to construction of foundations and facilities. Vegetation, roots, brush, large woody debris and other deleterious materials, top soil, historic foundations and plumbing, or other materials that may adversely affect appropriate construction and long term stability, must be removed from the footprint of the cyanidation facility unless approved by the Department. ()

05. Process Water Storage Sizing Criteria. All aspects of the cyanidation facility that entrain, utilize, treat, discharge, pump, convey, or otherwise contain process water, treated process water, or run-off water from any portion of the cyanidation facility must be included in the water balance. Each pond, tailings impoundment, and ditch containing process water must be designed to maintain a minimum two (2) foot freeboard during storage or conveyance of the design climatic events plus maximum expected normal operating levels. Leach pad design must provide containment of the maximum expected operating flows plus storm flows from the design climatic event. At a minimum, a cyanidation facility must be designed to contain the maximum expected normal operating water balance and the volume of run-on and run-off water associated with a climatic event that has a one percent (1%) annual exceedance probability. Snowmelt events will be considered in determining the maximum flow volume during the design climatic event. Contingency plans for managing excesses of all water included as a part of the water balance must be described in the water management strategy. Each structure that impounds process water or process-contaminated water must include a means of passing excess water unless otherwise approved by the Department. ()

06. Minimum Plans and Specifications. Unless the Department approves an alternative design under Section 205, the plans and specifications for any portion of a cyanidation facility that will contain process water must satisfy the applicable general design criteria in Subsection 200.06 and the design criteria in Sections 201 through 204 for the type of facility receiving process water. These provisions establish minimum pollutant control technologies and define the site and operating conditions that must be evaluated. ()

a. Cyanidation facility design must: ()

i. Minimize releases of pollutants into ground water or subsurface migration pathways so that any release will not cause unauthorized degradation of waters. ()

ii. Preclude any differential movement or shifting of the subgrade, soil layer, liner or contained material that endangers containment integrity as a result of the proposed range of operating conditions for each component and anticipated seismic activity at the site. ()

iii. Include additional containment of process water, as requested by the Department, in areas where ground water is considered to be near the surface. Ground water is considered to be near the surface if: ()

(1) The depth from the surface to ground water is less than one hundred (100) feet and the top one hundred (100) feet of the existing formation has a hydraulic conductivity greater than 10^{-5} cm/sec; ()

(2) Open fractured or faulted geologic conditions exist in the bedrock from the surface to the ground water; or ()

(3) There is an inability to document that all borings beneath the cyanidation facility have been adequately abandoned. ()

iv. Not locate new process component containing process water within one thousand (1,000) feet of any dwelling that is occupied at least part of the year and not owned by the permittee. This does not apply to modifications at a facility that predates such a dwelling. ()

v. Include measures for preventing wildlife contact with process water having a WAD cyanide concentration in liquid fraction exceeding fifty (50) mg/L. The Department may require additional measures if wildlife mortality is observed. ()

vi. Implement measures to protect birds, other wildlife and livestock from adverse effects of cyanide process water and other pollutants. ()

vii. Include a quality assurance/quality control plan for the construction of containment systems that provides a process for documenting owner acceptance of all underlying components of the containment system prior to construction of the overlying components. ()

- b.** Liner systems must: ()
- i. Have a structurally stable subgrade for the overlying components and contained material. The subgrade should be constructed to resist consolidation, excessive differential settlement that compromises liner performance, and uplift resulting from pressures inside or outside the containment unit to prevent distortion of overlying components. ()
- ii. Have a smooth rolled and compacted soil layer, or equivalent layer approved by the Department, in intimate contact with the overlying geomembrane liner with the following characteristics: ()
- (1) A minimum thickness of twenty-four (24) inches compacted to ninety-five percent (95%) of maximum dry density according to Standard Proctor Test ASTM D698 or Modified Proctor Test ASTM D1557; ()
- (2) Soil placed in a minimum of four (4) lifts that each have a compacted thickness of six (6) inches and a hydraulic conductivity less than or equal to 10^{-6} cm/sec; ()
- (3) An uppermost lift of soil that does not contain particles in excess of point seven five (0.75) inches (nineteen (19) mm) in largest dimension unless larger particles are consistent with the manufacturer's specifications for the overlying liner and approved by the Department; ()
- (4) No putrescible, frozen, or other deleterious materials. ()
- (5) No angular, sharp material regardless of diameter; and ()
- (6) Soil placed within two percent (2%) of optimum moisture content to achieve the specified compaction and hydraulic conductivity. ()
- iii. Include the following if an equivalent layer replacing the soil layer described in Subsection 200.06.b.ii. is proposed: ()
- (1) A layer that is not a geomembrane and has a liquid flow rate no greater than that of twenty-four (24) inches of compact soil with a hydraulic conductivity less than or equal to 10^{-6} cm/sec; ()
- (2) Materials with appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste, process water, or process-contaminated water to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation; ()
- (3) Materials that provide appropriate shear resistance of the upper and lower component interface to prevent sliding of the upper component including on slopes; ()
- (4) Certification from an Idaho licensed professional engineer that the liquid flow rate per unit area through the equivalent layer is no greater than the liquid flow rate through two (2) feet of compacted soil with a hydraulic conductivity less than or equal to 10^{-6} cm/sec, considering the maximum hydraulic head anticipated on the liner system and the thickness of the equivalent layer replacing the two (2) feet of compacted soil; and ()
- (5) Plans and specifications for an equivalent layer that substantially reflect the manufacturer's specifications and standards for construction, operation and maintenance unless otherwise approved by the Department. ()
- iv. Include geomembrane liners consisting of high density polyethylene, linear low-density polyethylene, or equivalent, rated as having a resistance to the passage of process water equal to or less than a hydraulic conductivity of 10^{-11} cm/sec. Each geomembrane liner will be constructed of materials with appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed,

climatic conditions, the stress of installation, and the stress of daily operation and permanent closure. ()

v. Be constructed according to manufacturer's standards, or Department-approved design standards, and protect against damage from cracking, sun exposure, ice, frost penetration or heaving, wildlife, wildfires, and damage that may be caused by personnel or equipment operating in or around these facilities. ()

vi. Have an appropriate coefficient of friction against sliding plus a factor of safety for each interface constructed on a slope. ()

vii. Have minimum factors of safety, and the logic behind their selection, for the stability of the earthworks and the lining systems. ()

viii. Include redundant systems for failures in primary power or pumping systems. ()

ix. Have liner material that meets the manufacturer's quality assurance/quality control performance specifications. ()

07. Process Buildings, Process Chemical Storage Containment Areas and General Facility Criteria. Storage, handling and use of all process chemicals, process wastes, process water and pollutants associated with the cyanidation facility must be conducted within a clean, safe and secure work space to prevent unauthorized discharges to soils, ground water or surface water. The plans and specifications must contain sufficient detail, including pump capacity and plumbing for evacuation of collection sumps, triggering systems for sump evacuation, and monitoring and reporting requirements and, where appropriate, provide for: ()

a. Structural integrity of the foundation, walls and roof for process and process chemical storage buildings; ()

b. Restriction of public access; ()

c. Protection of wildlife; ()

d. Internal sumps and spill cleanup plans; ()

e. Grouted and sealed concrete stemmed walls and floors in the process buildings and process chemical storage and containment facilities; ()

f. Vapor barriers and frost protection; ()

g. Segregation of process chemicals according to compatibility; ()

h. Communication systems; ()

i. Fire suppression systems, internal and external; and ()

j. Quality assurance/quality control for construction activities and construction materials. ()

08. Cap and Cover Criteria. Caps and covers used as source control measures for facilities must be designed and constructed to minimize the interaction of meteoric waters, surface waters, and ground waters with wastes containing pollutants that are likely to be mobilized and discharged to waters. Caps and covers designed for permanent closure must demonstrate permanence applicable to the permittee's designed and approved permanent closure plan. ()

09. Plumbing and Conveyance Criteria. Plumbing and conveyance systems must: ()

a. Be structurally sound and chemically compatible with the materials being conveyed; ()

b. Provide adequate primary and secondary containment; and ()

c. Be protected against heat, cold, mechanical failures, impacts, fires, and other factors that may cause breakage and result in unauthorized discharges. ()

10. Operation and Maintenance Plans. Operation and maintenance plans must be submitted to the Department for review and approval. Operation and maintenance plans must include, but are not limited to: ()

a. An overall plan that includes techniques for evaluating the integrity and performance of all containment systems; ()

b. Schedule for inspections of all containment systems; ()

c. Schedule for inspections on piping and conveyance systems that carry process water; ()

d. Response plans that detail specific actions that will result in mitigation of compromised or damaged containment systems; and ()

e. Response plans that detail specific thresholds identified under Subsection 200.11, the locations and frequency at which the thresholds will be monitored, and actions that will result in mitigation of an exceedance of any threshold. ()

11. Water Quality Monitoring and Reporting. The water quality monitoring plan submitted with the application must be reviewed and, if appropriate, approved by the Department. The approved water quality monitoring plan must: ()

a. Provide for physical, chemical and biological monitoring, including measurements of surface water flow, wildlife and bird mortality, and aquatic indicator species in potentially affected surface and ground water, as appropriate; ()

b. Provide for sampling locations and frequency; ()

c. Provide an assessment of the existing surface and ground water conditions prior to construction of the proposed cyanidation facility; ()

d. Be site specific and dependent on location, design and operation of the cyanidation facilities included in the overall operating plan; ()

e. Specify compliance points and associated water quality compliance criteria; ()

f. Specify monitoring points and threshold concentrations that provide for early detection of discharges of pollutants; ()

g. Provide analytical methods and method detection limits for chemical analysis used in the determination of water quality; ()

h. Provide a quality assurance quality control plan for data collection and analysis; ()

i. Provide for appropriate and timely analytical data analyses including evaluations of water quality and quantity trends; ()

j. Provide an annual environmental monitoring and data analysis report of water quality and quantity trends; ()

k. Provide for the reporting and re-sampling of monitoring locations where detectable and statistically significant changes in water quality are found. The permittee must propose a statistical method to determine the significance of the changes in water quality; and ()

1. Provide for anticipated changes or modifications to monitoring plans, which may be the result of a phased approach to cyanidation facility construction, operations and permanent closure. ()

12. Monitoring Wells Siting and Construction Plans. The applicant is encouraged to submit a report describing the purpose, objectives, location and proposed construction of monitoring wells to the Department for review and comment during the initial stages of site characterization. A monitoring well siting and construction plan must be provided upon submittal of the preliminary design report under Subsection 050.02. ()

a. Monitoring well siting and construction plans must provide for the following. ()

i. A quality assurance/quality control plan for well construction. ()

ii. A minimum of three (3) monitoring wells with one (1) located up gradient and two (2) located down gradient of primary components of the cyanidation facility to determine ground water flow direction. ()

b. Siting and planning for additional wells or replacement wells may be required in the permit application and final permit. Specifically, additional wells may be required for: ()

i. Large areas with multiple potential sources for pollutants; ()

ii. Areas with complex geology, fractured bedrock; and ()

iii. Areas with insufficient background hydrogeology. ()

c. All monitoring well construction must also conform to the well construction rules listed in IDAPA 37.03.09, "Well Construction Standards Rules." ()

d. Record diagrams including well construction details, well elevation and a detailed geologic log must be provided to the Department for each monitoring well. ()

13. Land Application. Plans and specifications must include: ()

a. An operation and maintenance plan including: ()

i. Water balance for the land application site; ()

ii. Pretreatment requirements and procedures; ()

iii. Operating season for land application; ()

iv. Seasonal closeout procedures; ()

v. Special soils or vegetative amendments; ()

vi. Storm water run-on/run-off controls; ()

vii. Best management practices for all areas impacted by the land application system; and ()

viii. A topographic map of the land application site and adjacent affected areas, of sufficient scale to facilitate site-specific analysis of soils, vegetation, surface water, and ground water; ()

b. Chemical, physical, and volumetric characteristics of the material to be land applied; ()

c. A complete description of the chemical and physical characteristics of the soils and applicable geology of the land application site; ()

d. Methods of process water treatment, distribution and disposal; ()

- e. Hydraulic loading capacity of the soils; ()
- f. Constituent loading capacity of the site; ()
- g. Attenuation capacity of the vegetative covers and soils; ()
- h. Evapotranspiration capacity of the site; ()
- i. Testing and analytical procedures for water quality and soils samples prior to, during, and following the land application process; ()
- j. Trend analysis of the constituent loading in the affected soils, vegetation, and water quality of the affected surface or ground water systems; ()
- k. Reporting requirements including both frequency and form; and ()
- l. Standby power and pumps sufficient to maintain all treatment and distribution works. ()

14. Temporary or Seasonal Closure. Temporary and seasonal closure plans for the entire cyanidation facility must be submitted by an applicant to the Department for review and approval prior to issuance of a final permit. Temporary and seasonal closure plans may, subject to Department approval pursuant to Section 750, be modified to provide for changes in operating conditions of the facilities and must incorporate a water management plan for the period of inactivity as well as during shut down and reactivation. ()

a. Prior to seasonal closure, process buildings, process chemical storage, process water ponds, tailings impoundments, spent ore disposal areas and other ancillary facilities must be stabilized and/or conditioned to prevent any emergency or unauthorized discharges to surface or ground water. ()

b. Subsequent to seasonal closure, process buildings, process chemical storage, process water ponds, tailings impoundments, spent ore disposal areas and other ancillary facilities must be maintained to prevent any emergency or unauthorized discharges to surface or ground water. Cyanidation facilities must be conditioned and maintained to provide: ()

- i. Material stabilization for all solids affected by process waters; ()
- ii. Optimum freeboard in all ponds, as dictated by the water management plan; ()
- iii. Fully functional power and pumping systems that are ready for use; both power and pumps are to incorporate redundant systems to allow for failure of either power or a pumping system. A failed power supply or pump is not an acceptable reason for an unauthorized discharge; ()
- iv. Protection of all containment; and ()
- v. Sufficient availability of qualified staff to restrict public access, fully implement the water quality monitoring plan, and initiate the emergency and spill response plan. ()

15. Employee Education Program. Operators and staff of facilities must be properly oriented and trained to operate, maintain, and protect containment systems; waste disposal and discharge systems; and to implement monitoring and emergency and spill response plans. An applicant must submit an employee orientation and continuing training plan to the Department for review prior to issuance of a final permit. The plan must provide the format and contents for training, the general qualifications of the person(s) responsible for training and testing, and the person(s) or positions who must receive such training. ()

201. DESIGN CRITERIA FOR LEACH PADS AND OTHER NONIMPOUNDING SURFACES THAT CONTAIN AND PROMOTE HORIZONTAL FLOW OF PROCESS WATER. Plans and specification for leach pads and other nonimpounding surfaces that temporarily contain, not impound, process water and promote the horizontal flow of process water must provide for all of the following. ()

01. Minimal Hydraulic Head. Process water is limited to twelve (12) inches or less hydraulic head pressure on the liner systems. ()

02. Engineered Liner System. In addition to meeting the general liner requirements in Subsection 200.06.b., the engineered liner system plans and specifications are to provide for geomembrane liners with a minimum thickness of eighty (80) milli-inches (two point zero (2.0) mm) or equivalent liners approved by the Department. ()

a. If leach pads or other non-impounding surfaces are located above areas where ground water is considered near the surface pursuant to Subsection 200.06.a.iii., the Department may require a liner system with a higher level of engineered containment. ()

b. When a material or system that provides hydraulic relief is installed, beneath a single liner, including, but not limited to, sand, French drains and geotextiles, regardless of the intent of its design, it is to function as a leak detection system and include a means for recovering process water. ()

c. Depending on the methods and materials used for their construction, the Department may require all open channels that routinely transport process water to be traced by a leak detection system. ()

03. Ore Loading Procedures. Procedures for loading ore onto the leach pads that minimize tensile stresses in the containment liners that may result in failure of the liners. ()

04. Monitoring. Monitoring points that will provide for early detection of any discharge. ()

05. Process Water Containment. Where appropriate, process water containment calculations at the leach pad perimeter should include the potential for drainage constrictions, including constrictions due to talus or washouts at the ore pile toe. Ore pile setbacks from the leach pad perimeter should be calculated based on local climatic conditions, ore properties, and site specific operating conditions. Solution collection ditches in which the liner is contiguous with the leach pad may be used to satisfy perimeter containment requirements. ()

202. DESIGN CRITERIA FOR PROCESS PONDS.

01. Engineered Liner System. In addition to meeting the general liner requirements in Subsection 200.06.b., the engineered liner system plans and specifications must provide for all of the following. ()

a. Lower geomembrane liners with a minimum thickness of eighty (80) milli-inches (two point zero (2.0) mm) or equivalent liners approved by the Department. ()

b. Leak detection and collection system that provides material between the lower geomembrane liner and the upper liner system to collect, transport and remove all process water that passes through the upper liner at such a rate as to prevent hydraulic head from developing on the lower geomembrane liner to the level at which it may be reasonably expected to result in leaks through the lower liner system. ()

c. Upper geomembrane liners with a minimum thickness of eighty (80) milli-inches (two point zero (2.0) mm) or equivalent liners approved by the Department. ()

d. Routines and schedules for the evaluation of the efficiency and effectiveness of the removal of process water from the leak collection system. The properly working system will continually relieve head pressures on the lower geomembrane liner. ()

e. Monitoring points that will provide for early detection of any discharge. ()

f. Specific triggers for maintenance routines to address inadequate performance of liner systems. ()

g. Specific operation and maintenance procedures to address inadequate performance of containment ()

or leak detection and collection systems. ()

02. Temporary Containment. Ponds for temporary containment of excess quantities of process water as a result of storm events may be constructed with a single liner if approved by the Department. ()

203. DESIGN CRITERIA FOR CONTAINERS THAT CONFINE PROCESS WATER.

Vats, tanks, or other containers that are partially buried and cannot be visually inspected must have a system providing secondary containment and leak detection. If visual inspection is possible and an area for secondary containment equal to one hundred ten percent (110%) of the largest container is provided, a double liner is not required. ()

204. DESIGN CRITERIA FOR TAILINGS IMPOUNDMENTS.

01. Engineered Liner System. In addition to meeting the general liner requirements in Subsection 200.06.b., the engineered liner system plans and specifications must provide for the following. ()

a. Geomembrane liners with a minimum thickness of sixty (60) milli-inches (one point five (1.5) mm) or equivalent liners approved by the Department. ()

b. A system to limit hydraulic head over the geomembrane liner that preserves the integrity and long-term performance of the liner system and includes the following: ()

i. A system to reduce excess pore pressure within the tailings; and ()

ii. A plan for managing the depth, area, and volume of process water occurring above the tailings surface and in direct contact with the liner, including thresholds and contingency measures to manage excess accumulation of process water in the facility. ()

c. Monitoring points that will provide for early detection of discharges of pollutants. ()

02. Enhanced Containment Criteria. An enhanced level of containment may be required by the Department for all of the tailings impoundment or for a portion thereof after considering the following factors: ()

a. The anticipated characteristics of the material to be deposited; ()

b. The characteristics of the soil and geology of the site; ()

c. The methods employed and degree to which the hydraulic head on the liner is minimized; ()

d. The extent of and methods used for material stabilization and recycling or neutralization of process water; ()

e. Area and volume of process water; ()

f. The depth from the surface to all ground water; ()

g. The methods employed in depositing the impounded material; and ()

h. The proximity to surface water and the ground water interactions with surface water. ()

03. Tailings Treatment. Tailings impoundments are restricted to a maximum of fifty (50) mg/L WAD cyanide concentration in the liquid fraction unless otherwise approved by the Department. ()

205. ALTERNATIVE PLANS AND SPECIFICATIONS FOR FACILITIES THAT CONTAIN PROCESS WATER.

An applicant may propose an alternative to the requirements identified in Subsection 200.06, Sections 201, 202, 203,

or 204 based on site-specific conditions and best management practices to protect water quality and human health. All other requirements in Section 200 apply to alternative design proposals. ()

01. Alternative Design Proposal. The applicant must demonstrate that the alternative design will protect water quality and human health by confirming that the alternative to the minimum design criteria is appropriate based on the WAD cyanide concentration and chemical characteristics of materials contained; the physical characteristics of the materials contained; site-specific soil, geology, hydrology, and hydrogeology characteristics; degree to which hydraulic head on the liner is minimized; area and volume of the facility; depth to ground water; methods employed in depositing the impounded material; potential for leaks and impacts to water quality; and risk to human health and the environment. The alternative design must provide an evaluation based on site-specific data, supported by best available science, and consistent with best management practices demonstrating that process water and process-contaminated water are contained and controlled or treated as necessary to protect public safety and the environment, prevent unauthorized degradation of waters, and achieve all applicable water quality and ground water quality standards. The alternative design must include all applicable elements listed below. ()

a. A hydrogeology assessment of site characteristics including depth to ground water; distance to surface water; hydrogeology and stratigraphy of the site; ground water and surface water interaction; and the quality, characteristics and existing and future beneficial uses of ground water and surface water that may be potentially affected by the facility. ()

b. An engineering assessment detailing the design of each component of the containment system, including type and thickness of each component of the liner system; types of materials to be used and methods of placement of those materials; structures, devices and techniques for controlling drainage and minimizing solution loss; and method to control internal hydraulic head. ()

c. A water quality assessment providing an analysis of potential for the facility to cause degradation of waters including the effect of ground water and surface water interactions, the potential for process water to reach waters, and the potential impact of process water on waters. ()

02. Preliminary Design Submittal. Alternative design proposals must be provided to the Department upon submittal of the preliminary design report required in Section 050. ()

03. Department Review. In evaluating alternative design proposals, the Department will consider the WAD cyanide concentration and other materials contained in facilities receiving process water, site hydrogeology, advances in liner technology, alternative designs implemented at other facilities receiving process water, and other site-specific factors in determining if an alternative is appropriate to protect water quality and the public health. ()

04. Cost Recovery Agreement. As provided in Subsection 100.04, the applicant must enter into an agreement with the Department for actual costs incurred to process an alternative design proposal under this subsection. The Department may utilize a third-party to support Department review of the alternative design proposal. ()

206. -- 299. (RESERVED)

300. APPLICATION PROCESSING PROCEDURE.

01. Completeness Review. Within thirty (30) days of receipt of an application, the Director will issue a written notice to the applicant and the Idaho Department of Lands, indicating: ()

a. The application is complete; or ()

b. The application is incomplete, specific deficiencies, and additional required information. ()

02. Accuracy and Protectiveness Review. Within ninety (90) days of receipt of an application and upon determination by the Department that the application is complete, the Department will review the application

for accuracy and protectiveness based on these and other applicable rules including, but not limited to, IDAPA 58.01.02, "Water Quality Standards," and IDAPA 58.01.11, "Ground Water Quality Rule." ()

03. Permit Application Rejection. ()

a. If the Director decides to reject an application under Subsection 300.03.b., the Director will provide public notice within ninety (90) days after receipt of the application. Such notice will be in writing, explain the basis for the rejection, and constitute a notice of rejection in accordance with Section 39-118A(2)(b), Idaho Code. ()

b. A complete permit application will be rejected if: ()

i. The cyanidation facility as proposed cannot be conditioned for construction, operation, and closure so as to comply with applicable state law; or ()

ii. Any payment required by the cost recovery agreement under Subsection 100.04 is due and unpaid. ()

04. Draft Permit and Fact Sheet. ()

a. If the Director decides to prepare a draft permit or draft major permit modification, the draft will contain the following information: ()

i. All conditions based on Sections 200 through 204; ()

ii. All conditions for an approved alternative under Section 205; ()

iii. All conditions under Section 500; ()

iv. Any information incorporated into the draft permit by reference; and ()

v. Any other condition the Director finds appropriate to protect water quality and public health. ()

b. A fact sheet will accompany the draft permit. The fact sheet will briefly state the principal facts and the significant legal and policy questions considered in the draft permit. The fact sheet will include, when applicable: ()

i. A brief description of the proposed cyanidation facility and the operating plan described in the application or permit modification request. ()

ii. A brief summary of the basis for the conditions on the draft permit, including references to applicable statutes or regulations and appropriate supporting references to the administrative record; and. ()

iii. The name and phone number of the agency representative to contact for additional information. ()

301. -- 399. (RESERVED)

400. PUBLIC NOTICE AND COMMENT.

01. Public Notice. No public notice is required when a request for a permit modification is denied. The Director will give public notice of: ()

a. Receipt of an application for a permit; ()

b. A scheduled public meeting; ()

- c. Issuance of a draft permit and fact sheet or a decision to reject an application for a permit; and ()
- d. An appeal that has been filed. ()
- 02. Public Notice Information.** A public notice issued under this section will contain at least the following information: ()

 - a. Contact information for the Department and applicant; ()
 - b. Description of public involvement procedures and how to obtain additional public information available; ()
 - c. General description of the facility location; ()
 - d. Comment period; and ()
 - e. Public meeting location and time conducted under Subsection 400.06 ()
- 03. Serving the Public Notice.** Public notice of permit actions will be given by the following methods: ()

 - a. By mail to: ()

 - i. The applicant; ()
 - ii. Persons on the public notice mailing list developed under Subsection 400.04; and ()
 - iii. Other appropriate federal, tribal, state, or local government entities. ()
 - b. Publication in a daily or weekly major newspaper of general circulation in the area of the proposed cyanidation facility; and ()
 - c. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected. ()
- 04. Mailing List.** The Department will develop a mailing list for public notices issued under this section by recording those who request in writing to be on the list, publishing notice of the opportunity to be on the mailing list on the Department's website, and periodically publishing in the local press and in regional and state-funded newsletters, environmental bulletins, state law journals or similar publications. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed and may delete from the list the name of any person who fails to respond to the Department's request. ()
- 05. Participation by Idaho Department of Lands.** The Department will request that the Idaho Department of Lands participate in the public meeting with respect to performance criteria for permanent closure. ()
- 06. Public Comment Period.** The Director will allow public comment on a draft permit for a period of sixty (60) days beginning on the date of the public notice for the draft permit. All written comments received during this public comment period will be considered by the Director. ()
- 07. Public Meeting.** Within thirty (30) days after the date of the public notice for draft permit or draft major permit modification, the Department will hold a public meeting. Oral or written comments may be submitted by any person at the public meeting. The meeting will be conducted by an official designated by the Director. In order for the Department to address public comments in its Response to Public Comments pursuant to Subsection 450.02, comments must be submitted in writing during the public comment period under Subsection 400.06. ()

401. -- 449. (RESERVED)

450. FINAL PERMIT DECISION.

01. Notification of the Decision. The Director will provide notice of the final permit decision to each person or entity given notice under Subsection 400.03. This notice will include reference to the procedures for administrative appeal under Section 003. For the purpose of this section, a final permit decision means a final decision to issue, deny, or modify a permit. ()

02. Response to Public Comments. The Director will prepare and make available to the public a response to relevant written comments received during the public comment period under Subsection 400.06. This response will: ()

a. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and ()

b. Briefly describe and respond to all relevant written comments on the draft permit. ()

03. Basis for Permit Denial. The Director will deny a permit if: ()

a. The application is incomplete or inaccurate; ()

b. The cyanidation facility as proposed cannot be conditioned for construction, operation, and closure so as to comply with applicable state law; or ()

c. The Idaho Department of Lands has determined that the permanent closure plan does not meet the requirements of Chapter 15, Title 47, Idaho Code, or the rules promulgated thereunder. ()

04. Immediate Effect of the Permit. A valid permit authorizes the construction and operation of a cyanidation facility in accordance with the terms of the permit. ()

451. -- 499. (RESERVED)

500. PERMIT CONDITIONS.

The following conditions apply to and must be specified in all permits: ()

01. Compliance Required. The applicant or permittee must comply with all conditions of the permit. Issuance or possession of a permit issued according to these rules does not relieve the applicant or permittee of the responsibility to comply with all other applicable local, state, and federal laws. ()

02. Construction. Construction of individual components of a cyanidation facility may commence upon approval by the Department of the final plans and specifications for that component. ()

03. Record Plans and Specifications. An Idaho licensed professional engineer must confirm in writing that all record drawings and specifications are complete and accurate. These record plans and specifications must be submitted by the permittee to the Director within thirty (30) days after the completion of the construction of each critical phase of facility development as approved by the Department. The record plans and specifications must be accompanied by a final construction report. If the construction does not deviate from the approved plans and specifications, a statement to the effect must be submitted by the engineer. The Department will review the final construction report, including record plans and specifications and results of quality control and quality assurance testing, to verify that the facility was constructed in compliance with and does not deviate from the approved plans and specifications. If the Department determines that the facility was not constructed in compliance with or deviates from the approved plans and specifications, the Department will provide the permittee written notice of necessary corrective actions within thirty (30) days of receipt of all submittals required by this subsection. In the event the Department provides such written notice, operation of the facility may not begin until the Department inspects and provides written approval of the corrective actions. Operation of the facility may begin if the Department does not deliver to the permittee such written notice within thirty (30) days of receipt of all submittals required by this

subsection. ()

04. Duty to Provide Information. The permittee must furnish to the Director, within a reasonable or specified time, any information, including copies of records required by the permit or other applicable rules, that the Director may request to determine whether cause exists for modifying or revoking the permit or to determine compliance with the permit or other applicable rules. ()

05. Notifications. After initial construction and seasonal and/or temporary closure, the permittee must, within thirty (30) days, provide written notice to the Director of the permittee's intentions to commence or restart operations. At least thirty (30) days prior to completion of operations, and/or temporary or seasonal operations, the permittee must notify the Director of the permittee's intentions to temporarily, seasonally or permanently close operations. Notification must provide sufficient time for the Director to provide pre-operational or post-operational inspections, as necessary. ()

06. Entry and Access. The permittee must allow the Director, or a designee obligated by agreement with the Director to comply with the confidentiality provisions of Section 39-111, Idaho Code, to: ()

a. Enter at reasonable times upon the premises of a permitted cyanidation facility or where records required by a permit are kept; ()

b. Have access to and copy at reasonable times any records that must be kept under the conditions of the permit; ()

c. Inspect at reasonable times any cyanidation facility, equipment, practice, or operation permitted or required by the permit; and ()

d. Sample or monitor at reasonable times, substance(s) or parameter(s) directly related to permit or regulation compliance. ()

07. Reporting. It is the permittee's responsibility to report to the Director: ()

a. Orally, as soon as possible but no later than twenty-four (24) hours from the time the permittee knows or should reasonably know of any noncompliance that may endanger the public health or the environment. ()

b. In writing, within five (5) working days from the time a permittee knows or should reasonably know of any event that may be or that may result in a violation of these rules, or IDAPA 58.01.02, "Water Quality Standards," or IDAPA 58.01.11, "Ground Water Quality Rule." This report must contain: ()

i. A description of the event and its cause; if the cause is not known, steps taken to investigate and determine the cause; ()

ii. The period of the event including, to the extent possible, the individual(s) involved in the incident(s) and the time(s) and date(s) of the incidents; ()

iii. Measures taken to mitigate or eliminate the event and protect the public health; and ()

iv. Steps taken to prevent recurrence of the event; ()

c. In writing, confirmation of any conditions that may result in violation of any permit condition; and ()

d. In writing, when the permittee knows or should reasonably know of relevant facts not submitted or incorrect information submitted in a permit application or any report or notice to the Director or the Department. Those facts or the correct information must be included as a part of this report. ()

08. Discharge Response. If an unauthorized discharge occurs the permittee must implement the

Department approved emergency and spill response plan. ()

09. Temporary or Seasonal Closure Plans. Prior to temporary or seasonal closure, the permittee must submit a temporary or seasonal closure plan to the Director for approval. The plan must describe the procedures, methods, and schedule to be implemented for the treatment and disposal of process water and pollutants, the control of drainage from the cyanidation facility, the control of drainage from the surrounding area, and the secure storage of chemicals during the period of closure. Within thirty (30) days of receiving the plan, the Director will approve and/or suggest modifications necessary to protect waters. The permittee must ensure that closure complies with an approved plan. The approved plan must be implemented before the permittee completes temporary or seasonal closure. Facilities may not be temporarily or seasonally closed for a period longer than two (2) years unless approved by the Director. ()

10. Begin Construction. If the permittee fails to begin construction of a cyanidation facility within one (1) year of the effective date of the permit, the permit will be deemed void. ()

11. Permanent Closure. The permanent closure plan, as approved by the Idaho Department of Lands, will be incorporated by reference into the Department-issued permit as a permit condition and will be enforceable as such. ()

501. COMPLETION OF PERMANENT CLOSURE.

01. Implementation of a Permanent Closure Plan. Unless otherwise specified in the approved permanent closure plan, the permittee must begin implementation of the approved permanent closure plan: ()

a. Within two (2) years of the final addition of cyanide to the ore processing circuit; or ()

b. If the product recovery phase of the cyanidation facility has been suspended for a period of more than two (2) years. ()

02. Submittal of a Permanent Closure Report. The permittee must submit a permanent closure report to the Department for review and approval. A permanent closure report must be of sufficient detail for the directors of the Department and the Idaho Department of Lands to issue a determination that permanent closure, as defined in Section 007, has been achieved. The permanent closure report must address: ()

a. The effectiveness of material stabilization; ()

b. The effectiveness of the water management plan and adequacy of the monitoring plan; ()

c. The final configuration of the cyanidation facility and its operational/closure status; ()

d. The post-closure operation, maintenance, and monitoring requirements, and the estimated reasonable cost to complete those activities; ()

e. The operational/closure status of any land application site of the cyanidation facility; ()

f. Source control systems that have been constructed or implemented to eliminate, mitigate, or contain short and long term discharge of pollutants from the cyanidation facility, unless otherwise permitted; ()

g. The short and long term water quality trends in surface and ground water through the statistical analyses of the existing monitoring data collected pursuant to the ore processing by cyanidation permit; ()

h. Ownership and responsibility for the cyanidation facility during the defined post-closure period; ()

i. The future beneficial uses of the land, surface and ground waters in and adjacent to the closed facilities; and ()

j. How the permanent closure of the cyanidation facility complies with the Resource Conservation and Recovery Act, Hazardous Waste Management Act, Solid Waste Management Act, and appropriate rules. ()

502. DECISION TO APPROVE OR DISAPPROVE OF A PERMANENT CLOSURE REPORT.

01. Cost Recovery. Final closure of the cyanidation facility will not be approved if any payment required by the cost recovery agreement under Subsection 100.04 is due and unpaid. ()

02. Issuance of Director's Determination. Within sixty (60) days of receipt of a permanent closure report, the Director will issue to the permittee a Director's determination of approval or disapproval of the permanent closure report. The Director's determination will be based on applicable statutes or rules administered by the Department. The Department will coordinate the evaluation of the permanent closure report with the Idaho Department of Lands. ()

03. Director's Determination to Disapprove a Permanent Closure Report. A Director's determination to disapprove a permanent closure report will specifically identify and discuss those reasons for disapproval, any administrative actions being considered by the Director, and the permittee's options and procedures for administrative appeal. The Director's determination to disapprove a permanent closure report must include: ()

- a. Identification of errors or inaccuracies in the permanent closure report; ()
- b. Issues or details that require additional clarification; ()
- c. Failures to fully implement the approved permanent closure plans; ()
- d. Outstanding violations or other noncompliance issues; and ()
- e. Other issues supporting the Department's disagreement with the contents, final conclusions or recommendations of the permanent closure report. ()

503. -- 549. (RESERVED)

550. VALIDITY AND DURATION OF PERMITS.

A permit remains valid until the Director determines that permanent closure is completed or the Director revokes or modifies the permit. ()

551. -- 649. (RESERVED)

650. FINANCIAL ASSURANCE.

01. Financial Assurance Required. The permittee is required to provide financial assurance pursuant to the Idaho Mined Land Reclamation Act, Chapter 15, Title 47, Idaho Code, and the rules promulgated thereunder. The Department will not issue a permit under these rules to a cyanidation facility unless a permanent closure plan for the cyanidation facility has been submitted for approval under Chapter 15, Title 47, Idaho Code. Any permit issued under these rules will prohibit construction and operation of the cyanidation facility until the permittee submits proof acceptable to the Department that financial assurance for the cyanidation facility permanent closure plan has been provided as required by Chapter 15, Title 47, Idaho Code. ()

02. Insufficiency. In the event the financial assurance is forfeited as described in the Idaho Mined Land Reclamation Act, Chapter 15, Title 47, Idaho Code, the Department may seek to recover the amount necessary to implement permanent closure under the Department-issued permit and these rules as provided by law. ()

651. -- 749. (RESERVED)

750. PERMIT MODIFICATION.

01. Cause for Permit Modification. Causes for permit modification are: ()

- a.** A material modification or material expansion in the cyanidation facility operation, design or closure plan; or ()
- b.** Natural phenomena substantially different from those anticipated in the original permit. ()
- 02. Modification at Request of Permittee.** Requests for modification from the permittee must include: ()
- a.** A written description of the modification(s); ()
- b.** Data supporting the modification request; and ()
- c.** Causes and anticipated effects of the modification. ()
- 03. Modification at Request of Director.** Pursuant to Subsection 750.01, if the Director determines that cause exists for permit modification, the Director will notify the permittee in writing and request information necessary for the Director to modify the permit. ()
- 04. Modification Procedure.** The Director will evaluate the request for a permit modification, based on the information provided in Subsection 750.02 or otherwise obtained by the Department, and determine if the modification requires a major permit modification or a minor permit modification. ()
- a.** Major permit modifications are subject to the provisions of Sections 100, 200 through 205, 300, 400, and 450. ()
- b.** Minor permit modifications are not subject to the provisions of Sections 100, 300, and 400. The permittee must notify and receive approval from the Department prior to making minor modifications. ()
- 05. Major Permit Modifications.** Changes that require a major permit modification include but are not limited to: ()
- a.** Material modifications or material expansions to a cyanidation facility as defined by these rules; ()
- b.** A significant increase or decrease in the time the cyanidation facility is expected to be in operation; or ()
- c.** Requests to modify or change water quality compliance criteria and/or water quality compliance monitoring points. ()
- 06. Minor Permit Modifications.** Minor permit modifications are those that, if granted, would not result in any increased hazard to the environment or to the public health. Within thirty (30) days of receipt of a written request for a minor modification, the Department will complete an evaluation of the request and either approve or deny the request in writing. Minor modifications may include but are not limited to: ()
- a.** The correction of typographical errors in an approved permit; ()
- b.** Legal transfer of ownership or operational control; ()
- c.** A change in the requirements for monitoring or reporting frequency of the quality or quantity of the project air, water or waste generated; ()
- d.** A change in the cost estimates submitted by a permittee to the Idaho Department of Lands to complete permanent closure; and ()
- e.** A change or modification that is required by a state or federal requirement that supersedes the ()

authorities of these rules. ()

751. -- 799. (RESERVED)

800. TRANSFER OF PERMITS.

01. Transfer of Permits Allowed. A permit may be transferred to a new permittee if such permittee provides written notice to the Director containing: ()

a. A specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees; ()

b. Demonstration that the new permittee has established appropriate financial assurance for permanent closure of the facility; and ()

c. The information required in Subsections 100.03.b., 100.03.d., 100.03.e., and 100.03.g. ()

02. Decision. The Director will either approve of or deny the transfer of the permit within thirty (30) days of receipt of notice that the current permittee wishes to transfer the permit to a new permittee. ()

03. Basis for Transfer Denial. The Director will deny the request for the permit transfer if the new permittee has not provided the information required in Subsection 800.01. ()

801. -- 849. (RESERVED)

850. PERMIT REVOCATION.

01. Cause for Revocation. A material violation of a permit or these rules may be grounds for the Director to revoke a permit. A violation that is shown to have occurred as the result of an unforeseeable act of God despite a permittee's reasonable efforts to comply with all applicable legal requirements will not be considered grounds for revocation. ()

02. Preliminary Decision. The Director will provide the permittee written notice of a preliminary decision to revoke a permit, including a statement of the reasons for the preliminary decision and reference to the procedure for requesting a revocation hearing under Subsection 850.03. ()

03. Revocation Hearing. A preliminary decision to revoke a permit becomes final thirty-five (35) days after the date of the written notice of the preliminary decision unless the permittee requests in writing an administrative hearing before the preliminary decision becomes final. A request for an administrative hearing must be in the form of and will be considered as a petition to initiate a contested case under IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ()

851. -- 899. (RESERVED)

900. VIOLATIONS.

01. Failure to Comply. Failure by a permittee to comply with the provisions of these rules or with any permit condition is a violation of these rules. ()

02. Falsification of Statements and Records. It is a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application, registration, report, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of a permit. ()

03. Discharges. Any unauthorized discharge is a violation of these rules. ()

901. -- 999. (RESERVED)

58.01.14 – RULES GOVERNING FEES FOR ENVIRONMENTAL OPERATING PERMITS, LICENSES, AND INSPECTION SERVICES

000. LEGAL AUTHORITY.

Pursuant to Sections 39-105, 39-107 and 39-119, Idaho Code, the Board of Environmental Quality is authorized to promulgate rules establishing reasonable fees to be charged and collected for any service rendered by the Department of Environmental Quality. ()

001. TITLE AND SCOPE.

01. Title. The rules are titled IDAPA 58.01.14, “Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services.” ()

02. Scope. These rules establish reasonable fees for environmental operating permits, licenses, inspection services and waiver application processing rendered by the Department of Environmental Quality or its designees. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), any written statements pertaining to the interpretation of these rules will be available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. ()

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure before the Board of Environmental Quality.” ()

004. INCORPORATION BY REFERENCE.

These rules do not contain documents incorporated by reference. ()

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8 a.m. to 5 p.m. Monday through Friday. ()

006. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.” ()

007. DEFINITIONS.

01. Board. The Idaho Board of Environmental Quality. ()

02. Department. The Idaho Department of Environmental Quality or its designee. ()

03. Director. The Director of the Idaho Department of Environmental Quality or his designee. ()

008. -- 099. (RESERVED)

100. ENVIRONMENTAL FEES.

The fees specified in Sections 101 through 199 shall be charged for the following environmental services rendered by the Department or its designees. Fees for services rendered by designees that are equivalent or greater than the fees listed in Sections 101 through 199 may be adopted by the district health departments or local government. The fees are to be paid by the party receiving the services to the Department or designee performing the service, in the time, place and manner specified by the performing entity. ()

101. -- 109. (RESERVED)

110. INDIVIDUAL AND SUBSURFACE SEWAGE DISPOSAL SYSTEM PERMIT.

For those services rendered in the process of issuing installation permits for individual and subsurface sewage disposal systems (see IDAPA 58.01.03, “Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks”), the following fees apply: ()

01. Individual Households or Buildings. For individual households or buildings, if the individual and subsurface sewage disposal system is a new installation or a replacement or expansion of an existing system, the fee shall be ninety dollars (\$90). ()

02. Multiple Households or Buildings. For individual and subsurface sewage disposal systems serving more than one (1) household or building in any combination, the fee shall be ninety dollars (\$90) plus ten dollars (\$10) per each household or per each two hundred fifty (250) gallons of flow from buildings. ()

111. -- 114. (RESERVED)

115. INDIVIDUAL AND SUBSURFACE SEWAGE DISPOSAL SYSTEM PUMPER PERMIT.

For those services rendered in the process of issuing permits to persons operating individual and subsurface sewage disposal system pumping equipment (see IDAPA 58.01.03, “Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks”), the fee shall be forty dollars (\$40) plus ten dollars (\$10) for each tank truck or tank per annum. ()

116. -- 119. (RESERVED)

120. SUBSURFACE SEWAGE DISPOSAL SYSTEM INSTALLER'S REGISTRATION PERMIT.

For those services rendered in the process of issuing Installer's Registration Permits (see IDAPA 58.01.03, “Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks”), the fee shall be fifty dollars (\$50) per annum for a standard and basic alternative system installer's registration permit and one hundred dollars (\$100) per annum for a standard, basic and complex alternative system installer's registration permit. ()

121. -- 149. (RESERVED)

150. PARCEL SURVEY.

For those services rendered in evaluating existing water supply or sewage disposal systems when such evaluation is a condition for the sale of real property, the fee shall be sixty dollars (\$60) excluding laboratory services. ()

151. -- 159. (RESERVED)

160. SANITARY RESTRICTION ADMINISTRATION.

For those services rendered in the administration of sanitary restrictions, pursuant to Section 50-1326, Idaho Code, the following fees apply: ()

01. Subdivisions or Plats Proposing Individual and Subsurface Sewage Disposal System Discharge to Subsurface. For subdivisions or plats for which sewage treatment and disposal systems are designed to discharge to the subsurface, the fee shall be one hundred dollars (\$100) plus twenty dollars (\$20) per lot. ()

02. Subdivisions or Plats Proposing Other Than Individual and Subsurface Sewage Disposal System Discharge to Subsurface. For subdivisions or plats for which sewage treatment and disposal systems are not designed to discharge to the subsurface, the fee shall be twenty-five dollars (\$25). ()

161. -- 899. (RESERVED)

900. WAIVER OF FEES.

Upon written application to the Director of the Department of Environmental Quality, a waiver of a specific fee may be granted to an applicant who is required by these rules to pay such a fee. ()

01. Determination of Good Cause. Good cause for such a waiver must be shown before it shall be granted by the Director. Good cause may include hardship or extenuating circumstances, as determined by the Director. ()

02. Duration of Waiver. If the fee sought to be waived becomes due periodically, the fee may be waived for a designated period of time. ()

03. Limitations. Granting of a waiver shall not be considered as precedent or be given any force or effect in any other proceeding. ()

901. -- 999. (RESERVED)

58.01.18 – IDAHO LAND REMEDIATION RULES

000. LEGAL AUTHORITY.

Pursuant to the provisions of Sections 39-105, 39-107, 39-4405, 39-7210, Idaho Code, the Department of Environmental Quality has the authority to promulgate and adopt rules to carry out the purposes of the Idaho Land Remediation Act, Sections 39-7201 to 39-7210, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title and Scope. These rules are titled IDAPA 58.01.18, "Idaho Land Remediation Rules," and shall be applicable to eligible persons who wish to enter into a voluntary remediation agreement with the state to minimize risk of harm to public health and the environment and to restore the economic viability of contaminated real property. ()

02. Intent. The Idaho Land Remediation rules have been adopted with the purpose of fostering the remediation, transfer, reuse, or redevelopment of sites or groups of sites based on risk to human health and the environment where releases or threatened release of hazardous substances or petroleum exists. It is also the intent of these rules to establish a voluntary program for the remediation of hazardous substance or petroleum contaminated sites that will encourage innovation and cooperation between the state, local communities, and interested persons and will promote the economic revitalization of property. It is intended that this program will provide for an expedited remediation process by eliminating the need for many adversarial enforcement actions and delays in response action plan approvals. ()

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of the rules of this chapter. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. ()

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ()

004. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

For the purpose of the rules contained in IDAPA 58.01.18, the following definitions and abbreviations apply. ()

01. Act. Idaho Land Remediation Act, Title 39, Chapter 72, Idaho Code. ()

02. Applicant. A person who submits an application to participate in the voluntary remediation program under the Idaho Land Remediation Act, Title 39, Chapter 72, Idaho Code. ()

03. Board. The Idaho Board of Environmental Quality. ()

04. Department. The Idaho Department of Environmental Quality. ()

05. Director. The Director of Idaho Department of Environmental Quality or his authorized agent. ()

06. Hazardous Substance. Has the meaning set forth in Section 101(14) of the Comprehensive Environmental, Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 (14), as amended. ()

07. Natural Background Level. The level of any constituent in the affected media within a specified area as determined by representative measurements of the quality of that media unaffected by human activities. ()

08. Person. Any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties. ()

09. Petroleum. Includes petroleum asphalt and crude oil or any part of petroleum asphalt or crude oil that is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and

seven-tenths (14.7) pounds per square inch absolute). ()

10. Release. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, or other closed receptacles containing any hazardous substance or petroleum. ()

11. Remediation. Remediation means any of the following: ()

a. Actions necessary to prevent, minimize, or mitigate damages to the public health or welfare or to the environment, which may otherwise result from a release or threat of a release; or ()

b. Actions consistent with a permanent remedy taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous substance or petroleum into the environment to eliminate the release of hazardous substances or petroleum so that the hazardous substances or petroleum do not migrate to cause substantial danger to present or future public health or welfare or the environment; or ()

c. The cleanup or removal of released hazardous substances or petroleum from the environment. ()

12. Site. A parcel of real estate for which an application has been submitted under Section 39-7204, Idaho Code. ()

011. -- 019. (RESERVED)

020. APPLICATION TO PARTICIPATE.

01. Application Required. In order to participate in the voluntary remediation program as established by the Idaho Land Remediation Act and these rules, a person shall submit an application to the Department. ()

02. Contents of Application. The application shall be on a form provided by the Department and include, or be accompanied by, the following: ()

a. Identification of the applicant and the applicant's relationship to the site; ()

b. Identification of the owner or operator of the site, if different than Subsection 020.02.a. of these rules; ()

c. General information pertaining to the site, including the assessors's parcel number(s), site name, and location; ()

d. An environmental assessment that conforms to ASTM Standard Practice E 1527, Environmental Site Assessments: Phase I Environmental Site Assessment Process, as amended, or equivalent; ()

e. An application fee in the amount of two hundred and fifty dollars (\$250); and ()

f. Other background information as requested on the application form provided by the Department as necessary to determine eligibility to participate in the voluntary remediation program. ()

03. Application Processing Procedure. ()

a. Not more than thirty (30) days after receiving an application the Department shall determine if the applicant is eligible to participate in the voluntary remediation program and notify the applicant of the Department's decision. If the Department fails to comply with this subsection, the applicant shall be considered eligible for the purposes of these rules. ()

b. As specifically set forth in the Department's application form, an application may be rejected for the reasons set forth in Section 39-7204(4), Idaho Code. ()

c. Rejection of an application for any of the reasons set forth in Section 39-7204(4)(a), Idaho Code, or Section 39-7204(4)(b), Idaho Code, is a final agency action. ()

021. VOLUNTARY REMEDIATION AGREEMENTS.

01. Negotiation of Voluntary Remediation Agreement. If the Department accepts an application pursuant to Section 39-7204, Idaho Code, the applicant may enter into a voluntary remediation agreement with the Department. The Department shall not evaluate a voluntary remediation work plan until the voluntary remediation agreement is signed by the applicant and the Director. ()

02. Contents of Agreement. The voluntary remediation agreement shall include the following: ()

a. A provision for the Department's oversight including access to site and pertinent site records; ()

b. A timetable for the Department to do the following: ()

i. Reasonably review and evaluate the adequacy of the work plan; ()

ii. Make a determination concerning the approval or rejection of the work plan; ()

iii. Identify, to the extent possible, permits or approvals required to initiate and complete a voluntary remediation work plan. ()

c. A provision to modify the voluntary remediation agreement and voluntary remediation work plan based upon unanticipated site conditions; ()

d. An estimation of costs the Department may incur associated with performing all of the tasks, duties and services related to the relevant application or voluntary remediation program activities, as specified in Subsection 021.04 of these rules; ()

e. A mechanism and schedule for the payment of all actual reasonable costs incurred by the Department in the review and oversight of the work plan; ()

f. A requirement that the applicant shall comply with any applicable zoning authorities or other local, state, or federal law, in implementing the voluntary remediation work plan; ()

g. Any other conditions considered necessary by the Department or the applicant concerning the effective and efficient implementation of these rules. ()

03. Reimbursement of Costs Included in Agreement. ()

a. The voluntary remediation agreement shall include a provision for the payment and accounting of reasonable oversight costs incurred by the Department in connection with the person's application and participation in the voluntary remediation program. ()

b. Costs incurred by the Department for oversight of voluntary remediation actions will be reimbursed in the following manner, which shall be specified in the voluntary remediation agreement. ()

i. The applicant shall deposit two thousand five hundred dollars (\$2,500) with the Department. ()

ii. The unused portion of the deposit will be returned to the applicant within sixty (60) days of Department issuance of a certificate of completion. ()

iii. Should funding be required for costs incurred in excess of the initial two thousand five hundred dollars (\$2,500) deposit, the Department will, in advance, notify the applicant of required successive deposits in the

amount of two thousand five hundred dollars (\$2,500). ()

04. Oversight Costs. Oversight costs shall include the following: ()

a. The review, processing and negotiation of the voluntary remediation agreement; ()

b. The review, processing and negotiation of the voluntary remediation work plan; ()

c. Conducting public hearing and dissemination of public notices; ()

d. Oversight of work performed in accordance with the voluntary remediation work plan; ()

e. Issuance of the certificate of completion; ()

f. Issuance of a covenant not to sue; ()

g. Administrative expenses associated with cost recovery activities. ()

05. Enforceability of Agreement. Upon signing of the voluntary remediation agreement by the Department and the applicant, the voluntary remediation agreement shall constitute a contract between the Department and the applicant enforceable in accordance with its terms, subject to: ()

a. The Department's right to rescind the voluntary remediation agreement as provided in Section 39-7208, Idaho Code; and ()

b. The applicant's right to terminate the voluntary remediation agreement under Subsection 021.06 of these rules. ()

06. Reasons for Which a Person May Terminate a Voluntary Remediation Agreement. An applicant may terminate the voluntary remediation agreement for any of the following reasons: ()

a. The applicant decides to terminate the voluntary remediation agreement rather than submit additional or corrected information to the Department as provided in Section 39-7206(2)(b), Idaho Code; or ()

b. The voluntary remediation work plan is modified or rejected as provided in Section 39-7206(5), Idaho Code. ()

07. Effect of Termination of Agreement. The termination of a voluntary remediation agreement as provided in Section 39-7206, Idaho Code, shall not relieve the applicant from the obligation to comply with any applicable authorities regarding the contamination at the site, and the Department may initiate administrative or judicial action under applicable authorities. ()

022. VOLUNTARY REMEDIATION WORK PLAN.

01. Submittal of Proposed Voluntary Remediation Work Plan. An applicant whose application has been accepted by the Department may submit a proposed voluntary remediation work plan to the Department. The Department will evaluate the work plan according to the terms and conditions of a voluntary remediation agreement signed by the Department and the applicant. ()

02. Contents of Voluntary Remediation Work Plan. The voluntary remediation work plan shall include the following: ()

a. The current and reasonably anticipated future use of on-site ground and surface water; ()

b. The current and reasonably anticipated future uses of the site and immediately adjacent properties; ()

c. If a risk-based concentration is proposed as a remediation standard, the voluntary remediation work plan shall include an estimate of the human and environmental risk from releases or threatened releases of hazardous substances or petroleum at the site based upon the current use of the site and adjacent properties and reasonably anticipated future uses of the site; ()

d. Proposed remediation standards developed in accordance with Section 023 of these rules; ()

e. A proposed statement of work; ()

f. A schedule to accomplish the proposed statement of work. ()

03. Information Supporting the Voluntary Remediation Work Plan. Sufficient information to support the voluntary remediation work plan shall be submitted and may include the following: ()

a. Site assessment information including: ()

i. A legal description of the site and a map identifying the location and size of facilities and relevant features, such as property boundaries, surface topography, surface and subsurface structures, and utility lines; ()

ii. The physical characteristics of site facilities and contiguous areas, including the location of any surface water bodies and ground water aquifers; ()

iii. The location of any wells located on the site or on areas within one-half mile radius of the site and a description of the use of those wells; ()

iv. The operational history of the facility, including ownership, and the current use of the facility; ()

v. Information on the methods and results of investigations concerning the nature and extent of any releases or threatened releases of hazardous substances or petroleum that have occurred at the site and a map showing general areas of concentrations of these hazardous substances or petroleum; ()

vi. A site investigation sampling and analysis plan, and quality assurance project plan; ()

vii. Any sampling results or other data that characterizes the soil, air, ground water, surface water, or sediments on the site; and ()

viii. Available information on the environmental regulatory and compliance history of the site, including all applicable environmental permits. ()

b. Risk evaluation information including: ()

i. An evaluation of the data collected during the site investigation including identification of chemicals of potential concern; ()

ii. An exposure assessment of all potential pathways of exposure; ()

iii. A toxicity assessment estimating the toxicity of both carcinogens and non-carcinogens; ()

iv. Identify site conditions which may affect or limit migration of the contamination; and ()

v. A risk characterization that evaluates the uncertainties associated with the site investigation, the likelihood of exposures, and the toxicity of the contaminants. ()

04. Review and Evaluation of Work Plan. The Department shall review and evaluate the voluntary remediation work plan, provide public notice, accept public comments and may make the determination whether to hold public hearings in accordance with Section 39-7206, Idaho Code, and the voluntary remediation agreement.

()

a. For purposes of determining whether to hold a public hearing in accordance with Section 39-7206, Idaho Code, the Department will consider the following a significant number of requests for a public hearing: ()

i. Twenty-five (25) written requests from potentially affected persons; or ()

ii. One (1) or more written requests from an organization representing twenty-five (25) or more potentially affected members. ()

b. The Department shall provide for a public comment period of at least thirty (30) days following publication of a public notice under Section 39-7206(3)(d), Idaho Code. ()

c. Pursuant to Section 39-7206, Idaho Code, the Department may approve, modify and approve, or reject a voluntary remediation work plan. ()

d. The Department may reject or approve with modification any voluntary remediation work plan that does not achieve the remediation standards developed and approved by the Department pursuant to Section 023 of these rules. ()

e. If the Department rejects a voluntary remediation work plan, the Department shall: ()

i. Notify the applicant and specify the reasons for rejection; ()

ii. Provide the applicant an opportunity according to the schedule in the voluntary remediation agreement to amend the work plan; and ()

iii. The applicant may appeal the Department's decision to reject the work plan as provided in Section 39-7206, Idaho Code. ()

f. If an applicant determines not to amend a rejected work plan to the satisfaction of the Department, the voluntary remediation agreement shall be terminated as provided in Subsection 021.06 of these rules. ()

05. Modification to an Approved Voluntary Remediation Work Plan That Requires Additional Public Notice and Comment. After the close of the public comment period and the Department's approval of the voluntary remediation work plan, situations may arise that result in modification of an approved voluntary remediation work plan. Depending upon the significance of the modification, another opportunity for public notice and comment may be appropriate. ()

a. The Department need not provide for an additional public notice and comment period if the proposed modifications to the voluntary remediation work plan are limited to minor changes. A minor change to the voluntary remediation work plan is a change that does not fundamentally alter the overall remedial approach. ()

b. The Department shall provide for an additional public notice and comment period if the proposed modifications to the voluntary remediation work plan are fundamental. A fundamental change is a change that requires reconsideration of the remediation proposed in the approved voluntary remediation work plan. ()

023. REMEDIATION STANDARDS.

01. Voluntary Remediation Work Plan Must Achieve Health-Based and Environmental Remediation Standards. All hazardous substance or petroleum concentrations in media which exceed the health-based and environmental remediation standards shall be addressed through appropriate remediation and in accordance with the appropriate technical standards based upon the following: ()

a. Site characteristics; ()

b. Hazardous substances or petroleum; and ()

- c. Technical guidance approved by the Department. ()

02. Establishment of Remediation Standards. The remediation standards utilized in these rules shall be no more stringent than applicable or relevant and appropriate federal and state standards and are consistent with 42 U.S.C. 9621, taking into consideration site specific conditions. An applicant who submits a voluntary remediation work plan for approval by the Department shall select and attain compliance with one (1) or more of the following remediation standards when implementing a voluntary remediation work plan: ()

a. Attainment of a natural background level demonstrated by the collection and analysis of representative samples from environmental media of concern where contamination occurs. Evaluation of representative samples shall be conducted through the application of statistical tests specified in a voluntary remediation work plan. ()

b. An established state or federal generic numerical health standard which achieves an appropriate health-based level so that any substantial present or probable future risk to human health or the environment is eliminated or reduced to protective levels based upon present and reasonably anticipated future uses of the site. ()

c. Risk-based concentrations calculated for the hazardous substance or petroleum using site-specific risk assessment procedures. ()

d. An applicant may use a combination of standards from Subsections 023.02.a. through 023.02.c. to implement a voluntary remediation work plan. ()

024. IMPLEMENTATION OF VOLUNTARY REMEDIATION WORK PLAN.

01. Implementation. An approved voluntary remediation work plan shall be fully implemented by the applicant according to the terms and conditions of the voluntary remediation agreement, these rules and the Idaho Land Remediation Act. ()

02. Permits or Approvals Necessary for Implementation. The Department shall assist in the timely issuance of Department permits or approvals required to initiate and complete a voluntary remediation work plan. ()

03. Progress Reports. An applicant implementing a voluntary remediation work plan shall submit periodic progress reports to the Department according to the terms and conditions of the voluntary remediation agreement. ()

04. Voluntary Remediation Work Plan Completion Report. When the applicant believes the objectives of the voluntary remediation work plan have been achieved and successfully implemented, the applicant shall submit to the Department a voluntary remediation work plan completion report together with a request that the Department issue a certificate of completion. ()

a. The voluntary remediation work plan completion report shall contain information sufficient for the Department to determine whether the voluntary remediation work plan objectives were achieved and the voluntary remediation work plan was successfully implemented. ()

b. The Department shall, within thirty (30) days of the receipt of a voluntary remediation work plan completion report and a request for a certificate of completion, notify the applicant whether the voluntary remediation work plan has been successfully implemented. ()

c. If the Department notifies the applicant that the voluntary remediation work plan has not been successfully implemented, the applicant shall do the following: ()

- i. Implement the voluntary remediation work plan to the satisfaction of the Department; and ()

ii. Resubmit the voluntary remediation work plan completion report. ()

d. If a voluntary remediation work plan completion report demonstrates that the voluntary remediation work plan has been successfully implemented, the Department shall certify such facts by issuing the applicant a certificate of completion. The applicant shall record the certificate of completion with the deed for the site on which the remediation took place. ()

e. The Department may provide a certificate of completion conditioned upon continued monitoring, recordation or maintenance of institutional or engineering controls, or other continuing actions by the applicant. ()

f. Decisions by the Department involving the voluntary remediation work plan completion reports required under this section are considered final agency actions. ()

025. COVENANT NOT TO SUE.

01. Negotiation and Provision of Covenant. Within thirty (30) days of receipt of the Department's certificate of completion, the applicant may request the Department negotiate and provide a covenant not to sue as provided in Section 39-7207, Idaho Code. Any such covenant not to sue may be conditioned upon continuing monitoring, recordation or maintenance of institutional or engineering controls, or other continuing actions required of the applicant pursuant to an approved voluntary remediation work plan. ()

02. Rescission of Covenant. The Department may rescind a covenant not to sue in accordance with Section 39-7208, Idaho Code. If the Department rescinds a covenant not to sue, it may initiate administrative or judicial action as provided in Sections 39-7207 and 39-7208, Idaho Code. The Department shall also notify the county in which the site exists of rescission of the covenant not to sue for purposes of determining ad valorem exemptions provided under Section 63-105II, Idaho Code. ()

03. Continuing Compliance. During the implementation of an approved voluntary remediation work plan, the Department shall not bring an action, including an administrative or judicial action for any liability for remediation relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the voluntary remediation work plan, against a person who entered into a voluntary remediation agreement and who is implementing the voluntary remediation work plan in accordance with such agreement implementing the voluntary remediation work plan. ()

026. LENDER LIABILITY.

01. General Statement. Pursuant to Section 39-7209, Idaho Code, a person who maintains indicia of ownership primarily to protect a security interest in a site, as defined in Subsection 010.12 of these rules, and who does not participate in the management of the site, shall not be considered an owner or operator of that site, nor liable under any pollution control or other environmental protection law, rule or regulation, or otherwise responsible for any environmental contamination or response activity costs consistent with United States environmental protection agency policy, 60 Federal Register 63517, dated December 11, 1995, as amended. This Section 026 sets out the rules of the Board regarding lender liability pursuant to Sections 39-7209 and 39-7210(6), Idaho Code. ()

02. Definitions and Operative Provisions. ()

a. "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure or its equivalents. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guaranties of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), legal or equitable title obtained pursuant to foreclosure, and their equivalents. Evidence of such interests also includes assignments, pledges or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership. ()

i. A “holder” is a person who maintains indicia of ownership primarily to protect a security interest in a site. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder. ()

ii. A “borrower,” “debtor,” or “obligor” is a person who owns, leases, occupies or operates a site encumbered by a security interest. ()

b. “Primarily to protect a security interest” means that the holder’s indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation. ()

i. “Security interest” means an interest in a site, created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trust, liens, security interests under Article 9 of the Uniform Commercial Code, and title pursuant to lease financing transactions. ()

ii. “Primarily to protect a security interest” does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest. ()

c. Participation in management defined. The term “participating in the management of a site” means that the holder is engaging in acts of site management, as defined herein. ()

i. Actions that are participation in management. Participating in the management of a site means actual participation by the holder in the management or operational affairs of the site by the holder, and does not include the mere capacity or ability to influence, or the unexercised right to control, site operations. A holder is participating in management, while the borrower is still in possession of the site encumbered by the security interest, only if the holder either: ()

(1) Exercises decision making control over the borrower’s environmental compliance, such that the holder has undertaken responsibility for the borrower’s hazardous substance or petroleum handling or disposal practices; or ()

(2) Exercises control at a level comparable to that of a manager of the borrower’s enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise with respect to (1) environmental compliance or (2) all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise other than environmental compliance. ()

ii. Actions that are not participation in management. ()

(1) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management. A prospective holder who undertakes or requires an environmental inspection of the site or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the site’s management. Neither Section 39-7209, Idaho Code, or these rules require a holder to conduct or require an inspection to qualify for the exemption, and the liability of a holder cannot be based on or affected by the holder not conducting or not requiring an inspection. ()

(2) Loan policing and workout. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and workout activities cover and include all activities up to foreclosure and its equivalents. ()

(a) Policing the security interest or loan. A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not by such actions participate in the management of the site. Such actions include, but are not limited to, requiring the borrower to clean up the site during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state and local environmental and other laws, rules and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the site (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations or promises from the borrower). ()

(b) Policing activities also include any activities taken by the holder to require a borrower to comply with a voluntary remediation work plan, or by agreement with the Department, to complete a voluntary remediation work plan, provided that the holder does not otherwise participate in the management of the site. ()

(c) Loan workout. A holder who engages in workout activities prior to foreclosure and its equivalents will remain within the exemption provided that the holder does not by such action participate in the management of the site. For purposes of this rule, "workout" refers to those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure or mitigate a default by the borrower or obligor, or to preserve, or prevent the diminution of, the value of the security. ()

d. Foreclosure on a site and post-foreclosure activities. ()

i. Foreclosure. Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure and its equivalents. "Foreclosure and its equivalents" includes purchase at foreclosure sale; acquisition or assignment of title in lieu of foreclosure; termination of a lease or other repossession; acquisition to a right to title or possession; an agreement in satisfaction of the obligation; or any other formal or informal manner (whether pursuant to law or under warranties, covenants, conditions, representations or promises from the borrower) by which the holder acquires title to or possession of the secured property. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest, provided that the holder undertakes to sell, re-lease or otherwise divest itself of the site, in a reasonably expeditious manner, using whatever commercially-reasonable means are relevant or appropriate with respect to the site, taking all facts and circumstances into consideration, and provided that the holder did not participate in management prior to foreclosure. ()

ii. Holding foreclosed property for disposition and liquidation. A holder, who did not participate in management prior to foreclosure and its equivalents, may sell, re-lease, liquidate, maintain business activities, wind up operations, undertake any response action under federal, state or local environmental laws, rules or regulations, undertake completion of an approved voluntary remediation work plan by agreement with the Department, and take measures to preserve, protect or prepare the secured asset prior to sale or other disposition, without voiding the exemption provided by Section 39-7209, Idaho Code, and these rules. ()

027. INSTITUTIONAL CONTROLS.

01. Purpose. ()

a. Institutional controls may be proposed by the applicant or the Department as an element of the voluntary remediation work plan. Institutional controls are measures undertaken to limit or prohibit activities that may interfere with the integrity of a cleanup action or result in exposure to hazardous substances or petroleum at a site. Such measures may be used to assure both the continued protection of human health and the environment and the integrity of a cleanup action in at least the following circumstances: ()

b. Where a cleanup action results in residual concentrations of hazardous substances or petroleum which exceed risk-based health standards; or ()

c. When the Department determines such controls are required to assure the continued protection of human health and the environment or the integrity of the cleanup action. ()

02. Prohibition of Use. Institutional controls should not be used as a substitute for cleanup actions that would otherwise be technically possible. ()

03. Institutional Controls. For the purposes of this section, institutional controls may include: ()

a. Physical measures, such as fences and signs, to limit activities that may interfere with the cleanup action or result in exposure to hazardous substances at the site; and ()

b. Legal and administrative controls, such as zoning restrictions, restrictive covenants, or equitable servitudes used to ensure such measures are maintained. ()

04. Legal Use Restrictions. Institutional controls may be described in an equitable servitude, restrictive covenant, or similar legal mechanism executed by the property owner and recorded in the county in which the site is located. The use of such legal use restrictions may be addressed in the voluntary remediation agreement, the certificate of completion, or the covenant not to sue. ()

05. Legal Use Restriction Requirements. Where appropriate, the legal use restriction requirement should: ()

a. Prohibit activities on the site that may interfere with a cleanup action, operation and maintenance, monitoring, or other measures necessary to assure the integrity of the cleanup action and continued protection of human health and the environment; ()

b. Prohibit activities that may result in the release of a hazardous substance or petroleum which was contained as a part of the remediation; ()

c. Require notice to the Department of the owner's intent to convey any interest in the site. Conveyance of title, easement, lease, or other interest in the property may be conditioned upon easement, lease, or other interest in the property for the continued operation, maintenance and monitoring of the cleanup action, and for continued compliance with this subsection; ()

d. Require notice and approval by the Department of any proposal to use the site in a manner which is inconsistent with the legal use restriction. ()

e. Grant the Department and its designated representatives the right to enter the property at reasonable times for the purpose of evaluating compliance with the voluntary remediation work plan and other required plans, including the right to take samples, inspect any remedial actions taken at the site, and to inspect records. ()

f. Contain other restrictions appropriate under the circumstances. ()

06. Compliance With Other Laws. It shall be the applicant's responsibility to comply with any applicable zoning authorities or other local, state, or federal law, in implementing the voluntary remediation work plan. ()

07. Financial Assurances. The Department may require the applicant to provide financial assurances, through a trust fund or other appropriate financial mechanism approved by the Department sufficient to cover all costs for ensuring the effectiveness of institutional controls or of operation and maintenance, including compliance monitoring and undertaking appropriate measures to ensure the integrity of institutional controls. ()

08. Removal of Restrictions. If the residual hazardous substances or petroleum remaining at the site are subsequently reduced in concentration such that risk-based health standards are met, then the owner may request the restrictive covenant or other restrictions be voided. The restrictive covenant or other restrictions may be removed, if the Department, after public notice and opportunity for comment, concurs. ()

028. -- 999. (RESERVED)

**58.01.25 – RULES REGULATING THE IDAHO POLLUTANT DISCHARGE
ELIMINATION SYSTEM PROGRAM**

000. LEGAL AUTHORITY.

The Department and the Board are authorized to formulate and adopt rules as are necessary to obtain approval of the IPDES program by EPA pursuant to Section 39-175C, Idaho Code. The Department is authorized to implement and enforce the rules in this chapter pursuant to the Sections 39-175A-C and the provisions of the Environmental Protection and Health Act, Sections 39-101 et seq., Idaho Code. The rules in this chapter are not effective until the requirements in Section 39-175C, Idaho Code, have been met and the United States EPA has approved, under 33 U.S.C. 1342(b), Idaho's administration of the IPDES program. ()

001. TITLE AND SCOPE.

01. Title. The rules are titled IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program." ()

02. Scope. These rules establish the procedures and requirements for the issuance and maintenance of permits for facilities or activities for which a person is required by Idaho Code and the Clean Water Act to obtain authorization to discharge pollutants to waters of the United States. These permits are referred to in these rules as "IPDES permits" or "permits." ()

002. CONFIDENTIALITY OF RECORDS.

01. Identifying Confidential Information. Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code, and IDAPA 58.01.21 (Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality). In accordance with Sections 74-101 through 74-119, Idaho Code, any information submitted to the Department pursuant to these rules may be claimed as confidential by the submitter. It is the responsibility of the submitter to give notice of the existence of a claim of confidentiality on each page or other portion of information at the time of submittal and such person has the burden of demonstrating that the information is confidential. ()

02. Denial of Confidential Claims. In accordance with Section 74-114, Idaho Code, a claim of confidentiality, including but not limited to a claim as to information claimed confidential as a trade secret, will be denied and any person may inspect and copy: ()

a. The name and address of any IPDES applicant or permittee; ()

b. The content of any IPDES permit; ()

c. IPDES permit applications, and information required to be submitted by IPDES application forms under Section 105 (Application for an Individual IPDES Permit), or IPDES General Permit Notice of Intent, and information required to be submitted under Section 130 (General Permits), whether the information is submitted on the application forms themselves or in any attachments used to supply information required by the application forms; and ()

d. Effluent data as defined in 40 CFR 2.302. ()

003. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

01. Availability of Reference Material. Codes, standards and regulations may be incorporated by reference in this rule pursuant to Section 67-5229, Idaho Code. Codes, standards or regulations adopted by reference throughout this rule are available in the following locations: ()

a. Department of Environmental Quality. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. ()

b. Law Library. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051. ()

c. Electronic Code of Federal Regulations (eCFR) <http://www.ecfr.gov/cgi-bin/ECFR>. ()

02. Incorporation by Reference. The following documents are incorporated by reference into these

rules. Any reference in these rules to requirements, procedures, or specific forms contained in any section or subsection constitute the full adoption by reference of that section or subsection, including any notes and appendices therein, unless expressly provided otherwise in these rules: ()

- a. [40 CFR 122.21\(r\)](#), revised as of July 1, 2020 (Application Requirements for Facilities with Cooling Water Intake Structures); ()
- b. [40 CFR 122.23](#), revised as of July 1, 2020 (Concentrated Animal Feeding Operations); ()
- c. [40 CFR 122.24](#), revised as of July 1, 2020 (Concentrated Aquatic Animal Production Facilities); ()
- d. [40 CFR 122.25](#), revised as of July 1, 2020 (Aquaculture Projects); ()
- e. [40 CFR 122.26\(a\)](#) through (b) and [40 CFR 122.26\(e\)](#) through (g), revised as of July 1, 2020 (Storm Water Discharges); ()
- f. [40 CFR 122.27](#), revised as of July 1, 2020 (Silvicultural Activities); ()
- g. [40 CFR 122.29\(d\)](#), revised as of July 1, 2020 (Effect of Compliance with New Source Performance Standards); ()
- h. [40 CFR 122.30](#) and [40 CFR 122.32](#) through [40 CFR 122.37](#), revised as of July 1, 2020 (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems); ()
- i. [40 CFR 122.42\(e\)](#), revised as of July 1, 2020 (Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations); ()
- j. [Appendix A to 40 CFR 122](#), revised as of July 1, 2020 (NPDES Primary Industry Categories); ()
- k. [Appendix C to 40 CFR 122](#), revised as of July 1, 2020 (Criteria for Determining a Concentrated Aquatic Animal Production Facility); ()
- l. [Appendix D to 40 CFR 122](#), revised as of July 1, 2020 (NPDES Permit Application Testing Requirements); ()
- m. [Appendix J to 40 CFR 122](#), revised as of July 1, 2020 (NPDES Permit Testing Requirements for Publicly Owned Treatment Works); ()
- n. [40 CFR 125.1](#) through [40 CFR 125.3](#) (Subpart A), revised as of July 1, 2020 (Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Clean Water Act); ()
- o. [40 CFR 125.10](#) through [40 CFR 125.11](#) (Subpart B), revised as of July 1, 2020 (Criteria for Issuance of Permits to Aquaculture Projects); ()
- p. [40 CFR 125.30](#) through [40 CFR 125.32](#) (Subpart D), revised as of July 1, 2020 (Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A) and 301(b)(2)(A) and (E) of the Clean Water Act); ()
- q. [40 CFR 125.70](#) through [40 CFR 125.73](#) (Subpart H), revised as of July 1, 2020 (Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Clean Water Act); ()
- r. [40 CFR 125.80](#) through [40 CFR 125.89](#) (Subpart I), revised as of July 1, 2020 (Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Clean Water Act); ()

s. 40 CFR 125.90 through 40 CFR 125.99 (Subpart J), revised as of July 1, 2020 (Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities Under Section 316(b) of the Clean Water Act); ()

t. 40 CFR 127.11 through 40 CFR 127.16 (Subpart B), revised as of July 1, 2020 (Electronic reporting of NPDES Information from NPDES-Regulated Facilities); ()

u. 40 CFR 129.1 through 40 CFR 129.105 (Subpart A), revised as of July 1, 2020 (Toxic Pollutant Effluent Standards and Prohibitions); ()

v. 40 CFR 133.100 through 40 CFR 133.105, revised as of July 1, 2020 (Secondary Treatment Regulation); ()

w. 40 CFR Part 136, revised as of July 1, 2020 (Guidelines Establishing Test Procedures for the Analysis of Pollutants, including Appendices A, B, C, and D); ()

x. 40 CFR Part 401, revised as of July 1, 2020 (General Provisions); ()

y. 40 CFR 403.1 through 40 CFR 403.3; 40 CFR 403.5 through 40 CFR 403.18, revised as of July 1, 2020 (General Pretreatment Regulations for Existing and New Sources of Pollution, including Appendices D, E, and G); ()

z. 40 CFR Part 405 through 40 CFR Part 471, revised as of July 1, 2020 (Effluent Limitations and Guidelines); and ()

aa. 40 CFR 503.2 through 40 CFR 503.48, revised as of July 1, 2020 (Sewage Sludge, including Appendices A and B). ()

bb. The term “Waters of the United States or waters of the U.S.,” as defined in 40 CFR 122.2, revised as of June 22, 2020, by 85 Federal Register 22250-22342 (April 21, 2020), unless said revision is stayed, overturned or invalidated by a court of law or withdrawn by EPA, in which case the Department incorporates by reference the term “Waters of the United States or waters of the U.S.” as defined in 40 CFR 122.2, revised as of December 23, 2019. ()

03. Term Interpretation. For the federal regulations incorporated by reference into these rules, unless the context in which a term is used clearly requires a different meaning, terms in this section have the following meanings: ()

a. The term Administrator or Regional Administrator means the EPA Region 10 Administrator; ()

b. The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program; ()

c. The term Director or State Director means the Director of the Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act; ()

d. The term National Pollutant Discharge Elimination System (NPDES) means the Idaho Pollutant Discharge Elimination System (IPDES); ()

e. The term Permitting Authority (also preceded by the terms NPDES or State) means the Idaho Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act. ()

004. ADMINISTRATIVE PROVISIONS. Persons may be entitled to appeal final IPDES permit decisions pursuant to Section 204 (Appeals Process) of these

rules. ()

005. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. ()

006. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The state office of the Department of Environmental Quality is located at 1410 N. Hilton, Boise, Idaho 83706, (208) 373-0502, www.deq.idaho.gov. The office hours are 8 a.m. to 5 p.m. Monday through Friday. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program," the following definitions apply. Terms not expressly defined in this section have the meaning provided by IDAPA 58.01.02, Section 010, "Water Quality Standards," or IDAPA 58.01.16, Section 010, "Wastewater Rules." ()

01. Animal Feeding Operation. A lot or facility (other than an aquatic animal production facility) where the following conditions are met: ()

a. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12)-month period; and ()

b. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. ()

02. Applicable Standards and Limitations. All state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the Clean Water Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under the Clean Water Act sections 301, 302, 303, 304, 306, 307, 308, 402 and 405. ()

03. Application. The IPDES forms for applying for a permit or the EPA equivalent standard national forms when deemed acceptable by the Department, including any additions, revisions or modifications to the forms. ()

04. Approved Program or Approved State. A state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123. ()

05. Aquaculture Project. A defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals. ()

06. Average Monthly Discharge Limitation. The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. ()

07. Average Weekly Discharge Limitation. The highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week. ()

08. Background. The biological, chemical or physical condition of waters measured at a point immediately upstream (up-gradient) of the influence of an individual point or nonpoint source discharge. If several discharges to the water exist or if an adequate upstream point of measurement is absent, the Department will determine where background conditions should be measured. ()

09. Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. ()

10. Biochemical Oxygen Demand (BOD). The measure of the amount of oxygen necessary to satisfy the biochemical oxidation requirements of organic materials at the time the sample is collected; unless otherwise specified, this term will mean the five (5) day BOD incubated at twenty (20) degrees C. ()

11. Biological Monitoring or Biomonitoring. The use of a biological entity as a detector and its response as a measure to determine environmental conditions. Toxicity tests and biological surveys, including habitat monitoring, are common biomonitoring methods. ()

12. Bypass. The intentional diversion of wastewater from any portion of a treatment facility. ()

13. Chemical Oxygen Demand (COD). A bulk parameter that measures the oxygen-consuming capacity of organic and inorganic matter present in water or wastewater. It is expressed as the amount of oxygen consumed from a chemical oxidant in a specific test. ()

14. Class I Sludge Management Facility. Any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including such POTWs where the Department has elected to assume local program responsibilities pursuant to 40 CFR 403.10(e)) and any other treatment works treating domestic sewage (TWTDS) classified as a Class I sludge management facility by the Department, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment. ()

15. Clean Water Act. Formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972. Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 et seq. ()

16. Clean Water Act and Regulations. The Clean Water Act and applicable regulations promulgated thereunder. In the case of an approved IPDES program, it includes Department program requirements. ()

17. Compliance Schedule or Schedule of Compliance. A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Clean Water Act and these rules. ()

18. Concentrated Animal Feeding Operation (CAFO). Animal feeding operation that is defined as a Large CAFO in accordance with 40 CFR 122.23(b)(4), as a Medium CAFO in accordance with 40 CFR 122.23(b)(6), or that is designated as a CAFO in accordance with 40 CFR 122.23(c). Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. ()

19. Concentrated Aquatic Animal Production (CAAP). A hatchery, fish farm, or other facility which meets the criteria in Appendix C of 40 CFR Part 122, or which the Department designates under 40 CFR 122.24(c). ()

20. Continuous Discharge. A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities. ()

21. Daily Discharge. The discharge of a pollutant measured during a calendar day or any twenty-four (24)-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day. ()

22. **Department.** The Idaho Department of Environmental Quality. ()
23. **Design Flow.** The average or maximum point source discharge volume per unit time that a facility or system is constructed to accommodate. ()
24. **Direct Discharge.** The discharge of a pollutant to waters of the United States. ()
25. **Director.** The Director of the Idaho Department of Environmental Quality or authorized agent. ()
26. **Discharge Monitoring Report (DMR).** The facility or activity report containing monitoring and discharge quality and quantity information and data required to be submitted periodically, as defined in the discharge permit. These reports must be submitted to the Department on a Department-approved format. ()
27. **Discharge.** When used without qualification means the discharge of a pollutant. ()
28. **Discharge of a Pollutant.** Any addition of any pollutant or combination of pollutants to waters of the United States from any point source. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger. ()
29. **Draft Permit.** A document prepared under these rules indicating the Department’s tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in Subsections 107.01 and 203.02, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in Subsection 201.01, is not a draft permit. A proposed permit is not a draft permit. ()
30. **Effluent.** Any discharge of treated or untreated pollutants into waters of the United States. ()
31. **Effluent Limitation.** Any restriction imposed by the Department on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the United States, in accordance with these rules and the Clean Water Act. ()
32. **Effluent Limitations Guidelines.** A regulation published by the EPA under the Clean Water Act section 304(b) to adopt or revise effluent limitations. ()
33. **Electronic Signature.** Information in digital form that is included in or associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature. ()
34. **Environmental Protection Agency (EPA).** The United States Environmental Protection Agency. ()
35. **Equivalent Dwelling Unit (EDU).** A measure where one (1) EDU is equivalent to wastewater generated from one (1) single-family residence. For the purposes of assessing fees associated with publicly or privately owned domestic sewage treatment, the number of EDUs is calculated as the population served divided by the average household size as defined in the most recent Census Bureau data (for that municipality, county, or average number of persons per household for the state of Idaho). For fees associated with industrial wastewater treatment owned by a municipality, EDUs are calculated in accordance with the definition of EDU in IDAPA 58.01.16, Section 010, “Wastewater Rules.” ()
36. **Existing Source.** Any source which is not a new source or a new discharger. ()
37. **Facilities or Equipment.** Buildings, structures, process or production equipment or machinery

which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source. ()

38. Facility or Activity. Any point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the IPDES program. ()

39. Fundamentally Different Factors. The factors relating to a discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national effluent limits. ()

40. General Permit. An IPDES permit issued under Section 130 (General Permits) authorizing a category of discharges within a geographical area. ()

41. Hazardous Substance. Any substance designated under 40 CFR Part 116 pursuant to the Clean Water Act section 311. ()

42. Idaho Pollutant Discharge Elimination System (IPDES). Idaho's program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under these rules and the Clean Water Act sections 307, 402, 318, and 405. ()

43. Indian Country. ()

a. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; ()

b. All dependent Indian communities within the borders of the United States, whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of the state; and ()

c. All Indian allotments, the Indian titles to which have not been extinguished including rights-of-way running through the same. ()

44. Indian Tribe. Any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation. ()

45. Indirect Discharger. A nondomestic discharger introducing pollutants to a privately or publicly owned treatment works. ()

46. Industrial Wastewater. Any waste, together with such water as is present that is the by-product of industrial processes including, but not limited to, food processing or food washing wastewater (see Process Wastewater). ()

47. Infiltration. Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. ()

48. Inflow. Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration. ()

49. Interstate Agency. An agency of two (2) or more states established by or under an agreement or compact, or any other agency of two (2) or more states having substantial powers or duties pertaining to the control of

pollution. ()

50. Load Allocation (LA). The portion of a receiving water body's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. ()

51. Major Facility. A facility or activity that is: ()

a. A publicly or privately owned treatment works with a design flow equal to or greater than one million gallons per day (1 MGD), or serves a population of ten thousand (10,000) or more, or causes significant water quality impacts; or ()

b. A non-municipal facility that equals or exceeds the eighty (80) point accumulation as described in the Score Summary of the NPDES Non-Municipal Permit Rating Work Sheet (June 27, 1990) or the Department equivalent guidance document. ()

52. Maximum Daily Discharge Limitation. The highest allowable daily discharge. ()

53. Maximum Daily Flow. The largest volume of flow to be discharged during a continuous twenty-four-hour period expressed as a volume per unit time. ()

54. Mixing Zone. A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. ()

55. Municipality. A city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under the Clean Water Act section 208. ()

56. National Pollutant Discharge Elimination System (NPDES). The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under the Clean Water Act sections 307, 402, 318, and 405. ()

57. New Discharger. Any building, structure, facility, or installation: ()

a. From which there is or may be a discharge of pollutants; ()

b. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979; ()

c. Which is not a new source; and ()

d. Which has never received a finally effective NPDES or IPDES permit for discharges at that site. ()

e. This definition includes an indirect discharger which commences discharging into waters of the United States after August 13, 1979. It also includes any existing mobile point source such as an aggregate plant, that begins discharging at a site for which it does not have a permit; ()

58. New Source. Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced: ()

a. After promulgation of standards of performance under the Clean Water Act section 306 which are applicable to such source; or ()

b. After proposal of standards of performance in accordance with the Clean Water Act section 306

which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within one hundred twenty (120) days of their proposal. ()

59. Notice of Intent to Deny. A type of draft permit that shall convey to a permit applicant or permittee, the Department’s intent to not issue or renew an IPDES permit. ()

60. Notice of Intent to Obtain Coverage under an IPDES General Permit. An applicant seeking discharge coverage under an IPDES general permit shall submit a notice of intent to obtain coverage for discharges to waters of the United States under general permit classifications, including, but not limited to: ()

- a. Storm Water Construction General Permit (CGP); ()
- b. Multi-Sector General Permit (MSGP) for Industrial Storm Water Requirements; ()
- c. Municipal Separate Storm Sewer System (MS4) General Permit; ()
- d. Concentrated Animal Feeding Operation (CAFO) General Permit; ()
- e. Concentrated Aquatic Animal Production (CAAP) Facility General Permit; ()
- f. Ground Water Remediation General Permit; ()
- g. Suction Dredge General Permit; or ()
- h. Pesticide General Permit (PGP). ()

61. Notice of Intent to Terminate. A notice of intent to terminate shall: ()

- a. Convey to a permittee the Department’s intent to terminate an existing IPDES permit for cause; or ()
- b. Convey to the Department a permittee’s intent to terminate coverage for an activity under an Individual or General Permit. A construction general permit holder is obligated to submit a notice of intent to terminate upon completion of construction activities and, in the case of storm water control, that final stabilization has been achieved. ()

62. Owner or Operator. The person, company, corporation, district, association, or other organizational entity that is an owner or operator of any facility or activity subject to regulation under the IPDES program. ()

63. Pesticide Discharges. The discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to waters of the United States. In the context of this definition of pesticide discharges, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law (33 U.S.C. 1342(l); 33 U.S.C. 1362(14)). ()

64. Pesticide Residue. For the purpose of determining whether an IPDES permit is needed for discharges to waters of the United States from pesticide application, means that portion of a pesticide application that is discharged from a point source to waters of the United States and no longer provides pesticidal benefits. It also includes any degradates of the pesticide. ()

65. Permit. The authorization, license, or equivalent control document issued by the Department to implement the requirements of these rules. This does not include any permit which has not yet been the subject of final Department action, such as a draft permit or a proposed permit. ()

66. Person. An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, or an agent or employee

thereof, which is recognized by law as the subject of rights and duties. ()

67. Point Source. Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. ()

68. Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean: ()

a. Sewage from vessels; or ()

b. Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources.

NOTE: Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. See *Train v. Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976). ()

69. Potable Water. Water which is free from impurities in such amounts that it is safe for human consumption without treatment. ()

70. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e). ()

71. Primary Industry Category. Any industry category listed in Appendix A of 40 CFR Part 122. ()

72. Privately Owned Treatment Works. Any device or system which is used to treat wastes and is not a Publicly Owned Treatment Works (POTW). ()

73. Process Wastewater. Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product (see Industrial Wastewater definition). ()

74. Proposed Permit. An IPDES permit prepared after the close of the public comment period (and, when applicable, any public meeting and administrative appeals) which is sent to EPA for review before final issuance by the Department. A proposed permit is not a draft permit. ()

75. Proposed Settlement of a State Enforcement Action. A Department consent order or compliance agreement schedule issued in response to a notice of violation that is to be signed by the Director. This does not include amendments or extensions of consent orders or compliance agreement schedules. ()

76. Publicly Owned Treatment Works (POTW). A treatment works as defined by the Clean Water Act section 212, which is owned by a state or municipality, as defined by the Clean Water Act section 502(4). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal

sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in the Clean Water Act section 502(4), which has jurisdiction over the indirect discharges to and the discharges from such a treatment works. ()

- 77. **Receiving Waters.** Those waters of the United States to which there is a discharge of pollutants. ()
- 78. **Recommencing Discharger.** A source which renews discharges after terminating operations. ()
- 79. **Regional Administrator.** The Region 10 Administrator of the Environmental Protection Agency or the authorized representative of the Regional Administrator. ()
- 80. **Secondary Industry Category.** Any industry category which is not a primary industry category. ()
- 81. **Secondary Treatment.** Technology-based requirements for direct discharging POTWs, based on the expected performance of a combination of physical and biological processes typical for the treatment of pollutants in municipal sewage. Standards are expressed as a minimum level of effluent quality in terms of: BOD5, total suspended solids (TSS), and pH (except as provided by treatment equivalent to secondary treatment and other special considerations). ()
- 82. **Secretary.** The Secretary of the Army, acting through the Chief of Engineers. ()
- 83. **Septage.** The liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained. ()
- 84. **Severe Property Damage.** Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. ()
- 85. **Sewage.** The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. ()
- 86. **Sewage from Vessels.** Human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under the Clean Water Act section 312. ()
- 87. **Sewage Sludge.** Any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge. ()
- 88. **Sewage Sludge Use or Disposal Practice.** The collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge. ()
- 89. **Significant Industrial User.** ()
 - a. All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Parts 400 through 471; and ()
 - b. Any other industrial user that: ()

i. Discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); ()

ii. Contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or ()

iii. Is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR 403.8(f)(6)). ()

90. Silvicultural Point Source. Any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a Clean Water Act section 404 permit. ()

91. Site. The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity. ()

92. Sludge. The semi-liquid mass produced and removed by the wastewater treatment process. ()

93. Sludge-Only Facility. Any TWTDS whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to the Clean Water Act section 405(d) and is required to obtain an IPDES permit. ()

94. Source. Any building, structure, facility, or installation from which there is or may be discharge of pollutants. ()

95. Standards for Sewage Sludge Use or Disposal. Regulations promulgated pursuant to the Clean Water Act section 405(d) and these rules which govern minimum requirements for sewage sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person. ()

96. State. The state of Idaho. ()

97. State/EPA Agreement. An agreement between the EPA Regional Administrator and the state of Idaho which coordinates EPA and Department activities, responsibilities and programs including those under the Clean Water Act programs. ()

98. Storm Water. Storm water runoff, snow melt runoff, and surface runoff and drainage. ()

99. Technology-Based Effluent Limitation (TBEL). Treatment requirements under the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under section 402 of the Clean Water Act. ()

100. Total Dissolved Solids. The total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136. ()

101. Toxic Pollutant. Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the United States and upon exposure, ingestion, inhalation, or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic pollutants include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA

pursuant to the Clean Water Act section 307(a), or in the case of sewage sludge use or disposal practices, any pollutant identified in regulations implementing the Clean Water Act section 405(d). ()

102. Treatment. A process or activity conducted for the purpose of removing pollutants from wastewater. ()

103. Treatment Facility. Any physical facility or land area for the purpose of collecting, treating, neutralizing, or stabilizing pollutants including treatment plants; the necessary collecting, intercepting, outfall and outlet sewers; pumping stations integral to such plants or sewers; disposal or reuse facilities; equipment and furnishing thereof; and their appurtenances. For the purpose of these rules, a treatment facility may also be known as a treatment system, a wastewater system, wastewater treatment system, wastewater treatment facility, wastewater treatment plant, or privately or publicly owned treatment works. ()

104. Treatment Works Treating Domestic Sewage (TWTDS). A POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. ()

105. Upset. An exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. ()

106. User. Any person served by a wastewater system. ()

107. Variance. Any mechanism or provision under the Clean Water Act section 301 or 316 or under 40 CFR Part 125, or in the applicable effluent limitations guidelines allowing modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the Clean Water Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on Clean Water Act sections 301(c), 301(g), 301(h), 301(i), or 316(a). ()

108. Wasteload Allocation (WLA). The portion of a receiving water's loading capacity that is allocated to one (1) of its existing or future point sources of pollution. ()

109. Wastewater. Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any ground water, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, gray water or commercial or industrial pollutants; and sewage. ()

110. Water Pollution. Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the United States, or the discharge of any pollutant into the waters of the United States, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. ()

111. Water Quality-Based Effluent Limitation (WQBEL). An effluent limitation determined by selecting the most stringent of the effluent limits calculated using all applicable water quality criteria (e.g., aquatic life, human health, wildlife, translation of narrative criteria) for a specific point source to a specific receiving water. ()

112. Water Transfer. An activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use. ()

113. Wetlands. Areas inundated or saturated by surface or ground water at a frequency and duration

sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. ()

114. Whole Effluent Toxicity. The aggregate toxic effect of an effluent measured directly by a toxicity test. ()

011. -- 049. (RESERVED)

050. COMPUTATION OF TIME.

01. Computing Time. In computing any period of time scheduled to begin after or before the occurrence of an act or event, the date of the act or event is not included. The last day of the period is included, unless it is a Saturday, a Sunday, or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor holiday. The section does not apply to submission deadlines for twenty-four (24) hour reporting, permit applications, or notices of intent for coverage under a general permit ()

02. Notice by Mail. Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper and the notice or paper is served upon him or her by mail, three (3) days will be added to the prescribed time. ()

051. -- 089. (RESERVED)

090. SIGNATURE REQUIREMENTS.

01. Permit Applications and Notices of Intent. All IPDES permit applications and notices of intent must be signed by a certifying official as follows: ()

a. For a corporation, a responsible corporate officer shall sign the application or notice of intent. In this subsection, a responsible corporate officer means: ()

i. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or ()

ii. The manager of one (1) or more manufacturing, production, or operating facilities, if: ()

(1) The manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental statutes and regulations; ()

(2) The manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for IPDES permit application requirements; and ()

(3) Authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; ()

b. For a partnership or sole proprietorship, the general partner or the proprietor, respectively, shall sign the application; and ()

c. For a municipality, state, or other public agency, either a principal executive officer or ranking elected official shall sign the application. In this subsection, a principal executive officer of an agency means: ()

i. The chief executive officer of the agency; or ()

ii. A senior executive officer having responsibility for the overall operations of a principal geographic ()

unit or division of the agency. ()

02. Reports and Other Information Submitted. Any report or information required by an IPDES permit, notice of intent, monitoring and reporting provisions, and any other information requested by the Department, must be signed by a person described in Subsection 090.01, or by a duly authorized representative of that person. A person is a duly authorized representative only if: ()

a. The authorization is made in writing by a person described in Subsection 090.01; ()

b. The authorization specifies either: ()

i. An individual or a position having responsibility for the overall operation of the regulated facility or activity, including the position of manager, operator, superintendent or position of equivalent responsibility; or ()

ii. An individual or position having overall responsibility for environmental matters for the company; and ()

c. The written authorization is submitted to the Department. ()

03. New Authorization. If an authorization is no longer accurate due to a change in staffing or personnel for the overall operation of the facility, a new authorization satisfying the requirements of Subsection 090.01 must be submitted to the Department before or together with any report, information, or application to be signed by an authorized representative. ()

04. Certification. Any person signing a document under Subsections 090.01 or 090.02 shall certify as follows: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." ()

05. Electronic Signatures. The Department may require any signed, certified, or authorized information required under these rules to be submitted electronically, with an electronic signature approved by the Department. ()

06. Electronic Reporting. When documents described in Subsection 090.01 or 090.02 of this rule are submitted electronically by or on behalf of the IPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission. ()

091. -- 099. (RESERVED)

100. EFFECT OF A PERMIT.

01. Rights. The issuance of, or coverage under, an IPDES permit does not convey any property rights or any exclusive privilege nor does it authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. The issuance of, or coverage under, an IPDES permit does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity, and does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits. ()

02. Compliance. Except for any toxic effluent standards and prohibitions imposed under the Clean Water Act section 307, and standards for sewage sludge use or disposal under the Clean Water Act section 405(d),

compliance with an IPDES permit during its term constitutes compliance, for purposes of enforcement, with Clean Water Act sections 301, 302, 306, 307, 318, 403, and 405(a) through (b). However, a permit or coverage under a permit may be modified, revoked and reissued, or terminated during its term for cause as set out in Sections 130 (General Permits), 201 (Modification, or Revocation and Reissuance of IPDES Permits), and 203 (Termination of IPDES Permits). ()

101. DURATION.

01. Permit Term. IPDES permits shall be issued for a fixed duration not to exceed five (5) years. ()

a. The Department may issue a permit for a period of less than five (5) years. An explanation of the reasoning behind issuing a permit for a shorter period shall be provided in the fact sheet. ()

b. The duration of a permit may not be modified to lengthen the effective term of the permit past the maximum five (5) year duration. ()

c. A permit may be issued to expire on or after the statutory deadline set forth in the Clean Water Act sections 301(b)(2)(A), (C), and (E), if the permit includes effluent limitations to meet the requirements of the Clean Water Act sections 301(b)(2)(A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved. ()

d. A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under Subsection 101.01.c. is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated. ()

e. A federally-issued NPDES permit, the administration of which has been transferred to the Department upon or after EPA approval of the IPDES program, shall continue in effect and be enforceable by the Department, subject to Subsections 101.02 and 101.03. ()

02. Continuation of Individual Permits. The conditions of an expired individual permit, whether a federal NPDES permit (except for permits over which EPA retains authority) or a state-issued IPDES permit, will remain fully effective and enforceable until the effective date of a new permit or the date of the Department's final decision to deny the application for the new permit, if: ()

a. The permittee has submitted a timely and complete application for a new permit under Section 105 (Application for an Individual IPDES Permit); and ()

b. The Department, because of time, resource, or other constraints, but through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. ()

03. Continuation of General Permits. The conditions of an expired general permit, whether a federal NPDES permit or a state-issued IPDES permit, will remain fully effective and enforceable (except for permits over which EPA retains authority) until the date the authorization to discharge under the new permit is determined, if: ()

a. The permittee has submitted a timely notice of intent to obtain coverage under the new general permit as specified in Section 130 (General Permits); and ()

b. The Department, because of time, resource, or other constraints, but through no fault of the permittee, does not issue a new general permit with an effective date on or before the expiration date of the previous permit. ()

04. Continuation of Permits During an Appeal. Whether the conditions of an expired permit remain effective and enforceable during an appeal of a new permit, or an appeal of the denial of a permit application, is

governed by Section 204 (Appeals Process). ()

102. OBLIGATION TO OBTAIN AN IPDES PERMIT.

01. Persons Who Must Obtain a Permit. Any person who discharges or proposes to discharge a pollutant from any point source into waters of the United States, or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 40 CFR Part 503 or these rules, and who does not have an IPDES or NPDES permit in effect, shall submit a complete IPDES permit application to the Department, unless the discharge, proposed discharge, or TWTDS: ()

a. Is covered by one (1) or more general permits in compliance with Section 130 (General Permits). Any applicant must complete a notice of intent for any discharge or proposed discharge that is covered by one (1) or more general permits; ()

b. Is excluded from IPDES permit requirements under Subsection 102.05; ()

c. Is by a user to a privately owned treatment works, and the Department, under Section 370 (Pretreatment Standards), does not otherwise require the person to apply for a permit; or ()

d. Is a TWTDS facility that uses or disposes of sewage sludge to which a standard applicable to its sewage sludge use or disposal practices have not been published. Such facilities shall submit limited background information, as specified in Subsection 105.17.o., within one (1) year after publication of applicable standards. ()

02. Operator’s Duty to Obtain a Permit. When a facility or activity is owned by one person but is operated by another person, it is the operator’s duty to obtain a permit. ()

03. Permits Under the Clean Water Act Section 405(f). All new and currently permitted TWTDS whose sewage sludge use or disposal practices are regulated by 40 CFR Part 503 must submit permit applications according to the applicable schedule in Subsection 105.17. The Department may require permit applications from any TWTDS at any time if the Department determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge. ()

04. Designation of Small Municipal Separate Storm Sewer Systems (MS4s). DEQ shall designate a small MS4 that is not located in an urbanized area, as determined by the latest Decennial Census by the Bureau of Census, as a regulated small MS4 that must be covered by an IPDES permit if the Department determines that: ()

a. The storm water discharge results in or has the potential to result in exceedance of water quality standards or other significant water quality impacts; or ()

b. The storm water discharge contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer that is regulated by the IPDES storm water program. ()

05. Exclusions from Permit. A person shall not discharge pollutants from any point source into waters of the United States without first obtaining an IPDES permit from the Department or coverage under an IPDES general permit, unless the discharge is excluded from IPDES permit requirements or the discharge is authorized by an IPDES or NPDES permit that continues in effect. The Department will not require persons to obtain IPDES permits for facilities or activities that are not required to obtain NPDES permits from EPA under the Clean Water Act and federal Clean Water Act regulations. Discharges excluded from IPDES permit requirements, but that may be regulated by other state or federal regulations include: ()

a. Any sewage discharge from vessels and any effluent from properly functioning marine engines, laundry, shower and galley sink wastes, or any other discharge incidental to the normal operation of a vessel of the U.S. Armed Forces within the meaning of the Clean Water Act section 312, and a recreational vessel within the meaning of the Clean Water Act section 502(25). None of these exclusions apply to: ()

- i. Rubbish, trash, garbage, or other such materials discharged overboard; nor to ()
- ii. Other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as: ()
 - (1) An energy or mining facility; ()
 - (2) A storage facility, or when secured to a storage facility; or ()
 - (3) When secured to the bed of the waters of the United States for the purposes of mineral or oil exploration or development; ()
- b. Any discharge of dredged or fill material into waters of the United States that is regulated under the Clean Water Act section 404; ()
- c. Sewage, industrial wastes, or other pollutants discharged into publicly owned treatment works (POTWs) by an indirect discharger who has received a will-serve letter authorizing the discharge to the POTW. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the United States are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works; ()
- d. Any discharge in compliance with the instructions of an on-scene coordinator under 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan), or 33 CFR 153.10(e) (Control of Pollution by Oil and Hazardous Substances, Discharge Removal); ()
- e. Any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands; however, this exclusion does not apply to discharges from concentrated animal feeding operations (CAFO) as defined in 40 CFR 122.23, discharges from concentrated aquatic animal production (CAAP) facilities, discharges to aquaculture projects, and discharges from silvicultural point sources; ()
- f. Any return flow from irrigated agriculture; ()
- g. Discharges into a privately owned treatment works, except as the Department may otherwise require under Subsection 302.15; and ()
- h. Discharges from a water transfer. This exclusion does not apply to pollutants introduced by the water transfer activity itself to the water being transferred. ()

103. PERMIT PROHIBITIONS.

The Department will not issue an IPDES permit for a discharge: ()

01. Clean Water Act Compliance. Unless the conditions of the permit provide for compliance with the applicable requirements of IDAPA 58.01.02, “Water Quality Standards” and 58.01.25 “Rules Regulating the Idaho Pollutant Discharge Elimination System Program”; ()

02. EPA Objection. When the Department has received written objection pursuant to 40 CFR 123.44 from the EPA Regional Administrator to issuance of the permit and until the objections are resolved according to the process identified in the Memorandum of Agreement between EPA and the Department; ()

03. Water Quality Requirements. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states; ()

04. Anchorage and Navigation Impaired. When, in the judgment of the Secretary of the United States Army through the Army Corp Chief of Engineers, anchorage and navigation in or on any of the waters of the

United States would be substantially impaired by the discharge; ()

05. Banned Content. Of any radiological, chemical, or biological warfare agent or high level radioactive waste; ()

06. Area Wide Waste Treatment Management Plans. That is inconsistent with a plan or plan amendment approved under the Clean Water Act section 208(b); or ()

07. New Sources or New Dischargers. For a new source or new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. ()

a. When the owner or operator of a new source or new discharge proposes to discharge into a water segment that does not meet applicable water quality standards, or that is not expected to meet those standards even after the application of the effluent limitations required by Clean Water Act sections 301(b)(1)(A) and (B), and for which the state or interstate agency has performed a pollutant load allocation for the pollutant to be discharged, then the owner or operator must demonstrate that: ()

i. There are sufficient remaining pollutant load allocations to allow for the discharge; and ()

ii. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. ()

b. The Department may waive the submission of the information by the permit applicant required in Subsection 103.07.a. if the Department determines that it already has adequate information to evaluate the request. ()

c. An explanation of the development of limitations to meet the criteria of this section is to be included in the fact sheet to the permit. ()

104. PRE-APPLICATION PROCESS.

Any person who intends to apply for a permit or who proposes to discharge a pollutant into the waters of the United States should contact the Department to schedule a meeting prior to submitting an application to discuss: ()

01. IPDES Permit Applicability. Whether the actions or facility will require an IPDES permit, and whether other suitable permitting options are available; ()

02. Application Content. The IPDES permit application requirements; and ()

03. Application Schedule. The IPDES permit application submittal schedule. ()

105. APPLICATION FOR AN INDIVIDUAL IPDES PERMIT.

01. Electronic Submittals. The Department may require an applicant to electronically submit information required by this section, if the Department approves an electronic method of submittal. ()

02. Application Retention Schedule. An applicant must keep records of all data used to complete a permit application and any supplemental information submitted for a period of at least three (3) years from the date the application is signed. ()

03. Time to Apply. Any person required under Subsections 102.01 through 102.03 to obtain an IPDES permit must submit to the Department a complete application for a permit in compliance with the requirements of this subsection. A permit application must be signed and certified as required by Section 090 (Signature Requirements). ()

a. A person proposing a new discharge must submit an application at least one hundred eighty (180) days before the date on which the discharge is to commence, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. A facility proposing a new discharge of storm water associated with industrial activity must submit an application one hundred eighty (180) days before that

facility commences industrial activity that may result in a discharge of storm water associated with that industrial activity, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. ()

b. Facilities described under 40 CFR 122.26(b)(14)(x) or (b)(15)(i) must submit an application at least ninety (90) days before the date on which construction is to commence unless otherwise required by the terms of an applicable general permit. ()

c. Any TWTDS that commences operations after promulgation of any applicable “standard for sewage sludge use or disposal” must submit an application to the Department at least one hundred eighty (180) days prior to the date proposed for commencing operations. ()

d. A person discharging from a permitted facility with a currently effective permit must submit a new application at least one hundred eighty (180) days before the expiration date of the existing permit, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. ()

e. Permission may be granted by the Department for submission of an application in less than one hundred eighty (180) days. The Department’s prior approval must be sought and obtained in advance of the one hundred eighty (180) days before expiration of the existing permit or commencement of new discharge. ()

f. The application will not be accepted after the expiration date of the existing permit as an application for renewal of the permit. Any applications received after the expiration of the permit will be received and reviewed as an application for a new source or new discharger. ()

04. Individual Permit Application Forms. An applicant must submit an application on one (1) or more Department-approved forms appropriate to the number and type of discharge or outfall at the applicant’s facility. A person required by Subsections 102.01 through 102.03 to obtain an individual IPDES permit must submit an application to the Department providing the information required by this subsection and Subsections 105.05 through 105.19, as applicable. The application must be submitted on one (1) or more of the EPA forms listed in this subsection, or on the Department equivalent of the listed EPA form: ()

a. All applicants, other than a POTW, TWTDS, and pesticide applicators (see Subsection 105.06), EPA Form 1 and the following additional forms, if applicable: ()

i. Applicants for a concentrated animal feeding operation (CAFO; see Subsection 105.09) or concentrated aquatic animal production (CAAP; see Subsection 105.10) facility, EPA Form 2B; ()

ii. Applicants for an existing industrial facility, including manufacturing facilities, commercial facilities, mining activities, and silviculture activities (see Subsection 105.07), EPA Form 2C; ()

iii. Applicants for a new industrial facility that discharges process wastewater (see Subsection 105.16), EPA Form 2D; ()

iv. Applicants for a new or existing industrial facility that discharges only non-process wastewater (see Subsection 105.08.a.), EPA Form 2E; ()

v. Applicants for a new or existing facility whose discharge is composed entirely of storm water associated with industrial activity (see Subsection 105.19), EPA Form 2F unless the applicant is exempted by 40 CFR 122.26(c)(1)(ii). If the applicant’s discharge is composed of storm water and non-storm water (see Subsections 105.07, 105.08, and 105.16), EPA Forms 2C, 2D, or 2E, as appropriate, are also required; or ()

vi. Applicants that operate a sludge-only facility (see Subsection 105.17), that currently does not have and is not applying for, an IPDES permit for a direct discharge to a surface water body, EPA Form 2S; ()

b. For an applicant that is a new or existing POTW (see Subsections 105.11 through 105.15): ()

- i. EPA Form 2A; and ()
- ii. EPA Form 2S, if applicable. ()

05. Application Information for All Dischargers. In addition to the application information required for specific dischargers, the Department may require the submittal of any information necessary to ensure compliance with Section 103 (Permit Prohibitions). Such information includes, but is not limited to: ()

a. Information required to determine compliance with the antidegradation policy and antidegradation implementation provisions set forth in IDAPA 58.01.02.051 and 052, “Water Quality Standards”; ()

b. Information required to determine compliance with the mixing zone provisions set forth in IDAPA 58.01.02.060, “Water Quality Standards”; or ()

c. Information necessary for the Department to authorize a compliance schedule under IDAPA 58.01.02.400, “Water Quality Standards.” ()

06. Application Requirements for Dischargers Other than Treatment Works Treating Domestic Sewage (TWTDS), Publicly Owned Treatment Works (POTWs), and Pesticide Applicators. An applicant for an IPDES permit other than a POTW and other TWTDS, must provide the following information to the Department, using the appropriate forms specified in Subsection 105.04: ()

a. The applicant’s activity that requires an IPDES permit; ()

b. The name, mailing address, e-mail address, and location of the facility for which the application is submitted; ()

c. Up to four (4) Standard Industrial Classification (SIC) codes that best identify the principal products or services provided by the facility; ()

d. The operator’s name, mailing address, e-mail address, telephone number, ownership status, Employer Identification Number (EIN) or Department equivalent, and status as federal, state, private, public, or other entity; ()

e. A statement that the facility is located in Indian country, if applicable; ()

f. A listing of all permits or construction approvals received or applied for under any of the following programs: ()

i. Hazardous waste management program under IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”; ()

ii. Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells”; ()

iii. IPDES program under IDAPA 58.01.25 “Rules Regulating the Idaho Pollutant Discharge Elimination System Program”; ()

iv. Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; ()

v. Nonattainment program under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; ()

vi. National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; ()

- vii. Dredge or fill permits under the Clean Water Act section 404; or ()
- viii. Other relevant environmental permits, programs or activities, including those subject to state jurisdiction, approval, and permits; and ()
- g.** A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting: ()
 - i. The facility and each of its intake and discharge structures; ()
 - ii. The location of the facility’s hazardous waste treatment, storage, or disposal areas; ()
 - iii. The location of each well where fluids from the facility are injected underground; and ()
 - iv. The location of wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known by the applicant to exist in the map area; and ()
- h.** A brief description of the nature of the business; ()
- i.** An indication of whether the facility uses cooling water and the source of the cooling water; and ()
- j.** An indication of whether the facility is requesting any of the variances in Subsection 310.01 if known at the time of application. ()

07. Application Requirements for Existing Manufacturing, Commercial, Mining and Silviculture Dischargers. ()

- a.** Except for a facility subject to the requirements in Subsection 105.08, an applicant for an IPDES permit for an existing discharge from a manufacturing, commercial, mining, or silviculture facility or activity must provide the following information to the Department, using the applicable forms specified in Subsection 105.04: ()
 - i. For each outfall: ()
 - (1) The latitude and longitude to the nearest second and the name of each receiving water; ()
 - (2) A narrative identifying each type of process, operation, or production area that contributes wastewater to the effluent from that outfall, including process wastewater, cooling water, and storm water runoff; processes, operations, or production areas may be described in general terms, such as dye-making reactor or distillation tower; ()
 - (3) The average flow that each process contributes and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; ()
 - (4) For a privately owned treatment works, the identity of each user of the treatment works; and ()
 - (5) The average flow of point sources composed of storm water. For this subsection, the average flow may be estimated, and the basis for the rainfall event with the method of estimation must be submitted; ()
 - ii. A description of the frequency, duration, and flow rate of each discharge occurrence for any of the discharges described in Subsections 105.07.a.i(2) through (5) that are intermittent or seasonal, except for storm water runoff, spillage, or leaks; ()
 - iii. A reasonable measure of the applicant’s actual production reported in the units used in the

applicable effluent guideline, if an effluent guideline promulgated under the Clean Water Act section 304 applies to the applicant and is expressed in terms of production or other measure of operation. The reported measure must reflect the actual production of the facility as required by Subsection 303.02.b.; ()

iv. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading, or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates; ()

v. A listing of any toxic pollutant that the applicant currently uses or manufactures as an intermediate or final product or byproduct, except that the Department may waive or modify this requirement; ()

(1) If the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant; and ()

(2) The Department has adequate information to issue the permit; ()

vi. An identification of any biological toxicity tests that the applicant knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge; and ()

vii. The identity of each laboratory or firm and the analyses performed, if a contract laboratory or consulting firm performed any of the analyses required by Subsection 105.07.c. through m. ()

b. The owner or operator of a facility subject to this subsection must submit, with an application, a line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. ()

i. In the line drawing, similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under Subsections 105.07.a.i(2) through (5). ()

ii. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. ()

iii. If a water balance cannot be determined for certain activities, the applicant may instead provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures. ()

c. In addition to the items of information listed in Subsections 105.07.a. through 105.07.b., and except for information on storm water discharges required by 40 CFR 122.26, an applicant for an IPDES permit for an existing facility described in Subsection 105.07.a. must: ()

i. Collect, prepare, and submit information regarding the effluent characteristics and discharge of pollutants specified in this section; and ()

ii. When quantitative data for a pollutant are required, collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136, except that when no analytical method is approved, the applicant may use any suitable method but must describe the method. ()

d. An applicant under this subsection must: ()

i. Use grab samples in providing information regarding cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including *E. coli*), enterococci (previously known as fecal streptococcus), and volatile organics; temperature, pH, dissolved oxygen, and residual chlorine effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; ()

ii. For all other pollutants, use twenty-four (24) hour composite samples, unless specified otherwise at 40 CFR Part 136, with a minimum of four (4) grab samples, except that a minimum of one (1) grab sample may be

taken for effluents from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours; ()

e. For purposes of Subsection 105.07.c., exceptions to testing and data provision requirements for effluent characteristics include: ()

i. When an applicant has two (2) or more outfalls with substantially identical effluents, the Department may allow the applicant to test only one (1) outfall and report that the quantitative data also apply to the substantially identical outfall; and ()

ii. An applicant's duty under Subsections 105.07.j., k., and l. to provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report that those pollutants are present. ()

f. For storm water discharges, associated with an existing facility described in Subsection 105.07.a., from storm events which yield more than one-tenth (0.1) inch of rainfall: ()

i. All samples must be collected from the discharge resulting from a storm event and at least seventy-two (72) hours after the previously measurable storm event exceeding one-tenth (0.1) inch rainfall. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed fifty percent (50%) from the average or median rainfall event in that area; and ()

ii. For all applicants, a flow-weighted composite sample must be taken for either the entire discharge or for the first three (3) hours of the discharge, except for the following: ()

(1) The sampling may be conducted with a continuous sampler or as a combination of a minimum of three (3) sample aliquots taken in each hour of discharge for the entire discharge or for the first three (3) hours of the discharge, with each aliquot being separated by a minimum period of fifteen (15) minutes. If the Department approves, an applicant for a storm water discharge permit under Subsection 105.18 may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots; ()

(2) A minimum of one (1) grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours; or ()

(3) For a flow-weighted composite sample, only one (1) analysis of the composite of aliquots is required; ()

iii. For samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty (30) minutes, or as soon thereafter as practicable, of the discharge for all pollutants specified in Subsection 105.19 except that for all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 40 CFR 122.26(a) through (b) and (e) through (g), Subsections 105.18 and 105.19, but not for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including *E. coli*), and enterococci (previously known as fecal streptococcus); ()

iv. The Department may, on a case-by-case basis, allow or establish appropriate site-specific sampling procedures or requirements, including: ()

(1) Sampling locations; ()

(2) The season in which the sampling takes place; ()

(3) The minimum duration between the previous measurable storm event and the sampled storm event; ()

(4) The minimum or maximum level of precipitation required for an appropriate storm event; ()

- (5) The form of precipitation sampled, whether snow melt or rain fall; ()
- (6) Protocols for collecting samples under 40 CFR Part 136; and ()
- (7) Additional time for submitting data; and ()

v. An applicant is deemed to know or have reason to believe that a pollutant is present in an effluent if an evaluation of the expected use, production, or storage of the pollutant, or any previous analyses for the pollutant, show that pollutant's presence. ()

g. Unless a reporting requirement is waived under Subsection 105.07.h., every applicant subject to this subsection must report quantitative data for the following pollutants for every outfall: ()

- i. 5-day biochemical oxygen demand (BOD5); ()
- ii. Chemical oxygen demand (COD); ()
- iii. Total organic carbon (TOC); ()
- iv. Total suspended solids (TSS); ()
- v. Ammonia, as N; ()
- vi. Temperature (both winter and summer); and ()
- vii. pH. ()

h. The Department may waive the reporting requirements under Subsection 105.07.g. for individual point sources or for a particular industry category for one (1) or more of the pollutants listed in Subsection 105.07.g. if the applicant demonstrates that information adequate to support issuance of a permit can be obtained with less stringent requirements. ()

i. Except as provided in Subsection 105.07.o., an applicant with an existing facility described in Subsection 105.07.a. that has processes that qualify in one (1) or more of the primary industry categories shown in Appendix A to 40 CFR Part 122 contributing to a discharge, must report quantitative data for pollutants in each outfall containing process wastewater as follows: ()

i. Data for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part 122 in the fractions designated in Table I of Appendix D to 40 CFR Part 122. For purposes of this subsection: ()

(1) Table II of Appendix D to 40 CFR Part 122, lists the organic toxic pollutants in each fraction that result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry; and ()

(2) If the Department determines that an applicant falls within an industrial category for the purposes of selecting fractions for testing, that determination does not establish the applicant's category for any other purpose; see Notes 2 and 3 to 40 CFR 122.21; and ()

ii. Data for the toxic metals, cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122. ()

j. An applicant under this section must disclose whether the applicant knows or has reason to believe that any of the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122 are discharged from each outfall. If an applicable effluent limitations guideline limits the pollutant either directly or indirectly by express limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged that is not limited in an effluent limitations guideline, the applicant must either report quantitative data or

briefly describe the reasons the pollutant is expected to be discharged. ()

k. An applicant under this subsection must disclose whether the applicant knows or has reason to believe that any of the organic toxic pollutants listed in Table II or the toxic metals, cyanide, or total phenols listed in Table III of Appendix D to 40 CFR Part 122 for which quantitative data are not otherwise required under Subsection 105.07.i., are discharged from each outfall. Unless an applicant qualifies as a small business under Subsection 105.07.o., the applicant must: ()

i. Report quantitative data for every pollutant expected to be discharged in concentrations of ten (10) parts per billion or greater; ()

ii. Report quantitative data for acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, if any of these four (4) pollutants are expected to be discharged in concentrations of one hundred (100) parts per billion or greater; and ()

iii. For every pollutant expected to be discharged in concentrations less than ten (10) parts per billion, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, in concentrations less than one hundred (100) parts per billion, either submit quantitative data, or briefly describe the reasons the pollutant is expected to be discharged and submit any supporting documentation. ()

l. An applicant under this subsection must disclose whether the applicant knows or has reason to believe that asbestos or any of the hazardous substances listed in Table V of Appendix D to 40 CFR Part 122 are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged and report any quantitative data it has for any pollutant. ()

m. An applicant under this subsection must disclose and report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7, 8-tetrachlorodibenzo-p-dioxin (TCDD) if the applicant: ()

i. Uses or manufactures the following: ()

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); ()

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); ()

(3) 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); ()

(4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); ()

(5) 2,4,5-trichlorophenol (TCP); or ()

(6) Hexachlorophene (HCP); or ()

ii. Knows or has reason to believe that TCDD is or may be present in an effluent. ()

n. Where quantitative data are required in Subsections 105.07.c. through m., existing data may be used, if available, in lieu of sampling done solely for the purpose of the application, provided that: ()

i. All data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half (4 ½) years prior to submission; ()

ii. All data are representative of the discharge; and ()

iii. All available representative data are considered in the values reported. ()

o. An applicant under this subsection is exempt from the quantitative data requirements in Subsections 105.07.i. or 105.07.j. for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part

122, if that applicant qualifies as a small business under one (1) of the following criteria: ()

i. The applicant is a coal mine with an expected total annual production of less than one hundred thousand (100,000) tons per year; or ()

ii. The applicant has gross total annual sales averaging less than two hundred eighty-seven thousand, three hundred dollars (\$287,300) per year in 2014 dollars. ()

p. In addition to the information reported on the application form, an applicant under this subsection must provide at the Department's request, any other information that may be reasonably required to assess the discharges of the facility and to determine whether to issue an IPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and information required to determine the cause of the toxicity. ()

08. Application Requirements for New or Existing Manufacturing, Commercial, Mining, and Silviculture Facilities that Discharge only Non-Process Wastewater. ()

a. An applicant that is a manufacturing, commercial, mining, or silvicultural discharger that discharges only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard must provide the following information to the Department for all discharges, except for storm water discharges, using the applicable forms specified in Subsection 105.04: ()

i. The number of each outfall, the latitude and longitude to the nearest second, and the name of each receiving water; ()

ii. For a new discharger, the date of expected commencement of discharge; ()

iii. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or non-contact cooling water; ()

iv. An identification of cooling water additives, if any, that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available; ()

v. Effluent characteristics prepared and submitted as described in Subsections 105.08.b. and 105.08.c.; ()

vi. A description of the frequency of flow and duration of any seasonal or intermittent discharge, except for storm water runoff, leaks, or spills; ()

vii. A brief description of any treatment system used or to be used; ()

viii. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits under Subsection 303.07; and ()

ix. The signature of the certifying official under Section 090 (Signature Requirements). ()

b. Except as otherwise provided in Subsections 105.08.d. through g., an application for a discharger described in Subsection 105.08.a. must include quantitative data for the following pollutants or parameters: ()

i. 5-day biochemical oxygen demand (BOD5); ()

ii. Total suspended solids (TSS); ()

iii. Fecal coliform (including *E. coli*), if believed present or if sanitary waste is or will be discharged; ()

- iv. Total residual chlorine (TRC), if chlorine is used; ()
- v. Oil and grease; ()
- vi. Chemical oxygen demand (COD), if non-contact cooling water is or will be discharged; ()
- vii. Total organic carbon (TOC), if non-contact cooling water is or will be discharged; ()
- viii. Ammonia, as N; ()
- ix. Discharge flow; ()
- x. pH; and ()
- xi. Temperature, both in winter and summer, respectively. ()
- c. For purposes of the data required under Subsection 105.08.b.: ()
 - i. Grab samples must be used for oil and grease, fecal coliform (including *E. coli*), and volatile organics. Temperature, pH, and TRC effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; ()
 - ii. Twenty-four (24) hour composite samples must be used for pollutants listed in Subsection 105.08.b., other than those specified in Subsection 105.08.c.i., unless specified otherwise at 40 CFR Part 136. Twenty-four (24) hour composite samples must, at a minimum, be composed of four (4) grab samples unless specified otherwise at 40 CFR Part 136. For a composite sample, only one (1) analysis of the composite aliquots is required; ()
 - iii. The quantitative data may be collected over the past three hundred sixty-five (365) days, as long as the data is representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken; and ()
 - iv. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. ()
- d. The Department may waive the testing and reporting requirements for any of the pollutants or flow listed in Subsection 105.08.c. if the applicant requests a waiver with its application or earlier, and demonstrates that information adequate to support permit issuance can be obtained through less stringent requirements. ()
- e. If the applicant is a new discharger, the applicant must: ()
 - i. Complete and submit Item IV of EPA Form 2E, or the Department equivalent, according to Subsection 105.04.a.iv., by providing quantitative data in compliance with that section no later than two (2) years after the discharge commences, except that the applicant need not complete those portions of Item IV requiring tests that the applicant has already performed and reported under the discharge monitoring requirements of its IPDES or NPDES permit; and ()
 - ii. Include estimates and the source of each estimate instead of sampling data for the pollutants or parameters listed in Subsection 105.08.b.; ()
- f. For purposes of the data required under this subsection, all pollutant levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature. Submittal of all estimated data must be accompanied by documents supporting the estimated value. ()
- g. An applicant's duty, under Subsections 105.08.b., c., and e., to provide quantitative data or estimates of certain pollutants does not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report the presence of those pollutants. If the requirements of Subsection 303.07 are met, net credit may be provided for the presence of pollutants in intake water. ()

09. Application Requirements for New and Existing Concentrated Animal Feeding Operations (CAFO). An applicant for an IPDES permit for a new or existing CAFO, as defined in 40 CFR 122.23(b) must provide the following information to the Department, using the applicable forms specified in Subsection 105.04:

- ()
- a. The name of the owner or operator; ()
- b. The facility location and mailing addresses; ()
- c. Latitude and longitude of the production area to the nearest second, measured at the entrance to the production area; ()
- d. A topographic map of the geographic area in which the concentrated animal feeding operation is located, showing the specific location of the production area; ()
- e. Specific information about the number and type of animals, including, if applicable: beef cattle, broilers, layers, swine weighing fifty-five (55) pounds or more, swine weighing less than fifty-five (55) pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, or other animals, whether in open confinement or housed under roof; ()
- f. The type of containment and total capacity in tons or gallons of any anaerobic lagoon, roofed storage shed, storage pond, under-floor pit, above-ground storage tank, below-ground storage tank, concrete pad, impervious soil pad, or other structure or area used for containment and storage of manure, litter, and process wastewater; ()
- g. The total number of acres available and under the applicant's control for land application of manure, litter, or process wastewater; ()
- h. Estimated amounts of manure, litter, and process wastewater generated per year in tons or gallons; ()
- i. Estimated amounts of manure, litter, and process wastewater transferred to other persons per year in tons or gallons; and ()
- j. A nutrient management plan that has been completed and will be implemented upon the date of permit coverage. A nutrient management plan must meet, at a minimum, the requirements specified in 40 CFR 122.42(e), including for all CAFOs subject to 40 CFR 412.30 through 412.37, 412.40 through 412.47, or the requirements of 40 CFR 412.4(c), as applicable. ()

10. Application Requirements for New and Existing Concentrated Aquatic Animal Production (CAAP) Facilities. An applicant for an IPDES permit for a new or existing CAAP facility must provide the following information, using the applicable forms specified in Subsection 105.04:

- a. The maximum daily and average monthly flow from each outfall; ()
- b. The number of ponds, raceways, and similar structures; ()
- c. The name of the receiving water and the source of intake water; ()
- d. For each species of aquatic animal, the total yearly and maximum harvestable weight; and ()
- e. The calendar month of maximum feeding and the total mass of food fed during that month. ()

11. Application Requirements for New and Existing POTWs and Other Dischargers Designated by the Department. ()

a. Except as provided in Subsection 105.11.b., an applicant that is a POTW and any other discharger designated by the Department must provide the information in this subsection, using the applicable forms specified in Subsection 105.04.b. An applicant under this subsection must submit all information available at the time of application; however, they may provide information by referencing information previously submitted to the Department. ()

b. The Department may waive any requirement of this subsection if it has access to substantially identical information or if that information is not of material concern for a specific permit, if approved by the EPA Regional Administrator. The waiver request to the Regional Administrator must include the Department's justification for the waiver. A Regional Administrator's disapproval of a Department's proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information. ()

c. An applicant under this subsection must provide: ()

i. Name, mailing address, and location of the facility for which the application is submitted; ()

ii. Name, mailing address, e-mail address, EIN or Department equivalent, and telephone number of the applicant, and a statement whether the applicant is the facility's owner, operator, or both; ()

iii. A list of all environmental permits or construction approvals received or applied for, including dates, under any of the following programs or types of activities: ()

(1) Hazardous waste management program under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; ()

(2) Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells"; ()

(3) IPDES program under IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; ()

(4) Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ()

(5) Nonattainment program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ()

(6) National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ()

(7) Dredge or fill permits under the Clean Water Act section 404; ()

(8) Sludge Management Program under IDAPA 58.01.16.650, "Wastewater Rules," and Section 380 (Sewage Sludge) of these rules; and ()

(9) Other relevant environmental permits, programs, or activities, including those subject to state jurisdiction, approval, and permits; ()

iv. The name, population, and EDUs of each municipal entity served by the facility, including unincorporated connector districts, a statement whether each municipal entity owns or maintains the collection system and, if the information is available, whether the collection system is a separate sanitary sewer or a combined storm and sanitary sewer; ()

v. A statement whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country; ()

vi. The facility's design flow rate, or the wastewater flow rate the plant was built to handle, annual average daily flow rate, and maximum daily flow rate for each of the previous three (3) years; ()

vii. A statement identifying the types of collection systems, either separate sanitary sewers or combined storm and sanitary sewers, used by the treatment works, and an estimate of the percent of sewer line that each type comprises; ()

viii. The following information for outfalls to waters of the United States and other discharge or disposal methods: ()

(1) For effluent discharges to waters of the United States, the total number and types of outfalls including treated effluent, combined sewer overflows, bypasses, constructed emergency overflows; ()

(2) For wastewater discharged to surface impoundments, the location of each surface impoundment, the average daily volume discharged to each surface impoundment, and a statement whether the discharge is continuous or intermittent; ()

(3) For wastewater applied to the land, the location of each land application site, the size in acres of each land application site, the average daily volume in gallons per day applied to each land application site, and a statement whether the land application is continuous or intermittent; ()

(4) For effluent sent to another facility for treatment prior to discharge, the means by which the effluent is transported, the name, mailing address, e-mail address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant, the name, mailing address, e-mail address, contact person, phone number, and IPDES or NPDES permit number, if any, of the receiving facility, and the average daily flow rate from this facility into the receiving facility in million gallons per day (MGD); and ()

(5) For wastewater disposed of in a manner not included in Subsections 105.11.c.viii(1) through (4), including underground percolation and underground injection, a description of the disposal method, the location and size of each disposal site, if applicable, the annual average daily volume in gallons per day disposed of by this method, and a statement whether disposal by this method is continuous or intermittent; and ()

ix. The name, mailing address, e-mail address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the POTW facility. ()

x. An indication of whether applicant is operating under or requesting to operate under a variance as specified in Subsection 310.02 if known at the time of application. ()

d. In addition to the information described in Subsection 105.11.c., an applicant under this subsection with a design flow greater than or equal to zero point one (0.1) million gallons per day (MGD) must provide: ()

i. The current average daily volume in gallons per day of inflow and infiltration, and a statement describing steps the facility is taking to minimize inflow and infiltration; ()

ii. A topographic map, or other map if a topographic map is unavailable, extending at least one (1) mile beyond property boundaries of the treatment plant including all unit processes, and showing: ()

(1) The treatment plant area and unit processes; ()

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant, including outfalls from bypass piping, if applicable; ()

(3) Each well where fluids from the treatment plant are injected underground; ()

- (4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within one-quarter (1/4) mile of the property boundaries of the treatment works; ()
- (5) Sewage sludge management facilities including on-site treatment, storage, and disposal sites; and ()
- (6) Each location at which waste classified as hazardous under IDAPA 58.01.05, “Rules and Standards for Hazardous Waste,” enters the treatment plant by truck, rail, or dedicated pipe; ()
- iii. A process flow diagram or schematic as follows: ()
- (1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system, including a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points and approximate daily flow rates between treatment units; and ()
- (2) A narrative description of the diagram; and ()
- iv. The following information regarding scheduled improvements: ()
- (1) The outfall number of each affected outfall; ()
- (2) A narrative description of each required improvement; ()
- (3) Scheduled dates for commencement and completion of construction, commencement of discharge and attainment of operational level, and actual completion date for any event listed in this subsection that has been completed; and ()
- (4) A description of permits and authorizations concerning other federal and state requirements. ()
- e. An applicant under this subsection must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable: ()
- i. For each outfall: ()
- (1) The outfall number; ()
- (2) The county, and city or town in which the outfall is located; ()
- (3) The latitude and longitude, to the nearest second; ()
- (4) The distance from shore and depth below surface; ()
- (5) The average daily flow rate, in million gallons per day (MGD); ()
- (6) If the outfall has a seasonal or periodic discharge, the number of times per year the discharge occurs, the duration of each discharge, the flow of each discharge, and the months in which discharge occurs; and ()
- (7) A statement whether the outfall is equipped with a diffuser and the type of diffuser used, such as high-rate; ()
- ii. For each outfall discharging effluent to waters of the United States, the following receiving water information, if the information is available: ()
- (1) The name of each receiving water; ()

- (2) The critical flow of each receiving stream; and ()
- (3) The total hardness of the receiving stream at critical low flow; and ()
- iii. For each outfall discharging to waters of the United States, the following information describing the treatment of the discharges: ()
 - (1) The highest level of treatment, including primary, equivalent to secondary, secondary, advanced, or other treatment level provided for: ()
 - (a) The design biochemical oxygen demand removal percentage; ()
 - (b) The design suspended solids removal percentage; ()
 - (c) The design phosphorus removal percentage; ()
 - (d) The design nitrogen removal percentage; and ()
 - (e) Any other removals that an advanced treatment system is designed to achieve; and ()
 - (2) A description of the type of disinfection used, and a statement whether the treatment plant de-chlorinates, if disinfection is accomplished through chlorination. ()
- f. In addition to Subsection 105.11.a., and except as provided in Subsection 105.11.h., an applicant under this subsection must undertake sampling and analysis and submit effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for combined sewer overflows, including the following if applicable: ()
 - i. Sampling and analysis for the pollutants listed in Appendix J, Table 1A to 40 CFR Part 122; ()
 - ii. For an applicant with a design flow greater than or equal to zero point one (0.1) million gallons per day (MGD), sampling and analysis for the pollutants listed in Appendix J, Table 1 to 40 CFR Part 122, except that a facility that does not use chlorine for disinfection, does not use chlorine elsewhere in the treatment process, and has no reasonable potential to discharge chlorine in the facility's effluent, is not required to sample or analyze chlorine; ()
 - iii. Sampling and analysis for the pollutants listed in Appendix J, Table 2 to 40 CFR Part 122 and for any other pollutants for which the state or EPA has established water quality standards applicable to the receiving waters if the facility is: ()
 - (1) A POTW that has a design flow rate equal to or greater than one (1) million gallons per day (MGD); ()
 - (2) A POTW that has an approved pretreatment program; ()
 - (3) A POTW that is required to develop a pretreatment program; or ()
 - (4) Any POTW, as required by the Department to ensure compliance with these rules; ()
 - iv. Sampling and analysis for additional pollutants, as the Department may require, on a case-by-case basis; ()
 - v. Data from a minimum of three (3) samples taken within four and one-half (4 ½) years before the date of the permit application; to meet this requirement: ()

- (1) Samples must be representative of the seasonal variation in the discharge from each outfall; ()
- (2) Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application; and ()
- (3) Additional samples may be required by the Department on a case-by-case basis; and ()
 - vi. All existing data for pollutants specified in Subsections 105.11.f.i. through iv. collected within four and one-half (4 ½) years of the application. This data must be included in the pollutant data summary submitted by the applicant, except that if the applicant samples for a specific pollutant on a monthly or more frequent basis, only the data collected for that pollutant within one (1) year of the application must be provided. ()
- g. To meet the information requirements of Subsection 105.11.f., an applicant must: ()
 - i. Collect samples of effluent and analyze the samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 unless an alternative is specified in the existing IPDES or NPDES permit; ()
 - ii. Use the following methods: ()
 - (1) Grab samples for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including *E. coli*), and volatile organics. Temperature, pH, dissolved oxygen, and residual chlorine data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; ()
 - (2) Twenty-four (24) hour composite samples for all other pollutant, unless specified otherwise at 40 CFR Part 136, using a minimum of four (4) grab samples; for a composite sample, only one (1) analysis of the composite of aliquots is required; and ()
 - iii. Provide at least the following information for each parameter: ()
 - (1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values; ()
 - (2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value; ()
 - (3) The analytical method used; and ()
 - (4) The threshold level, such as the method detection limit, minimum level, or other designated method endpoint for the analytical method used; and ()
 - iv. Report metals as total recoverable, unless the Department requires otherwise. ()
- h. When an applicant under this subsection has two (2) or more outfalls with substantially identical effluent discharging to the same receiving water segment, the Department may, on a case-by-case basis, allow the applicant to submit sampling data for only one (1) outfall. The Department may also allow an applicant to composite samples from one (1) or more outfalls that discharge into the same mixing zone, pursuant to IDAPA 58.01.02, "Water Quality Standards." For POTWs applying prior to commencement of discharge, data must be submitted no later than twenty-four (24) months after the commencement of discharge. ()

12. Whole Effluent Toxicity (WET) Monitoring for POTWs. ()

- a. An applicant for a permit under Subsection 105.11 must submit information on effluent monitoring for WET, including an identification of any WET tests conducted during the four and one-half (4 ½) years before the date of the application on any of the applicant's discharges or on any receiving water near the discharge. For POTWs applying prior to commencement of discharge, data must be submitted no later than twenty-four (24) months after the

commencement of discharge. ()

b. An applicant under Subsection 105.11 must submit to the Department, in compliance with Subsections 105.12.c. through f., the results of valid WET tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows, if the applicant: ()

i. Has a design flow rate greater than or equal to one (1) million gallons per day (MGD); ()

ii. Has an approved pretreatment program or is required to develop a pretreatment program; or ()

iii. Is required to comply with this subsection by the Department, based on consideration of the following factors: ()

(1) The variability of the pollutants or pollutant parameters in the POTW effluent based on chemical-specific information, the type of treatment plant, and types of industrial contributors; ()

(2) The ratio of effluent flow to receiving stream flow; ()

(3) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW; ()

(4) Receiving water characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource water; or ()

(5) Other considerations, including the history of toxic impacts and compliance problems at the POTW that the Department determines could cause or contribute to adverse water quality impacts. ()

c. When an applicant under Subsection 105.11 has two (2) or more outfalls with substantially identical effluent discharging to the same receiving water segment, the Department may, on a case-by-case basis, allow the applicant to submit whole effluent toxicity data for only one (1) outfall. The Department may also allow an applicant to composite samples from one (1) or more outfalls that discharge into the same mixing zone. ()

d. An applicant under Subsection 105.12.b. that is required to perform WET testing must provide: ()

i. Results of a minimum of four (4) quarterly tests for a year, from the year preceding the permit application or results from four (4) tests performed at least annually in the four and one-half (4 ½) year period before the application, if the results show no appreciable toxicity using a safety factor determined by the Department; ()

ii. The number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance; ()

iii. The results using the form provided by the Department, or test summaries, if available and comprehensive, for each WET test conducted under this subsection for which the information has not been reported previously to the Department; ()

iv. For WET data submitted to the Department within four and one-half (4 ½) years before the date of the application, the dates on which the data were submitted and a summary of the results; and ()

v. Any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any WET test conducted within the past four and one-half (4 ½) years revealed toxicity. ()

e. An applicant under Subsection 105.11 must conduct tests with no less than two (2) species, including fish, invertebrate, or plant, and test for acute or chronic toxicity, depending on the range of receiving water

dilution. Unless the Department directs otherwise, an applicant must conduct acute or chronic testing based on the following dilutions: ()

i. Acute toxicity testing if the dilution of the effluent is greater than a ratio of one thousand to one (1,000:1) at the edge of the mixing zone; ()

ii. Acute or chronic toxicity testing, if the dilution of the effluent is between a ratio of one hundred to one (100:1) and one thousand to one (1,000:1) at the edge of the mixing zone; acute testing may be more appropriate at the higher end of this range (one thousand to one (1,000:1)), and chronic testing may be more appropriate at the lower end of this range (one hundred to one (100:1)); or ()

iii. Chronic testing if the dilution of the effluent is less than a ratio of one hundred to one (100:1) at the edge of the mixing zone. ()

f. For purposes of the WET testing required by this section, an applicant must conduct testing using methods approved under 40 CFR Part 136. ()

13. Application Requirements for POTWs Receiving Industrial Discharges. ()

a. An applicant for an IPDES permit as a POTW under Subsection 105.11 must state in its application the number of significant industrial users (SIU) and non-significant categorical industrial users (NSCIU), as defined at 40 CFR 403.3(v), including SIUs and NSCIUs that truck or haul waste, discharging to the POTW. A POTW with one (1) or more SIUs must provide the following information for each SIU that discharges to the POTW: ()

i. The name and mailing address of the SIU; ()

ii. A description of all industrial processes that affect or contribute to the SIU's discharge; ()

iii. The principal products and raw materials of each SIU that affects or contributes to that SIU's discharge; ()

iv. The average daily volume of wastewater discharged by the SIU, indicating the amount attributable to process flow and non-process flow; ()

v. A statement whether the SIU is subject to local limits; ()

vi. A statement whether the SIU is subject to one (1) or more categorical standards, and if so, under which category and subcategory; and ()

vii. A statement whether any problems at the POTW, including upsets, pass-through, or interference have been attributed to the SIU in the past four and one-half (4 ½) years. ()

b. The information required in Subsection 105.13.a. may be waived by the Department for a POTW with a pretreatment program if the applicant has submitted either of the following that contains information substantially identical to the information required in Subsection 105.13.a.: ()

i. An annual report submitted within one (1) year of the application; or ()

ii. A pretreatment program. ()

14. Application Requirements for POTWs Receiving Discharges from Hazardous Waste Generators and from Waste Cleanup or Remediation Sites. ()

a. A POTW receiving hazardous or corrective action wastes or wastes generated at another type of cleanup or remediation site must provide the following information: ()

i. If the POTW receives, or has been notified that it will receive by truck, rail, or dedicated pipe, any

wastes that are regulated as hazardous wastes under 40 CFR Part 261 and IDAPA 58.01.05, “Rules and Standards for Hazardous Waste,” the applicant must report the following: ()

(1) The method of delivery, including by truck, rail, or dedicated pipe, by which the waste is received; and ()

(2) The applicable hazardous waste number designated in IDAPA 58.01.05, “Rules and Standards for Hazardous Waste” for the transported waste, and the amount received annually of each hazardous waste; and ()

ii. If the POTW receives, or has been notified that it will receive, wastewater that originates from remedial activities, including those undertaken under Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act sections 3004(u) or 3008(h), the applicant must report the following: ()

(1) The identity and description of each site or facility at which the wastewater originates; ()

(2) The identity of any known hazardous constituents specified in IDAPA 58.01.05, “Rules and Standards for Hazardous Waste,” in the wastewater; and ()

(3) The extent of any treatment the wastewater receives or will receive before entering the POTW. ()

b. An applicant under this subsection is exempt from the requirements of Subsection 105.14.a.ii. if the applicant receives no more than fifteen (15) kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in IDAPA 58.01.05, “Rules and Standards for Hazardous Waste.” ()

15. Application Requirements for POTWs with Combined Sewer Systems and Overflows. A POTW applicant with a combined sewer system must provide the following information on the combined sewer system and outfalls: ()

a. A system map indicating the location of: ()

i. All combined sewer overflow discharge points; ()

ii. Any sensitive use areas potentially affected by combined sewer overflows including beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems; ()

iii. Outstanding national resource waters potentially affected by combined sewer overflows; and ()

iv. Waters supporting threatened and endangered species potentially affected by combined sewer overflows; ()

b. A system diagram of the combined sewer collection system that includes the locations of: ()

i. Major sewer trunk lines, both combined and separate sanitary; ()

ii. Points where separate sanitary sewers feed into the combined sewer system; ()

iii. In-line and off-line storage structures; ()

iv. Flow-regulating devices; and ()

v. Pump stations; ()

c. Information on each outfall for each combined sewer overflow discharge point covered by the permit application, including: ()

- i. The outfall number; ()
- ii. The county and city or town in which the outfall is located; ()
- iii. The latitude and longitude, to the nearest second; and ()
- iv. The distance from shore and depth below surface; ()
- d.** A statement whether the applicant monitored any of the following in the past year for a combined sewer overflow: ()
 - i. Rainfall; ()
 - ii. Overflow volume; ()
 - iii. Overflow pollutant concentrations; ()
 - iv. Receiving water quality; ()
 - v. Overflow frequency; and ()
 - vi. The number of storm events monitored in the past year; ()
- e.** Information regarding the number of combined sewer overflows from each outfall in the past year and, if available: ()
 - i. The average duration per event; ()
 - ii. The average volume for each event; and ()
 - iii. The minimum rainfall that caused a combined sewer overflow event in the last year; ()
- f.** The name of each receiving water; ()
- g.** A description of any known water quality impact caused by the combined sewer overflow operations, including permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or the exceedance of any applicable state water quality standard, on the receiving water; and ()
- h.** All applicants must provide the name, mailing address, e-mail address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility. ()

16. Application Requirements for New Sources and New Discharges. ()

- a.** An applicant for an IPDES permit for a new manufacturing, commercial, mining, silviculture, or other discharge, except for a new discharge from a facility subject to the requirements of Subsection 105.08 or a new discharge of storm water associated with industrial activity that is subject to the requirements of Subsection 105.19, except as provided by Subsection 105.19.c., must provide the following information to the Department, using the applicable forms specified in Subsection 105.04.b.: ()
 - i. The latitude and longitude to the nearest second of the expected outfall location and the name of each receiving water; ()
 - ii. The expected date the discharge will commence; ()
 - iii. The following information on flows, sources of pollution, and treatment technologies: ()

- (1) A narrative describing the treatment that the wastewater will receive, identifying all operations contributing wastewater to the effluent, stating the average flow contributed by each operation, and describing the ultimate disposal of any solid or liquid wastes not discharged; ()
- (2) A line drawing of the water flow through the facility with a water balance as described in Subsection 105.07.b.; and ()
- (3) If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration, and maximum daily flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks; ()
- iv. If a new source performance standard promulgated under the Clean Water Act section 306 or an effluent limitation guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable calculation of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard, as required by Subsection 303.02.b., for each of the first three (3) years. The applicant may submit alternative estimates if production is likely to vary; ()
- v. The effluent characteristics information as described in Subsection 105.16.b.; ()
- vi. The existence of any technical evaluation concerning the applicant's wastewater treatment, along with the name and location of similar plants of which the applicant has knowledge; ()
- vii. Any optional information the permittee wishes the Department to consider. ()
- b.** An applicant under this section must provide the following effluent characteristics information: ()
- i. Estimated daily maximum, daily average, and the source of that information for each outfall for the following pollutants or parameters: ()
- (1) Five (5)-day biochemical oxygen demand (BOD5); ()
- (2) Chemical oxygen demand (COD); ()
- (3) Total organic carbon (TOC); ()
- (4) Total suspended solids (TSS); ()
- (5) Flow; ()
- (6) Ammonia, as N; ()
- (7) Temperature, in both winter and summer; and ()
- (8) pH. ()
- ii. Estimated daily maximum, daily average, and the source of that information for each outfall for all the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122, if the applicant knows or has reason to believe any of the pollutants will be present or if any of the pollutants are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant; ()
- iii. Estimated daily maximum, daily average, and the source of that information for the following pollutants for each outfall, if the applicant knows or has reason to believe the pollutants will be present in the discharge from any outfall: ()

- (1) All pollutants in Table IV of Appendix D to 40 CFR Part 122; ()
- (2) The toxic metals, total cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122; ()
- (3) The organic toxic pollutants in Table II of Appendix D to 40 CFR Part 122 except bis (chloromethyl) ether, dichlorofluoromethane, and trichlorofluoromethane; however, this requirement is waived for: ()
 - (a) An applicant with expected gross sales of less than two hundred eighty-seven thousand three hundred dollars (\$287,300) per year in 2014 dollars for the next three (3) years (see also Subsection 105.07.o.ii.); or ()
 - (b) A coal mine with expected average production of less than one hundred thousand (100,000) tons of coal per year (see also Subsection 105.07.o.i.); ()
- iv. The information that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) may be discharged if the applicant uses or manufactures one (1) of the following compounds, or if the applicant knows or has reason to believe that TCDD will or may be present in an effluent: ()
 - (1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); Chemical Abstract Service (CAS) #93-76-5; ()
 - (2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1); ()
 - (3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4); ()
 - (4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3); ()
 - (5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or ()
 - (6) Hexachlorophene (HCP) (CAS #70-30-4); and ()
- v. The potential presence of any of the pollutants listed in Table V of Appendix D to 40 CFR Part 122 if the applicant believes these pollutants will be present in any outfall, except that quantitative estimates are not required unless they are already available at the time the applicant applies for the permit. ()
- c. No later than twenty-four (24) months after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of EPA application Form 2C or the Department equivalent. The applicant need not complete those portions of Item V or the Department equivalent requiring tests already performed and reported under the discharge monitoring requirements of its permit. ()
- d. The effluent characteristics requirements in Subsections 105.08.b., c., and e. that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report that a pollutant is present. For purposes of this subsection, net credits may be provided for the presence of pollutants in intake water if the requirements of Subsection 303.07 are met, and (except for discharge flow, temperature, and pH) all levels must be estimated as concentration and as total mass. ()
- e. The Department may waive the reporting requirements for any of the pollutants and parameters in Subsection 105.16.b. if the applicant requests a waiver with its application, or earlier, and demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements. ()

17. Application Requirements for Treatment Works Treating Domestic Sewage (TWTDS). All TWTDS with a currently effective NPDES or IPDES permit must submit a permit application at the time of the next IPDES permit renewal application, using Form 2S or another application form approved by the Department. New applicants must submit all information available at the time of permit application. The information may be provided

by referencing information previously submitted to the Department. ()

a. The Department may waive any requirement of this subsection if there is access to substantially identical information. The Department may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the EPA Regional Administrator. The waiver request to the Regional Administrator must include the Department’s justification for the waiver. A Regional Administrator’s disapproval of a Department’s proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information. ()

b. All applicants must submit the following information: ()

i. The name, mailing address, and location of the TWTDS for which the application is submitted; ()

ii. The name, mailing address, e-mail address, EIN or Department equivalent, and telephone number of the applicant and indication whether the applicant is the owner, operator, or both; ()

iii. Whether the facility is a Class I Sludge Management Facility; ()

iv. The design flow rate in million gallons per day (MGD); ()

v. The total population and equivalent dwelling units (EDU) served; and ()

vi. The TWTDS’s status as federal, state, private, public, or other entity. ()

c. All applicants must submit the facility’s NPDES or IPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs: ()

i. Hazardous waste management program under IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”; ()

ii. Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells”; ()

iii. IPDES program under IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program”; ()

iv. Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”; ()

v. Nonattainment program under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”; ()

vi. National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”; ()

vii. Dredge or fill permits under the Clean Water Act section 404; ()

viii. Sludge Management Program under IDAPA 58.01.16.650, “Wastewater Rules,” and Section 380 (Sewage Sludge) of these rules; and ()

ix. Other relevant environmental permits, programs or activities, including those subject to state jurisdiction, approval, and permits. ()

d. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country. ()

e. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one (1) mile beyond property boundaries of the facility and showing the following information: ()

i. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and ()

ii. Wells, springs, and other surface water bodies that are within one-quarter ($\frac{1}{4}$) mile of the property boundaries and listed in public records or otherwise known to the applicant. ()

f. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction. ()

g. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in 40 CFR Part 503 for the applicant's use or disposal practices on the date of permit application. ()

i. The Department may require sampling for additional pollutants, as appropriate, on a case-by-case basis; ()

ii. Applicants must provide data from a minimum of three (3) samples taken within four and one-half ($4\frac{1}{2}$) years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one (1) month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application; ()

iii. Applicants must collect and analyze samples in accordance with analytical methods approved under SW-846 (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods) unless an alternative has been specified in an existing sewage sludge permit; and ()

iv. The monitoring data provided must include at least the following information for each parameter: ()

(1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values; ()

(2) The analytical method used; and ()

(3) The method detection level. ()

h. If the applicant is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge, the following information must be provided: ()

i. If the applicant's facility generates sewage sludge, the total dry metric tons per three hundred sixty-five (365)-day period generated at the facility; ()

ii. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received: ()

(1) The name, mailing address, and location of the other facility; ()

(2) The total dry metric tons per three hundred sixty-five (365)-day period received from the other facility; and ()

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics; ()

iii. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information must be submitted: ()

(1) Whether the Class A pathogen reduction requirements in 40 CFR 503.32(a) or the Class B pathogen reduction requirements in 40 CFR 503.32(b) are met, and a description of any treatment processes used to reduce pathogens in sewage sludge; ()

(2) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(1) through (b)(8) are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and ()

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge; ()

iv. If sewage sludge from the applicant's facility meets the ceiling concentrations in 40 CFR 503.13(b)(1), the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one (1) of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8), and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is applied to the land; ()

v. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to Subsection 105.17.h.iv., the applicant must provide the following information: ()

(1) The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and ()

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away; and ()

vi. If sewage sludge from the applicant's facility is provided to another person who generates sewage sludge during the treatment of domestic sewage in a treatment works or a person who derives a material from sewage sludge, and the sewage sludge is not subject to Subsection 105.17.h.iv., the applicant must provide the following information for each facility receiving the sewage sludge: ()

(1) The name, e-mail address, and mailing address of the receiving facility; ()

(2) The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility; ()

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic; ()

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 40 CFR 503.12(g); and ()

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge. ()

i. If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to Subsection 105.17.h.iv., v., or vi., the applicant must provide the following information: ()

i. The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to

this subsection that is applied to the land; ()

ii. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located; ()

iii. The following information for each land application site that has been identified at the time of permit application: ()

(1) The name (if any), and location for the land application site; ()

(2) The site's latitude and longitude to the nearest second, and method of determination; ()

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location; ()

(4) The name, mailing address, e-mail address, and telephone number of the site owner, if different from the applicant; ()

(5) The name, mailing address, e-mail address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant; ()

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 40 CFR 503.11; ()

(7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation; ()

(8) Whether either of the vector attraction reduction options of 40 CFR 503.33(b)(9) or (b)(10) is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and ()

(9) Other information that describes how the site will be managed, as specified by the permitting authority. ()

iv. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site: ()

(1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 40 CFR 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to 40 CFR 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name, phone number, and e-mail address, if available, of a contact person at the permitting authority; ()

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site since July 20, 1993, if, based on the inquiry in Subsection 105.17.i.iv(1) bulk sewage sludge subject to cumulative pollutant loading rates in 40 CFR 503.13(b)(2) has been applied to the site since July 20, 1993; ()

v. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum: ()

(1) Describes the geographical area covered by the plan; ()

(2) Identifies the site selection criteria; ()

(3) Describes how the site(s) will be managed; ()

(4) Provides for advance notice to the permit authority of specific land application sites and reasonable time for the permit authority to object prior to land application of the sewage sludge; and ()

(5) Provides for advance public notice of land application sites in the manner prescribed by state and local law. When state or local law does not require advance public notice, it must be provided in a manner reasonably calculated to apprise the general public of the planned land application. ()

j. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information: ()

i. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per three hundred sixty-five (365)-day period; ()

ii. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate: ()

(1) The site name or number, contact person, mailing address, e-mail address, and telephone number for the surface disposal site; and ()

(2) The total dry metric tons from the applicant's facility per three hundred sixty-five (365)-day period placed on the surface disposal site; ()

iii. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates: ()

(1) The name or number and the location of the active sewage sludge unit; ()

(2) The unit's latitude and longitude to the nearest second, and method of determination; ()

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location; ()

(4) The total dry metric tons placed on the active sewage sludge unit per three hundred sixty-five (365)-day period; ()

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit; ()

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec; ()

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal; ()

(8) If the active sewage sludge unit is less than one hundred fifty (150) meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line; ()

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit; ()

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified; ()

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit: ()

(a) The name, contact person, and mailing address of the facility; and ()

(b) Available information regarding the quality of the sewage sludge received from the facility, ()

including any treatment at the facility to reduce pathogens or vector attraction characteristics; ()

(12) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(9) through (b)(11) is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge; ()

(13) The following information, as applicable to any ground water monitoring occurring at the active sewage sludge unit: ()

(a) A description of any ground water monitoring occurring at the active sewage sludge unit; ()

(b) Any available ground water monitoring data, with a description of the well locations and approximate depth to ground water; ()

(c) A copy of any ground water monitoring plan that has been prepared for the active sewage sludge unit; and ()

(d) A copy of any certification that has been obtained from a qualified ground water scientist that the aquifer has not been contaminated; and ()

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request. ()

k. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information: ()

i. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per three hundred sixty-five (365)-day period; ()

ii. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate: ()

(1) The name and/or number, contact person, mailing address, e-mail address, and telephone number of the sewage sludge incinerator; and ()

(2) The total dry metric tons from the applicant's facility per three hundred sixty-five (365)-day period fired in the sewage sludge incinerator; ()

iii. The following information for each sewage sludge incinerator that the applicant owns or operates: ()

(1) The name and/or number and the location of the sewage sludge incinerator; ()

(2) The incinerator's latitude and longitude to the nearest second, and method of determination; ()

(3) The total dry metric tons per three hundred sixty-five (365)-day period fired in the sewage sludge incinerator; ()

(4) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Beryllium in 40 CFR Part 61 will be achieved; ()

(5) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Mercury in 40 CFR Part 61 will be achieved; ()

(6) The dispersion factor for the sewage sludge incinerator, as well as modeling results and supporting documentation; ()

- (7) The control efficiency for parameters regulated in 40 CFR 503.43, as well as performance test results and supporting documentation; ()
- (8) Information used to calculate the risk specific concentration (RSC) for chromium, including the results of incinerator stack tests for hexavalent and total chromium concentrations, if the applicant is requesting a chromium limit based on a site-specific RSC value; ()
- (9) Whether the applicant monitors total hydrocarbons (THC) or Carbon Monoxide (CO) in the exit gas for the sewage sludge incinerator; ()
- (10) The type of sewage sludge incinerator; ()
- (11) The maximum performance test combustion temperature, as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies; ()
- (12) The following information on the sewage sludge feed rate used during the performance test: ()
- (a) Sewage sludge feed rate in dry metric tons per day; ()
- (b) Identification of whether the feed rate submitted is average use or maximum design; and ()
- (c) A description of how the feed rate was calculated; ()
- (13) The incinerator stack height in meters for each stack, including identification of whether actual or creditable stack height was used; ()
- (14) The operating parameters for the sewage sludge incinerator air pollution control device(s), as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies; ()
- (15) Identification of the monitoring equipment in place, including (but not limited to) equipment to monitor the following: ()
- (a) Total hydrocarbons or Carbon Monoxide; ()
- (b) Percent Oxygen; ()
- (c) Percent moisture; and ()
- (d) Combustion temperature; and ()
- (16) A list of all air pollution control equipment used with this sewage sludge incinerator. ()
- I.** If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent: ()
- i. The name, contact person, mailing address, e-mail address location, and all applicable permit numbers of the MSWLF; ()
- ii. The total dry metric tons per three hundred sixty-five (365)-day period sent from this facility to the MSWLF; ()
- iii. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and ()

iv. Information, if known, indicating whether the MSWLF complies with criteria set forth in 40 CFR Part 258. ()

m. All applicants must provide the name, mailing address, e-mail address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal. ()

n. At the request of the Department, the applicant must provide any other information necessary to determine the appropriate standards for permitting under 40 CFR Part 503 and any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements. ()

o. TWTDS facilities using or disposing of sewage sludge to which a standard applicable to its sewage sludge use or disposal practices have been published must submit the following information on EPA Form 2S, Part I, or on the Department equivalent form: ()

i. The TWTDS's name, mailing address, location, and status as federal, state, private, public, or other entity; ()

ii. The applicant's name, address, e-mail address, telephone number, and ownership status; ()

iii. A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of Subsection 105.17.h.iv., the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites; ()

iv. Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and ()

v. The most recent data the TWTDS may have on the quality of the sewage sludge. ()

18. Application Requirements for Municipal Separate Storm Sewer Discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Department under 40 CFR 122.26(a)(1)(v), may submit a jurisdiction-wide or system-wide permit application. Where more than one (1) public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a co-applicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under 40 CFR 122.26 (a)(1)(v) must include: ()

a. In Part 1 of the application: ()

i. The applicants' name, address, e-mail address, EIN or Department equivalent, telephone number of contact person, ownership status and status as a state or local government entity; ()

ii. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in Subsection 105.18.b.i., the description must list additional authorities as will be necessary to meet the criteria and include a schedule and commitment to seek such additional authority that will be needed to meet the criteria; ()

iii. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any POTW serving the same area as the municipal separate storm sewer system, including all of the following: ()

(1) A USGS seven point five (7.5) minute topographic map (or equivalent topographic map with a scale between one to ten thousand (1:10,000) and one to twenty-four thousand (1:24,000) if cost effective) extending one (1) mile beyond the service boundaries of the municipal storm sewer system covered by the permit application; ()

- (2) The location of known municipal storm sewer system outfalls discharging to waters of the United States; ()
- (3) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten (10) year period within the drainage area served by the separate storm sewer and an estimate of an average runoff coefficient for each land use type; ()
- (4) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste; ()
- (5) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES or IPDES permit; ()
- (6) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and ()
- (7) The identification of publicly owned parks, recreational areas, and other open lands. ()
- iv. A description of the discharge including: ()
- (1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events; ()
- (2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used; ()
- (3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts must include a description of whether the water bodies receiving such discharges have been: ()
- (a) Assessed and reported in the Clean Water Act section 305(b) reports submitted by the Department, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act goals (fishable and swimmable waters), and causes of nonsupport of designated uses; ()
- (b) Listed under the Clean Water Act section 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) that is not expected to meet water quality standards or water quality goals; ()
- (c) Listed in state Nonpoint Source Assessments required by the Clean Water Act section 319(a), without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards); ()
- (d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under the Clean Water Act section 314(a) (include the following: A description of those publicly owned lakes for which uses are known to be impaired, a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes, and a description of methods and procedures to restore the quality of such lakes); ()
- (e) Recognized by the applicant as highly valued or sensitive waters; ()
- (f) Defined by the state as wetlands; and ()
- (g) Found to have pollutants in bottom sediments, fish tissue, or biosurvey data. ()

(4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis includes a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two (2) grab samples are to be collected during a twenty-four (24)-hour period with a minimum period of four (4) hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping must be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) must be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136, the applicant must provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points are either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points are established using the following guidelines and criteria: ()

(a) Overlay a grid system consisting of perpendicular north-south and east-west lines spaced one-quarter (1/4) mile apart on a map of the municipal storm sewer system, creating a series of cells; ()

(b) Identify all cells that contain a segment of the storm sewer system; select one (1) field screening point in each cell; major outfalls may be used as field screening points; ()

(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity; ()

(d) Locate field screening points to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination; ()

(e) Hydrological conditions, total drainage area of the site, population density of the site, traffic density, age of the structures or buildings in the area, history of the area, and land use types; ()

(f) For medium municipal separate storm sewer systems, no more than two hundred fifty (250) cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than five hundred (500) cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than two hundred fifty (250) cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system are subject to field screening (unless access to the separate storm sewer system is impossible); and ()

(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in Subsection 105.18.a.iv(4)(a) through (f), because a sufficiently detailed map of the separate storm sewer systems is unavailable, must field screen no more than five hundred (500) or two hundred fifty (250) major outfalls respectively (or all major outfalls in the system, if less). In such circumstances, the applicant must establish a grid system consisting of north-south and east-west lines spaced one-quarter (1/4) mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells. The applicant will then select major outfalls in as many cells as possible until at least five hundred (500) major outfalls (large municipalities) or two hundred fifty (250) major outfalls (medium municipalities) are selected; a field screening analysis must occur at these major outfalls; and ()

(5) Information and a proposed program to meet the requirements of Subsection 105.18.b.iii., including at least: the location of outfalls or field screening points appropriate for representative data collection under Subsection 105.18.b.iii(1), a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see Subsection 105.18.a.iv(3)) to the extent practicable; ()

v. A description of the existing management programs to control pollutants from the municipal separate storm sewer system including existing source controls and operation and maintenance measures for structural controls that are currently being implemented. Such controls may include, but are not limited to: procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements; ()

vi. A description of the existing program to identify illicit connections to the municipal storm sewer system that includes inspection procedures and methods for detecting and preventing illicit discharges and describes areas where this program has been implemented; and ()

vii. A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs. ()

b. In Part 2 of the application: ()

i. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance, or series of contracts which authorizes or enables the applicant at a minimum to: ()

(1) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity; ()

(2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer; ()

(3) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water; ()

(4) Control through interagency agreements among co-applicants the contribution of pollutants from a portion of the municipal system to another portion of the municipal system; ()

(5) Require compliance with conditions in ordinances, permits, contracts or orders; and ()

(6) Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer. ()

ii. The location of any major outfall that discharges to waters of the United States that was not reported under Subsection 105.18.a.iii(2). Provide an inventory, organized by watershed of the name and address, and a description (such as Standard Industrial Classification (SIC) codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity; ()

iii. When quantitative data for a pollutant are required under Subsection 105.18.b.iii(1)(c), the applicant must collect a sample of effluent in accordance with Subsection 105.07.c. through 105.07.m. and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including: ()

(1) Quantitative data from representative outfalls designated by the Department developed as follows (based on information received in part 1 of the application. The Department will designate between five (5) and ten (10) outfalls or field screening points as representative of the commercial, residential and industrial land use activities

of the drainage area contributing to the system or, where there are less than five (5) outfalls covered in the application, the Department will designate all outfalls): ()

(a) For each outfall or field screening point designated under this subsection, samples must be collected of storm water discharges from three (3) storm events occurring at least one (1) month apart in accordance with the requirements at Subsection 105.07.c. through 105.07.m. (the Department may allow exemptions to sampling three (3) storm events when climatic conditions create good cause for such exemptions); ()

(b) A narrative description must be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event; ()

(c) For samples collected and described under Subsections 105.18.b.iii(1)(a) and (b), quantitative data will be provided for the organic pollutants listed in Table II and the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of Appendix D of 40 CFR Part 122, and for the following pollutants: ()

- (i) Total suspended solids (TSS); ()
- (ii) Total dissolved solids (TDS); ()
- (iii) Chemical oxygen demand (COD); ()
- (iv) Five (5)-day biochemical oxygen demand (BOD5); ()
- (v) Oil and grease; ()
- (vi) Fecal coliform (including *E. coli*); ()
- (vii) Enterococci (previously known as fecal streptococcus); ()
- (viii) pH; ()
- (ix) Total Kjeldahl nitrogen; ()
- (x) Nitrate plus nitrite; ()
- (xi) Total ammonia plus organic nitrogen; ()
- (xii) Dissolved phosphorus; and ()
- (xiii) Total phosphorus; ()

(d) Additional limited quantitative data required by the Department for determining permit conditions (the Department may require that quantitative data be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness); ()

(2) Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls during a storm event for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates must be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods; ()

(3) A proposed schedule to provide estimates for each major outfall identified in either Subsection 105.18.b.ii. or 105.18.a.iii(2) of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under Subsection 105.18.b.iii(1); and ()

(4) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment; ()

iv. A proposed management program covering the duration of the permit, that includes a comprehensive planning process involving public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program must also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each co-applicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Department when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs must describe priorities for implementing controls. Such programs must be based on: ()

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description must include: ()

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers; ()

(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan must address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed (controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in Subsection 105.18.b.iv(4)); ()

(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities; ()

(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible; ()

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage, or disposal facilities for municipal waste that identifies priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under Subsection 105.18.b.iv(3)); and ()

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities; ()

(2) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate IPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program must include: ()

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system. This program description

must address all types of illicit discharges; however, the following categories of non-storm water discharges or flows must be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined in Section 010) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions must address discharges or flows from firefighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States); ()

(b) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens; ()

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform (including *E. coli*), enterococci (previously known as fecal streptococcus), surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description must include the location of storm sewers that have been identified for such evaluation); ()

(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer; ()

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers; ()

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and ()

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary; ()

(3) A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program must: ()

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges; and ()

(b) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in Subsection 105.18.b.iv(3), to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES or IPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under Subsections 105.07.j. through l.; ()

(4) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system that includes: ()

(a) A description of procedures for site planning which incorporate consideration of potential water quality impacts; ()

(b) A description of requirements for nonstructural and structural best management practices; ()

- (c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and ()
- (d) A description of appropriate educational and training measures for construction site operators; ()
- v. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment must also identify known impacts of storm water controls on ground water; ()
- vi. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under Subsections 105.18.b.iii. and iv. Such analysis must include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds; ()
- vii. Where more than one (1) legal entity submits an application, the application must contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and ()
- viii. Where requirements under Subsections 105.18.a.iv.(5), 105.18.b.ii., 105.18.b.iii.(2), and 105.18.b.iv. are not practicable or are not applicable, the Department may exclude any operator of a discharge from a municipal separate storm sewer which is designated under 40 CFR 122.26(a)(1)(v), (b)(4)(ii) or (b)(7)(ii) from such requirements. The Department may not exclude the operator of a discharge from a municipal separate storm sewer identified in Appendix F, G, H or I of 40 CFR Part 122, from any of the permit application requirements under this subsection except where authorized under this section. ()

19. Application Requirements for Industrial and Construction Storm Water Discharges.
Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity. ()

a. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit or any discharge of storm water which the Department is evaluating for designation (see Section 130, General Permits) under 40 CFR 122.26(a)(1)(v) and is not a municipal storm sewer, must submit an IPDES application in accordance with the requirements of Section 105 (Application for an Individual IPDES Permit) as modified and consistent with this subsection. ()

b. Except as provided in Subsections 105.19.c. through e., the operator of a storm water discharge associated with industrial activity subject to this section must provide: ()

i. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: ()

- (1) Each of its drainage and discharge structures; ()
- (2) The drainage area of each storm water outfall; ()

(3) Paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a Resource Conservation and Recovery Act permit which is used for accumulating hazardous waste under 40 CFR 262.34); ()

- (4) Each well where fluids from the facility are injected underground; and ()
- (5) Springs, and other surface water bodies which receive storm water discharges from the facility; ()
- ii. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: ()
- (1) Significant materials that in the three (3) years prior to the submittal of this application have been treated, stored, or disposed in a manner to allow exposure to storm water; ()
- (2) Method of treatment, storage or disposal of such materials; materials management practices employed, in the three (3) years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; ()
- (3) Materials loading and access areas; ()
- (4) The location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; ()
- (5) The location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and ()
- (6) A description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; ()
- iii. A certification that all outfalls containing storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by an IPDES permit, including a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test. Tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests.; ()
- iv. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three (3) years prior to the submittal of this application; ()
- v. Quantitative data based on samples collected during storm events and collected in accordance with Subsection 105.07 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters: ()
- (1) Any pollutant limited in an effluent guideline to which the facility is subject; ()
- (2) Any pollutant listed in the facility's NPDES or IPDES permit for its process wastewater (if the facility is operating under an existing NPDES or IPDES permit); ()
- (3) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen; ()
- (4) Any information on the discharge required under Subsections 105.07.j. through l.; ()
- (5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and ()
- (6) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration (in hours) between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event; ()

vi. Operators of a discharge which is composed entirely of storm water are exempt from the requirements of Subsections 105.07.b., 105.07.a.i(2) through (5), 105.07.a.ii., 105.07.a.iii., 105.07.g., 105.07.h., 105.07.i., and 105.07.m.; and ()

vii. Operators of new sources or new discharges (as defined in Section 010, Definitions) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in Subsection 105.19.b.v. instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in Subsection 105.19.b.v. within two (2) years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the IPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of Subsections 105.16.a.iii.(2) and (3), and 105.16.b. ()

c. An operator of an existing or new storm water discharge that is associated with industrial activity solely under 40 CFR 122.26(b)(14)(x) or is associated with small construction activity solely under 40 CFR 122.26 (b)(15), is exempt from the requirements of Subsection 105.07 and Subsection 105.19.b. Such operator must provide a narrative description of: ()

i. The location (including a map) and the nature of the construction activity; ()

ii. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit; ()

iii. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements; ()

iv. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements; ()

v. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and ()

vi. The name of the receiving water. ()

d. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with Subsection 105.19.b., unless the facility: ()

i. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987; or ()

ii. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or ()

iii. Contributes to a violation of a water quality standard. ()

e. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations. ()

f. Applicants must provide such other information the Department may reasonably require under Subsection 105.07.o. to determine whether to issue a permit and may require any facility subject to Subsection

105.19.c. to comply with Subsection 105.19.b. ()

106. INDIVIDUAL PERMIT APPLICATION REVIEW.

01. Completeness Criteria. The Department will not begin processing or issue an individual IPDES permit application before receiving a complete application. An application is complete when an application form and any supplemental information are completed and submitted to the Department's satisfaction. The Department will not consider a permit application to be complete until all applicable fees required under Section 110 (Permit Fee Schedule for IPDES Permitted Facilities) are paid. ()

02. Sufficiently Sensitive Methods. Except as specified in Subsection 106.02.c., a permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR Part 136 or required under 40 CFR Parts 400 through 471 and 501 through 503. ()

a. A method approved under 40 CFR Part 136 or required under 40 CFR Parts 400 through 471 and 501 through 503 is "sufficiently sensitive" when: ()

i. The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter; or ()

ii. The method ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or ()

iii. The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Parts 400 through 471 and 501 through 503 for the measured pollutant or pollutant parameter. ()

b. For Subsection 106.02.a., consistent with 40 CFR Part 136, applicants have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of "sufficiently sensitive," the analytical results are not consistent with the QA/QC specifications for that method, then the Department may determine that the method is not performing adequately and the applicant should select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with Subsection 106.02.a. Where no other EPA-approved methods exist, the applicant should select a method consistent with Subsection 106.02.c. ()

c. When there is no analytical method that has been approved under 40 CFR Part 136, required under 40 CFR Parts 400 through 471 and 501 through 503, and is not otherwise required by the Department, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method's precision, accuracy, or resolution, may be considered when assessing the performance of the method. ()

03. Independence. The Department shall judge the completeness of any IPDES permit application independently of any other permit application or permit. ()

04. Schedule. The Department will notify an applicant in writing whether the application is deemed complete for purposes of this section within: ()

a. Thirty (30) days if the application is for a new source or new discharger under the IPDES program, or ()

b. Sixty (60) days if the application is for an existing source or sludge-only facility. ()

05. Additional Information. Notification that an application is complete does not preclude the Department from requiring the applicant submit additional information for the Department's use in processing the

application. This additional information may only be requested when necessary to clarify, modify, or supplement previously submitted material. ()

a. Requests for additional information will not render an application incomplete. ()

b. If the Department decides that a site visit is necessary for any reason in connection with the processing of an application, the Department shall notify the applicant and a date shall be scheduled. Failure to schedule or refusal of a requested site visit are grounds for permit denial. ()

c. The applicant’s failure or refusal to correct deficiencies, or supply requested information may result in permit denial, and appropriate enforcement actions may be initiated, if warranted. ()

06. Incomplete Due to Waiver Denial. The Department will not consider a permit application to be complete if the Department waived application requirements under Subsection 105.11 or 105.17 and the EPA has disapproved the waiver. ()

07. Impact of Waiver Delay. If a person required to reapply for a permit submits a waiver request to the Department more than two hundred ten (210) days before an existing permit expires, and the EPA does not disapprove the waiver request one hundred eighty-one (181) days before the permit expires, the Department will consider the permit application to be complete without the information that is the subject of the waiver request. ()

08. Application Completeness Date. The completeness date of an application is the date on which the Department notifies the applicant that the application is complete. ()

107. DECISION PROCESS.

After the Department has determined that a permit application is complete the Department will decide whether to tentatively deny the application, or prepare an IPDES draft permit. ()

01. Application Denial. If the Department decides to tentatively deny the application: ()

a. A notice of intent to deny the permit application shall be issued. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit and shall be made available for public comment, and the Department shall give notice of opportunity for a public meeting, as specified in Section 109 (Public Notification and Comment); ()

b. The Department shall generate a response to public comment; and ()

c. Issue a final decision. The final decision may: ()

i. Be to withdraw the notice of intent to deny the application, and proceed to prepare a draft permit and fact sheet as defined in Section 108 (Draft Permit and Fact Sheet); or ()

ii. Confirm the decision to deny the application. ()

d. The applicant may appeal the final decision to deny the application by adhering to the requirements of Section 204 (Appeals Process). ()

02. Draft Permit. If the Department decides to generate a draft permit and fact sheet it will comply with Section 108 (Draft Permit and Fact Sheet). ()

a. Upon completion of the draft permit and fact sheet the Department shall issue a public notification as required in Subsection 109.01. ()

b. An opportunity for the public to comment and request a public meeting shall be provided. ()

c. The Department shall generate a response to public comment as stipulated in Subsection 109.03. ()

03. Proposed Permit. After the close of the public comment period on a draft permit, the Department will make appropriate changes in response to comments, and generate a proposed permit and fact sheet. ()

04. Final Permit. After the close of the public comment period on a draft permit, and after receipt of comments on the proposed permit, if any, from EPA, the Department shall issue a final permit decision and fact sheet. A final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit. ()

a. The Department shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. ()

b. A final permit decision shall become effective twenty-eight (28) days after the service of notice of the decision unless: ()

i. A later effective date is specified in the decision; or ()

ii. A Petition for Review is filed with the Department as specified in Section 204 (Appeals Process). ()

108. DRAFT PERMIT AND FACT SHEET.

01. Draft Permit. ()

a. If the Department decides to prepare a draft permit, it shall contain the following information: ()

i. All conditions established under Section 300 (Conditions Applicable to All Permits); ()

ii. All conditions for specific categories established under Section 301 (Permit Conditions for Specific Categories) and 40 CFR 122.42(e). ()

iii. All conditions established under Section 302 (Establishing Permit Provisions); ()

iv. All conditions established under Section 303 (Calculating Permit Provisions); ()

v. All monitoring requirements established under Section 304 (Monitoring and Reporting Requirements); ()

vi. Schedules of compliance established under Section 305 (Compliance Schedules); and ()

vii. Any variances that are approved. ()

b. General and individual proposed permits shall be available to the EPA Region 10 Administrator for comment as specified in Subsections 107.03 (Proposed Permit) and 107.04 (Final Permit). ()

02. Fact Sheets. ()

a. A fact sheet containing the information required in Subsection 108.02.b. must accompany the draft permit prepared for: ()

i. A major IPDES facility or activity; ()

ii. A Class I sludge management facility; ()

iii. An IPDES general permit; ()

- iv. A permit that incorporates a variance or requires an explanation under Subsection 108.02.b.ix. through 108.02.b.x.; ()
- v. A permit that includes a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix); and ()
- vi. A permit that the Department finds is the subject of wide-spread public interest or raises major issues. ()
- b.** A fact sheet must briefly set out the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit and must include, if applicable, the following information: ()
 - i. A brief description of the type of facility or activity that is the subject of the draft permit; ()
 - ii. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged; ()
 - iii. A brief summary of the basis for the draft permit conditions, including references to applicable statutes or regulations and appropriate supporting references to the administrative record; ()
 - iv. Reasons for the Department’s tentative decision on any requested variances or alternatives to required standards; ()
 - v. A description of the procedures for reaching a final decision on the draft permit, including: ()
 - (1) The beginning and ending dates of the comment period under Subsection 109.02 and the address where comments should be submitted; ()
 - (2) The procedure for requesting a public meeting and the nature of that meeting; and ()
 - (3) Any other procedures by which the public may participate in the final decision; ()
 - vi. The name and telephone number of a person to contact for additional information; ()
 - vii. The justification for waiver of any application requirements under Section 105 (Application for an Individual IPDES Permit) for new and existing POTWs; ()
 - viii. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard as required by Section 302 (Establishing Permit Provisions), and reasons why the effluent limitations and conditions are applicable, or an explanation of how any alternate effluent limitation was developed; ()
 - ix. If applicable, an explanation of why the draft permit contains the following conditions or waivers: ()
 - (1) Limitations to control toxic pollutants under Subsection 302.07; ()
 - (2) Limitations on internal waste streams under Section 304 (Monitoring and Reporting Requirements); ()
 - (3) Limitations on indicator pollutants under 40 CFR 125.3(g); ()
 - (4) Limitations established on a case-by-case basis under 40 CFR 125.3 (c)(2) or (c)(3) or pursuant to the Clean Water Act section 405(d)(4); ()
 - (5) Limitations to meet the criteria for permit issuance under Subsection 103.07; or ()

- (6) Waivers from monitoring requirements granted under Subsection 302.03; ()
- x. For a draft permit for a treatment works owned by a person other than a state or municipality, an explanation of the Department’s decision on regulation of users under Subsection 302.15; ()
- xi. If appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and ()
- xii. For permits that include a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), a brief description of how each of the required elements of the land application plan are addressed in the permit. ()

109. PUBLIC NOTIFICATION AND COMMENT.

- 01. Public Notification.** ()
- a.** The Department will give notice to the public that: ()
 - i. A draft permit has been prepared under Subsection 108.01; ()
 - ii. The Department intends to deny a permit application under Subsection 107.01; ()
 - iii. A public meeting is scheduled; or ()
 - iv. An IPDES new source determination has been made. ()
- b.** A public notice may describe more than one (1) permit or permit action. ()
- c.** The Department will allow at least thirty (30) days for public comment on the items in the notice, and will provide at least thirty (30) days’ notice before the public meeting. Notice of the draft permit and the meeting may be combined and given at the same time. ()
- d.** Public notice that a draft permit has been prepared, and any public meeting on the draft permit must be given by the following methods: ()
 - i. By mailing a copy of the notice to the following persons, unless any person entitled to receive notice under this subsection waives that person’s right to receive notice for any classes and categories of permits: ()
 - (1) The applicant, unless there is no applicant for an IPDES general permit; ()
 - (2) Any other agency (including EPA when the draft permit is prepared by the state) that the Department knows has issued or is required to issue a permit for the same facility or activity under the following laws and programs: ()
 - (a) Resource Conservation and Recovery Act, under IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”; ()
 - (b) Underground Injection Control (UIC) Program under Idaho Department of Water Resources as authorized under Idaho Code Title 42 Chapter 39 and regulated under IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells”; ()
 - (c) Clean Air Act, under IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho”; ()
 - (d) Idaho Pollution Discharge Elimination System Program, under IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program”; or ()

- (e) Sludge Management Program, under IDAPA 58.01.16.650, “Wastewater Rules”; and ()
- (f) Dredge and Fill Permit Program (Clean Water Act section 404); ()
- (3) Affected federal and state agencies with jurisdiction over fish, shellfish, wildlife, and other natural resources, state historic preservation officers, and any affected Indian tribe; ()
- (4) Any state agency responsible for plan development under the Clean Water Act sections 208(b)(2), 208(b)(4), or 303(e), and the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and the National Marine Fisheries Service; ()
- (5) Any user identified in the permit application of a privately owned treatment works; ()
- (6) Persons on a mailing list developed by: ()
 - (a) Recording those who request in writing to be on the list; ()
 - (b) Soliciting persons for area lists from participants in past permit proceedings in that area; and ()
 - (c) Publishing notice of the opportunity to be on the mailing list on the Department’s website and through periodic publication in the local press and in regional and state-funded newsletters, environmental bulletins, state law journals or similar publications. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed, and may delete from the list the name of any person who fails to respond to the Department’s request; ()
- (7) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and ()
- (8) Each state agency having any authority under state law with respect to the construction or operation of the facility; ()
 - ii. For a major facility permit, a general permit, and a permit that includes sewage sludge land application plans, by publishing a notice in a daily or weekly newspaper within the area affected by the facility or activity; and ()
 - iii. By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or use of any other forum or media to elicit public participation. For IPDES major permits and general permits, in lieu of the requirement for publication of a notice in a daily or weekly newspaper, the Department may publish all notices of activities described in Subsection 109.01.a. to the Department’s website. If the Department selects this option for a draft permit, in addition to meeting the requirements in Subsection 109.01.e., the Department will post the draft permit and fact sheet on the website for the duration of the public comment period. The Department will ensure the methods of public notice effectively inform all interested communities and allow access to the permitting process for those seeking to participate. ()
- e. A public notice issued under this subsection must contain at least the following information: ()
 - i. Name and address of the office processing the permit action for which notice is being given and where comments may be submitted; ()
 - ii. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of IPDES draft general permits; ()
 - iii. A brief description of the business conducted at the facility or activity described in the permit application, or for general permits when there is no application, in the draft permit; ()

iv. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, fact sheet, and the application; ()

v. A brief description of the comment and public meeting procedures required by this subsection and the time and place of any meeting that will be held; if no meeting has already been scheduled, a statement of procedures to request a meeting and other procedures by which the public may participate in the final permit decision; ()

vi. A general description of the location of each existing or proposed discharge point and the name of the receiving water; ()

vii. The sludge use and disposal practices and the location of each sludge TWTDS and use or disposal sites known at the time of permit application; ()

viii. A description of requirements applicable to cooling water intake structures under the Clean Water Act section 316(b), in accordance with 40 CFR 125.80 through 89, 125.90 through 99, and 125.130 through 139; and ()

ix. Directions to the Department’s website where interested parties can obtain copies of the draft permit, fact sheet, and the permit application, if any; and ()

f. In addition to the information required by Subsection 109.01.e., the public notice for a draft permit for a discharge for which a request has been filed under the Clean Water Act section 316(a) must include: ()

i. A statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act sections 301 or 306, and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under the Clean Water Act sections 301 or 306; ()

ii. A statement that a request has been filed under the Clean Water Act section 316(a), that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the Clean Water Act section 316(a), and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and ()

iii. If the applicant has filed an early screening request under 40 CFR 125.72 for a variance under the Clean Water Act section 316(a), a statement that the applicant has submitted that early screening request. ()

g. In addition to the general public notice described in Subsection 109.01.e., the public notice of a meeting under this section must contain the following information: ()

i. Reference to the date of previous public notices relating to the permit; ()

ii. Date, time, and place of the meeting; and ()

iii. A brief description of the nature and purpose of the meeting, including the applicable rules and procedures. ()

h. The Department will mail a copy of the general public notice described in Subsection 109.01.e. to all persons identified in Subsections 109.01.d.i.(1), (2), (3), and (4). ()

i. The Department will hold a public meeting whenever the Department finds, on the basis of requests, a significant degree of public interest in a draft permit. The Department may also hold a public meeting if a meeting might clarify one (1) or more issues involved in the permit decision or for other good reason in the Department’s discretion. ()

02. Public Comment. ()

a. During the public comment period, any interested person may submit written comments on the draft permit. Written comments must be submitted to the person identified in the notice and as specified in Subsection 109.01.e. ()

b. During the public comment period, any interested person may request a public meeting if no public meeting has been scheduled. The Department will schedule and hold a public meeting if the Department determines that significant public interest exists in the draft permit. ()

i. A request for a public meeting must be in writing and be submitted to the Department within fourteen (14) days after the date of the public notice required by Subsection 109.01. ()

ii. If a public meeting is held for the purpose of receiving comments, the Department will make an audio recording or hire a court reporter to record the meeting and will prepare a transcript of the meeting if an appeal is filed. ()

c. If, during the comment period for an IPDES draft permit, the district engineer of the United States Army Corps of Engineers advises the Department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the Department will deny the permit and notify the applicant of the denial. If the district engineer advises the Department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, the Department will include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer must be sought through the applicable procedures of the United States Army Corps of Engineers and not through the state procedures. If a court of competent jurisdiction stays the conditions or if applicable procedures of the United States Army Corps of Engineers result in a stay of the conditions, those conditions must be considered stayed in the IPDES permit for the duration of the stay. ()

d. If, during the comment period for an IPDES draft permit, the United States Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Department may include the specified conditions in the permit to the extent the Department determines they are necessary to comply with the provisions of the Clean Water Act. ()

e. In some cases, the Department may confer with one (1) or more of the agencies referred to in Subsections 109.02.c. and 109.02.d. before issuing a draft permit and may set out an agency's view in the fact sheet or the draft permit. ()

f. The Department will consider all comments in making the final decision and will answer the comments as provided in this subsection. ()

g. Requests for extending a public comment period must be received in writing by the Department prior to the last day of the comment period. ()

h. After the close of the public comment period and prior to the issuance of the final permit decision, the Department will afford the permit applicant an opportunity to provide additional information to respond to public comments. In addition, in order to respond to comments, the Department may request the applicant provide additional information. ()

03. Response to Comments. When the Department issues a final permit, the Department will issue a response to comments that will be available to the public. The response must: ()

a. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and ()

b. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any meeting. ()

110. FEE SCHEDULE FOR IPDES PERMITTED FACILITIES.

01. Effective Date. Annual fees must be paid for each fee year beginning one (1) year after the effective date of the IPDES program for the affected category of discharger and continuing for each succeeding year. ()

02. Fee Schedule. ()

a. Publicly and privately owned treatment works, and any other discharger designated by the Department (Subsection 105.11.a.), must pay an annual fee based on the number of equivalent dwelling units (EDUs). The fee is \$1.74 per EDU. EDUs and the appropriate annual fee will be calculated according to the definition of EDUs in Section 010 by the following: ()

i. The Department calculates facility EDUs; or ()

ii. Existing facilities may annually report to the Department the number of EDUs served; or ()

iii. New facilities may report to the Department the number of EDUs to be served, based on the facility planning design as part of the IPDES permit application. ()

b. All other permitted IPDES dischargers, excluding small scale suction dredges, must pay an annual fee, an application fee, or both according to the following schedule:

| Permit Type | Application | Annual |
|------------------------------------|-------------|----------|
| Non-POTW Individual Permits | | |
| Major | \$0 | \$13,000 |
| Minor | \$0 | \$4,000 |
| Storm Water General Permits | | |
| Construction (CGP) | | |
| 1-10 acres¹ | \$200 | \$0 |
| >10-50 acres | \$400 | \$75 |
| >50-100 acres | \$750 | \$100 |
| >100-500 acres | \$1,000 | \$400 |
| >500 acres | \$1,250 | \$400 |
| Low Erosivity Waiver (CGP) | \$125 | \$0 |
| Industrial (MSGP) Permits | \$1,500 | \$1,000 |
| Cert. of No Exposure (MSGP) | \$250 | \$100 |
| Other General Permits | \$0 | \$0 |

¹This includes NOIs for construction that will disturb one or more acres of land, or will disturb less than one acre of land but are part of a common plan of development or sale that will ultimately disturb one or more acres of land. ()

03. Fee Assessment. ()

a. An annual fee assessment will be generated for each IPDES-permitted facility for which an annual fee is required as set forth in Subsection 110.02. Annual fees will be determined based on the twelve (12) months between October 1 and September 30 of the following calendar year. ()

- b.** Application Fees and Annual Fees. ()
- i.** Application fees, as identified in Subsection 110.02.b., are assessed at the time of application for coverage under an individual permit, or notice of intent for coverage under a general permit. ()
- ii.** Owners or operators of multi-year storm water facilities or construction projects are subject to annual fees that will be assessed in the year (October through September) immediately following the receipt of the application or notice of intent for coverage. ()
- c.** Assessment of annual fees will consider the number of months a permittee was covered under either a general or an individual permit in a given year (October through September of the following calendar year). If the permittee was covered for less than a full twelve (12) months, the assessed fee will be pro-rated to account for less than a full year's coverage under the permit. ()
- 04. Billing.** For those permitted facilities subject to an annual fee, the annual fee will be assessed and a statement will be mailed by the Department on or before July 1 of each year. ()
- 05. Payment.** ()
- a.** Payment of the annual fee is due on October 1, unless it is a Saturday, Sunday, or legal holiday, in which event the payment is due on the successive business day. ()
- b.** If a POTW serves five hundred seventy-five (575) EDUs or more, the facility may request to divide its annual fee payment into equal monthly or quarterly installments by submitting a request to the Department on the proper request form provided with the initial billing statement. ()
- i.** The Department will notify an applicable POTW, in writing, of approval or denial of a requested monthly or quarterly installment plan within ten (10) business days of the Department receiving such a request. ()
- ii.** If a POTW has been approved to pay monthly installments then each installment is due by the first day of each month, unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment is due on the next business day. ()
- iii.** If a POTW has been approved to pay quarterly installments then each installment is due by the first day of the month of each quarter (October 1, January 1, April 1, and July 1), unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment is due on the next business day. ()
- c.** Payment of the application fee is due with the application for an individual permit or notice of intent for coverage under a general permit. ()
- 06. Delinquent Unpaid Fees.** A permittee covered under either a general permit or an individual permit will be delinquent in payment if the annual fee assessed has not been received by the Department by November 1; or if having first opted to pay monthly or quarterly installments, its monthly or quarterly installment has not been received by the Department by the last day of the month in which the monthly or quarterly payment is due. ()
- 07. Suspension of Services and Disapproval Designation.** For any permittee delinquent in payment of fees assessed under Subsections 110.02 and 110.06: ()
- a.** In excess of ninety (90) days, the Department will suspend all technical services it provides. The permittee will receive a warning letter that identifies administrative enforcement actions the Department may pursue if the permittee does not comply with the terms of the permit. ()
- b.** In excess of one hundred and eighty (180) days, the Department will consider the permittee in non-compliance with permit conditions and these rules, and subject to provisions described in Section 500 (Enforcement)

of these rules. ()

08. Reinstatement of Suspended Services and Approval Status. For any permittee for which delinquency of fee payment pursuant to Subsection 110.07 has resulted in the suspension of technical services, determination of non-compliance of permit condition, or both, the continuation of technical services, determination of compliance based on payment of fee, or both will occur upon payment of delinquent annual fee assessments. ()

09. Enforcement Action. Nothing in Section 110 (Fee Schedule for IPDES Permitted Facilities) waives the Department’s right to undertake a non-fee related enforcement action at any time, including seeking penalties, as provided in Sections 39-108, 39-109, and 39-117, Idaho Code. ()

10. Responsibility to Comply. Subsection 110.07 does not relieve any permittee from its obligation to comply with all applicable state and federal statutes, rules, regulations, permits, or orders. ()

111. -- 119. (RESERVED)

120. NEW SOURCES AND NEW DISCHARGES.

01. Criteria for New Source Determination. Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition in Section 010 (Definitions), and: ()

a. Is constructed at a site at which no other source is located; or ()

b. Totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or ()

c. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Department shall consider such factors as: ()

i. The extent to which the new facility is integrated with the existing plant; and ()

ii. The extent to which the new facility is engaged in the same general type of activity as the existing source. ()

02. New Source vs. New Discharger. A source meeting the requirements of Subsection 120.01 is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger, as defined in Section 010 (Definitions). ()

03. Modification vs. New Source/Discharger. Construction on a site at which an existing source is located, results in a modification subject to Subsection 201.02, rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of Subsection 120.01, but otherwise alters, replaces, or adds to existing process or production equipment. ()

04. New Source Construction. Construction of a new source has commenced if the owner or operator has: ()

a. Begun, or caused to begin as part of a continuous on-site construction program: ()

i. Any placement, assembly, or installation of facilities or equipment; or ()

ii. Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or ()

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Items which do not constitute contractual obligations

under this section include: ()

- i. Options to purchase or contracts which can be terminated or modified without substantial loss; ()
- ii. Contracts for feasibility engineering; and ()
- iii. Design studies. ()

121. -- 129. (RESERVED)

130. GENERAL PERMITS.

01. Coverage. The Department may issue a general permit in accordance with the following: ()

a. Within a geographic area, the general permit will be written to cover one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under Subsection 130.01.b.ii., except those covered by individual permits within a geographic area. The area should correspond to existing geographic or political boundaries such as: ()

- i. Designated planning areas under the Clean Water Act sections 208 and 303; ()
- ii. Sewer districts or sewer authorities; ()
- iii. City, county, or state political boundaries; ()
- iv. State highway systems; ()
- v. Standard metropolitan statistical areas as defined by state or federal agencies; ()
- vi. Urbanized areas as designated by the U.S. Census Bureau; or ()
- vii. Any other appropriate division or combination of boundaries. ()

b. The general permit may be written to regulate one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in Subsection 130.01.a., where the sources within a covered subcategory of discharges are either: ()

- i. Storm water point sources; or ()
- ii. One (1) or more categories or subcategories of point sources other than storm water point sources or TWTDS, if the point sources or TWTDS within each category or subcategory all: ()
 - (1) Involve the same or substantially similar types of operations; ()
 - (2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices; ()
 - (3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal; ()
 - (4) Require the same or similar monitoring; and ()
 - (5) In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits. ()

c. Where sources within a specific category or subcategory of dischargers are subject to water quality-

based limits imposed pursuant to Section 302 (Establishing Permit Provisions), the sources in that specific category or subcategory are subject to the same water quality-based effluent limitations. ()

d. Other requirements: ()

i. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or TWTDS covered by the permit; and ()

ii. The general permit may exclude specified sources or areas from coverage. ()

iii. For general permits issued under Subsection 130.01.b. for small MS4s, the Department must establish the terms and conditions necessary to meet the requirements of 40 CFR 122.34 using one (1) of the two (2) permitting approaches described in Subsections 130.01.d.iii(1) and (2). The Department must indicate in the permit or fact sheet which approach is being used. ()

(1) Comprehensive general permit. The Department includes all required permit terms and conditions in the general permit; or ()

(2) Two-step general permit. The Department includes required permit terms and conditions in the general permit applicable to all eligible small MS4s and, during the process of authorizing small MS4s to discharge, establishes additional terms and conditions not included in the general permit to satisfy one (1) or more of the permit requirements in 40 CFR 122.34 for individual small MS4 operators. ()

(a) The general permit must require that any small MS4 operator seeking authorization to discharge under the general permit submit a Notice of Intent (NOI) consisting of the minimum required information in Subsection 130.05.b., and any other information the Director identifies as necessary to establish additional terms and conditions that satisfy the permit requirements of 40 CFR 122.34, such as the information required under Subsection 130.05.b. The general permit will explain any other steps necessary to obtain permit authorization. ()

(b) The Department must review the NOI submitted by the small MS4 operator to determine whether the information in the NOI is complete and to establish the additional terms and conditions necessary to meet the requirements of 40 CFR 122.34. The Department may require the small MS4 operator to submit additional information. If the Department makes a preliminary decision to authorize the small MS4 operator to discharge under the general permit, the Department must give the public notice of and opportunity to comment and request a public meeting on its proposed authorization and the NOI, the proposed additional terms and conditions, and the basis for these additional requirements. The public notice, the process for submitting public comments and meeting requests, and the meeting process if a request for a meeting is granted, must follow the procedures applicable to draft permits set forth in Sections 108 and 109 except Subsection 109.01.d. The Department must respond to significant comments received during the comment period as provided in Subsection 109.03. ()

(c) Upon authorization for the MS4 to discharge under the general permit, the final additional terms and conditions applicable to the MS4 operator become effective. The Department must notify the permittee and inform the public of the decision to authorize the MS4 to discharge under the general permit and of the final additional terms and conditions specific to the MS4. ()

02. Electronic Submittals. As of December 21, 2020, all notices of intent submitted in compliance with this section must be submitted electronically by the discharger (or treatment works treating domestic sewage) to the Department unless waived pursuant to 40 CFR 127.15. ()

03. Information Retention Schedule. An applicant must keep records of all data used to complete a notice of intent and any supplemental information submitted for a period of at least three (3) years from the date the notice of intent is signed. ()

04. Notice of Intent. ()

a. Any person required under Subsections 102.01 through 102.03 must submit a notice of intent to the Department for coverage under an IPDES general permit as set out in Subsection 130.05. ()

b. A notice of intent must be signed and certified as required by Section 090 (Signature Requirements). ()

05. Administration. ()

a. General permits may be issued, modified, revoked and reissued, or terminated in accordance with Sections 201 (Modification, or Revocation and Reissuance of IPDES Permits) and 203 (Termination of IPDES Permits). ()

b. Authorization to discharge, or authorization to engage in sludge use and disposal practices will follow these procedures: ()

i. Except as provided in Subsections 130.05.b.xi. and 130.05.b.xii., a discharger must submit, in accordance with general permit requirements, a complete and timely notice of intent which will fulfill the requirements for permit applications; ()

ii. A discharger (or TWTDS) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice) under the terms of the general permit unless: ()

(1) The general permit, in accordance with Subsections 130.05.b.xi., contains a provision that a notice of intent is not required; or ()

(2) The Department notifies a discharger (or TWTDS) that it is covered by a general permit in accordance with Subsection 130.05.b.xii.; ()

iii. All notices of intent must be signed as required in Section 090 (Signature Requirements); ()

iv. The general permit will specify the contents of the notice of intent and require the submission of information necessary for adequate program implementation, including at a minimum: ()

(1) The legal name, address, and EIN or Department equivalent of the owner or operator; ()

(2) The facility name and address; ()

(3) Type of facility or discharges; and ()

(4) The receiving stream(s); ()

v. Coverage under a general permit may be terminated or revoked in accordance with Subsection 130.05.c. through e.; ()

vi. Notices of intent for coverage under a general permit for CAFOs must include the information specified in Subsection 105.09 and 40 CFR 122.21(i)(1), including a topographic map; ()

vii. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in 40 CFR 122.23(h); ()

viii. General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements; ()

ix. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit; ()

x. General permits shall specify whether a discharger (or TWTDS), who has submitted a complete

and timely notice of intent to be covered in accordance with the general permit and is eligible for coverage under the permit, is authorized to discharge (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice) in accordance with the permit either: ()

- (1) Upon receipt of the notice of intent by the Department; ()
- (2) After a waiting period specified in the general permit; ()
- (3) On a date specified in the general permit; or ()
- (4) Upon receipt of notification of inclusion by the Department; ()

xi. Discharges other than discharges from POTWs, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Department, be authorized to discharge under a general permit without submitting a notice of intent where the Department finds that a notice of intent requirement would be inappropriate. The Department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent. In making such a finding, the Department shall consider: ()

- (1) The type of discharge; ()
- (2) The expected nature of the discharge; ()
- (3) The potential for toxic and conventional pollutants in the discharges; ()
- (4) The expected volume of the discharges; ()
- (5) Other means of identifying discharges covered by the permit; and ()
- (6) The estimated number of discharges to be covered by the permit; and ()

xii. The Department may notify a discharger (or TWTDS) that it is covered by a general permit, even if the discharger (or TWTDS) has not submitted a notice of intent to be covered. A discharger (or TWTDS) so notified may request an individual permit as specified in Subsection 130.05.d. ()

c. The Department may terminate, revoke, or deny coverage under a general permit, and require the discharger or applicant to apply for and obtain an individual IPDES permit. Any interested person may petition the Department to take action under this subsection. Cases where an individual IPDES permit may be required include the following: ()

- i. The discharger or TWTDS is not in compliance with the conditions of the general permit; ()
- ii. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or TWTDS; ()
- iii. Effluent limitation guidelines are promulgated for point sources covered by the general permit; ()
- iv. A Water Quality Management plan containing requirements applicable to such point sources is approved; ()
- v. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary; ()
- vi. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general IPDES permit; or ()

vii. The discharge(s) is a significant contributor of pollutants. In making this determination, the Department may consider the following factors: ()

- (1) The location of the discharge with respect to waters of the United States; ()
- (2) The size of the discharge; ()
- (3) The quantity and nature of the pollutants discharged to waters of the United States; and ()
- (4) Other relevant factors. ()

d. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. ()

i. The owner or operator shall submit an application under Section 105 (Application for an Individual IPDES Permit), with reasons supporting the request, to the Department no later than ninety (90) days after the publication of the general permit. ()

ii. The Department shall process the request under Sections 106 (Individual Permit Application Review), 107 (Decision Process), 108 (Draft Permit and Fact Sheet) and 109 (Public Notification and Comment). ()

iii. The Department shall grant a request by issuing an individual permit if the reasons cited by the owner or operator are adequate to support the request. ()

e. When an individual IPDES permit is issued to an owner or operator otherwise subject to a general IPDES permit, the applicability of the general permit to the individual IPDES permittee is automatically terminated on the effective date of the individual permit. ()

f. A source excluded from a general permit, solely because it already has an individual permit, may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source. ()

06. Case-by-Case Requirements for Individual Permits. ()

a. The Department may require any owner or operator authorized by a general permit to apply for an individual IPDES permit as provided in Subsection 130.05.c., only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, a statement that on the effective date of the individual IPDES permit, the general permit as it applies to the individual permittee shall automatically terminate, and a statement that the owner or operator may appeal the Department's decision as provided in Section 204 (Appeals Process). The Department may grant additional time upon request of the applicant. ()

b. Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (see 40 CFR 122.26(a)(1)(v), (a)(9)(iii), and Subsection 105.19), the Department may require the discharger to submit a permit application or other information regarding the discharge described in the Clean Water Act section 308. ()

i. In requiring such information, the Department shall notify the discharger in writing and shall send an application form with the notice. ()

ii. The discharger must apply for a permit within one hundred eighty (180) days of notice, unless permission for a later date is granted by the Department. ()

131. -- 199. (RESERVED)

200. RENEWAL OF IPDES PERMITS.

01. Interim Effluent Limits. Except as provided in Subsection 200.02, when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based: ()

- a. Have materially and substantially changed since the time the permit was issued; and ()
- b. Would constitute cause for permit modification or revocation and reissuance under Subsection 201.02. ()

02. Final Clean Water Act Section 402(a)(1)(B) Effluent Limits. In the case of effluent limitations established by the Department on the basis of the Clean Water Act section 402(a)(1)(B), a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under Clean Water Act section 304(b) after the original issuance of a permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit, except a permit may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if: ()

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance, which justify the application of a less stringent effluent limitation; ()

b. Information is available: ()

i. Which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or ()

ii. Which the Department determines indicates that technical mistakes or mistaken interpretations of law were made in issuing the permit under the Clean Water Act section 402(a)(1)(b); ()

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy; ()

d. The permittee has received a permit modification under the Clean Water Act section 301(c), 301(g), 301(i), 301(k), 301(n), or 316(a); or ()

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification). ()

03. Final Clean Water Act Section 301(b)(1)(C) or 303 Effluent Limits. In the case of effluent limitations established on the basis of Clean Water Act section 301(b)(1)(C) or section 303(d) or (e), a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except when: ()

a. One of the exceptions in Subsection 200.02 apply; or ()

b. The water to which the discharge occurs is identified as impaired on Idaho's Integrated Report and the effluent limitation is based on a total maximum daily load or other waste load allocation established under Clean Water Act section 303, if the cumulative effect of all revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of applicable water quality standards; or ()

c. The water quality in the water to which the discharge occurs meets or exceeds levels required by applicable water quality standards and the effluent limitation is based on a total maximum daily load or other waste

load allocation established under Clean Water Act section 303, any water quality standard, or any permitting standard, if such revision is subject to and consistent with the antidegradation policy and implementation procedures in the water quality standards. ()

04. Effluent Limits and Water Quality Standards. In no event may a permit with respect to which Subsection 200.02 or 200.03 applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters of the United States be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under IDAPA 58.01.02, "Water Quality Standards." ()

201. MODIFICATION, OR REVOCATION AND REISSUANCE OF IPDES PERMITS.

01. Procedures to Modify, or Revoke and Reissue Permits. ()

a. Permits may be modified, or revoked and reissued either at the request of any interested person (including the permittee) or upon the Department's initiative. However, permits may only be modified or revoked and reissued for the reasons specified in Subsection 201.02. All requests shall be in writing and shall contain facts or reasons supporting the request. ()

b. If the Department tentatively decides to modify or revoke and reissue a permit, the Department shall prepare a draft permit under Section 108 (Draft Permit and Fact Sheet), incorporating the proposed changes. ()

i. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated application. If the tentative decision is to revoke and reissue a permit, the Department shall require the submission of a new application. ()

ii. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. ()

iii. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued. ()

iv. Minor modifications, as defined in Subsection 201.03, do not require the development of a draft permit, fact sheet, nor must minor modifications be subjected to public notification and comment. ()

02. Causes to Modify, or Revoke and Reissue Permits. When the Department receives any pertinent information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under Subsection 201.01, or conducts a review of the permit file), the Department may determine whether or not one (1) or more of the causes listed in Subsections 201.02.c. and 201.02.d. for modification or revocation and reissuance or both exist. ()

a. If cause exists, the Department may modify or revoke and reissue the permit accordingly, subject to the limitations of Subsection 201.01.b., and may request a new or updated application, if necessary. ()

b. If cause does not exist under this section, the Department shall not modify or revoke and reissue the permit. ()

c. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees: ()

i. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice), which occurred after permit issuance, and which justify the application of permit conditions that are different or absent in the existing permit.

()

ii. The Department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance: ()

(1) For IPDES general permits (Section 130) this cause includes any information indicating that cumulative effects on the environment are unacceptable; and ()

(2) For new source or new discharger IPDES permits (Section 120), this cause shall include any significant information derived from effluent testing required under Subsection 105.08 or 105.16 after issuance of the permit. ()

iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows: ()

(1) For promulgation of amended standards or regulations, when: ()

(a) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under 40 CFR Part 133; ()

(b) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and ()

(c) A permittee requests modification in accordance with Subsection 201.01 or 203.01 within ninety (90) days after notice of the action on which the request is based; and ()

(2) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA or Idaho promulgated regulations or effluent limitation guidelines, if the remand and stay concerns that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with Subsection 201.01 or 203.01 within ninety (90) days of judicial remand. ()

iv. The Department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an IPDES compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline. ()

v. When the permittee has filed a request for a variance under Clean Water Act section 301(c), 301(g), 301(i), 301(k), or 316(a) or for fundamentally different factors within the time specified in Section 310 (Variances). ()

vi. When required to incorporate an applicable Clean Water Act 307(a) toxic effluent standard or prohibition, under Subsection 302.04. ()

vii. When required by the reopener conditions in a permit, which are established in the permit under Subsection 302.05 or 40 CFR 403.18(e) (Pretreatment Standards). ()

viii. Upon request of a permittee who qualifies for effluent limitations on a net basis, or when a discharger is no longer eligible for net limitations, as provided in Subsection 303.07. ()

ix. As necessary under 40 CFR 403.8(e) (Pretreatment Program Requirements: Development and Implementation by POTW). ()

x. Upon failure of an approved state to notify, as required by the Clean Water Act section 402(b)(3), another state whose waters may be affected by a discharge from the approved state. ()

xi. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). ()

xii. To establish a notification level as provided in Subsection 302.08. ()

xiii. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a loan under IDAPA 58.01.12, "Rules for Administration of Water Pollution Control Loans." In no case shall the compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline. ()

xiv. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 40 CFR 122.34(b) when: ()

(1) The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s), and ()

(2) The other entity fails to implement measure(s) that satisfy the requirement(s). ()

xv. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions. ()

xvi. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the Clean Water Act section 402(a)(1) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline). ()

xvii. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with 40 CFR 122.23(h) and Section 130 (General Permits) is not a cause for modification pursuant to the requirements of this section. ()

xviii. When required by a permit condition to incorporate a land application or sludge disposal plan for beneficial reuse of sewage sludge, to revise an existing land application or sludge disposal plan, or to add a land application or sludge disposal plan as required by IDAPA 58.01.16.650, "Wastewater Rules," and Section 380 (Sewage Sludge) of these rules. ()

d. The following are causes to modify or, alternatively, revoke and reissue a permit: ()

i. Cause exists for termination under Subsection 203.03, and the Department determines that modification or revocation and reissuance is appropriate; ()

ii. The Department has received notification, as required in the permit, of a proposed transfer of the permit; or ()

iii. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (Subsection 202.02) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee. ()

03. Minor Modifications of Permits. Upon the consent of the permittee, the Department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this subsection without following the procedures of Sections 108 (Draft Permit and Fact Sheet), 109 (Public Notification and Comment), and Subsection 201.01. Any permit modification not processed as a minor modification under this subsection must be

made for cause and must meet the requirements of Section 108 (Draft Permit and Fact Sheet) and Section 109 (Public Notification and Comment). Minor modifications may: ()

- a. Correct typographical errors; ()
- b. Require more frequent monitoring or reporting by the permittee; ()
- c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than one hundred twenty (120) days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; ()
- d. Allow for a change in ownership or operational control of a facility where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department; ()
- e. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under Section 120 (New Sources and New Discharges), and 40 CFR 122.29(d); ()
- f. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; ()
- g. Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 or a modification that has been approved in accordance with the procedures in 40 CFR 403.18 as enforceable conditions of the POTW's permits; ()
- h. Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of 40 CFR 122.42(e)(6); or ()
- i. Require electronic reporting requirements (to replace paper reporting requirements) including those specified in 40 CFR Part 127 (NPDES Electronic Reporting). ()

202. TRANSFER OF IPDES PERMITS.

01. Transfers by Modification. Except as provided in Subsection 202.02, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under Subsection 201.02.d., or a minor modification made under Subsection 201.03, to identify the new permittee and incorporate such other requirements as may be necessary under the Clean Water Act. ()

02. Automatic Transfers. As an alternative to transfers by modification, any IPDES permit may be automatically transferred to a new permittee if: ()

- a. The current permittee notifies the Department at least thirty (30) days in advance of the proposed transfer date; ()
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee; and ()
- c. The Department does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. A modification under this subsection may also be a minor modification under Subsection 201.03. If this notice is not received, the transfer is effective on the date specified in the agreement. ()

203. TERMINATION OF IPDES PERMITS.

01. Request to Terminate or Termination Initiated by the Department. Permits may be terminated either at the request of any interested person (including the permittee) or upon the Department’s own initiative. However, permits may only be terminated for the reasons specified in Subsection 203.03 or 203.04. ()

a. Request for termination by persons other than the permittee must be submitted in writing to the Department. ()

b. As of December 21, 2020, all NOTs submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, the permittee may be required to report electronically if specified by a particular permit. ()

02. Tentative Permit Termination. Except as provided in Subsection 203.04, if the Department tentatively decides to terminate a permit under Subsection 203.03, the Department will issue a notice of intent to terminate. A notice of intent to terminate will be available for public comment, and the Department will give notice of an opportunity for public meetings, as specified in Section 109 (Public Notification and Comment). ()

03. Cause to Terminate Permits. The following are causes for terminating a permit during its term, or for denying a permit renewal application: ()

a. Noncompliance by the permittee with any condition of the permit; ()

b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; ()

c. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or ()

d. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW), or other situations where the Department has sufficiently reliable basis for determining discharge will cease. ()

04. Expedited Termination Process for Terminated or Eliminated Discharge. If the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Department may terminate the permit by notice to the permittee. ()

a. Termination by notice becomes effective thirty (30) days after notice is sent (expedited permit termination), unless the permittee objects within that time. ()

b. If the permittee objects during that period, the Department will follow procedures for termination in Subsection 203.02. ()

c. Expedited permit termination procedures are not available to permittees that are subject to pending state and/or federal enforcement actions including citizen suits brought under federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under federal law. ()

204. APPEALS PROCESS.

01. Petition for Review of a Permit Decision. Appeal of a final IPDES permit decision, issued under Section 107 (Decision Process), to the Hearing Authority is commenced by filing a Petition for Review with the Department’s Hearing Coordinator within the time prescribed in Subsection 204.01.b. The “Hearing Authority” shall be a Hearing Officer appointed by the Director from a pool of Hearing Officers approved by the Board. ()

a. Any person who is aggrieved by the final permit decision may file a Petition for Review as

provided in this section. A person aggrieved is limited to the permit holder or applicant, and any person or entity who filed comments or who participated in the public meeting on the draft permit. ()

b. A Petition for Review must be filed with the Department’s Hearing Coordinator within twenty-eight (28) days after the Department serves notice of the final permit decision under Section 107 (Decision Process). A petition is filed when it is received by the Department’s Hearing Coordinator at the address specified in Subsection 204.13. ()

c. In addition to meeting the requirements in Subsection 204.06, a Petition for Review must: ()

i. Be confined to the issues raised during the public comment process or to changes made to the permit by the Department after the close of the public comment period; ()

ii. Identify the permit condition or other specific aspect of the permit decision that is being challenged; ()

iii. Set forth the legal and factual basis for the petitioner’s contentions; ()

iv. Set forth the relief sought; and ()

v. Set forth the basis for asserting that the petitioner is an aggrieved person. ()

02. Public Notice of the Petition for Review. Within fourteen (14) days of the date a Petition for Review has been filed, the Hearing Authority must give reasonable notice to the public of the petition. ()

03. Administrative Record Filed By the Department. The Department shall file a certified copy of the administrative record, as identified in Section 600 (Administrative Records and Data Management), with an index within twenty-eight (28) days of the date the Petition for Review was filed. ()

04. Participation by the Permit Applicant or Permit Holder. A permit applicant or permit holder who did not file a petition but who wishes to participate in the appeal process must file a notice of appearance within twenty-eight (28) days of the date the Petition for Review was filed. ()

05. Petition to Intervene. Any person who has a direct and substantial interest in the outcome of the Petition for Review may file a Petition to Intervene. ()

a. The Petition to Intervene must set forth the interest of the intervener, and why intervention would not unduly broaden the issues and cause delay or prejudice to the parties. ()

b. Petitions to Intervene must be filed within fourteen (14) days of the notice of filing of the Petition for Review. ()

c. Any party opposing a Petition to Intervene must file objections within seven (7) days after service of the Petition to Intervene and serve the objection upon all parties of record and upon the person petitioning to intervene. ()

d. If a Petition to Intervene shows direct and substantial interest in the outcome of the Petition for Review, does not unduly broaden the issues, and will not cause delay or prejudice to the parties, the Hearing Authority shall grant intervention. ()

06. Content and Form Requirements for Petitions and Briefs. All petitions and briefs filed under this section must: ()

a. Identify, in the caption, the permit applicant or holder, the permitted facility, and the permit number. The caption should also include the case number, if available at the time of filing, and the title of the document, and ()

b. Specify on the upper left corner of the first page, the name, address, telephone number, e-mail address and facsimile number, if any, of the person filing the document. If the person filing the document is a representative of a party as provided in Subsection 204.11, the document must identify the name of the person or entity represented. No more than two (2) representatives for service of documents may be listed. ()

07. Augmenting the Administrative Record. Consideration of the Petition for Review by the Hearing Authority is limited to the certified administrative record unless, upon the request of a party, the Hearing Authority allows the record to be augmented. A request to augment the record must be filed within fourteen (14) days of the filing of the certified administrative record, unless intervention is granted, in which case the request to augment must be filed within fourteen (14) days of the date the order granting intervention is issued. The Hearing Authority may allow the record to be augmented if the requesting party shows that the additional information is material, is relevant to the issues raised in the appeal and that: ()

a. There were good reasons for failure to present the information during the permitting proceeding; or ()

b. There were alleged irregularities in the permitting proceeding and the party wishes to introduce evidence of the alleged irregularities. ()

08. Brief of the Petitioner. Once all requests to augment the record and motions to intervene have been determined, the Hearing Authority shall issue an order notifying the parties that the administrative record has been settled and of the date by which the petitioner must file petitioner's brief in support of the Petition for Review. In addition to meeting the requirements of Subsection 204.06, the brief must include: ()

a. The legal arguments and citations to legal authority that support the allegations in the Petition for Review; and ()

b. The factual support for the allegations in the Petition for Review, including citations to the administrative record. ()

c. A statement regarding whether the party desires an opportunity for oral argument. ()

09. Response Briefs. Unless an alternative date is set by the Hearing Authority, the Department and all other parties must file response briefs within twenty-eight (28) days of the service of the petitioner's brief. In addition to meeting the requirements of Subsection 204.06, the response briefs must include: ()

a. A response to the arguments and assertions in the petitioner's brief (either in support or opposed); ()

b. A citation to all legal authorities and facts in the administrative record relied upon; and ()

c. A statement regarding whether the party desires an opportunity for oral argument. ()

10. Reply Briefs by the Petitioner. Unless an alternative date is set by the Hearing Authority, the petitioner may file a reply brief within fourteen (14) days after service of response briefs. A petitioner may not raise new issues or arguments in the reply. ()

11. Representation of Parties. Unless otherwise authorized or required by law, appearances and representation of parties or other persons shall be as follows: ()

a. A natural person may represent himself or herself or be represented by an attorney or, if the person lacks full legal capacity to act for himself or herself, then by a legal guardian or guardian ad litem or representative of an estate; ()

b. A general partnership may be represented by a partner or an attorney; ()

c. A corporation, or any other business entity other than a general partnership, must be represented by ()

an attorney; ()

d. A municipal corporation, local government agency, unincorporated association or nonprofit organization must be represented by an attorney; or ()

e. A state, federal or tribal governmental entity or agency must be represented by an attorney. ()

12. Substitution and Withdrawal of Representatives. A party's representative may be changed and a new representative may be substituted by notice to all parties so long as the proceedings are not unreasonably delayed. Representatives who wish to withdraw from a proceeding must immediately file a motion to withdraw representation and serve that motion on the party represented and all other parties. ()

13. Filing and Service Requirements. ()

a. All documents concerning actions governed by these rules must be filed with the Hearing Coordinator at the following address: Hearing Coordinator, Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706. Documents may also be filed by fax or may be filed electronically. The Hearing Coordinator's fax number and email address for filing electronically are available at www.deq.idaho.gov/petitions-for-review. The documents are deemed to be filed on the date received by the Hearing Coordinator. Upon receipt of the filed document, the Hearing Coordinator will provide confirmation to the originating party. ()

b. All documents subsequent to the petition must be served on all parties or representatives, unless otherwise directed by the Hearing Authority. ()

c. Service of documents on the named representative is valid service upon the party for all purposes in the proceeding. ()

14. Proof of Service. Every document meeting the requirements for service must be attached to or accompanied by proof of service containing the following certificate:

| |
|---|
| <p>I hereby certify that on this (insert date), a true and correct copy of the foregoing (insert name of document) was served on the following as indicated below:</p> <p>(insert names and addresses of parties and method of delivery (first class U.S. mail, facsimile, hand-delivery, or overnight express))</p> <p>(Signature)</p> |
|---|

()

15. Motions. A request for an interlocutory or procedural order or other relief must be made by written motion unless these rules prescribe another form. ()

a. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support the motion. In advance of filing a motion, parties must attempt to ascertain whether the other parties concur or object to the motion and must indicate in the motion the attempt made and the response obtained. ()

b. Any party may file a response to a motion. Responses must state with particularity the grounds for opposition and the legal argument necessary to support the motion. The response must be filed within fifteen (15) days after service of the motion unless the Hearing Authority shortens or extends the time for response. ()

c. Any reply to a response must be filed within ten (10) days after service of the response. A reply must not introduce any new issues or arguments and may respond only to matters presented in the response. ()

d. The Hearing Authority may act on a motion for a procedural order at any time without awaiting a response. ()

e. Parties must file motions for extensions of time sufficiently in advance of the due date to allow other parties to have a reasonable opportunity to respond to the request for more time and to provide the Hearing Authority with a reasonable opportunity to issue an order prior to the due date. ()

16. **Oral Argument.** The Hearing Authority may hold oral argument on its own initiative or at its discretion in response to a request by one or more of the parties. ()

17. **Withdrawal of Permit or Portions of Permit by the Department.** The Department may, at any time, upon notification to the Hearing Authority and all parties, withdraw the permit or specified portions of the permit and prepare a new draft permit under Section 108 (Draft Permit and Fact Sheet) addressing the portions so withdrawn. The new draft permit must proceed through the same process of public comment and opportunity for a public meeting as would apply to any other draft permit. If applicable, any portions of the permit that are not withdrawn continue to apply, unless stayed under Sections 205 (Contested Permit Conditions) and 206 (Stays of Contested Permit Conditions). The appeal shall continue with respect to those portions of the permit that are contested in the appeal that the Department does not withdraw. ()

18. **Request to Dismiss Petition.** The petitioner, by motion, may request to have the Hearing Authority dismiss its appeal. The motion must briefly state the reason for its request. ()

19. **Burden of Proof.** The petitioner has the burden of proving the allegations in the Petition for Review. Factual allegations must be proven by a preponderance of the evidence. ()

20. **Appointment of Hearing Officers.** The Hearing Authority shall be a Hearing Officer appointed by the Director from a pool of Hearing Officers approved by the Board. Hearing Officers should be persons with technical expertise or experience in the issues involved in IPDES appeals. Notice of appointment of a Hearing Officer shall be served on all parties. No Hearing Officer shall be appointed that has a conflict of interest as defined in 40 CFR 123.25(c). ()

21. **Scope of Authority of the Hearing Authority.** The Hearing Authority shall have the following authority: ()

a. The authority to set schedules and take such other actions to ensure an efficient and orderly adjudication of the issues raised in the Petition for Review; ()

b. The authority to hear and decide motions; and ()

c. The authority to issue an order that decides the issues raised in the appeal and includes findings of fact and conclusions of law. The required contents of an order are set forth in Subsection 204.24. ()

22. **Ex Parte Communications.** The Hearing Authority shall not communicate, directly or indirectly, regarding any substantive issue in the permit appeal with any party, except upon notice and opportunity for all parties to participate in the communication. The Hearing Authority may communicate ex parte with a party concerning procedural matters (e.g., scheduling). When the Hearing Authority becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during an appeal, the Hearing Authority shall place a copy of the communication in the file for the case and order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications. ()

23. **Alternative Dispute Resolution.** Parties to the permit appeal may agree to use a means of alternative dispute resolution. ()

24. **Final Orders.** ()

a. Final orders are issued by the Hearing Authority upon review of the petitions, briefs and the administrative record on appeal. ()

b. Every final order shall contain the following: ()

- i. A reasoned statement in support of the decision; ()
 - ii. Findings of fact, with reference to the portions of the administrative record that support the findings. The findings of fact must be based exclusively on the administrative record, or if augmented during the appeal, the augmented record; ()
 - iii. Conclusions of law with respect to legal issues raised in the appeal; ()
 - iv. The final order shall either affirm the permitting decision, or vacate and remand the decision to the Department with instructions; and ()
 - v. A statement of the right to judicial review as set forth in Section 204.26. ()
- c. Motions for reconsideration of any final order shall not be considered. ()**
- 25. Final Agency Action for Purposes of Judicial Review. ()**
- a.** Filing a Petition for Review is a prerequisite to seeking judicial review of the Department’s permitting decision. ()
 - b.** For purposes of judicial review under Sections 39-107 and 67-5270, Idaho Code, final agency action or determination regarding an appeal of a permit occurs when a final order that affirms the Department’s permitting decision is issued. ()
 - c.** An order that vacates and remands the decision to the Department with instructions is not a final agency action for purposes of judicial review. ()
- 26. Petition for Judicial Review. ()**
- a.** Any person aggrieved by a final agency action or determination by the Department as defined in Subsection 204.25 has a right to judicial review by filing a petition for judicial review. ()
 - b.** The petition for judicial review must be filed with the Hearing Coordinator as set out in Subsection 204.13 and with the district court and served on all parties. The petition for judicial review shall also be served upon the Hearing Authority, the Director of the Department, and upon the Attorney General of the State of Idaho. Pursuant to Section 67-5272, Idaho Code, petitions for judicial review may be filed in the District Court of the county in which: ()
 - i. The hearing was held; ()
 - ii. The final agency action was taken; ()
 - iii. The party seeking review of the agency action resides; or ()
 - iv. The real property or personal property that was the subject of the agency action is located. ()
 - c.** Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final agency action must be filed within twenty-eight (28) days of the service date of a final order issued by the Hearing Authority. ()
- 27. IPDES General Permits. ()**
- a.** Persons affected by an IPDES general permit may not file a petition under this section or otherwise challenge the conditions of a general permit in further Department proceedings. Instead, they may do either of the following: ()

- i. Challenge the conditions in a general permit by filing an action in court; or ()
- ii. Apply for an individual IPDES permit under Section 105 (Application for an Individual IPDES Permit), as authorized in Section 130 (General Permits), and may then petition the Hearing Authority to review the individual permit as provided by in these rules. ()

b. As provided in Subsection 130.05.c., any interested person may also petition the Department to require an individual IPDES permit for any discharger eligible for authorization to discharge under an IPDES general permit. ()

c. The Department’s decision to terminate, revoke or deny coverage under a general permit and to require application for an individual permit may be appealed pursuant to the provisions of Section 204 (Appeals Process). ()

28. Appeals of Variances. ()

a. When the Department issues a permit on which EPA has made a variance decision, separate appeals of the Department permit and of the EPA variance decision are possible. If the owner or operator is challenging the same issues in both proceedings, the EPA Region 10 Administrator will decide, in consultation with the Department, which case will be heard first. ()

b. Variance decisions made by EPA may be appealed under the provisions of 40 CFR 124.19. ()

c. Stays for variances other than Clean Water Act section 301(g) variances are governed by Section 205 (Contested Permit Conditions) and 206 (Stays of Contested Permit Conditions). ()

205. CONTESTED PERMIT CONDITIONS.

01. Force and Effect of Conditions. As provided in Subsection 206.01, if an appeal of a permit decision is filed under Section 204 (Appeals Process), the force and effect of the contested conditions of the permit are stayed until final Department action. The Department must notify the discharger and all interested parties of the uncontested conditions of the permit that are enforceable obligations of the discharger in accordance with Subsection 206.01.c. ()

02. Control Technologies. When effluent limitations are contested, but the underlying control technology is not, the notice must identify the installation of the technology in accordance with the permit compliance schedules as an uncontested, enforceable obligation of the permit. ()

03. Combination of Technologies. When a combination of technologies is contested, but a portion of the combination is not contested, that portion must be identified as uncontested if compatible with the combination of technologies proposed by the requester. ()

04. Inseverable Conditions. Uncontested conditions, if inseverable from a contested condition, must be considered contested. ()

05. Enforceable Dates. Uncontested conditions become enforceable thirty (30) days after the date of notice under Subsection 205.01. ()

06. Uncontested Conditions. Uncontested conditions include: ()

a. Preliminary design and engineering studies or other requirements necessary to achieve the final permit conditions which do not entail substantial expenditures; and ()

b. Permit conditions which will have to be met regardless of the outcome of the appeal under Section 204 (Appeals Procedure). ()

206. STAYS OF CONTESTED PERMIT CONDITIONS.

01. Stays. ()

a. If a Petition for Review of an IPDES permit under Section 204 (Appeals Process) is filed, the effect of the contested permit conditions are stayed pending final Department action. Uncontested permit conditions are stayed only until the date specified in Subsection 206.01.b. If the permit involves a new facility or new injection well, new source, new discharger or a recommencing discharger, the applicant will not be issued a permit for the proposed new facility, injection well, source or discharger pending final Department action. ()

b. Uncontested conditions which are not severable from those contested are stayed together with the contested conditions. The Department must identify the stayed provisions of permits for existing facilities, injection wells, and sources. All other provisions of the permit for the existing facility, injection well, or source become fully effective and enforceable thirty (30) days after the date of the notification required in Subsection 206.01.c. ()

c. As soon as possible after receiving notification from the Hearing Coordinator of the filing of a Petition for Review, the Department must notify the Hearing Authority, the applicant, and all other parties of the uncontested (and severable) conditions of the final permit that will become fully effective enforceable obligations of the permit as of the date specified in Subsection 206.01.b., and the notice must comply with the requirements of Section 205 (Contested Permit Conditions). ()

02. Stays Based on Cross Effects. ()

a. The Department may grant a stay based on the grounds that an appeal to the Hearing Authority under Section 204 (Appeals Process) of one permit may result in changes to another Department-issued IPDES permit only when each of the permits involved has been appealed to the Department. ()

b. No stay of an EPA-issued NPDES permit may be granted based on the staying of any Department-issued IPDES permit except at the discretion of the EPA Region 10 Administrator and only upon written request from the Department. ()

03. Permittee Responsibilities. Any facility or activity holding an existing permit must: ()

a. Comply with the conditions of that permit during any modification or revocation and reissuance proceeding under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits); and ()

b. To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed. ()

207. -- 299. (RESERVED)

300. CONDITIONS APPLICABLE TO ALL PERMITS.

The following conditions apply to all IPDES permits. Additional conditions applicable to IPDES permits are in Sections 301 (Permit Conditions for Specific Categories), 302 (Establishing Permit Provisions), and 40 CFR 122.42(e). All conditions applicable to IPDES permits will be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation must be given in the permit. ()

01. Duty to Comply. The permittee must comply with all conditions of the permit. ()

a. Any permit noncompliance constitutes a violation of Idaho law, the Clean Water Act, and is grounds for: ()

i. Enforcement action; ()

ii. Permit termination, revocation and reissuance, or modification; or ()

iii. Denial of a permit renewal application. ()

b. The permittee shall comply with effluent standards or prohibitions established under the Clean Water Act section 307(a) for toxic pollutants and with standards for sewage sludge use or disposal established under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, “Wastewater Rules,” within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement. ()

02. Duty to Reapply. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit. If the permittee complies with the application requirements of Section 105 (Application for an Individual IPDES Permit), or the notice of intent requirements of Section 130 (General Permits) for a general permit, and a permit is not issued prior to the permit’s expiration date, the permit shall remain in force as stipulated in Subsections 101.02 and 101.03. ()

03. Need to Halt or Reduce Activity. In an enforcement action, a permittee may not assert as a defense that compliance with the conditions of the permit would have made it necessary for the permittee to halt or reduce the permitted activity. ()

04. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment. ()

05. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. ()

a. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. ()

b. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit or are required by IDAPA 58.01.16 “Wastewater Rules.” ()

06. Permit Actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition. ()

07. Property Rights. The permit does not convey any property rights of any sort, or any exclusive privilege. ()

08. Duty to Provide Information. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by the permit. ()

09. Inspection and Entry. The permittee shall provide the Department’s inspectors, or authorized representatives, including authorized contractors acting as representatives of the Department, upon presentation of credentials and other documents as may be required by law, access to: ()

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit; ()

b. Any records that must be kept under the conditions of the permit and, at reasonable times, to copy such records; ()

c. Inspect, at reasonable times, any facilities, equipment (including monitoring and control

equipment), practices, or operations regulated or required under the permit; and ()

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location. ()

10. Monitoring and Records. A permittee must comply with the following monitoring and recordkeeping conditions: ()

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. ()

b. The permittee shall retain the following records: ()

i. All monitoring information, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time; and ()

ii. The permittee's sewage sludge use and disposal activities shall be retained for a period of at least five (5) years or longer as required by 40 CFR Part 503. ()

c. Records of monitoring information shall include: ()

i. All calibration and maintenance records; ()

ii. All original strip chart recordings for continuous monitoring instrumentation or other forms of data approved by the Department; ()

iii. Copies of all reports required by the permit; ()

iv. Records of all data used to complete the application or notice of intent for the permit; ()

v. The date, exact place, and time of sampling or measurements; ()

vi. The name of any individual(s) who performed the sampling or measurements; ()

vii. The date(s) any analyses were performed; ()

viii. The name of any individual(s) who performed the analyses; ()

ix. The analytical techniques or methods used; and ()

x. The results of the analysis. ()

d. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another test method is required by 40 CFR Part 401 through 471 or Part 501 through 503. ()

11. Signatory Requirements. All applications, reports, or information submitted to the Department shall be signed and certified in accordance with Section 090 (Signature Requirements) and must include penalty provisions pursuant to Section 500 (Enforcement). ()

12. Reporting Requirements. ()

a. The permittee must give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility if: ()

i. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source as defined in Section 120 (New Sources and New Discharges) and 010

(Definitions); ()

ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Subsection 301.01.a.; or ()

iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites: ()

(1) Not reported during the permit application process, or ()

(2) Not reported pursuant to an approved land application or sludge disposal plan. ()

b. The permittee must give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. ()

c. The permit is not transferable to any person except after notice to the Department. The Department may modify or revoke and reissue a permit to change the name of the permittee and incorporate such other requirements as may be necessary under Section 202 (Transfer of IPDES Permits). ()

d. Monitoring results must be reported at the intervals specified in the permit and meet the following requirements: ()

i. Monitoring results will be reported on a Discharge Monitoring Report (DMR) or forms (which may be electronic) provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices. All reports and forms submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to report electronically if specified by a particular permit. ()

ii. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136, or another method required for an industry-specific waste stream specified in the permit or under 40 CFR Part 401 through 471 or Part 501 through Part 503, the results of such monitoring will be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department. ()

iii. Calculations for all limitations which require averaging of measurements will utilize an arithmetic mean unless otherwise specified by the Department in the permit. ()

e. A permittee must submit reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit no later than fourteen (14) days following each schedule date of each requirement. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. ()

f. The permittee must report to the Department any noncompliance which may endanger health or the environment as follows: ()

i. Within twenty-four (24) hours from the time the permittee becomes aware of the circumstances, provide any information orally; ()

ii. Within five (5) days from the time the permittee becomes aware of the circumstances, provide a written submission that contains a description of: ()

(1) The noncompliance and its cause; ()

(2) The period of noncompliance, including exact dates and times; ()

(3) If the noncompliance has not been corrected, the anticipated time it is expected to continue; and ()

(4) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; ()

(5) For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described in Subsections 300.12.f.ii(1) through (4), as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. ()

(6) As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. ()

iii. The following information must be reported within twenty-four (24) hours: ()

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit (see Subsection 300.07, Property Rights); ()

(2) Any upset which exceeds any effluent limitation in the permit; and ()

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within twenty-four (24) hours (see Subsection 302.09, Twenty-Four Hour Reporting); and ()

iv. The Department may waive the written report on a case-by-case basis for reports under Subsection 300.12.f.iii. if the oral report has been received within twenty-four (24) hours. ()

g. The permittee must report all instances of noncompliance not reported under Subsections 300.12.d., e., and f., at the time monitoring reports are submitted. The reports of noncompliance must contain the information listed in Subsection 300.12.f. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. ()

h. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it must

promptly submit such facts or correct information. ()

13. Bypass Terms and Conditions. ()

a. Bypass, as defined in Section 010 (Definitions), is prohibited, and the Department may take enforcement action against a permittee for bypass, unless: ()

i. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; ()

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and ()

iii. The permittee submitted a notice of a bypass to the Department in accordance with Subsections 300.13.c. and d. As of December 21, 2020, all notices submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of CFR Part 127, permittees may be required to report electronically if specified by a particular permit. ()

b. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three (3) conditions listed in Subsection 300.13.a. ()

c. If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Department, if possible at least ten (10) days before the date of the bypass. ()

d. The permittee shall submit notice of an unanticipated bypass as required in Subsection 300.12.f. (24-hour notice). ()

e. Bypasses not exceeding limitations, are allowed to occur, and are not subject to Subsection 300.13.a. or 300.13.d. if: ()

i. The bypass does not cause effluent limitations to be exceeded, and ()

ii. Only if it also is for essential maintenance to assure efficient operation. ()

14. Upset Terms and Conditions. ()

a. In any enforcement action for noncompliance with technology-based permit effluent limitations, a permittee may claim upset, as defined in Section 010 (Definitions), as an affirmative defense. A permittee seeking to establish the occurrence of an upset has the burden of proof. ()

b. Any determination made in administrative review of a claim that noncompliance was caused by upset, before an action for noncompliance is commenced, is not final administrative action subject to judicial review. ()

c. The following conditions are necessary for a permittee to demonstrate that an upset occurred. A permittee who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that: ()

i. An upset occurred and that the permittee can identify the cause(s) of the upset; ()

ii. The permitted facility was at the time being properly operated; ()

iii. The permittee submitted twenty-four (24)-hour notice of the upset as required Subsection 300.12.f.iii(2); and ()

iv. The permittee complied with any remedial measures required under Subsection 300.04. ()

15. Penalties and Fines. Permits must include penalty and fine requirements pursuant to Section 500 (Enforcement). ()

301. PERMIT CONDITIONS FOR SPECIFIC CATEGORIES.

In addition to conditions set forth in Section 300 (Conditions Applicable to all Permits), conditions identified in this section apply to all IPDES permits within the categories specified below. ()

01. Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under Subsection 300.12, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe: ()

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following notification levels: ()

i. One hundred micrograms per liter (100 µg/L); ()

ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; ()

iii. Five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and ()

iv. One milligram per liter (1 mg/L) for antimony; ()

v. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.07; or ()

vi. The level established by the Department in accordance with Subsection 302.08; and ()

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following notification levels: ()

i. Five hundred micrograms per liter (500 µg/L); ()

ii. One milligram per liter (1 mg/L) for antimony; ()

iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.07; or ()

iv. The level established by the Department in accordance with Subsection 302.08. ()

02. Publicly Owned Treatment Works. All POTWs must provide adequate notice to the Department of the following: ()

a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to the Clean Water Act section 301 or 306 if it were directly discharging those pollutants; and ()

b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit. For purposes of this subsection, adequate notice shall include information on: ()

- i. The quality and quantity of effluent introduced into the POTW, and ()
- ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW. ()

03. Municipal Separate Storm Sewer Systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Department under 40 CFR 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. As of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, the owner, operator, or the duly authorized representative of the MS4 may be required to report electronically if specified by a particular permit. The report shall include: ()

- a. The status of implementing the components of the storm water management program that are established as permit conditions; ()
- b. Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with Subsection 105.18.b.iii.; ()
- c. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under Subsection 105.18.b.iv. and 105.18.b.v.; ()
- d. A summary of data, including monitoring data, that is accumulated throughout the reporting year; ()
- e. Annual expenditures and budget for the year following each annual report; ()
- f. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and ()
- g. Identification of water quality improvements or degradation. ()

04. Storm Water Dischargers. The initial permits for discharges composed entirely of storm water issued pursuant to 40 CFR 122.26(e)(7) shall require compliance with the conditions of the permit as expeditiously as practicable but in no event later than three (3) years after the date of issuance of the permit. ()

05. Concentrated Animal Feeding Operations (CAFOs). Any applicable permit must include provisions pursuant to 40 CFR 122.42(e). ()

302. ESTABLISHING PERMIT PROVISIONS.

The Department will establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of the Clean Water Act and state rules, including conditions under Section 101 (duration of permits), Section 305 (compliance schedules), Section 304 (monitoring), and electronic reporting requirements identified under 40 CFR Part 127. An IPDES permit must include conditions meeting the following requirements, when applicable, in addition to other applicable sections of these rules. ()

01. Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit. ()

02. Applicable Requirements. The Department shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Clean Water Act and Section 101 (Duration), and Subsections 304.01, and 305.01 of these rules. ()

- a. Applicable requirements include all statutory or regulatory requirements which take effect prior to

final administrative disposition of the permit. ()

b. Applicable requirements also include any requirement which takes effect prior to the modification or revocation and reissuance of a permit under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits). ()

c. New or reissued permits, and to the extent allowed under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits) for modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Sections 200 (Renewal of IPDES Permits), and 302 (Establishing Permit Provisions) through 304 (Monitoring and Reporting Requirements). ()

03. Technology-Based Effluent Limitations and Standards. ()

a. Technology-based effluent limitations and standards shall be based on: ()

i. Effluent limitations and standards promulgated under the Clean Water Act section 301; ()

ii. New source performance standards promulgated under the Clean Water Act section 306; ()

iii. Effluent limitations determined on a case-by-case basis under the Clean Water Act section 402(a)(1); or ()

iv. A combination of the three (3), in accordance with 40 CFR 125.3. ()

b. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of 40 CFR 122.29(d). ()

c. The Department may authorize a discharger, subject to technology-based effluent limitations guidelines and standards in an IPDES permit, to forgo sampling of a pollutant found at 40 CFR Parts 401 through 471, if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. ()

i. This waiver is good only for the term of the permit and is not available during the term of the first NPDES or IPDES permit issued to a discharger. ()

ii. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. ()

iii. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet. ()

iv. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards. ()

04. Other Effluent Limitations and Standards. ()

a. If any applicable toxic effluent limitations and standards under the Clean Water Act sections 301, 302, 303, 307, 318, and 405 or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under the Clean Water Act section 307(a) for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall initiate proceedings under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits) to modify or revoke and reissue the permit to conform to the more stringent toxic effluent standard or prohibition (see also Subsection 300.01). ()

b. Standards for sewage sludge use or disposal under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, “Wastewater Rules,” shall be applied, unless those standards have been included in a permit issued under the appropriate provisions of: ()

- i. Subtitle C of the Solid Waste Disposal Act; ()
- ii. Part C of Safe Drinking Water Act; ()
- iii. The Clean Air Act; or ()
- iv. State permit programs approved by the EPA. ()

c. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. ()

d. If any applicable standard for sewage sludge use or disposal is promulgated under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, “Wastewater Rules,” that standard is more stringent than any limitation on the pollutant or practice in the permit, the Department may initiate proceedings under these regulations to modify or revoke and reissue the permit, in compliance with Section 201 (Modification, or Revocation and Reissuance of IPDES Permits), to conform to the standard for sewage sludge use or disposal. ()

e. Include any requirements applicable to cooling water intake structures under the Clean Water Act section 316(b), in accordance with 40 CFR 125.80 through 125.99. ()

05. Reopener Clause. For any permit issued to a TWTDS (including sludge-only facilities), the Department shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under the Clean Water Act section 405(d). The Department may promptly modify or revoke and reissue any permit containing the reopener clause required by this subsection if the standard for sewage sludge use or disposal: ()

- a.** Is more stringent than any requirements for sludge use or disposal in the permit, or ()
- b.** Controls a pollutant or practice not limited in the permit. ()

06. Water Quality Standards and Requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under the Clean Water Act sections 301, 304, 306, 307, 318 and 405 shall be included in a permit if they are necessary to: ()

a. Achieve water quality standards established in IDAPA 58.01.02, “Water Quality Standards,” including narrative criteria for water quality and antidegradation provisions. ()

i. Effluent limitations in a permit must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Department determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria for water quality. ()

ii. When the Department determines whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a water quality standard, the Department shall use procedures which account for: ()

- (1) Existing controls on point and nonpoint sources of pollution; ()
- (2) The variability of the pollutant or pollutant parameter in the effluent; ()

(3) The sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and where appropriate, ()

(4) The dilution of the effluent in the receiving water; ()

iii. When the Department determines, using the procedures in Subsection 302.06.a.ii., that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a state numeric criteria within a state water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant. ()

iv. When the Department determines, using the procedures in Subsection 302.06.a.ii., that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity. ()

v. Except as provided in this subsection, when the Department determines, using the procedures in Subsection 302.06.a.ii., toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Department demonstrates in the fact sheet of the IPDES permit, using the procedures in Subsection 302.06.a.ii., that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative state water quality standards. ()

vi. When the state has not established a numeric water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable state water quality standard, the Department must establish effluent limits using one (1) or more of the following options: ()

(1) Establish effluent limits using a calculated numeric water quality target or concentration value for the pollutant which the Department demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a target or concentration value may be derived: ()

(a) Using a proposed criterion, or an explicit policy or regulation interpreting its narrative water quality criterion, and ()

(b) Supplemented with other relevant information which may include EPA's Water Quality Standards Handbook, as currently revised, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration (FDA), and current EPA criteria documents; ()

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under the Clean Water Act section 304(a), supplemented where necessary by other relevant information; or ()

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided: ()

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation; ()

(b) The required fact sheet sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards; ()

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and ()

(d) The permit contains a reopener clause allowing the Department to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards. ()

vii. When developing water quality-based effluent limits under this subsection, the Department shall ensure that: ()

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and ()

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the state and approved by EPA pursuant to 40 CFR 130.7; ()

b. Attain or maintain a specified water quality through water quality related effluent limits established under the Clean Water Act section 302; ()

c. Conform to applicable water quality requirements under the Clean Water Act section 402(b)(5) when the discharge affects a state other than Idaho; ()

d. Incorporate any more stringent limitations, treatment standards, or schedules of compliance requirements established under federal or state law or regulations in accordance with the Clean Water Act section 301(b)(1)(C); ()

e. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under the Clean Water Act section 208(b); or ()

f. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR 125.30 through 125.32. ()

07. Technology-Based Controls for Toxic Pollutants. ()

a. In determining whether to include limitations on toxic pollutants in a permit under this section, the Department will establish limits in accordance with Subsections 302.03, 302.04, and 302.06 and in a notification under Section 301 (Permit Conditions for Specific Categories), or other relevant information. The fact sheet must explain the development of limitations included in the permit. ()

b. An IPDES permit must include limitations to control all toxic pollutants which the Department determines (based on information reported in a permit application under Subsection 105.07 and 301.01.a., or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). ()

c. The requirement that the limitations control the pollutants meeting the criteria of Subsection 302.07.b. will be satisfied by: ()

i. Limitations on those toxic pollutants; or ()

ii. Limitations on other pollutants which, in the judgment of the Department, will provide treatment of the pollutants under Subsection 302.07.b. to the levels required by 40 CFR 125.3(c). ()

08. Notification Level. An IPDES permit must include a condition requiring a notification level which exceeds the notification level of Subsection 301.01.a., upon a petition from the permittee or on the Department's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). ()

09. Twenty-Four (24) Hour Reporting. A permit will list pollutants for which the permittee is required to report violations of maximum daily discharge limitations within twenty-four (24) hours under Subsection 300.12.f.iii(3), including any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance. ()

- 10. Permit Durations.** Permits must include permit durations pursuant to Subsection 101.01. ()
- 11. Monitoring Requirements.** Permits must include monitoring requirements pursuant to Section 304 (Monitoring and Reporting Requirements). ()
- 12. Pretreatment Program for POTWs.** A POTW permit must include pretreatment program conditions requiring the permittee to: ()
- a.** Identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under the Clean Water Act section 307(b) and 40 CFR Part 403; ()
 - b.** Submit a local program when required by and in accordance with 40 CFR Part 403, to ensure compliance with pretreatment standards to the extent applicable under the Clean Water Act section 307(b): ()
 - i.** The local program shall be incorporated into the permit as described in 40 CFR Part 403, and ()
 - ii.** The program must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR Part 403; ()
 - c.** Provide written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1), following permit issuance or reissuance; and ()
 - d.** POTWs which are sludge-only facilities, are required to develop a pretreatment program under 40 CFR Part 403, when the Department determines that a pretreatment program is necessary to assure compliance with the Clean Water Act section 405(d). ()
- 13. Best Management Practices.** An IPDES permit must include best management practices (BMPs) to control or abate the discharge of pollutants when: ()
- a.** Authorized under the Clean Water Act section 304(e) for the control of toxic pollutants and hazardous substances from ancillary industrial activities; ()
 - b.** Authorized under the Clean Water Act section 402(p) for the control of storm water discharges; ()
 - c.** Numeric effluent limitations are infeasible; or ()
 - d.** The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Clean Water Act. ()
- 14. Reissued Permits.** When a permit is renewed or reissued, it must include provisions pursuant to Section 200 (Renewal of IPDES Permits). ()
- 15. Privately-Owned Treatment Works.** For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this section. ()
- a.** Alternatively, the Department may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. ()
 - b.** The Department’s decision to issue a permit with no conditions applicable to any user, to impose conditions on one (1) or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works. ()
- 16. Grants.** An IPDES permit must include any conditions imposed in grants made by the EPA to

POTWs under the Clean Water Act sections 201 and 204, which are reasonably necessary for the achievement of effluent limitations under the Clean Water Act section 301. ()

17. Sewage Sludge. An IPDES permit must include any requirements under the Clean Water Act section 405 governing the disposal of sewage sludge from POTWs or any other TWTDS for any use for which regulations have been established, in accordance with any applicable regulations. ()

18. Navigation. An IPDES permit must include any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with Subsection 103.04 and 109.02. ()

19. Qualifying State or Local Programs. ()

a. For storm water discharges associated with small construction activity disturbing one (1) acre or more, but less than five (5) acres as specified in 40 CFR 122.26(b)(15), the Department may include permit conditions that incorporate by reference qualifying state or local erosion and sediment control program requirements. Where a qualifying state or local program does not include one (1) or more of the elements in this subsection, then the Department must include those elements as conditions in the permit. ()

b. A qualifying state or local erosion and sediment control program is one that includes: ()

i. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices; ()

ii. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; ()

iii. Requirements for construction site operators to develop and implement a storm water pollution prevention plan, which must include: ()

(1) Site descriptions; ()

(2) Descriptions of appropriate control measures; ()

(3) Copies of approved state or local requirements; ()

(4) Maintenance procedures; ()

(5) Inspection procedures; ()

(6) Identification of non-storm water discharges; and ()

iv. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts. ()

c. For storm water discharges from a construction activity disturbing five (5) acres or more, including activities that disturb less than five (5) acres but are part of a larger common plan of development or sale that will ultimately disturb five (5) acres or more, as specified in 40 CFR 122.26(b)(14)(x), the Department may include permit conditions that incorporate by reference qualifying state or local erosion and sediment control program requirements. A qualifying state or local erosion and sediment control program is one that includes the elements listed in Subsections 302.19.a. and b. and any additional requirements necessary to achieve the applicable technology-based standards of best available technology and best conventional technology based on the best professional judgment of the permit writer. ()

20. Water Quality Trading. The Department may include provisions in IPDES permits that allow for compliance with water quality based permit limits to be achieved through water quality trading. ()

303. CALCULATING PERMIT PROVISIONS.

01. Outfalls and Discharge Points. All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under Subsection 302.13, (Best Management Practices,) and Subsection 303.08, (Internal Waste Streams.) ()

02. Production-Based Limitations. ()

a. In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow. ()

b. Except in the case of POTWs or as provided in Subsection 303.02.b.ii., calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based upon a reasonable measure of actual production of the facility. ()

i. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations. ()

ii. The Department may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels. ()

iii. For the automotive manufacturing industry only, the Department shall establish an alternate condition under 303.02.b.ii., if the applicant satisfactorily demonstrates to the Department, at the time the application is submitted, that: ()

(1) Its actual production, as indicated in Subsections 303.02.b. and 303.02.b.i. is substantially below maximum production capability, and ()

(2) There is a reasonable potential for an increase above actual production during the duration of the permit. ()

iv. If the Department establishes permit conditions under Subsection 303.02.b.ii.: ()

(1) The permit shall require the permittee to notify the Department at least two (2) business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify: ()

(a) The anticipated level, and the period during which the permittee expects to operate at the alternate level; and ()

(b) If the notice covers more than one (1) month, the notice shall specify the reasons for the anticipated production level increase; and ()

(c) New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two (2) consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice; ()

(2) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Department under Subsection 303.02.b.ii., in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice; and ()

(3) The permittee shall submit, with the Discharge Monitoring Report, the level of production that

actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production. ()

03. Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal as defined in 40 CFR Part 136, unless: ()

a. An applicable effluent standard or limitation has been promulgated under the Clean Water Act and specifies the limitation for the metal in the dissolved or valent or total form; ()

b. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the Clean Water Act; or ()

c. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium). ()

04. Continuous Discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall, unless impracticable, be stated as: ()

a. Maximum daily and average monthly discharge limitations for all dischargers other than POTWs; or ()

b. Average weekly and average monthly discharge limitations for POTWs. ()

05. Noncontinuous Discharges. Discharges which are not continuous, as defined in Section 010 (Definitions), shall be particularly described and limited, considering the following factors, as appropriate: ()

a. Frequency (for example, a batch discharge shall not occur more than once every three (3) weeks); ()

b. Total mass (for example, not to exceed one hundred (100) kilograms of zinc and two hundred (200) kilograms of chromium per batch discharge); ()

c. Maximum rate of discharge of pollutants during the discharge (for example, not to exceed two (2) kilograms of zinc per minute); and ()

d. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than one-tenth (0.1) mg/L zinc or more than two hundred fifty (250) grams (one-fourth (¼) kilogram) of zinc in any discharge). ()

06. Mass Limitations. ()

a. All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except: ()

i. pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass; ()

ii. When applicable standards and limitations are expressed in terms of other units of measurement; or ()

iii. If in establishing permit limitations on a case-by-case basis under 40 CFR 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment. ()

b. Pollutants limited in terms of mass, may also be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations. ()

07. Pollutant Credits for Intake Water. ()

a. The following definitions apply to the consideration of intake credits in determining reasonable potential and establishing technology based and water quality based effluent limits for IPDES permits. ()

i. An intake pollutant is the amount of a pollutant that is present in waters of the United States (including ground water as provided in Subsection 303.07.a.iv.) at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water. ()

ii. An intake pollutant must be from the same body of water as the discharge in order to be eligible for an intake credit. An intake pollutant is considered to be from the same body of water as the discharge if the Department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding will be established if: ()

(1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; ()

(2) There is a direct hydrological connection between the intake and discharge points; and ()

(3) Water quality characteristics (e.g., temperature, pH, hardness) are similar in the intake and receiving waters. ()

iii. The Department may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. ()

iv. An intake pollutant from ground water may be considered to be from the same body of water if the Department determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water if the ground water contains the pollutant partially or entirely due to human activity, such as industrial, commercial, or municipal operations, disposal actions, or treatment processes. ()

v. The determinations made under Subsections 303.07.b. and c. will be made on a pollutant-by-pollutant and outfall-by-outfall basis. ()

vi. These provisions do not alter Department's obligation under Subsection 302.06.a.vii(2) to develop effluent limitations consistent with the assumptions and requirements of any available waste load allocations for the discharge, that is part of a TMDL prepared by the Department and approved by EPA pursuant to 40 CFR 130.7, or prepared by EPA pursuant to 40 CFR 130.7(d). ()

b. Consideration of intake pollutants for technology based effluent limitations: ()

i. Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if: ()

(1) The applicable effluent limitations and standards contained in 40 CFR Part 401 through 471, specifically provide that they shall be applied on a net basis; or ()

(2) The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters. ()

ii. Credit for generic pollutants such as BOD or TSS should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of

the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere. ()

iii. Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits. ()

iv. Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Department may waive this requirement if the Department finds that no environmental degradation will result. ()

v. This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water. ()

c. Consideration of intake pollutants for water quality based effluent limitations: ()

i. The Department will evaluate if there is reasonable potential for the discharge of an identified intake pollutant to cause or contribute to an exceedance of a narrative or numeric water quality criterion. If the Department determines that an intake pollutant in the discharge does not have the reasonable potential to cause or contribute to an exceedance of an applicable water quality standard, the Department is not required to include a water quality-based effluent limit for the identified intake pollutant in the facility's permit. ()

ii. If a reasonable potential exists, then water quality-based effluent limits may be established that reflect a credit for intake pollutants where a discharger demonstrates that the following conditions are met: ()

(1) The facility removes the intake water containing the pollutant from the same body of water into which the discharge is made; ()

(2) The ambient background concentration of the pollutant does not meet the most stringent applicable water quality criterion for that pollutant; ()

(3) The facility does not alter the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutants had not been removed from the body of water; ()

(4) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the identified intake pollutant had not been removed from the body of water; ()

(5) For the purpose of determining water quality-based effluent limits, the facility does not increase the identified intake pollutant concentration at the point of discharge as compared to the pollutant concentration in the intake water. ()

iii. Where the conditions in Subsection 303.07.c.i. and ii are met, the Department may establish a water quality-based effluent limitation allowing a facility to discharge a mass and concentration of the intake pollutant that are no greater than the mass and concentration found in the facility's intake water. A discharger may add mass of the pollutant to its waste stream if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water. ()

iv. Where intake water for a facility is provided by a municipal water supply system and the supplier provides treatment of the raw water that removes an intake water pollutant, the concentration of the intake water pollutant will be determined at the point where the water enters the water supplier's distribution system. ()

v. Where a facility discharges intake pollutants from multiple sources that originate from the receiving water body and from other water bodies, the Department may derive an effluent limit reflecting the flow-weighted amount of each source of the pollutant provided that conditions in 303.07.c.ii. of this subsection are met and adequate monitoring to determine compliance can be established and is included in the permit. ()

vi. The permit will specify how compliance with mass and concentration-based limitations for the intake water pollutant will be assessed. This may be done by basing the effluent limitation on background concentration data. Alternatively, the Department may determine compliance by monitoring the pollutant concentrations in the intake water and in the effluent. This monitoring may be supplemented by monitoring internal waste streams or by a Department evaluation of the use of best management practices. ()

vii. Effluent limitations must be established to comply with all other applicable state and federal laws and regulations including technology-based requirements and anti-degradation policies. ()

viii. When determining whether water quality based effluent limitations are necessary, information from chemical-specific, whole effluent toxicity and biological assessments will be considered independently. ()

ix. Permit limits must be consistent with the assumptions and requirement of waste load allocations or other provisions in a TMDL that has been approved by the EPA. ()

08. Internal Waste Streams. ()

a. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 304 (Monitoring and Reporting Requirements) shall also be applied to the internal waste streams. ()

b. Limits on internal waste streams will be imposed only when the fact sheet sets forth the exceptional circumstances which make such limitations necessary, such as: ()

i. When the final discharge point is inaccessible (for example, under ten (10) meters of water); ()

ii. The wastes at the point of discharge are so diluted as to make monitoring impracticable; or ()

iii. The interferences among pollutants at the point of discharge would make detection or analysis impracticable. ()

09. Disposal of Pollutants into Wells, into POTWs, or by Land Application. ()

a. When part of a discharger's process wastewater is not being discharged into waters of the United States because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States, applicable effluent standards and limitations for the discharge in an IPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one (1) of the following methods: ()

i. If none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards; or ()

ii. In all cases other than those described in Subsection 303.09.a.i., effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 40 CFR Part 125, subpart D, to make them more or less stringent if discharges to wells, POTWs, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$P=(E \times N)/T$; where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.

- ()
- b.** Subsection 303.09.a. does not apply to the extent that promulgated effluent limitations guidelines: ()
 - i.** Control concentrations of pollutants discharged but not mass; or ()
 - ii.** Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs. ()
 - c.** Subsection 303.09.a. does not alter a discharger’s obligation to meet any more stringent requirements established under Sections 300 (Conditions Applicable to all Permits), 301 (Permit Conditions for Specific Categories), 40 CFR 122.42(c), and 302 (Establishing Permit Provisions). ()
 - d.** Disposal of discharge into injection wells is regulated by: ()
 - i.** Idaho Department of Water Resources, in compliance with the IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells,” for a Class I injection well; or ()
 - ii.** Health District having jurisdiction, in compliance with IDAPA 58.01.03, “Individual/Subsurface Sewage Disposal Rules,” for a Class V injection well. ()
 - e.** Disposal of discharge onto the surface of the land is regulated by the Department under IDAPA 58.01.17, “Recycled Water Rules.” ()

304. MONITORING AND REPORTING REQUIREMENTS.

- 01. Monitoring Requirements.** A permit must include the following requirements for monitoring: ()
 - a.** Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate); ()
 - b.** The type, intervals, and frequency of monitoring sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; ()
 - c.** Provisions for reporting the results of monitoring, including frequency, appropriate for the regulated activity based on the impact of that activity and as specified in 40 CFR Part 127 (NPDES Electronic Reporting). Reporting shall be no less frequent than specified in 40 CFR 122.44; ()
 - d.** The mass (or other measurement specified in the permit) for each pollutant limited in the permit; ()
 - e.** The volume of effluent discharged from each outfall; ()
 - f.** Other measurements as appropriate, including: ()
 - i.** Pollutants in internal waste streams under Subsection 303.08; ()
 - ii.** Pollutants in intake water for net limitations under Subsection 303.07; ()
 - iii.** Frequency, rate of discharge, etc., for non-continuous discharges under Subsection 303.05; ()

- iv. Pollutants subject to notification requirements under Subsection 301.01; and ()
- v. Pollutants in sewage sludge or other monitoring as specified in 40 CFR Part 503; or as determined to be necessary on a case-by-case basis pursuant to the Clean Water Act section 405(d)(4), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, “Wastewater Rules”; ()

g. According to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 for the analysis of pollutants or pollutant parameters, or another method required under 40 CFR Part 401 through 471 or Part 501 through 503. Consistent with 40 CFR Part 136, applicants or permittees have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant or permittee can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of “sufficiently sensitive,” the analytical results are not consistent with the QA/QC specifications for that method, then the Department may determine that the method is not performing adequately and the Department should select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with provisions outlined in Subsections 304.01.g.i. and ii. For the purposes of this section, a method is “sufficiently sensitive” when: ()

i. The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or ()

ii. The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O, for the measured pollutant or pollutant parameter; and ()

h. In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136, or methods are not otherwise required under 40 CFR Part 401 through 471 or Part 501 through 503, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters. ()

02. Reporting Monitoring Results. ()

a. Except as provided in Subsections 304.02.d. and 304.02.e., the Department will establish requirements to report monitoring results on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. All results must be electronically reported in compliance with 40 CFR Part 127. ()

b. For sewage sludge use or disposal practices, the Department will establish requirements to monitor and report results on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR Part 503, Section 380 (Sewage Sludge) of these rules, and Idaho’s Wastewater Rules, IDAPA 58.01.16.650, “Wastewater Rules,” (where applicable), but in no case less than once a year. All results must be electronically reported in compliance with 40 CFR Part 127. ()

c. The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. ()

d. The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity, other than those addressed in Subsection 304.02.c., on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require the discharger to: ()

i. Conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity; ()

ii. Evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed; ()

iii. Maintain for a period of three (3) years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance; ()

iv. Sign the report and certification in accordance with Section 090 (Signature Requirements); and ()

v. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification that the facility is in compliance with the permit, or alternative requirements, once every three (3) years by an Idaho licensed professional engineer. ()

e. A permit that does not require monitoring results reports at least annually must require the permittee to report, at least annually, all instances of noncompliance not reported under Subsection 300.12. ()

305. COMPLIANCE SCHEDULES.

01. General. An IPDES permit may, when appropriate, specify a schedule of compliance leading to compliance with the Clean Water Act and these rules. ()

a. Any schedules of compliance under this section shall require compliance as soon as possible. ()

b. The first IPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction, but less than three (3) years before commencement of the relevant discharge. ()

c. For recommending dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three (3) years before recommencement of discharge. ()

d. If a permit establishes a schedule of compliance under this section that exceeds one (1) year from the date of permit issuance, the schedule must set out interim requirements and dates for achievement of the interim requirements. If the schedule includes interim requirements: ()

i. The time between interim dates shall not exceed one (1) year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six (6) months; or ()

ii. If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one (1) year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. ()

e. Within fourteen (14) days following each interim and final date of compliance, the permittee shall notify the Department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if Subsection 305.01.d.ii. is applicable. ()

f. Permits may incorporate compliance schedules which allow a discharger to phase in, over time, compliance with water quality-based effluent limitations in accordance with IDAPA 58.01.02.400, "Water Quality Standards." ()

02. Alternative Schedules of Compliance. An IPDES permit applicant or permittee may cease conducting regulated activities (by terminating direct discharge for point sources) rather than continuing to operate and meet permit requirements as follows: ()

a. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued: ()

i. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or ()

ii. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit. ()

b. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline. ()

c. If the permittee is undecided whether to cease conducting regulated activities, the Department may issue or modify a permit to contain two (2) schedules, as follows: ()

i. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities; ()

ii. One (1) schedule shall lead to timely compliance with applicable requirements, no later than the statutory deadline; ()

iii. The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline; and ()

iv. Each permit containing two (2) schedules shall include a requirement that after the permittee has made a final decision under Subsection 305.02.c., it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities. ()

d. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Department, such as a resolution of the board of directors of a corporation. ()

306. -- 309. (RESERVED)

310. VARIANCES.

01. Variance Requests by non-POTWs. ()

a. A discharger which is not a POTW may request a variance from otherwise applicable effluent limitations under the following statutory or regulatory provisions, within the times specified in this subsection. ()

i. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based must be filed as follows: ()

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period under Section 109 (Public Notification and Comment); or ()

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than one hundred eighty (180) days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987. ()

ii. The request must explain how the requirements of the applicable regulatory and/or statutory criteria

have been met. ()

b. An applicant may request a variance for non-conventional pollutants under this section for the following: ()

i. A variance from the BAT requirements for Clean Water Act section 301(b)(2)(F) pollutants (commonly called non-conventional pollutants) pursuant to the Clean Water Act section 301(c) because of the economic capability of the owner or operator; or ()

ii. A variance pursuant to the Clean Water Act section 301(g) provided: ()

(1) The variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP), when determined by the EPA Administrator to be a pollutant covered by the Clean Water Act section 301(b)(2)(F); and ()

(2) Any other pollutant which the EPA Administrator lists under the Clean Water Act section 301(g)(4). ()

c. The request for variance as outlined in Subsection 310.01.b. must be made as follows: ()

i. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline, by submitting an initial request to the Department no later than two hundred seventy (270) days after promulgation of the applicable effluent limitation guideline followed by a completed request no later than the close of the public comment period under Section 109 (Public Notification and Comment). ()

(1) The initial request to the Department must contain: ()

(a) The name of the discharger; ()

(b) The permit number; ()

(c) The outfall number(s); ()

(d) The applicable effluent guideline; and ()

(e) Whether the discharger is requesting a Clean Water Act section 301(c) or section 301(g) modification or both. ()

(2) The completed request must demonstrate that the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under Clean Water Act section 301(g) must be filed one hundred eighty (180) days before the Department must make a decision (unless the Department establishes a shorter or longer period). ()

ii. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with Subsection 310.01.c.i(2) and need not be preceded by an initial request under Subsection 310.01.c.i(1). ()

d. A modification under the Clean Water Act section 302(b)(2) of requirements under the Clean Water Act section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under Section 109 (Public Notification and Comment) on the permit from which the modification is sought. ()

e. A variance under the Clean Water Act section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under Section 105 (Application for an Individual IPDES Permit), except that if thermal effluent limitations are established under the Clean Water Act section 402(a)(1) or are based on water quality standards, the request for a variance may be filed by the close of the public comment period under Section 109 (Public Notification and Comment). ()

02. Variance Requests by POTWs. A discharger which is a POTW may request a variance from water quality based effluent limitations. A modification under the Clean Water Act section 302(b)(2) of the requirements under the Clean Water Act section 302(a) for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under Section 109 (Public Notification and Comment) on the permit from which the modification is sought. ()

03. Permit Variance Decision Process. ()

a. The Department may deny requests for variances. A variance that has been denied by the Department may be appealed according to the process identified in Section 204 (Appeals Process). ()

b. The Department may grant (subject to EPA objection under Subsection 103.02 or 40 CFR 123.44): ()

i. Variances for extensions under the Clean Water Act section 301(i) based on delay in completion of a POTW; ()

ii. Variances after consultation with EPA, extensions under the Clean Water Act section 301(k) based on the use of innovative technology; ()

iii. Variances under the Clean Water Act section 316(a) for thermal pollution; or ()

iv. Variances from water quality standards under IDAPA 58.01.02.260, "Water Quality Rules." ()

c. The Department may forward to EPA with or without a recommendation: ()

i. A variance based on the economic capability of the applicant under the Clean Water Act section 301(c); or ()

ii. A variance based on water quality related effluent limitations under the Clean Water Act section 302(b)(2). ()

d. The Department may forward to EPA with a written concurrence: ()

i. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based (Clean Water Act section 301(n)); or ()

ii. A variance based upon certain water quality factors under the Clean Water Act section 301(g). ()

e. The EPA may grant or deny a request for a variance that is forwarded by the Department. If the EPA Administrator (or his delegate) approves the variance, the Department shall prepare a draft permit incorporating the variance. ()

f. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under Section 204 (Appeals Process). ()

04. Expedited Variance Procedures and Time Extensions. ()

a. Notwithstanding the time requirements in Subsections 310.01 and 310.02, the Department may notify a permit applicant before a draft permit is issued under Section 108 (Draft Permit and Fact Sheet) that the draft permit will likely contain limitations which are eligible for variances. ()

i. In the notice, the Department may require the applicant, as a condition of consideration of any

potential variance request, to submit a request explaining how the requirements of 40 CFR Part 125, applicable to the variance, have been met and may require its submission within a specified reasonable time after receipt of the notice. ()

ii. The Department may send the notice before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance. ()

b. A discharger who cannot file a timely complete request required under Subsections 310.01.c.i.(2) or 310.01.c.ii. may request an extension. ()

i. The extension may be granted or denied at the discretion of the Department. ()

ii. The extension shall be no more than six (6) months in duration. ()

05. Special Procedures for Decisions on Thermal Variances. ()

a. The only issues connected with issuance of a particular permit on which the Department will make a final decision before the final permit is issued, are whether alternative effluent limitations would be justified under the Clean Water Act section 316(a) or whether cooling water intake structures will use the best available technology under section 316(b). ()

i. Permit applicants who wish an early decision on these issues should make a request to the Department, furnished with supporting reasons at the time their permit applications are filed. ()

ii. The Department will then decide whether or not to make an early decision. If it is granted, both the early decision on Clean Water Act section 316 (a) or (b) issues and the grant of the balance of the permit shall be: ()

(1) Considered permit issuance under these regulations, and ()

(2) Subject to the same requirements of public notice and comment and the same opportunity for an appeal. ()

b. If the Department, on review of the administrative record, determines that the information necessary to decide whether or not the Clean Water Act section 316(a) issue is not likely to be available in time for a decision on permit issuance, the Department may issue a permit for a term up to five (5) years. ()

i. The permit shall require achievement of the effluent limitations initially proposed for the thermal component of the discharge, no later than the date otherwise required by law. ()

ii. However, the permit shall also afford the permittee an opportunity to file a demonstration under Clean Water Act section 316(a), after conducting such studies as are required under 40 CFR 125.70 through 125.73. ()

iii. A new discharger may not exceed the thermal effluent limitation which is initially proposed unless and until its Clean Water Act section 316(a) variance request is finally approved. ()

c. Any proceeding held under Subsection 310.05.a. shall be: ()

i. Publicly noticed as required by Section 109 (Public Notification and Comment), and ()

ii. Conducted at a time allowing the permittee to take necessary measures to meet the final compliance date in the event its request for modification of thermal limits is denied. ()

d. Whenever the Department defers the decision under the Clean Water Act section 316(a), any decision under the Clean Water Act section 316(b) may be deferred. ()

311. -- 369. (RESERVED)

370. PRETREATMENT STANDARDS.

- 01. Purpose and Applicability.** This section and 40 CFR Part 403 apply to: ()
- a.** Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in Subsection 370.04 and 40 CFR 403.3; ()
 - b.** POTWs which receive wastewater from sources subject to National Pretreatment Standards; and ()
 - c.** Any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW Treatment Plant. ()
- 02. Objectives of General Pretreatment Regulations.** This section and 40 CFR Part 403 fulfill three (3) objectives: ()
- a.** To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; ()
 - b.** To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and ()
 - c.** To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges. ()
- 03. Department Program in Lieu of a POTW Program.** 40 CFR 403.8(a) requires certain POTWs develop a pretreatment program. The Department may, however, assume responsibility for implementing the POTW pretreatment program requirements set forth in 40 CFR 403.8(f) in lieu of requiring the POTW to develop a pretreatment program. This does not preclude POTWs from independently developing pretreatment programs. ()
- 04. Term Interpretation.** When used in the context of 40 CFR Part 403, unless the context in which a term is used clearly requires a different meaning, terms 40 CFR Part 403 that are incorporated by reference in these rules have the following meanings: ()
- a.** The terms Administrator or Regional Administrator mean the EPA Region 10 Administrator; ()
 - b.** The term Approval Authority means the Department of Environmental Quality; ()
 - c.** The term Approved POTW Pretreatment Program or Program or POTW Pretreatment Program means a program administered by a POTW that meets the criteria established in 40 CFR 403.8 and 403.9, and which has been approved by the Department in accordance with 40 CFR 403.1; ()
 - d.** The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program; ()
 - e.** The term Director means the Department of Environmental Quality with an NPDES permit program approved pursuant to the Clean Water Act section 402(b); ()
 - f.** The terms National Pretreatment Standard, Pretreatment Standard, or Standard mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, ()

which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5; and ()

g. The term Water Management Division Director means a Director of the Water Management Division within the Region 10 office of the Environmental Protection Agency or this person's delegated representative. ()

05. Exceptions to Incorporation by Reference. The following sections of 40 CFR Part 403 are excluded from the incorporation by reference in Section 003 (Incorporation by Reference) of these rules. ()

a. 40 CFR 403.4 (State or Local Law). ()

b. 40 CFR 403.19 (Provisions of Specific Applicability to the Owatonna Wastewater Treatment Facility). ()

c. 40 CFR 403.20 (Pretreatment Program Reinvention Pilot Projects Under Project XL). ()

371. -- 379. (RESERVED)

380. SEWAGE SLUDGE.

01. Purpose. The purpose of this section and 40 CFR Part 503 is to: ()

a. Establish standards, which consist of general requirements, pollutant limits, management practices, and operational standards, for the final use or disposal of sewage sludge. ()

i. Include standards for sewage sludge applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator. ()

ii. Include: ()

(1) Pathogen and alternative vector attraction reduction requirements for sewage sludge applied to the land or placed on a surface disposal site; and ()

(2) On a case-by-case basis, controls for storm water runoff from lands where sewage sludge or septage has been placed for treatment or disposal. ()

b. Include the frequency of monitoring and recordkeeping requirements when sewage sludge is: ()

i. Applied to the land; ()

ii. Placed on a surface disposal site; or ()

iii. Fired in a sewage sludge incinerator; and ()

c. Include reporting requirements for: ()

i. Class I sludge management facilities; ()

ii. POTWs with a design flow rate equal to or greater than one million gallons per day (1 MGD); and ()

iii. POTWs that serve ten thousand (10,000) people or more. ()

02. Applicability. This section and 40 CFR Part 503 applies to: ()

a. Any person, who prepares sewage sludge, applies sewage sludge to the land, or fires sewage sludge in a sewage sludge incinerator and to the owner or operator of a surface disposal site; ()

b. Sewage sludge applied to the land, placed on a surface disposal site, or fired in a sewage sludge incinerator; ()

c. The exit gas from a sewage sludge incinerator stack; or ()

d. Land where sewage sludge is applied, to a surface disposal site, and to a sewage sludge incinerator. ()

03. Term Interpretation. When used in the context of 40 CFR Part 503, unless the context in which a term is used clearly requires a different meaning, terms in the 40 CFR Part 503 that are incorporated by reference in these rules have the following meanings: ()

a. The terms Administrator or Regional Administrator mean the EPA Region 10 Administrator; ()

b. The terms Director or State Program Director mean the Department of Environmental Quality as the agency designated by the Governor as having the lead responsibility for managing or coordinating the approved IPDES program; and ()

c. The term permitting authority is the Department of Environmental Quality. ()

04. Exceptions to Incorporation by Reference. 40 CFR 503.1 (Purpose and Applicability) is excluded from the incorporation by reference found in Section 003 (Incorporation by Reference) of these rules. ()

381. -- 399. (RESERVED)

400. COMPLIANCE EVALUATION.

01. Non-Compliance Actions. When the permittee is not in compliance with any condition of the existing or expired permit that has been administratively continued, the Department may choose to do one (1) or more of the following: ()

a. Initiate an enforcement action; ()

b. Issue a notice of intent to deny the new application. If the application is denied and the expired permit is no longer effective as provided in Subsection 101.02, the owner or operator must cease the activities authorized by the permit or be subject to enforcement action for operating without a permit; ()

c. Issue a new permit with appropriate conditions; or ()

d. Take other actions authorized by state law. ()

401. -- 499. (RESERVED)

500. ENFORCEMENT.

01. General Enforcement and Penalties. Any person who violates any permit condition, filing or reporting requirement, duty to allow or carry out inspections, entry or monitoring requirements or any other provision in these rules shall be subject to administrative, civil or criminal enforcement and those remedies authorized in the Environmental Protection and Health Act, Sections 39-101 et seq., Idaho Code, including without limitation, civil and criminal penalties as provided in Sections 39-108 and 39-117, Idaho Code. ()

02. Truth in Reporting. It is a violation of these rules for any person to falsify, tamper with, or

knowingly render inaccurate any monitoring device or method required to be maintained under an IPDES permit. In addition to any other remedy available to the Department, such a violation is punishable by a fine as provided in Section 39-117, Idaho Code. ()

03. False Statements. It is a violation of these rules for any person to knowingly make any false statement, representation, or certification in any record or other document submitted or required to be maintained under an IPDES permit, including monitoring reports or reports of compliance or non-compliance. In addition to any other remedy available to the Department, such a violation is punishable by a fine as provided in Section 39-117, Idaho Code. ()

04. Public Participation in Enforcement. The Department shall provide for public participation in the state enforcement process by: ()

a. Investigating and providing written responses to citizen complaints; ()

b. Not opposing intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and ()

c. Publishing notice of and providing at least thirty (30) days for public comment on any proposed settlement of a state enforcement action. ()

501. -- 599. (RESERVED)

600. ADMINISTRATIVE RECORDS AND DATA MANAGEMENT.

01. Administrative Record for Draft Permits. ()

a. The provisions of a draft permit prepared by the Department under Subsection 108.01 shall be based on the administrative record defined in this section. ()

b. For preparing a draft permit, the record shall consist of: ()

i. The application, if required, and any supporting data furnished by the applicant; ()

ii. The draft permit or notice of intent to deny the application or to terminate the permit; ()

iii. The fact sheet; ()

iv. All documents cited in the fact sheet; and ()

v. Other documents contained in the supporting file for the draft permit. ()

c. Material readily available at the Department or published material that is generally available, and that is included in the administrative record under Subsection 600.01, need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet. ()

d. This subsection applies to all draft permits when public notice was given after the effective date of these rules. ()

02. Administrative Record for Final Permits. ()

a. The Department shall base final permit decisions on the administrative record defined in this section. ()

b. The administrative record for any final permit, including issuance, denial, transfer, modification, revocation and reissuance, or termination shall consist of the administrative record for the draft permit and fact sheet, as defined in Subsection 600.01, the proposed permit and associated information, and the following: ()

- i. All comments received during the public comment period provided under Section 109 (Public Notification and Comment); ()
 - ii. The record of, and any written materials submitted as part of, any meeting(s) held under Section 109 (Public Notification and Comment); ()
 - iii. The application or notice of intent to obtain coverage under a general permit, notice of intent to deny the application, or to terminate the permit, and any supporting data furnished by the applicant; ()
 - iv. The response to comments required by Subsections 109.02 and 109.03 and any new material placed in the record under that section; and ()
 - v. Any other relevant correspondence and documents. ()
 - c. The final permit and fact sheet shall become part of the administrative record after the final permit is issued. ()
 - d. The additional documents identified under Subsection 600.02.b., 107.03, and 109.02 should be added to the record as soon as possible after their receipt or publication by the Department. The record shall be complete on the date the final permit is issued. ()
 - e. This subsection applies to all IPDES permits when the draft permit was included in a public notice. ()
 - f. Material readily available from the Department or published materials which are generally available and which are included in the administrative record under Subsection 600.02 or Section 109 (Public Notification and Comment), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the fact sheet or in the response to comments. ()
- 03. Electronic Submittals.** Any information which the Department requires to be submitted electronically, with an electronic signature approved by the Department, will become part of the Administrative Record in accordance with Subsections 600.01 and 02. ()

601. -- 999. (RESERVED)