

PENDING 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

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DOCKET NO. 13-0104-2002

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b), 36-301, 36-401 through 413, 36-1101, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 2, 2020 Idaho Administrative Bulletin, [Vol. 20-9, pages 26-30](#).

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

There is no fiscal impact to the state general fund.

1. The proposed rule to change the application period for the Landowner Appreciation Program will have no fiscal impact.

2. The proposed rule to provide the Commission the authority to limit the number of nonresident DAV deer and elk tags would cap potential revenue to the Department's Fish and Game fund from sales of these tag types and related nonresident DAV hunting licenses. All future year revenue from sales of these tag types would likely be lower than 2019 and 2020 tag sales, unless nonresident DAVs choose to still purchase nonresident DAV hunting licenses and equivalent amount of general tag items that would otherwise be unsold. If nonresident DAVs purchase other nonresident items instead of nonresident DAV tags (once nonresident DAV deer and elk tags sell out), Department revenue from license and tag sales to nonresident DAVs could remain neutral or increase.

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

Dated this 6th day of November, 2020.

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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221, Idaho Code, this agency hereby gives notice of proposed rulemaking. The action is authorized by Sections 36-104(b), 36-301, 36-401 through 413, and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2020.

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

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

1. The rulemaking would change the application period for Landowner Appreciation Program (LAP) controlled hunt tags to May 15 through June 15. Applications for LAP controlled hunt tags are currently accepted from June 15 through July 15. Moving the application period to an earlier time in the year would provide additional processing time and help ensure that the Department can provide timely draw result notification to landowners, especially for hunts beginning in August.

2. This rulemaking would provide the Commission the authority to limit the number of nonresident Disabled American Veterans (DAV) deer and elk tags. Nonresident DAV deer and elk tags are not subject to statewide quotas like other nonresident deer and elk tags (IDAPA 13.01.04.550), and nonresident DAV tags are significantly lower in price than other nonresident tags. The rulemaking proposes to limit discounted tags for nonresident DAVs to 500 deer and 300 elk tags. This rulemaking would not restrict the ability of nonresident DAVs to purchase available nonresident general deer and elk tags, with purchase of a discounted nonresident DAV hunting license. This rulemaking would not also restrict the ability of nonresident DAVs to purchase discounted nonresident DAV muzzleloader or archery permits, black bear tags or turkey tags. Nonresident DAV participation in deer and elk hunts has been growing, and this rulemaking would be in concert with other Commission actions to manage nonresident participation in general to address hunter congestion. From 2016 to 2019, nonresident DAV elk tag sales increased from 910 to 1,682 and nonresident DAV deer tag sales increased from 1,149 to 1,839. Nonresident DAV deer and elk tags cost \$22.00 and \$38.00, respectively, and it is reasonable to expect continued growth in at least the near term if tags are not limited.

FEE SUMMARY: The proposed rules have no associated fees.

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

There is no fiscal impact to the state general fund because IDFG licensing fees are managed in a dedicated fund.

1. The proposed rule to change the application period for the Landowner Appreciation Program will have no fiscal impact.

2. The proposed rule to provide the Commission the authority to limit the number of nonresident DAV deer and elk tags would cap potential revenue to the Department's Fish and Game fund from sales of these tag types and related nonresident DAV hunting licenses. All future year revenue from sales of these tag types would likely be lower than 2019 and 2020 tag sales, unless nonresident DAVs choose to still purchase nonresident DAV hunting licenses and equivalent amount of general tag items that would otherwise be unsold. If nonresident DAVs purchase other nonresident items instead of nonresident DAV tags (once nonresident DAV deer and elk tags sell out), Department revenue from license and tag sales to nonresident DAVs could remain neutral or increase.

Descriptive summary of fiscal impact, based on 2019 tag sales:

- Current tag sales framework (unlimited number of nonresident DAV deer and elk tags available):
 - Revenue from 2019 nonresident DAV deer tag sales: 1,839 tags at \$22.00 = \$40,458.
 - Revenue from 2019 nonresident DAV elk tag sales: 1,682 tags at \$38.00 = \$63,916.
 - Total 2019 nonresident DAV deer and elk tag sales = \$104,374.
- Proposed tag sales framework (restricted number of discounted deer and elk tags available):
 - Revenue from sale of 500 nonresident deer tag sales = 500 tags at \$22.00 = \$11,000.
 - Revenue from sale of 300 nonresident elk tag sales = 300 tags at \$38.00 = \$11,400
 - Total revenue = \$22,400
- Potential revenue reduction from above:
 - \$104,374 - \$22,400 = (\$81,974).
- Revenue neutral example of estimated revenue from the sale of 90 deer and 80 elk tags to nonresident DAV's at regular nonresident prices (once the discounted 500 deer and 300 elk tags sell out):
 - 90 deer tags: 90 tags at \$350.00 = \$31,500
 - 80 elk tags: 80 tags at \$650.00 = \$52,000
 - Total Revenue = \$83,500
- Net impact from above example:
 - (\$81,974) + \$83,500 = \$1,526 or roughly revenue neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2020 Idaho Administrative Bulletin, [Vol. 20-6, page 28](#). This Notice identified the opportunity to provide rulemaking input during a 21-day comment period. The agency received 482 responses via on-line submissions regarding the proposal to change the application period for Landowner Appreciation Program controlled hunt tags. The agency received 1,121 responses via on-line submissions regarding the proposal to provide the Commission the authority to limit the number of deer and elk tags made available annually to nonresident Disabled American Veterans (DAV) at discounted prices. The Notice also identified the opportunity for people to express interest in participating in negotiated rulemaking meetings. No commenter stated interest in negotiated rulemaking meetings. Before advancing proposed rules, the agency provided an opportunity for in-person comment at a public hearing held during the quarterly meeting of the Commission in Idaho Falls on July 22, 2020. Pursuant to Section 67-5221, Idaho Code, the agency proceeded with proposed rulemaking.

INCORPORATION BY REFERENCE: Not Applicable

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2020.

Dated this 31st day of July, 2020.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-2002

400. LANDOWNER APPRECIATION PROGRAM (LAP).

01. Property and Landowner Registration. (3-20-20)

a. Only landowners who have registered their eligible property with the Department are eligible to apply for LAP controlled hunt tags for deer, elk, pronghorn, and/or black bear. Registered landowners must notify the Department of any changes in property ownership or eligibility. (3-20-20)

b. Registration of an eligible property and landowner applicant will be on a form prescribed by the Department. The landowner must submit the registration form; a copy of the deed(s) and the most recent tax assessment(s) describing the eligible property and showing the name(s) of the owner(s); and a map of the eligible property to the Department regional office. Department personnel will certify the registration and land description and return a copy to the landowner. (3-20-20)

c. If the person registering is an authorized corporate or partnership representative, the registration will include written verification from the board of directors, partnership, or an officer of the corporation, other than himself, verifying that he is authorized to register the property and eligible applicants. (3-20-20)

02. Hunt Areas. LAP controlled hunt tags will be issued only for those controlled hunt areas designated by the Commission as eligible for such tags. (3-20-20)

03. Tag Eligibility. Landowners may receive LAP controlled hunt tags only for the species and sex that use the eligible property and only for LAP hunt areas in which the registered property is located. (3-20-20)

04. Controlled Hunt Applications. Applications for LAP controlled hunt tag(s) will be on a form prescribed by the Department. (3-20-20)

a. Applications from landowners with six hundred forty (640) acres or more will be accepted on or after ~~June~~ **May** 15 of each year. Applications submitted in person or mailed to the Department main office or any Regional Office, postmarked not later than ~~July~~ **June** 15 of each year, will be entered in the random drawing for LAP controlled hunt tags. Each application will be entered in the random drawing one (1) time based upon each six hundred and forty (640) acres of eligible property registered by the landowner that are within the LAP controlled hunt area. ~~For example, if a landowner has six thousand four hundred (6,400) eligible acres, the application will be entered into the random drawing ten (10) times.~~ (3-20-20)()

b. One (1) application may be submitted by a landowner with eligible property consisting of six hundred forty (640) acres to four thousand nine hundred ninety-nine (4,999) acres. A second application may be submitted for eligible property consisting of five thousand (5,000) acres or more. (3-20-20)

05. Left Over Tags. Landowners with eligible property consisting of three hundred twenty (320) acres or more may apply for left-over tags following the random draw. Written applications will be accepted beginning on the first business day on or after August 15 of each year on a first-come, first-served basis, provided they are accompanied by the appropriate application fee as specified in Section 36-416, Idaho Code. (3-20-20)

06. Issuance of Controlled Hunt Tag(s). (3-20-20)

a. Once the Commission has determined the number of controlled hunt tags to be issued in any controlled hunt area, an additional ten percent (10%) of the number of controlled hunt tags may be issued as LAP tags. In subsequent years up to twenty-five percent (25%) of the number of controlled hunt tags may be issued only if the hunt is over subscribed by eligible LAP applicants. (3-20-20)

b. Where the number of LAP applicants exceeds the number of LAP controlled hunt tags available in an area, successful applicants will be determined by drawing. All eligible landowners in the drawing will be considered for one (1) tag before any landowner is eligible for a second tag. (3-20-20)

- c. No more than two (2) LAP controlled hunt tags may be issued to any eligible landowner. (3-20-20)
- d. Only one (1) leftover LAP controlled hunt tag may be issued for eligible property consisting of between three hundred twenty (320) and six hundred thirty-nine (639) acres within a LAP controlled hunt area. Only one (1) LAP controlled hunt tag may be issued for eligible property consisting of between six hundred forty (640) and four thousand nine hundred ninety-nine (4,999) acres within a LAP controlled hunt area. One (1) additional controlled hunt tag may be issued to a landowner or designated agent(s) for eligible property in excess of five thousand (5,000) acres within a LAP controlled hunt area. No landowner or designated agent(s) is eligible to receive more than one (1) LAP controlled hunt tag for one (1) species in a calendar year. (3-20-20)
- e. A successful landowner, corporate or partnership representative drawing a LAP controlled hunt tag may designate an eligible individual to whom the controlled hunt tag will be issued. (3-20-20)
- 07. Sale or Marketing Unlawful.** It is unlawful to sell or market LAP controlled hunt tags. In addition to any statutory penalties, a violator of this provision will not be eligible to participate in the LAP program for three (3) years. (3-20-20)
- 08. Application of Controlled Hunt Restrictions.** (3-20-20)
- a. The restriction that applying for a moose, bighorn sheep, or mountain goat controlled hunt makes the applicant ineligible to apply for any other controlled hunt does not apply to persons who are otherwise eligible to apply for a LAP controlled hunt tag. (3-20-20)
- b. LAP controlled hunts are exempt from limits or quotas on nonresident tags. (3-20-20)
- c. LAP controlled hunt tags are exempt from the one (1) year waiting periods for deer, elk and pronghorn controlled hunt applications under IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals," Section 257. (3-20-20)
- 09. Special Restrictions.** Any person hunting with a LAP controlled hunt tag may hunt only within the boundaries described in the LAP controlled hunt area. Bag and possession limits set forth in IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals," Section 200, apply to holders of LAP controlled hunt tags. (3-20-20)

(BREAK IN CONTINUITY OF SECTIONS)

550. NONRESIDENT DEER AND ELK TAG QUOTAS.

- 01. General Hunt Tag Quotas.** The following number of general hunt ~~deer tags and elk~~ tags will be set aside annually and reserved for sale to nonresidents: ~~(3-20-20)~~ ()
- a. Fourteen thousand (14,000) total deer tags (regular and white-tailed deer tags); (3-20-20)
- b. Twelve thousand eight hundred fifteen (12,815) total elk tags (A and B tags); (3-20-20)
- c. One thousand five hundred (1,500) white-tailed deer tags, available only upon sell out of deer tags referenced in Subsection 550.01.a. (3-20-20)
- 02. Disabled American Veteran Hunt Tag Quotas.** The following number of disabled American veteran general hunt tags will be set aside annually and reserved for sale to eligible nonresidents. ()
- a. Five hundred (500) total disabled American veteran deer tags (regular and white-tailed deer tags); ()
- b. Three hundred (300) total disabled American veteran elk tags (A and B tags). ()

023. Exceptions. ~~Sales of nonresident general hunt deer and elk tags~~ Tag sales to the following persons will not be counted in the quotas in Section 550 of these rules: ~~(3-20-20)~~ ()

a. Unqualified Residents: Persons who have moved into Idaho and by notarized affidavit show proof of their intent to become bona fide Idaho residents but are not yet qualified to purchase a resident license. (3-20-20)

b. Designated Buyers of unused nonresident tags to which the quota has already applied: an unused nonresident general hunt deer or elk tag, accompanied by a notarized affidavit stating that the tag buyer has not hunted, may be designated to another nonresident for purchase at the regular tag price, by the original buyer or an outfitter or guide retained by the original buyer, or absent such designation, may be sold by the Department on a first-come, first-serve basis. (3-20-20)

c. Holders of resident lifetime license certificates who are no longer Idaho residents. (3-20-20)

d. Holders of nonresident junior mentored ~~and disabled American veteran~~ tags. ~~(3-20-20)~~ ()

IDAPA 13 – DEPARTMENT OF FISH AND GAME
13.01.08 – RULES GOVERNING THE TAKING OF BIG GAME ANIMALS
DOCKET NO. 13-0108-2001
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104, 36-105, 36-405, 36-408, 36-409, 36-1101(a), Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 2, 2020 Idaho Administrative Bulletin, [Vol. 20-9, pages 33-35](#).

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: Not applicable.

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

Dated this 6th day of November, 2020.

Paul Kline
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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221, Idaho Code, this agency hereby gives notice of proposed rulemaking. The action is authorized by Sections 36-104, 36-105, 36-405, 36-408, 36-409, and 36-1101(a), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2020.

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

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

The proposed rule would establish a one-year wait period for successful antelope controlled hunt applicants to be consistent with one-year wait periods for antlered deer and elk.

FEE SUMMARY: The proposed rule has no associated fees.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: Not applicable.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2020 Idaho Administrative Bulletin, Vol. 20-6, page 30. This Notice identified the opportunity to provide rulemaking input, and the agency received 849 responses via on-line submissions during a 21-day comment period. The agency's Notice also identified the opportunity for people to express interest in participating in negotiated rulemaking meetings. No commenter stated interest in negotiated rulemaking meetings. Before advancing proposed rules, the agency provided an opportunity for in-person comment at a public hearing held during the quarterly meeting of the Commission in Idaho Falls on July 22, 2020. Pursuant to Section 67-5221, Idaho Code, the agency proceeded with proposed rulemaking.

INCORPORATION BY REFERENCE: Not Applicable

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Toby Boudreau at (208) 334-2920. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2020.

Dated this 31st day of July, 2020.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-2001

257. ELIGIBILITY FOR CONTROLLED HUNT APPLICATION.

A person must possess an Idaho hunting license valid for taking game animals to apply for any controlled hunt for big game species. (3-20-20)

01. Bighorn Sheep. (3-20-20)

a. Any person whose name was drawn on a controlled hunt for any bighorn sheep is not eligible to apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. (3-20-20)

b. Any person who has killed a California bighorn ram is not eligible to apply for a California bighorn ram controlled hunt tag; and any person who has killed a Rocky Mountain bighorn ram is not eligible to apply for a Rocky Mountain bighorn ram controlled hunt tag, except any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84; and any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. (3-20-20)

c. Any person who kills a bighorn ewe is not eligible to apply for another bighorn ewe controlled hunt tag for five (5) years. The harvest of a bighorn ewe does not make the person ineligible to apply for a tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe is not eligible to apply for any bighorn ram the same year. (3-20-20)

02. Mountain Goat. (3-20-20)

a. Any person whose name was drawn on a controlled hunt for mountain goat is not eligible to apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. (3-20-20)

b. Any person who has killed a mountain goat since 1977 is not eligible to apply for a mountain goat tag. (3-20-20)

03. Moose. (3-20-20)

a. Any person whose name was drawn on a controlled hunt for moose is not eligible to apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. (3-20-20)

b. Any person who has killed an antlered moose in Idaho is not eligible to apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho is not eligible to apply for a tag for antlerless moose except that any person may apply for tags remaining unsold after the controlled hunt draw. (3-20-20)

04. Antlered-Only Deer, Antlered-Only Elk, and Pronghorn. Any person whose name was drawn on a controlled hunt for antlered-only deer, antlered-only elk, or any pronghorn (including either sex, and doe and fawn) is not eligible in the following one (1) year to apply for any other controlled antlered-only deer hunt for one (1) year any controlled hunt for the respective species drawn (antlered-only deer, antlered-only elk, or any pronghorn). ()

i. Exceptions, that a person may draw in the previous year remains eligible to apply for an antlered-only deer tag controlled hunts in the second application period, controlled hunts with an unlimited number of tags, or Landowner Appreciation Program hunts. or Such person is also eligible to purchase a leftover antlered-only deer tag the following year or Governor's Wildlife Partnership Tag. (3-20-20) ()

~~05. Antlered-Elk. Any person whose name was drawn on a controlled antlered-only elk hunt is not~~

eligible to apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does not apply to controlled hunts with an unlimited number of tags, Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. (3-20-20)

065. Grizzly Bear. No person who has killed a grizzly bear in Idaho may apply for a grizzly bear tag. (3-20-20)

076. Black Bear. Any nonresident applying for a controlled black bear hunt who wishes to use hounds must separately apply for a Hound Hunter Permit, subject to applicable limitations of IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (3-20-20)

087. Landowner Permission Hunts. Any person applying for a landowner permission hunt must have a permission slip including the name, address, and signature of a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. (3-20-20)

098. Youth Only Hunts. Youth-only controlled hunt application eligibility is limited to persons nine (9) to seventeen (17) years of age, provided they will be ten (10) to seventeen (17) years of age during the hunt for which they apply. A nine (9) year old cannot participate in the hunt until turning age ten (10). A person who turns eighteen (18) years of age during the hunt may continue to participate through the end of the youth-only controlled hunt. A person sixty-five (65) years of age or older with a senior or disabled combination or hunting license may apply during a second application period for youth-only controlled hunts or purchase leftover youth-only controlled hunt tags on a first come, first served basis. (3-20-20)

109. Outfitter Allocated Hunts. Any person must have a written agreement with an outfitter to submit an application for an outfitter allocated controlled hunt. (3-20-20)

110. Multiple Applications. (3-20-20)

a. Any person applying for a bighorn sheep, mountain goat, grizzly bear, or moose controlled hunt is not eligible to apply for any other controlled hunt in the same year, except Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in the second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk, and pronghorn controlled hunt permit sales. (3-20-20)

b. Any person may apply for both a controlled hunt tag and a controlled hunt extra tag for the same big game species. (3-20-20)

IDAPA 13 – DEPARTMENT OF FISH AND GAME
13.01.09 – RULES GOVERNING THE TAKING OF GAME BIRDS
DOCKET NO. 13-0109-2002
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rule Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-103, 36-104, 36-408, 36-409, 36-1101, and 36-1102, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 2, 2020 Idaho Administrative Bulletin, [Vol. 20-9, pages 36-40](#).

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

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

Dated this 6th day of November, 2020.

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221, Idaho Code, this agency hereby gives notice of proposed rulemaking. The action is authorized by Sections 36-103, 36-104, 36-408, 36-409, 36-1101, and 36-1102, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2020.

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

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

1. The proposed rule would establish consistent requirements for use of game bird tags authorized by statute (Section 36-409(c), Idaho Code) and establish mandatory check requirements for swan (prompted by legislation adopted to support federal approval of swan seasons).
2. The proposed rule would designate two special waterfowl hunting days for veterans and active military (prompted by 2019 federal legislation allowing states to make such designations).
3. The proposed rule would delay the opening date for pheasant season for all nonresident license holders. This citizen-petitioned change by residents of Franklin/Oneida Counties would expand by rule the statutory (Section 36-407(e), Idaho Code) 5-day delayed opener for nonresident small game license holders.
4. The proposed rule would simplify the agency's game tag framework for hunting turkey.

FEE SUMMARY: The proposed rules have no associated fees.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: Not applicable.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2020 Idaho Administrative Bulletin, Vol. 20-6, page 31. This Notice identified the opportunity to provide rulemaking input during a 21-day comment period. The agency received 365 responses via on-line submissions regarding the proposal to establish consistent requirements for use of game bird tags and establish mandatory check requirements for swan. The agency received 485 responses via on-line submissions regarding the proposal to designate two special waterfowl hunting days for veterans and active military. The agency received 480 responses via on-line submissions regarding the proposal to delay the opening date for pheasant season for all nonresident license holders. The agency received 440 responses via on-line submissions regarding the proposal to simplify the agency's game tag framework for hunting turkey. The agency's Notice also identified the opportunity for people to express interest in participating in negotiated rulemaking meetings. No commenter stated interest in negotiated rulemaking meetings. Before advancing proposed rules, the agency provided an opportunity for in-person comment at a public hearing held during the quarterly meeting of the Commission in Idaho Falls on July 22, 2020. Pursuant to Section 67-5221, Idaho Code, the agency proceeded with proposed rulemaking.

INCORPORATION BY REFERENCE: Not Applicable

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Toby Boudreau at (208) 334-2920. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2020.

Dated this 31st day of July, 2020.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0109-2002

011. – ~~098~~9. (RESERVED)

090. GAME BIRD TAG VALIDATION AND ATTACHMENT.

Any hunter who kills a game bird for which a game tag is required under Section 36-409(c), Idaho Code, must immediately validate the appropriate tag and securely attach the validated tag to the carcass. Tag validation means completely removing the two (2) triangles on the tag corresponding to the day and month of the kill date. The tag must remain attached to the carcass in transit or storage. ()

091. – 099. (RESERVED)

100. SAGE AND SHARP-TAILED GROUSE TAGS AND PERMITS ~~AND VALIDATIONS~~.

No person may hunt sage or sharp-tailed grouse anywhere within the state, except licensed shooting preserves, without having in possession the appropriate hunting license with tag (if required under Section 36-409, Idaho Code) or permit validation for sage grouse and sharp-tailed grouse whose fee is specified in Section 36-416, Idaho Code. (3-20-20) ()

101. MIGRATORY GAME BIRD TAGS, PERMITS, AND VALIDATIONS.

01. License Validation. No person may hunt migratory game birds anywhere within the state, without having in possession the appropriate hunting license with validation for the Migratory Game Bird Harvest Information Program and tag. (3-20-20)

~~02. Sandhill Crane Tag. (3-20-20)~~

~~a. Immediately after any sandhill crane is killed, the sandhill crane tag must be validated and securely attached to the sandhill crane. Tag validation means cutting out and completely removing two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill. (3-20-20)~~

~~b. The tag must remain attached so long as the sandhill crane is in transit or storage. (3-20-20)~~

~~03. Youth and Veteran/Active Duty Waterfowl Season. The youth waterfowl season is open only to licensed hunters with Migratory Bird validation who are eight (8) to seventeen (17) years of age, and who are accompanied in the field at all times by a licensed hunter eighteen (18) years of age or older. The Veteran/Active Duty waterfowl season is open only to licensed hunters with Migratory Bird validation who are veterans (as defined in Section 65-203, Idaho Code) or members of the Armed Forces on active duty (which does not include members of the National Guard and Reserves performing drills or training), and who carry proof of eligibility on their person, such as an official military or veteran identification card; DD214 form; or a state-issued driver's license or identification card with veteran's designation. (3-20-20) ()~~

102. WILD TURKEY TAGS, ~~STAMPS, PERMITS, AND VALIDATIONS~~.

No person may hunt wild turkey without having in possession the appropriate hunting license; and tag, ~~and controlled hunt permit.~~ (3-20-20) ()

01. Tags. ~~There are three (3) types of t~~urkey tags available: the may be general or controlled hunt tags, extra tag, and special unit tag. A hunter may purchase one (1) general tag, two (2) extra tags, and three (3) special unit tags. The general tag and one (1) extra tag may be used during the spring general season; however, if one (1) or both go unused, the unused tag(s) may be used during the general fall season. A second extra tag may also be used during the general fall season. A general tag or an extra tag may be used with a controlled hunt permit in the spring and fall seasons. Special unit tags may be used in designated units during any season set by the Commission or in a depredation hunt when authorized by the Director. (3-20-20) ()

02. Youth General Hunts and Youth Passport Holder Hunt Eligibility. Youth-only general hunts are limited to participation by hunters who are ten (10) to seventeen (17) years of age with a valid license. (3-20-20)

a. Youth-only general hunts are limited to participation by hunters who are ten (10) to seventeen (17) years of age with a valid license. (3-20-20)

b. Hunting passport holders eight (8) to seventeen (17) years of age are eligible to participate in general season hunts, youth-only general hunts, landowner permission controlled hunts ~~with the appropriate landowner permission tag,~~ and depredation hunts. (3-20-20)()

03. Controlled Hunts. A controlled hunt permit tag for wild turkey is valid only for the take of turkey in the controlled hunt area for which the permit tag was drawn issued, and in general hunts. (3-20-20)()

a. Eligibility: The holders of hunting licenses valid for game birds are eligible to apply for spring and fall controlled hunts subject to the following restrictions: (3-20-20)

i. In the event a permit tag is issued based on erroneous information, the permit tag will be invalidated and the person will remain on the drawn list. (3-20-20)()

ii. Landowner permission controlled hunt application eligibility is limited to persons who have a signed permission slip, which includes the landowner's name and address, from a landowner who owns more than seventy-nine (79) acres in the hunt area. (3-20-20)()

iii. Youth-only controlled hunt application eligibility is limited to persons nine (9) to seventeen (17) years of age, provided they will be ten (10) to seventeen (17) years of age during the hunt for which they apply. A nine (9) year old cannot participate in the hunt until turning age ten (10). A person who turns eighteen (18) years of age during the hunt may continue to participate through the end of the youth-only controlled hunt. A person sixty-five (65) years of age or older with a senior or disabled combination or hunting license may apply on a first-come, first-served basis for leftover youth-only controlled hunt permits tags. (3-20-20)()

b. Applications: Applications for spring and fall controlled hunts may be submitted electronically through the automated licensing system at any vendor location, including Department offices, through the Internet, or via telephone, not later than March 1 for spring hunts and June 5 for fall hunts, annually. (3-20-20)

i. Duplicate license numbers will not be accepted. Applications from Holders of a Duplicate License (Type 501) will be processed only if they include original license numbers. (3-20-20)

ii. Only one (1) application per person or group will be accepted. Additional applications will result in all applicants being declared ineligible. (3-20-20)

iii. A single payment ~~(either cashier's check, money order, certified check, or personal check)~~ may be submitted to cover fees for all applications. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. (3-20-20)()

iv. A "group application" is defined as two (2) hunters applying for the same controlled hunt on the same application. (3-20-20)

v. Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (3-20-20)

c. Drawing information: Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing provided the second choice hunt applied for has not been filled. (3-20-20)

~~**04. Tag Validation.** (3-20-20)~~

~~**a. Tag and permit validation and attachment: Immediately after any wild turkey is killed, the turkey**~~

~~tag and permit, if a controlled hunt, must be validated and securely attached to the wild turkey. Tag and permit validation means cutting out and completely removing two (2) triangles on the border of each tag and permit, one (1) for the month and one (1) for the day of the kill. (3-20-20)~~

~~b. The tag and permit must remain attached so long as the turkey is in transit or storage. (3-20-20)~~

~~054. Tag Designation. (3-20-20)~~

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

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

c. The designation of the controlled hunt permit tag is not effective unless it is: (3-20-20)()

i. Made on a form prescribed by the Department and submitted either in person to any Department Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (3-20-20)

ii. Completed before the first opening hunt date for the permit tag. (3-20-20)()

d. Any child cannot be designated more than one (1) controlled hunt permit tag per calendar year. (3-20-20)()

~~06. Landowner Permission Tags. Landowner permission hunt tags will be sold on a first come, first served basis at Department offices after March 20 for spring hunts and after July 10 for fall hunts. (3-20-20)~~

103. PHEASANT TAGS, PERMITS, AND VALIDATIONS AND NONRESIDENT PARTICIPATION.

No person may hunt pheasant anywhere within the state, except licensed shooting preserves, without having in possession the appropriate hunting license and permit. (3-20-20)()

01. Upland Game Bird Permit. (3-20-20)

a. Any person eighteen (18) years of age or older hunting for or having a pheasant in his or her possession on Fort Boise, C.J. Strike, Montour, Payette River, Sterling, Market Lake, Mud Lake, Cartier, or Niagara Springs Wildlife Management Areas, or at other locations where the Department stocks pheasants, as identified by Commission proclamation, must have a valid Upland Game Bird Permit in possession. (3-20-20)

b. Permit Limit. Each Upland Game Bird Permit has a limit of six (6) cocks. Multiple permits may be purchased. (3-20-20)

c. Permit Validation. Any person harvesting a pheasant where a Upland Game Bird Permit is required must immediately validate their Permit upon reducing a pheasant to possession by entering the harvest date and location in Non-Erasable ink, and removing a notch from the permit for each pheasant taken. (3-20-20)

02. Youth Pheasant Season. The youth pheasant season is open only to licensed hunters ten (10) to seventeen (17) years of age and hunting passport holders eight (8) to seventeen (17) years of age, provided such youth hunters/passport holders are accompanied in the field at all times by a licensed hunter eighteen (18) years of age or older. (3-20-20)

03. Nonresident Participation. The Commission may set by proclamation a later season start date, of no more than five (5) days, for nonresident participation. ()

(BREAK IN CONTINUITY OF SECTIONS)

201. – ~~249~~. (RESERVED)

250. MANDATORY CHECK AND REPORT – SWANS.

Any hunter killing a swan must, within three (3) days of the date of kill, present the swan carcass (for measurement and identification) to a conservation officer, regional office or check station, and complete a harvest report. A person may authorize another person to comply with the check and report if that person possesses sufficient information to complete the report. ()

251. – 299. (RESERVED)

IDAPA 13 – DEPARTMENT OF FISH AND GAME

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

DOCKET NO. 13-0116-2002

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rule Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104, 36-1101, and 36-1103, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 2, 2020 Idaho Administrative Bulletin, [Vol. 20-9, pages 45-47](#).

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: Not applicable.

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

Dated this 6th day of November, 2020.

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221, Idaho Code, this agency hereby gives notice of proposed rulemaking. The action is authorized by Sections 36-104, 36-1101, and 36-1103, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2020.

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

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

1. The proposed rule would establish additional restrictions on use of body-gripping traps (based on citizen petition by Idaho Trappers Association and others).

2. The proposed rule would simplify rules associated with use of bait for trapping furbearing, predatory and unprotected animals (based on citizen petition by Idaho Trappers Association and others). The proposed rule provides consistency with allowances for wolf trapping, unless a restriction exists in law (such as the statutory restriction on use of game parts for trapping furbearing animals).

FEE SUMMARY: The proposed rules have no associated fees.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: Not applicable.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking, was published in the June 3, 2020 Idaho Administrative Bulletin, [Vol. 20-6, page 35](#). This Notice identified the opportunity to provide rulemaking input during a 21-day comment period. The agency received 549 responses via on-line submissions regarding the proposal to establish additional restrictions on use of body-gripping traps. The agency received 393 responses via on-line submissions regarding the proposal to simplify rules associated with use of bait for trapping furbearing, predatory and unprotected animals. The Notice also identified the opportunity for people to express interest in participating in negotiated rulemaking meetings. No commenter stated interest in negotiated rulemaking meetings. Before advancing proposed rules, the agency provided an opportunity for in-person comment at a public hearing held during the quarterly meeting of the Commission in Idaho Falls on July 22, 2020. Pursuant to Section 67-5221, Idaho Code, the agency proceeded with proposed rulemaking.

INCORPORATION BY REFERENCE: Not Applicable

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Toby Boudreau at (208) 334-2920. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2020.

Dated this 31st day of July, 2020.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0116-2002

400. METHODS OF TAKE.

01. Furbearing Animals. No person may take beaver, muskrat, mink, marten, or otter by any method other than trapping. No person may hunt any furbearing animal with or by the aid of artificial light. (3-20-20)

02. Hunting. No person hunting furbearing animals or predatory or unprotected wildlife may hunt with dogs, except in accordance with IDAPA 13.01.15, "Rules Governing the Use of Dogs." (3-20-20)

03. Trapping. No person trapping furbearing animals or predatory or unprotected wildlife may: (3-20-20)

a. Use for bait or scent, any part of a ~~domestic or wild origin~~ game bird, big game animal, upland game animal, game fish, or protected nongame wildlife: EXCEPT: ~~(3-20-20)~~ ()

i. Furbearing animals or predatory or unprotected wildlife may be trapped with bait, lures, or other attractants when not prohibited by Section 36-1103(a), Idaho Code. ()

ii. Furbearing animals or predatory or unprotected wildlife may be trapped near a big game animal that has died naturally and the carcass has not been repositioned for trapping purposes. Natural causes do not include any man-caused mortality. ()

b. Use any set within thirty (30) feet of any visible bait. (3-20-20)

c. Use a dirt hole ground set with bait unless the person ensures that the bait remains covered at all times to protect raptors and other meat-eating birds from being caught accidentally. (3-20-20)

d. Use live animals as a bait or attractant. (3-20-20)

e. Place any ground sets on, across, or within ten (10) feet of the edge of any maintained unpaved public trail. (3-20-20)

f. Place any ground set on, across, or within any public highway as defined in Section 36-202, Idaho Code; except ground sets may be placed underneath bridges and within and at culverts that are part of a public highway right-of-way. (3-20-20)

g. Place any ground set incorporating snare, trap, or attached materials within three hundred (300) feet of any designated public campground, trailhead, paved trail, or picnic area; except cage or box live traps may be placed within these areas as allowed by city, county, state, and federal law. (3-20-20)

h. Place or set any ground set snare without a break-away device or cable stop incorporated within the loop of the snare. (3-20-20)

i. Place any ground set incorporating a foothold trap with an inside jaw spread greater than nine (9) inches. (3-20-20)

j. Place or operate, except as a waterset, any body-gripping trap that has a maximum jaw opening, when set, of greater than seven and one-half (7 1/2) inches measured from the inside edges of the body-gripping portions of the jaws, within thirty (30) feet of any bait, lure, or other attractant. ()

k. Place or operate, except as a waterset, any body-gripping trap that has a maximum jaw opening, when set, greater than six and one half (6 1/2) inches and less than seven and one-half (7 1/2) inches measured from the inside edges of the body-gripping portions of the jaws, unless: ()

i. The trap is in an enclosure and the trap trigger is recessed seven (7) inches or more from the top and front most portion of the open end of the enclosure; ()

- ii. No bait, lure, or other attractant is placed within thirty (30) feet of the trap; or ()
- iii. The trap is elevated at least three (3) feet above the surface of the ground or snowpack. ()

IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

24.35.01 – RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 24-3501-2000

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rule Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 36-2107, Idaho Code.

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

This pending rule adopts and re-publishes the following existing rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 25.01.01, now indexed as IDAPA 24.35.01, rules of the Idaho Outfitters and Guides Licensing Board:

IDAPA 24.35

- 24.35.01 *Rules of the Outfitters and Guides Licensing Board.*

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the Sept. 16, 2020, Idaho Administrative Bulletin, [Vol. 20-9SE, pages 1655-1686](#). These rules are necessary for the agency to carry out its statutory duties and to protect the public health, safety, and welfare and conservation of wildlife and range resources in the State of Idaho.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lori Thomason at (208) 327-7380.

Dated this 14th day of October, 2020.

Lori Thomason
Executive Director
Outfitters and Guides Licensing Board
P.O. Box 83720
Boise, Idaho 83720-0036
Phone: (208) 327-7380
Fax: (208) 488-7528

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 36-2107, 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 25.01.01, now indexed as IDAPA 24.35.01, rules of the Idaho Outfitters and Guides Licensing Board with amendments necessary to comply with H426 that was passed during the 2020 Regular Legislative Session:

IDAPA 24.35

- 24.35.01 *Rules of the Outfitters and Guides Licensing Board.*

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(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. However, the Board conducted negotiated rulemaking and held three public hearings regarding the rule changes needed to implement H426, which changed how the Board designates allocated deer and elk tags to licensed outfitters.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lori Thomason at (208) 327-7380.

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 DOCKET NO. 24-3501-2000

24.35.01 – RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

000. LEGAL AUTHORITY.

These rules have been promulgated in accordance with the Idaho Administrative Procedures Act and pursuant to authority granted in the Outfitters and Guides Act. ()

001. TITLE AND SCOPE.

These rules are titled IDAPA 24.35.01, “Rules of the Outfitters and Guides Licensing Board.” The purpose is to implement, administer, and enforce the Act to establish uniform standards for licensing outfitted and guided activities to protect the public and protect, enhance, and facilitate management of Idaho's fish, wildlife, and recreational resources. ()

002. DEFINITIONS.

The definitions set forth in Section 36-2102, Idaho Code, are applicable to these rules. In addition, the following terms have the meanings set forth below: ()

01. Act. Title 36, Chapter 21, Idaho Code, commonly known as the Outfitters and Guides Act, as amended. ()

02. Authorized Person. An investigator or enforcement agent in the employ of the Board, a conservation officer of the IFGC, or any local, state, or federal law enforcement officer. ()

03. Booking Agent. Any individual, firm, business, partnership, or corporation that makes arrangements for the use of the services of a licensed outfitter and receives compensation therefore. A booking agent does not supply personnel or facilities and services to outfitter clientele. ()

04. Classified River. For the purpose of these rules, specific sections of some whitewater river or streams which are considered more hazardous than others have been designated “classified.” Classified rivers are denoted by an asterisk (*) in the list of rivers contained in Subsection 059.01. ()

05. Compensation or Consideration. The receipt or taking of goods, services, or cash in exchange for outfitted or guided activities. A bona fide charging of out-of-pocket travel expenses by members of a recreational party is not deemed compensation. However, such out-of-pocket expenses may not include depreciation, amortization, wages, or other recompense. ()

06. Designated Agent. A licensed individual who is employed as an agent by any person, firm, partnership, corporation, or other organization or combination thereof that is licensed as an outfitter and who, together with the licensed outfitter, is responsible and accountable for the conduct of the licensed outfitter's operations. ()

07. Enforcement Agent. An individual employed by the Board having the power of peace officers to enforce the provisions of the Act and these Rules. ()

08. Facilities and Services. The provision of personnel, lodging (tent, home, lodge, or hotel/motel), transportation (other than by commercial carrier), guiding, preparation and serving of food and equipment, or any other accommodation for the benefit of clientele in the conduct of outdoor recreational activities as designed in Section 36-2102(b), Idaho Code. ()

09. First Aid Card. A valid card or other evidence demonstrating that the individual has successfully completed an applicable American Red Cross course or equivalent course that is acceptable to the Board. ()

10. Fishing. Fishing activities on those waters and for those species described in the rules of the IFGC, IDAPA 13.01.11, “Rules Governing Fish,” general fishing seasons and any anadromous fishing rules; for purposes of the Act, fishing is defined as follows: ()

a. Anadromous fishing means fishing for salmon or steelhead trout. ()

b. Float boat fishing means the use of floatboats without motors for the conduct of fishing as a major activity on those waters open to commercial activities as set forth in Section 059. ()

c. Fly fishing means a licensed activity restricted to the use of fly fishing equipment and procedures, as defined by IFGC rules. ()

- d. Incidental fishing means fishing conducted as a minor activity. ()
- e. Power boat fishing means the use of power boats in conduct of fishing as a major activity on those Idaho waters open to commercial outfitting activities as set forth in Section 059. ()
- f. Walk and wade fishing means fishing conducted along or in a river, stream, lake or reservoir, and may include the use of personalized flotation equipment, but does not include the use of watercraft. ()
11. **Float Boats.** Watercraft (inflatable watercraft, dories, drift boats, canoes, catarafts, kayaks, sport yaks, or other small watercraft) propelled by, and moving with the stream flow, maneuvered by oars, paddles, sweeps, pike poles or by motors for downstream steerage only. Downstream steerage does not include holding or upstream travel of a watercraft with a motor. Excluded as float boats are personal flotation devices, innertubes, air mattresses, or similar devices. ()
12. **Hazardous Excursions.** Outfitted or guided activities conducted outside municipal limits in a desert or mountainous environment that may constitute a potential danger to the health, safety, or welfare of participants involved. These activities include, but are not limited to: day or overnight trailrides, backpacking, technical mountaineering/rock climbing, cross-country skiing, backcountry alpine skiing, llama and goat packing, snowmobiling, survival courses, guiding courses, rescue courses, fishing courses, motored and non-motored cycling, wagon rides, sleigh rides, and dog sled rides. ()
13. **Hunting.** The pursuit of any game animal or bird and all related activities including packing of client camp equipment, supplies, game meat and clients to and from a hunting camp. ()
14. **IFGC.** The Idaho Department of Fish and Game or the Idaho Fish and Game Commission. ()
15. **Minor Amendment.** All outfitter license amendment requests that can be processed by the Board without requiring outside research or recommendation of a land managing agency or other agency before the Board takes final action on said amendment request. ()
16. **Major Activity.** A licensed activity, the nature of which requires a significant commitment of time and effort by an outfitter in its execution and is intended to provide a significant amount of income to an outfitter. ()
17. **Major Amendment.** All outfitter license amendment requests requiring Board research or recommendation of a land management agency or other agency before the Board takes final action on the amendment request. ()
18. **Minor or Incidental Activity.** A licensed activity the nature of which is carried out in conjunction with a major activity, but is not the primary purpose of the excursion. ()
19. **New Opportunity.** A proposed commercial outfitted activity to be conducted in an area where no similar commercial outfitted activity has been conducted in the past. ()
20. **Operating Area.** The area assigned by the Board to an outfitter for the conduct of outfitting activities. ()
21. **Operating Plan.** A detailed schedule or plan of operation which an outfitter proposes to follow in the utilization of licensed privileges, areas, or activities. (See Subsection 018.03). ()
22. **Out-of-Pocket Costs.** The direct costs attributable to a recreational activity. Such direct costs do not include: ()
- a. Compensation for either sponsors or participants; ()
- b. Amortization or depreciation of debt or equipment; or ()

- c. Costs of non-expendable supplies. ()
- 23. **Power Boats.** All motorized watercraft used on Idaho waters open to commercial outfitting activities. Excluded as power boats are hovercraft, jetskis or similar devices, and float boats using motors for downstream steerage. ()
- 24. **Third Party Agreement.** The allowing of the conduct of an outfitted or guided activity by the outfitter licensed to conduct those activities by any persons not directly employed by said outfitter. (See Section 023). ()
- 25. **Trainee.** A person not less than sixteen (16) years of age pursuing the necessary experience or skill qualifications for a guide license. A trainee may not provide any direct guiding services for clients, but may assist while under direct supervision. ()
- 26. **Training Log.** A form approved by the Board and completed in detail and attested to by the outfitter documenting the training completed by a person pursuing training or licensure as a guide pursuant to these rules. The log is maintained and made available for inspection by the Board or its agent by the outfitter during the time the guide is employed by the outfitter and for one (1) complete license year following the termination of employment of the guide, and for three (3) years from the date of an accident or incident jeopardizing the health, safety or welfare of a client, in which the trainee or guide is involved. ()
- 27. **Unethical/Unprofessional Conduct.** Any activity(ies) by a licensee which is inappropriate to the conduct of the outfitting or guiding profession. These activities include, but are not limited to: ()
 - a. Providing false, fraudulent or misleading information to the Board or another governmental entity regulating outfitting activities including the use or verification of allocated tags; ()
 - b. Violation of an order of the Board; ()
 - c. Failure to provide services as advertised or contracted; ()
 - d. Harassment of the public in their use of Idaho’s outdoor recreational opportunities; ()
 - e. Violation of state or federal fish and game laws or rules or to condone or willfully allow a client's violation of those laws and rules; ()
 - f. For a licensed boating outfitter or guide, violation of the Idaho Safe Boating Act (Title 67, Chapter 70, Idaho Code) and IDAPA 26.01.30 “Idaho Safe Boating Rules”; ()
 - g. Engaging in unlicensed activities or conducting outfitter/guide services outside the operating area for which the licensee is licensed; ()
 - h. Disregard for the conservation, maintenance or enhancement of fish, game, land and water resources; ()
 - i. Killing a client's game or catching a client’s fish. ()
 - j. Failure to pay a supplier of goods or services to the outfitter business; ()
 - k. Failure to pay state taxes; ()
 - l. Operating in a manner which endangers the health, safety, or welfare of the public. ()
 - m. Selling lifetime excursions, lifetime hunts, or selling of outfitted activities to an individual for the life of that individual and collecting fees accordingly. ()
 - n. Operating under a name that is not associated with the license issued by the Board; or ()

o. Interference with private landowners, public land management agencies, and/or stockmen and their rights and privileges. ()

28. Watercraft. A boat or vessel propelled mechanically or manually, capable of operating on inland water surfaces. Excluded as watercraft are hovercraft, jetskis, personal flotation devices (PFD's), or similar devices. ()

003. -- 004. (RESERVED)

005. LICENSE PRODUCTION.

A license or proof of licensure must be in possession of the licensee while engaged in outfitting or guiding and be produced upon the request of an authorized person. ()

006. FIRST AID KIT.

A first aid kit must be present and available on every outfitted excursion. ()

007. LICENSE RESTRICTIONS.

01. Qualified. All outfitters must be qualified to guide or employ a licensed guide(s) qualified for the activity(ies) for which the outfitter is licensed. ()

02. Review. An outfitter's qualifications to guide will be reviewed by the Board and, if approved, a guide license will be issued at no additional fee. ()

03. Qualifications. The qualification(s) of an outfitter or guide licensee are determined in accordance with the Act and these rules. ()

04. Limitation. A limitation in number of clientele served, operating area, or any other criteria affecting the safety, health, and welfare, of the public or viability of the fish, and wildlife, or other natural resources will be imposed in licensing where such limitation is deemed necessary by the Board in accordance with the Act and these rules. ()

05. Temporary Employment. An outfitter may employ a licensed guide who is not currently licensed under the outfitter's license in the case of temporary employment, or short term "loan" or transfer (less than fifteen (15) days duration and not on a routine basis) of a guide between outfitters, or termination of employment of a guide upon completion of the seasonal activity for which the guide was employed. The employing outfitter or authorized agent must keep written documentation of the loan or transfer and dates and times. Repeated transfers or loans of guides require a license amendment. ()

008. EMPLOYMENT OF OUTFITTERS.

An outfitter may guide for another outfitter or rent or lease equipment or services as follows: ()

01. Other Outfitter. An outfitter may guide for another outfitter when properly employed by that outfitter and approved by the Board. ()

02. Other. If an outfitter is employed to guide activities not covered by his own guide license, the outfitter must apply to the Board for a license amendment and submit the employing outfitter certification prescribed in Subsection 034.02. ()

03. No Sharing of Profits. While an outfitter is employed as a guide by another outfitter, the outfitters may not share profits or equipment and/or animals other than leased equipment and/or leased animals. An outfitter when employed as a guide may only render personal services as would any other guide. ()

04. Agreement. When an outfitter utilizes equipment from another outfitter or a guide in the provision of facilities, services and transportation to clientele, a written notice of usage must be filed with the Board including a current certificate or proof of non-owner liability insurance. ()

009. (RESERVED)

010. COMPLIANCE WITH LAWS.

All licensees must comply with all local, state, and federal laws, and they must report all violations to a law enforcement officer. In instances where violations of local, state, or federal laws have occurred, such violations will be handled in accordance with the following discretionary criteria: ()

01. Violations. An applicant who has never held an outfitter or a guide license and who has been convicted of a violation of local, state, or federal law may be required to appear before the Board. Each such conviction will be appraised and a decision to approve or deny the application will be based upon the nature and the circumstances of the violation. ()

02. Examination by Board. When a license holder is convicted of a violation of local, state, or federal law, the Board will examine the nature of the violation and the circumstances in determining whether or not a hearing will be held for the purpose of restricting, suspending or revoking the outfitter or guide license or imposing an administrative fine for any violation. Any such violator may be required to appear before the Board before a license will be issued for the following year. ()

011. (RESERVED)

012. OUTFITTER RESPONSIBILITIES.

An outfitter is responsible for: ()

01. Camps. Maintaining safe and sanitary camps at all times. ()

02. General. Providing clean, fresh drinking water, protecting all food from contamination, and disposing of all garbage, debris, and human waste in the manner prescribed by regulations concerning use of private and public lands. ()

03. Livestock Facilities. Ensuring that livestock facilities are kept separate from camp facilities, and that streams are protected from contamination. ()

04. Emergency Provisions. Ensuring that all cross-country and backcountry alpine skiing and technical mountaineering/rock climbing tours have the necessary emergency provisions with them. ()

05. Actions. The actions of all guides, and other persons, while in the scope of their employment. ()

013. -- 014. (RESERVED)

015. ANNUAL DATE, FEES, AND PAYMENT.

01. Due Date. All outfitter and designated agent license applications must be completed and received by the Board by January 31 of each year. ()

02. Penalty Fee. When a completed renewal application is filed with the Board after the last day of the license year, a penalty fee must be paid before the license is issued. ()

03. License Lapsed and Expired. All licenses expire on March 31, and when a completed outfitter application has not been received by the Board after ninety (90) days after the last day of the license year, a renewal application will not be accepted for licensure. ()

04. Payment. ()

a. Prior to the issuance of a license, an applicant must submit the appropriate fee. ()

b. The applicant must pay an annual license fee for each license issued, except for an outfitter licensed as a guide for the outfitter's operation. ()

016. -- 017. (RESERVED)

018. NEW OUTFITTER OR OUTFITTER LICENSE AMENDMENT APPLICATION.

A complete application for a new outfitter license, outfitter license major amendment, or new landowner statement in existing areas must, in addition to all other requirements include: ()

01. Name. The name(s) registered with the Idaho Secretary of State as an assumed business name, the name of the business entity, or both. ()

02. Other Signatures. Signed landowner or land manager statement from: ()

a. The affected state and federal land managers in all areas where an outfitter plans to utilize lands administered by the state or federal government (this may involve memorandum of understanding procedures as applicable to proposed operation on national forest or public domain lands); and, ()

b. Private land owners, or their agents, where an outfitter applicant proposes to use such private lands in his operation. ()

03. Operating Plan. An operating plan that includes, among other things, the following: ()

a. A list of the activities to be conducted in the operating area(s) requested. ()

b. A detailed map showing the operating area(s) requested for each activity and a worded description of the boundaries of said operating area(s), described in terms of rivers, creeks, and ridges with prominent reference coordinates (section, township, and range). ()

c. An outfitter whose operation is solely on rivers, streams, lakes or reservoirs should specify put-in and take-out points but need not send maps. ()

d. A detailed description of how and when each operating area(s) will be used for each activity. ()

e. The proposed number of guests intended to be accommodated for each activity within the proposed operating area(s). ()

f. A list of the names and locations of camps that will be used for each activity, and whether on public or private land. ()

g. A list of the basic equipment, facilities, and livestock, and proof of financial capability necessary to conduct the proposed outfitted activity or business. ()

h. The number, title (guide, lead guide, etc.), and principal activities of individuals to be employed in the business operation. ()

i. A plan to assure the safety and provide for emergency medical care of guests. ()

04. Public Need and Existing Use. Statement of the public need for the proposed service(s) in the area requested and the use by the general public and commercial use already licensed in the area. ()

05. Insurance. Current certificate or proof of insurance for the following: ()

a. Insurance coverage against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person, excluding employees, caused by the outfitter's operation, in the minimum amount of one hundred thousand (\$100,000) per accident, with the aggregate of three hundred thousand (\$300,000),

because of bodily injury or death occurring in an accident. ()

b. Insurance coverage on vehicles carrying passengers against loss resulting from liability for bodily injury or death or property damage suffered by any person caused by the outfitter's operation, in the amount of three hundred thousand (\$300,000) for vehicles carrying one (1) to fifteen (15) passengers, and in the minimum amount of five hundred thousand (\$500,000) for vehicles carrying sixteen (16) or more passengers. ()

06. Designated Agent. When the applicant is a corporation, firm, partnership, or other organization or combination thereof, the designation at least one (1) designated agent who is a qualified outfitter, covered by the outfitter's bond, and who will be responsible for the outfitting business. The designated agent must apply for and be granted a license. ()

07. Hearing. If more than one (1) applicant submits a complete application with landowner statement(s), a hearing will be held to decide the successful applicant. ()

08. Existing Operating Area. A licensed outfitter may be given priority for any opportunities within the outfitter's existing operating area boundaries. ()

019. (RESERVED)

020. EXAMINATION.

All new applicants applying for an outfitter or designated agent license must successfully pass a written and/or oral examination on the Act, the rules, and general outfitting procedures. An applicant who fails the test may retake it after a five (5) day waiting period. ()

021. (RESERVED)

022. ISSUANCE OF AN OUTFITTER LICENSE.

In order to safeguard the health, safety, and welfare of the public and for the conservation of wildlife resources, the Board may place a limit on the number of outfitter licenses issued within an operating area. ()

023. THIRD PARTY AGREEMENTS.

An outfitter may not sublet or enter into any third party agreements involving the use of his activity(ies), operating area(s), or license. ()

01. Employed. No outfitter may allow any person to conduct any of the activities for which he is licensed unless said person is employed directly by the outfitter as a guide. ()

02. Other Activities. Any arrangement wherein an outfitter licensed to conduct outfitted activity(ies) in an operating area(s) knowingly allows, condones, or otherwise abets and supports the conduct of outfitting activity(ies) by another, wherein said outfitter does not assume full and complete responsibility for all clients booked for such activity(ies), constitutes an unlawful third party agreement. Complete responsibility includes providing liability insurance to cover the client, collection of fees paid for the activity(ies), payment of user fees and taxes, and making the client aware as to who is the responsible outfitter(s). Such unlawful activity(ies) is grounds for discipline as unethical and unprofessional conduct in addition to any other penalties which may be assessed for violations of these rules or the laws of the state of Idaho. ()

03. Booking Agent. This Rule does not apply to the conduct of a booking agent or an agreement between two (2) or more outfitters in which the outfitters provide services to the same party or parties within their respective operating areas. ()

024. STANDARDS FOR NON-USE.

In order to carry out the intent of the Act to promote and encourage participation in the enjoyment and use of the state's natural resources and fish and game and ensure an outfitter adequately serves the public, the Board will monitor, prioritize, and fairly administer identified remedies based on, among other factors, interest or demand for the particular activity or area and as set forth in this rule. ()

01. Requirement. The Board may annually review the outfitter’s use reports for the preceding three (3) years to determine whether any licensed activity or operating area fall within non-use. If the outfitter falls within non-use, a “notice of non-use” may be issued to the outfitter. ()

02. Definitions. ()

a. Non-use. When an outfitter is making zero (0) or negligible use of major licensed activities for any two (2) of the three (3) preceding years unless the lack of use is due to an act of nature or because of state or federal agency restrictions on hunting or fishing that limit the ability of the outfitter to seek and accommodate clients; ()

b. Zero (0) use. No recorded use by an outfitter of their licensed area or activities; ()

c. Negligible use. An unreasonable lack of use as determined by the Board for any one (1) or more of the particular activities in the assigned operating area. Typically, use may be determined by comparison of use levels for the same activity(s) in similar operating areas. Other factors in determining use are found in Subsection 024.04. ()

03. Process. ()

a. The notice of non-use will include the activity(s) and operating area(s) that appear to be in non-use and an explanation of how the determination was made. The outfitter will be given the opportunity to correct the use records by supplying staff with evidence of use, prior to a hearing being scheduled. If adequate proof of use is not provided, the matter will be scheduled for a hearing. ()

b. When the Board determines that any activity or operating area has had zero (0) use or negligible use, certain requirements may be imposed by the Board up to and including revocation of some or all of the outfitter’s operating areas and activities. ()

04. Examples of Acceptable Use: ()

a. Paying clients participating in activities occurring within a designated operating area; ()

b. Donated trips; ()

c. Outfitter initiated applications for controlled hunts in their licensed operating area; ()

d. Outfitter initiated applications for trophy species; and ()

e. Use in conformance with a current and accepted operating plan. ()

05. Required Records. Outfitters may be required to submit client records that include the name, address, and date of activity of individual clients or groups for a period of three (3) consecutive years. ()

06. Non-Use During a Sale. Board staff reviews all full or partial business sales for non-use. If it is determined a major activity or operating area has had zero (0) or negligible use, the Board may review the sale and the issuance of a license may be denied. In some instances the Board may approve the sale with notification to the buyer that use must be established within the following two (2) out of the next three (3) years or the area or activity may be removed from their license. ()

07. Waiver of Compliance. The Board may waive compliance with the non-use standard upon a showing of good cause, including an act of nature, state or federal agency seasonal restrictions on hunting or fishing or personal circumstances such as illness or injury that limit the ability of the outfitter to seek and accommodate clients. An outfitter must apply for a waiver prior to the beginning of the license year or immediately upon the event constituting good cause. If a federal permit holder is requesting zero (0) or negligible use, the request for a waiver must be accompanied by a Land Manager’s Statement. ()

025. OUTFITTER RENEWAL.

All licenses expire on March 31 and every application for license renewal for an outfitter and designated agent must be complete and submitted by January 31 of the license year and include a use report containing an activity, use, and harvest report on the actual use during the preceding year and other information about outfitting or guiding activities. ()

026. OPERATING AREA ADJUSTMENTS.

An outfitter's operating area may be adjusted for reasons of wildlife harvest, where territorial conflict exists, or for the safety of persons utilizing the services of outfitters. ()

01. Hearing. If the Board determines that a hearing is necessary prior to the adjustment of a licensee's operating area, such hearing will be conducted in accordance with the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and all affected parties will be afforded an opportunity to participate. ()

02. Consideration. In determining whether to adjust an operating area for reasons of wildlife harvest, the Board or the hearing officer considers, among other things, the following: ()

a. Any changes in wildlife harvest, including any increase or decrease in wildlife harvest attributable to the licensee's activity(ies). ()

b. Any new limitation(s) imposed or recommendation(s) made regarding wildlife harvest in the operating area(s) by any governmental agency since the issuance of the license. ()

c. Any environmental change(s) that have occurred in the operating area(s) that affect wildlife management. ()

d. Any undesirable wildlife impact(s) that may be ameliorated by a territorial adjustment. ()

e. Any new information discovered since the issuance of the license regarding wildlife management in the operating area(s). ()

03. Consideration. In determining whether to adjust an operating area for reasons of territorial conflict, the Board or the hearing officer considers, among other things, the following: ()

a. Any incident(s) of territorial conflict and how they might be ameliorated by a territorial adjustment. ()

b. The extent of each licensee's legal use of the disputed area. ()

c. Any public or client safety concerns that might be ameliorated by or might arise from the inclusion of the disputed area as part of a particular licensee's operation. ()

d. Any environmental or operational factors that indicate which licensee will be able to make the best use of the disputed area in providing services to the public considering, among other things, each licensee's licensed activity(ies) and the relationship of that activity(ies) to the activity(ies) conducted in the disputed area, each licensee's total operating area, the financial stability of each licensee, and the accessibility of the disputed area from adjacent operating area(s). ()

e. Any recommendation(s) submitted by any governmental agency that regulates or manages land or wildlife within the disputed area. ()

04. Safety Adjustment. In determining whether to adjust an operating area for reasons of safety of persons using the services of an outfitter, the Board or hearing officer considers, among other things, the following: ()

a. Any change(s) in the environmental condition(s) in the area that may pose a threat to the health and safety of persons using the operating area. ()

b. Any change(s) in the manner or amount of public use of the operating area since the issuance of the license that may pose a threat to the health and safety of persons using the operating area. ()

c. Any change(s) in a licensee's manner of operation within the operating area that may affect clientele safety considering, among other things, change(s) in the condition(s) of the licensee's capability or equipment. ()

d. Any safety-related incident(s) that have occurred in the operating area. ()

e. Any safety concern(s) expressed by any governmental agency that regulates or manages land or wildlife within the operating area. ()

f. Any new information discovered since the issuance of the license regarding safety. ()

027. OUTFITTER LICENSE PRIORITY.

Priority for licensure in any outfitter's operating area may be maintained by submitting a complete application for a license for the ensuing license period before the expiration date of the current license. ()

028. OUTFITTER BUSINESS PURCHASE, LICENSE CONSIDERATIONS.

01. Sale of Outfitting Business. The sale of an outfitting business requires an application for a new outfitter license by the purchaser, provided that the Board may give priority for licensure to an applicant who has negotiated an agreement related to a sale with a licensee if the applicant meets all other requirements or upon documentation from a court. ()

02. Notification to Clients. When an existing operation is acquired by another outfitter, all clients who have booked with the original outfitter must be promptly notified and refunded any advanced payment, unless the client is satisfied with the new arrangements. ()

029. OUTFITTER BOND OR INSURANCE CANCELLATION.

An outfitter or designated agent must immediately notify the Board when their bond or insurance is canceled. The cancellation of an outfitter license bond or insurance by the insurer is grounds for emergency suspension of the outfitter's license under Section 67-5247, Idaho Code. ()

030. AVAILABILITY OF OUTFITTING OPPORTUNITIES.

Except as provided in other sections of this chapter, when a new opportunity or existing opportunity, which had previously been licensed to another outfitter, becomes available, the Board may use a competitive application process through a waiting list, public notice, or both to select a qualified applicant. A competitive application process may be coordinated with another governmental agency that has management or permitting authority over the opportunity. ()

01. Waiting List. The waiting list will be maintained for each individual river, lake and reservoir outlined in Section 059 and for each specific IFGC unit listed in IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho." ()

02. Placement on Waiting List. A written request, in a form specified by the Board, must be submitted to be placed on the waiting list, and a name on the waiting list will be maintained for a period of five (5) years or until December 31 of the fifth year that the name is placed on the list, whichever comes first. ()

03. Notification. When public notice is used when an opening occurs, a public announcement will be made and may be made in conjunction with notice by another governmental agency. Persons on the waiting list will be notified of the available opportunity in any competitive application process. ()

04. Application Period and Consideration. Anyone wishing to apply for the opportunity must submit a complete application or amendment, including all applicable fees, by the date specified in the notice. The Board will consider the qualifications of all applicants and in its discretion select the best qualified applicant. ()

031. -- 033. (RESERVED)

034. GUIDE APPLICATION REQUIREMENTS - GENERAL.

To be complete, an application for a guide license must: ()

01. First Aid Card. Be accompanied by an affidavit signed by the employing outfitter that the applicant will have a current, valid first aid card before they are employed as a guide. ()

02. Signatures. Be attested to by the applicant and certified by the licensed outfitter(s) who wishes to employ the applicant as a guide that the applicant: ()

a. Is qualified to perform the type of guiding activity(ies) for which the applicant seeks licensure. ()

b. Has extensive, first-hand knowledge of the operating area(s) and water(s) in or on which the applicant will be guiding. ()

c. If the applicant is land based, is able to read and understand a map and compass or operate a global positioning system (GPS) or other computerized map system. ()

d. If the applicant is water based, is proficient in reading the water and handling the type of boat required to be used. ()

e. Provide directly from the outfitter a training log or documentation demonstrating satisfaction of the training requirements pursuant to Sections 035 through 042, 044, 046, 047 and 048 of these rules, as applicable for the activities sought to be licensed to guide. ()

03. Amendment. A guide may apply for an amendment to add additional employing outfitters or additional activities by submitting complete application that includes certification from the outfitter that training requirements for the area and activity to be added have been met and proof of such training will be available at the Board's request. ()

035. GUIDE APPLICATION REQUIREMENTS - HUNTING.

A guide applicant for big game hunting may be licensed either as an apprentice guide or as a guide. ()

01. Apprentice Guide. A new applicant may be licensed as an apprentice guide to pursue training necessary for licensure as a guide by submitting a completed application form and fee. ()

02. Apprentice Guide. An apprentice guide may assist a hunting guide in the scope of training, but may not be primarily responsible for guiding a hunt. ()

03. Guide. In addition to Section 034, a new hunting guide applicant must have the following minimum training. ()

a. Been in the outfitter's operating area(s) for at least ten (10) days and is knowledgeable of trails, terrain, drainages, and game habits and habitat. ()

b. Be able to care for meat and trophies, including the ability to correctly cape an animal and with adequate training to be able to instruct and assist clients in the proper care of meat. ()

04. Upgraded. A licensed apprentice guide may apply by amendment to upgrade a guide license when the required training is completed as certified by the employing outfitter, and a copy of the completed training form is submitted to the Board. ()

036. (RESERVED)

037. BOATMAN LICENSE TRAINEES.

A trainee boatman may not obtain a guide license until training is complete and may not operate a boat except as prescribed in Section 040 and provided that the boat trainee must be in a boat operated by a licensed boatman, or one in which the operation is closely monitored by a licensed boatman. The licensed boatman need not be in the same boat during training as long as the trainee's activity is closely monitored. ()

038. FLOAT BOAT GUIDE -- UNCLASSIFIED RIVERS.

An applicant for a float boat guide on unclassified rivers and streams must have one (1) complete commercial float boat trip on each of the rivers applied for, (complete trip means the total section of river designated by the Board in Subsection 059.01), under the supervision of a float boat guide licensed for each of those rivers. ()

039. FLOAT BOAT GUIDE -- CLASSIFIED RIVERS.

A float boat guide on a classified river must be licensed as a float boatman or a float lead boatman according to his experience on that specific river. Each trip on a classified river must have a lead boat operated by a guide licensed as a lead boatman for that specific river and all other boats participating in that trip must follow the lead boat and must be operated by a guide licensed as a boatman or a lead boatman for that specific river. (Note exception for trainees in Section 040). ()

040. FLOAT BOATMAN QUALIFICATIONS -- CLASSIFIED RIVERS.

An applicant for a float boatman license on classified rivers may qualify in one (1) of three (3) ways: ()

01. General. Three (3) complete float boat trips on each of the classified rivers applied for under the direct supervision of a float boatman licensed for that river (complete trip means the total section of river designated by the Board in Subsection 059.01), or he must have had one (1) or more complete float boat trips on each of the classified rivers applied for under the direct supervision of a float boatman licensed for that river with the remaining trip(s) in a boat with no more than one (1) other trainee, following a licensed float boatman for that river, but he must not have passengers in the boat. ()

a. Allowances may be made for experience gained as a commercial boat operator on selected whitewater rivers with characteristics similar to Idaho's classified rivers; e.g. Colorado River (Grand Canyon or Cataract Canyon), Yampa River, Rogue River, American and Toulumne Rivers, other Idaho classified rivers, or the unclassified section of the Salmon River from North Fork to Corn Creek, provided the applicant has logged at least five hundred (500) miles as a commercial float boat operator on one (1) or more of those rivers. ()

b. To document this experience, a statement signed by the applicant under oath or affirmation and notarized must be recorded on a form provided by the Board office that includes precise put-in and take-out points, miles logged for each trip, and the names and addresses of the boat operators who have employed them. ()

02. Other. Logged at least five hundred (500) miles as a commercial float boat guide on any rivers applicable to Subsection 040.01.a., and must have one (1) complete float boat trip on each river applied for under the direct supervision of a float boatman licensed for that river, or in a boat with no more than one (1) other trainee, following a float boatman licensed for that river, but there must not be any passengers in the boat. (Complete trip means the total section of river designated by the Board in Subsection 059.01). ()

03. Float Lead Boatman. Or, hold a license as a float lead boatman on a classified Idaho river and complete one (1) complete float boat trip on each other classified river applied for, under the direct supervision of a float boatman licensed for that river, or in a boat with no more than one (1) other trainee, following a float boatman licensed for that river, but he must not have passengers in the boat. (Complete trip means the total section of river designated by the Board in Subsection 059.01.) ()

041. FLOAT LEAD BOATMAN QUALIFICATIONS.

An applicant for a float lead boatman license must have six (6) complete float boat trips except that upon Board approval, a licensee may train on and be licensed for a specific reach of a section only. (Complete trip means the total section or reach of a section of river designated by the Board in Subsection 059.01). One (1) trip must have been within the sixty (60) months preceding the date of the application on each of the classified rivers applied for. ()

042. POWER BOAT GUIDE.

To qualify for a power boat guide license on the following waters, an applicant must have spent the following power boating hours that are distributed as evenly as possible along the total length or section of river or area of the lake or reservoir and under the direct supervision of a power boat guide licensed for the body of water for which qualification is sought: ()

01. Classified Rivers. Fifty (50) hours on the total length of the river or section of river designated on the application by the Board for which he wishes to operate, except that an applicant may have spent twenty-five (25) hours on each section for the Salmon River from the mouth of the Middle Fork to Salmon Falls, Salmon Falls to Ludwig Rapids, and Ludwig Rapids to Vinegar Creek or Spring Bar. ()

02. Unclassified Rivers and Streams. At least ten (10) hours on the total length of the river or section of river designated by the Board on the application for which he wishes to operate. ()

03. Lakes and Reservoirs. Ten (10) hours on the lake or reservoir on which he wishes to operate. ()

04. Log. The outfitter must maintain a log of this experience recorded on a form provided by the Board, showing the dates, river, lake or reservoir, location of put-in, destination, take-out, hours logged, and signature of outfitter. ()

043. (RESERVED)

044. SKIING, NON-HAZARDOUS AND HAZARDOUS TERRAIN OUTFITTER, DESIGNATED AGENT, SKI GUIDE AND SKI GUIDE TRAINEE.

01. Applications. ()

a. An outfitter, designated agent or guide must submit an outfitter or a guide application with current outfitter operating plan, if required, ski resume, and avalanche training certificates. ()

b. The Technical Advisory Committee (TAC) will evaluate and advise the Board on the scope and appropriate designations for licensure of any application for outfitting or guiding principally in non-hazardous and hazardous terrain skiing. The TAC is a five (5) member body of qualified backcountry ski outfitters and ski guides appointed by the Executive Director and confirmed by the Board. ()

02. Designations and Qualifications for Outfitters, Designated Agents, Guides and Trainees. The designations and qualifications are as follows: ()

a. Level I ski guide (non-hazardous terrain, principally sub-alpine or skiing operations in forests). Is qualified to lead ski tours in the outfitter's operating area. One (1) year training as a ski guide assistant in a non-hazardous backcountry setting. Level I Ski Guides may work in hazardous terrain as a Level II Ski Guide Trainee under the supervision of a Level II Ski Guide. Level I Ski Guides are required to have: ()

i. Level I field-based avalanche training consisting of a twenty-four (24) hour curriculum submitted and an instructor roster; ()

ii. Knowledge of Outfitters Scope of Operation including logistics, services, terrain; and ()

b. Level II ski guide (hazardous terrain with a high degree of avalanche exposure). Has in-depth ski guiding experience on hazardous terrain and has the following qualifications: ()

i. Two (2) winter seasons training with licensed Level II Ski Outfitter or Guide or equivalent work experience with another Level II ski operation which conduct services principally in hazardous or avalanche terrain; ()

ii. Advanced First Aid, WFR, or EMT of a minimum of forty-eight (48) hours; ()

iii. Level 1 and Level II field-based avalanche training consisting of at least forty-eight (48) hours curriculum with a submitted instructor roster; ()

iv. Knowledge of the Outfitters Scope of Operation including logistics, services, terrain; and ()

03. Outfitters. Outfitters who conduct winter ski-based operations may be designated as: ()

a. Level I: self-propelled, with snowcat, or with snowmobile assisted including day skiing, hut skiing in non-hazardous terrain; ()

b. Level II: self-propelled including day skiing, hut skiing, multi-day expeditions, in hazardous terrain; or ()

c. Level II skiing operations with snowcats, helicopters, or ski from out of bounds from ski areas. ()

04. Outfitters Plan of Operation. The outfitter’s operating plan will include a plan for snowpack, terrain and avalanche safety assessment, additional transport utilized (i.e., snowmobiles, snowcats, helicopters) and instruction and training plans of guides working around related equipment, and any additional safety and training standards for guides. ()

05. Field Supervisor. The Outfitter must employ at least one individual acting as a field supervisor who is a working Guide with the appropriate level of licensing for the operation and a minimum of five (5) years working at that level of guiding as to the scope of the operation, unless the outfitter or Designated Agent has this experience. ()

06. Ski Guide Trainee. An outfitter may employ an unlicensed trainee, provided the trainee may only assist when under the direct supervision of a licensed guide and a trainee may not provide guided services to clients. A trainee who applies for licensure must have thirty (30) days experience with a licensed ski guide in the outfitter’s operating area and meet all other qualifications of Section 044. ()

045. (RESERVED)

046. TECHNICAL MOUNTAINEERING/ROCK CLIMBING GUIDE.

Any applicant for a technical mountaineering/rock climbing guide license must submit to the Board a detailed explanation of the applicant’s qualifications, experience, and training. ()

047. SNOWMOBILING GUIDE.

An applicant for a snowmobiling guide license must: ()

01. Snowmobiling Techniques. Have working knowledge of snowmobiling techniques; ()

02. Avalanche. Have good leadership qualities and be knowledgeable in regards to potential avalanche conditions and proper route selection; ()

03. Hypothermia. Be knowledgeable in the treatment of hypothermia and in winter survival techniques; and ()

04. Mechanics. Have knowledge of the mechanical characteristics of snowmobiles and other equipment being used. ()

048. POWER BOAT FISHING GUIDE -- (LAKES AND RESERVOIRS).

All applicants for a power boat fishing guide license must possess the ability and knowledge to: ()

01. Maneuver or Pilot. Maneuver or pilot a power boat upon Idaho lakes and reservoirs open to power boat fishing. ()

02. Operation. Have operated a power boat for a minimum of ten (10) hours upon the lakes and reservoirs being requested. ()

03. Law. Comply with the Idaho Safe Boating Act (Title 67, Chapter 70, Idaho Code). ()

049. -- 050. (RESERVED)

051. PLACEMENT OF HUNTING CAMPS AND LEAVING OUTFITTER’S OPERATING AREA, BIG GAME HUNTING AND INCIDENTAL TRAPPING.

01. Hot Pursuit of Bear and Cougar With Hounds and Hot Pursuit Agreements. The Board may approve a minor amendment to allow an outfitter licensed for bear and cougar hunting to enter into an adjacent area with a client for hot pursuit of bear and cougar hunting when hunting with hounds, provided that the pursuit starts inside the outfitter’s licensed area. The application for minor amendment must include: ()

a. Written permission from all outfitters whose licensed area(s) will be directly involved in the hunt and which will be provided annually to the Board; ()

b. Written permission from all applicable landowners or land managers; ()

c. With prior Board approval, on a case by case basis and under special circumstances, the Board may waive the requirement for approval from the adjacent outfitter. ()

02. Camps. A hunting outfitter may not place a camp, nor cause one to be placed, in an area for which he is not licensed, except as identified in his approved operating plan. Whenever possible, camps used for big game hunting must be placed well within the operating area and not near the boundary line. ()

03. Wolf Trapping Incidental to Big Game Hunts. Outfitters licensed for big game hunting and for hunting wolves may qualify to provide wolf trapping as a hazardous excursion during the course of big game hunting as a minor (incidental) activity during open wolf trapping season as set forth below. ()

a. The Outfitter or Designated Agent and guide must have completed the mandatory wolf trapping education class prior to the activity taking place. The outfitter is responsible for maintaining the certificate(s) of completion on file and making it available for inspection. ()

b. Wolf trapping may not be advertised, promoted, or booked as an outfitted or guided service. ()

c. Outfitter or Designated Agent may not kill or allow domestic livestock or animals to be killed for use as bait while in their operating area or to use live animals as bait and will be otherwise expected to follow existing state laws regarding handling of domestic livestock. ()

d. A trapped animal must be killed quickly and humanely. It cannot be released and then “hunted” or killed. ()

e. Outfitters and guides may not directly engage a client in trapping activities handle or be involved with handling traps or trapped animals. Clients may be allowed to: ()

i. Hunt and kill any free ranging animal for which they have an appropriate license and tag, except when the animal is in or within two hundred (200) yards of the Outfitter's or guide's trap line. ()

ii. Accompany a properly licensed guide who is checking the outfitter's traps provided the client is directly accompanied by that guide at all times. ()

iii. Only observe the handling of trapped animals by properly licensed guides. ()

f. Guides who have completed the required education in Paragraph 051.01.a. are subject to the

following: ()

- i. Guides may check their employing outfitter’s or their own wolf traps as per state requirements as part of outfitted, big game hunts. ()
- ii. May not provide services to the same client for two (2) different outfitters within a five (5) day period. ()

052. BOAT TRANSPORT OF HUNTING CLIENTS.

A boatman licensee (either power or float) must not transport big game hunters to any big game hunting area unless licensed to outfit for big game hunting in that area or is in the employ of the licensed outfitter for that area. ()

053. CONTROLLED HUNTS OUTSIDE OUTFITTER’S OPERATING AREA.

The Board may authorize an outfitter who is licensed for a controlled hunt species to conduct a one-time hunt for a controlled hunt outside of the outfitter's licensed area when the outfitter submits a minor amendment fee and a written request with the following: ()

01. Written Permission. Written permission from all outfitters whose licensed area(s) will be directly involved in the hunt and all applicable landowners or land managers; ()

02. Identification of Hunter. The hunter name and address, hunting license, tag and permit numbers, controlled hunt number, and dates of hunt. ()

03. Compensation Between Outfitters. No compensation is permitted between outfitters participating in the conduct of a controlled hunt in another outfitter’s area, unless the outfitter supplies a service for that compensation. ()

054. BOAT EQUIPMENT REQUIREMENTS.

Each float or power boat must be identified as follows: ()

01. Identification. Identification recorded with the Board on the outfitter application consisting of words, names, or letters not less than three (3) inches in height, and be of a contrasting color indicating the current licensed outfitter and that is placed above the water line on each side of the bow or stern of the boat utilized by that outfitter in letters. (Does not apply to single person boats or two (2) person inflatable boats). ()

02. Clearwater. On Sections CL2 and CL3 of the Clearwater River, a sticker affixed to the surface of any boat used for anadromous fishing that is not less than eight (8) inches in height and placed immediately adjacent to the identification words, names or letters on each side of the boat towards the bow, identifying the boat as operated by a licensed outfitter. Stickers will be provided and sold annually by the Board or a vendor designated by the Board. ()

055. BOATING CLIENT/GUIDE RATIO.

All float boats, occupied by three (3) or more clients, must be under the control of a licensed guide; except a boat guide trainee may operate a boat under the direct supervision of a licensed boatman, or may train as indicated in Section 040. Kayaks and canoes and clients rowing rafts that they provide are exempt from this rule. ()

056. (RESERVED)

057. DESIGNATION OF ALLOCATED DEER AND ELK TAGS.

For the purposes of this section, an outfitting operation is an outfitter licensee whose licensed activities include hunting for the species in the area of the allocated tag being designated. When IFGC sets big game seasons all allocated tags will be designated pursuant to Section 36-2120, Idaho Code, and IDAPA 24.35.01.057. The designation applies until the next big game season setting by IFGC. ()

01. Base Allocation. The base allocation number is computed pursuant to Section 36-2120(b), Idaho Code. ()

02. Outfitted Hunter Tag Use History. Until the IFGC is able to collect and verify outfitted tag use pursuant to Section 36-408(4), Idaho Code, the use history will be based on each outfitter’s use reports, or the best data available, and subject to verification by documentation or other reliable information acceptable to the Board showing that the outfitter provided outfitting services to the hunter using the tag. ()

a. The use history for a capped hunt is the number of tags used by clients of each outfitter for the hunt with the most similar framework to the hunt for which the allocated tag is being designated. ()

b. The use history for a controlled hunt is the number of tags used by clients of each outfitter in the hunt or hunts that have the most similar framework to the hunt for which the allocated tag is being designated. Both the hunt with allocated tags and the matching hunt with non-allocated tags will be used. ()

c. Transfers – The original outfitter may transfer a designated allocated tag(s) to another outfitting operation for use that year in the same hunt and still retain credit for the tag. ()

d. Surrenders - An outfitter may surrender a designated allocated tag(s) to the undesignated tag pool at any time after notification of its tag designation. The surrendering outfitter does not retain credit for the surrendered tag unless it later uses the tag from the pool. The surrendered tag will be available to any outfitter in the same hunt pursuant to IDAPA 24.35.01.057.09. ()

03. New Hunt Allocated Tag Designation. When the IFGC initially allocates tags for a new capped or controlled hunt, allocated tags will be designated for that hunt proportionately as follows: ()

a. Divide each outfitting operation’s base allocation by the total of all base allocations in the hunt, resulting in a percentage of total use. Truncate the decimal at the hundredths place. ()

b. Multiply the percentage of total use from IDAPA 24.35.01.057.03.a. by the total number of allocated tags for the hunt, which determines the number of allocated tags designated to the outfitting operation. ()

04. Use of Previously Designated Allocated Tags. For established capped or controlled hunts, allocated tags will first be designated to each outfitting operation in an amount equal to the outfitting operation’s use of the allocated tags previously designated to it for the same hunt. ()

a. In a capped hunt, the use of previously designated allocated tags is the average use of allocated tags in the preceding two (2) years. ()

b. In a controlled hunt, the use of previously designated allocated tags is the highest year of use of allocated tags in the preceding two (2) years. ()

05. Remaining or Additional Allocated Tags. Allocated tags that were not designated pursuant to IDAPA 24.35.01.057.04 will be designated proportionately as follows: ()

a. Subtract each outfitting operation’s use of previously designated allocated tags from its base allocation number to determine the number of non-allocated tags it used; then ()

b. Divide the result by the total number of non-allocated tags used by all outfitting operations, resulting in a percentage of the total non-allocated tags used by all outfitting operations in that hunt. Truncate the decimal at the hundredths place; and finally ()

c. Multiply the percentage of total use from IDAPA 24.35.01.057.05.b. by the number of allocated tags yet to be designated, which determines the number of allocated tags designated to the outfitting operation. ()

06. Rounding. If allocated tag designation results in a partial tag, the calculation will be rounded up when a decimal equals or exceeds six tenths (.6) and rounded down when a decimal is less than six tenths (.6). When calculating the reduction to the designation of allocated tags pursuant to Section 36-2120(4), Idaho Code, the

calculation will be rounded up when a decimal equals or exceeds five tenths (.5) and rounded down when a decimal is less than five tenths (.5). ()

07. Tie-breaker. If after applying IDAPA 24.35.01.057.03-06 there is a surplus or deficit of allocated tags to be designated, the unrounded proportion, with as many decimal places as necessary, will be used as follows: ()

a. A surplus allocated tag will be designated to the outfitting operation whose unrounded proportion is the greatest. In the event there is more than one outfitting operation with the same unrounded proportion, the undesignated tag will be designated based on a random drawing between those outfitting operations. ()

b. A deficit will be resolved from the outfitting operation whose unrounded proportion is closest to six tenths (.6). If there is more than one (1) outfitting operation with the same unrounded proportion, a random drawing will be held between those outfitters. ()

08. Stipulation by Outfitters. Outfitting operations in a hunt may submit to the Board a written stipulation determining the number of allocated tags designated for each outfitting operation within that hunt. The stipulation must be signed by all eligible outfitting operations for the hunt. If the Board approves the stipulation, the stipulation will be effective until the IFGC sets the next big game season. On or before November 1 preceding the hunt, any outfitting operation may petition the Board to vacate the stipulation for good cause that would make it unconscionable or unjust to enforce the stipulation. If the Board vacates the stipulation, the allocated tags in that hunt will be designated pursuant to Section 36-2120, Idaho Code, and IDAPA 24.35.01.057. ()

09. Undesignated Tag Pool. Any designated allocated tags that are surrendered or have not been utilized by an outfitting operation on or before the tenth (10) business day prior to July 31 for a capped hunt, or on or before September 10 or the next business day for a controlled hunt, will be available in an undesignated pool for any outfitting operation, as follows: ()

a. Beginning April 10 preceding the hunt, an outfitting operation without any designated allocated tags or who has utilized all of its designated allocated tags may submit a request for an allocated tag from the pool. The request must be in such a form as designated by the Board. ()

b. Beginning April 20 preceding the hunt or next business day, an allocated tag will be designated from the pool on a first-come, first-served basis, using a waiting list when as necessary, with a maximum of two (2) allocated tags designated to each requesting outfitting operation until all other requesting outfitting operations have been served, then a requesting outfitting operation is eligible to receive a maximum of two (2) additional allocated tags from the pool, repeated until all requesting outfitting operations are served or until no tags remain. ()

10. Objection to Calculation. If an outfitting operation believes the calculation is incorrect it may object by filing a petition with the Board within fourteen (14) days from the date the notification was sent and in accordance with the Idaho administrative procedures act. The petition will include any supporting information or documentation. ()

a. All outfitting operations in the hunt in question will be notified of the petition. ()

b. The outfitting operation bears the burden of establishing that the calculation was incorrect. ()

11. Hardship Request. A written hardship request to maintain all or a portion of previous outfitted hunter tag use history may be submitted to the Board on or before the November 1 preceding the biennial IFGC big game season setting. If a hardship occurs after October 21 but prior to the hunt being completed the request may be submitted within ten (10) days of the occurrence. A hardship may include health, act of nature, state or federal restrictions on hunting or access, or other good cause that prevented or limited the outfitting operation's ability to seek and accommodate clients and impacted its use of designated allocated tags. The outfitting operation must provide any information requested by the Board to substantiate the request. ()

12. Change in Operating Area or Owner of Business. When an outfitting operation is sold or when an operating area is adjusted and designated allocated tags are associated with the affected operating area, the

associated designated allocated tags will transfer to the new owner. ()

058. NUMBER OF OUTFITTERS AND GUIDES LIMITED.

Big Lost and Little Lost Rivers and the Big Wood and the Little Wood Rivers -- All reaches from headwaters to the termination of the flow of the Big Lost and the Little Lost Rivers and all reaches of the Big Wood and Little Wood Rivers are limited to a maximum of five (5) outfitters on both rivers combined. ()

059. RIVER, LAKE AND RESERVOIR POWER AND FLOAT OUTFITTER LIMITS.

The following rivers and streams or sections that lie totally or partially within the state of Idaho are open to commercial boating operations by outfitters and guides. The Board may open other rivers and streams or sections upon a petition to adopt rules under Section 67-5230, Idaho Code. ()

01. Licensable Waters -- River Sections (BL1) Blackfoot River through (PR1) Priest River -- Table.

River/Section	Maximum No. Power	Maximum No. Float
(BL1) Blackfoot River - Morgan Bridge to Trail Creek Bridge	none	2
(BO1) Boise River, South Fork - Danskin Bridge to the Neal Bridge EXCEPT on weekends or holidays. Each outfitter may use only one (1) boat for fishing only with a maximum of two (2) fisherman. No overnight camping or walk-and-wade fishing allowed.	none	2
(BO1A) Boise River - Eckert Road Bridge to Main Street Bridge.	none	
(BO1B) Boise River - Main Street Bridge to West side of Garden City limits.	none	
(BO2) Boise River - Downstream from the west side of the Garden City municipal limits to the east side of the Caldwell municipal limits. Each outfitter may use at any time a maximum of four (4) boats for boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitters operating plan.	none	2
(CF1) Clark Fork River - Montana stateline to Lake Pend Oreille (boating closing date September 30)	4 outfitters for either power or float or combination thereof	
(CL1) Clearwater River - Lowell to the Lower Bridge at Kooskia. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. Fishing may not be conducted downstream from the Upper Bridge at Kooskia by CL1 outfitters. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.	none	5

River/Section	Maximum No. Power	Maximum No. Float
(CL2) Clearwater River - The Upper Bridge at Kooskia to the Orofino Bridge. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.	6	10
(CL3) Clearwater River - The Orofino Bridge to the mouth of the Clearwater River with the Snake River at Lewiston. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitters operating plan.	10	10
* (NFCL) North Fork Clearwater River - Kelly Forks Bridge downstream to backwaters of Dworshak Reservoir	none	4
(CDNF) Headwaters of North Fork Coeur d'Alene - Including tributaries (Independence and Tee Pee Creeks) upstream from Devils Elbow Campground. Three (3) walk and wade only licenses. Up to four (4) clients on the river at one time per license.	none	none
(CD1) Coeur d'Alene River - Devil's Elbow to South Fork confluence. Fishing limit is two (2) float boats per license with a maximum of two (2) clients at a time per boat. Two (2) additional walk and wade licenses can be issued. Walk and wade limited to a maximum of two (2) clients at a time per license.	none	1
(CD2) Coeur d'Alene River - South Fork confluence downstream to Cataldo Mission Boat Ramp. Fishing limit is one (1) float boat per license with a maximum of two (2) clients or two walk and wade clients per license at a time. Walk and wade activities do not have to be initiated from a float boat.	none	1
(CD3) Lateral (Coeur d'Alene chain) Lakes - Connected by the Coeur d' Alene river. Cataldo Mission Boat Ramp to Highway 97 Bridge. A limit of one (1) power boat per license with a maximum of two (2) clients at a time or a limit of one (1) guide per license and two (2) float tubes at a time or two (2) clients walking and wading. The walk and wade activities must be associated with the power boating.	3	none
* (JB1) Jarbidge/Bruneau Rivers	none	4
(K01) Kootenai River - Montana stateline to Canada boundary	5	5

River/Section	Maximum No. Power	Maximum No. Float
(LCL1) Little North Fork Clearwater River - Mouth of Canyon Creek to first bridge on the Little North Fork Clearwater River. Fishing only. Each outfitter may use only two (2) boats per day with a maximum of two (2) fishermen per boat.	none	2
* (LO1) Lochsa River	none	5
(MO1) Moyie River - Canada boundary to Bonners Ferry Municipal Dam (boating closing date July 20)	none	5
* (OW1) Owyhee River - Nevada stateline to Oregon stateline or South Fork to confluence with Owyhee River and continuing on to a take-out point.	none	6
(PN1) Payette River, North Fork - Payette Lakes Outlet to Hartsell Bridge. Restrictions: NO FISHING ALLOWED. Four (4) boat or ten (10) canoe limit per trip, and only two (2) trips per day per outfitter.	none	2
(PN1A) Payette River, North Fork - Cascade City Park, 1/4 mile south of Cascade on Highway 55 to Cabarton. Restrictions: Catch and release for TROUT ONLY, other species F & G rules apply. No stopping by commercial groups from 1/4 mile above to 1/4 mile below heron nesting trees. Four (4) boat or ten (10) canoe limit per trip, and only two (2) trips per day per outfitter.	none	2
(PN2) Payette River, North Fork - Cabarton to Smiths Ferry Bridge	none	5
(PS1) Payette River, South Fork - Grandjean to Deadwood River	none	5
* (PS2) Payette River, South Fork - Deadwood River to Banks	none	5
(PA1) Payette River - Banks to Black Canyon Dam	none	5
(PO1) Pend Oreille River	5	5
(PR1) Priest River - Dickensheet Campground to Priest River City	none	5

()

02. Licensable Waters -- River Sections (MF1) Middle Fork Salmon River Through (SE2) Selway

River -- Table.

River/Section	Maximum No. Power	Maximum No. Float
###(MF1) Salmon River, Middle Fork - Boundary Creek to Cache Bar on the Salmon River	none	27
(SA1) Salmon River - First bridge across Salmon River above Redfish Lake Creek to Torrey's Bar	none	6
(SA2) Salmon River - Torrey's Bar to first Highway 93 bridge above Challis. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are a part of an outfitter's operating plan.	none	5
(SA3) Salmon River - First Highway 93 bridge above Challis to Kilpatrick River access. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are a part of an outfitter's operating plan.	none	6
(SA4A) Salmon River - Kilpatrick River access to North Fork - License period from May 1 to September 30. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.	5	11
(SA4B) Salmon River - Kilpatrick River access to North Fork - License period from October 1 to April 30. Each power boat outfitter may use at any one time a maximum of one (1) boat and each float boat outfitter may use at any one time a maximum of three (3) boats.	2	8
(SA5) Salmon River - North Fork to Corn Creek	3	9
###(SA6) Salmon River - Corn Creek to Spring Bar Boat Ramp with no outfitter fishing below Vinegar Creek from September 15 through March 31 except that on a case-by-case basis, outfitter fishing may occur when permitted by the BLM and with the notification to and concurrence of the Board Executive Director.	14	31

River/Section	Maximum No. Power	Maximum No. Float
* (SA7A) Salmon River - Vinegar Creek to Hammer Creek - License period from March 15 to October 15. No power boating is allowed from the Saturday before Memorial Day through Labor Day from 10:30 a.m./Mountain Time to 5:00 p.m./Mountain Time daily between the Riggins City Boat Dock and Lucile.	10	26
* (SA7B) Salmon River - Power boats from Vinegar Creek to Spring Bar Boat Ramp and float boats from Vinegar Creek to Island Bar Boat Ramp, open from September 15 to March 31 only. Each float boat outfitter may use at any one time a maximum of three (3) boats for fishing, or two (2) additional boats for fishing when permitted by the BLM and with the notification to and concurrence of the Board Executive Director; and each power boat outfitter may use at any one time a maximum of two (2) boats for fishing, or one (1) additional boat for fishing when permitted by the BLM and with the notification to and concurrence of the Board Executive Director.	6	12
* (SA7C) Salmon River - Riggins City Park Boat Ramp to Hammer Creek. Three (3) designated outfitters may utilize float boats to fish from the Riggins City Boat Dock to Hammer Creek during the period from September 15 to March 31.	none	3
* ##(SA8) Salmon River - Hammer Creek to Heller Bar or Lewiston on the Snake River	15	35
* (SE1) Selway River - Paradise Campground to Selway Falls	none	4
(SE2) Selway River - Selway Falls to the mouth of the Selway River at Lowell. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments to these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.	none	5

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03. Licensable Waters -- River Sections (SH1) Henry’s Fork Snake River Through (TE3) Teton River -- Table.

River/Section	Maximum No. Power	Maximum No. Float
<p>(SH1) Snake River, Henry's Fork - Henry's Lake Outlet to Hatchery Ford. (Each outfitter may use at any one time a maximum of (a) eight (8) boats for fishing No more than three (3) of these boats may be used at any one time on any of the following river reaches: Henry's Lake Outlet to Island Park Dam, Island Park Dam to Last Chance, Last Chance to Osborn Bridge, and Osborn Bridge to Hatchery Ford), and (b) five (5) boats for other boating activities. The Board may approve adjustments to these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.</p>	none	7
<p>(SH2) Snake River, Henry's Fork - Mesa Falls to St. Anthony. Each outfitter may use at any one time a maximum of (a) eight (8) boats for fishing, no more than three (3) of these boats may be used at any one time on any one of the following river reaches: Mesa Falls to Warm River, Warm River to Ashton Dam, and Ashton Dam to St. Anthony, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.</p>	none	8
<p>(SH3) Snake River, Henry's Fork - No more than three (3) boats for fishing may be used by an outfitter at any one (1) time in each of the following river sections:</p> <ul style="list-style-type: none"> a) St. Anthony to Red Road Bridge Boat Access (i.e., Parker/Salem or Fort Henry) b) Red Road Bridge Boat Access to Warm Slough Boat Access c) Warm Slough Boat Access to Menan Boat Access <p>No outfitter may have more than six (6) boats on the SH3 in any one (1) day.</p> <p>When permitted by the BLM and with the notification to and concurrence of the IOGLB Executive Director, each outfitter may be allowed adjustments to the maximum boat limits in order to accommodate non-fishing boating activities (e.g., canoeing, paddle boards, and kayaks) and hazardous excursions that are part of an outfitter's operating plan. These adjustments must be reviewed and approved annually.</p> <p>IOGLB licenses are for the entire SH3 segment; a section of SH3 cannot be separated from SH3 for the purposes of selling a portion of an outfitter's business.</p>	none	4

River/Section	Maximum No. Power	Maximum No. Float
<p>(SS1) Snake River - South Fork - No more than four (4) boats per section/per day may be used by an outfitter at any one (1) time in each of the following river sections:</p> <ul style="list-style-type: none"> a) Palisades Dam to the Conant Boat Access; b) Conant Boat Access to Fullmer Boat Access. Exception: Not more than eight (8) boats would be permitted in Section (b) on the same day, provided that no more than four (4) of said boats are in this Section after 11:00 a.m. due to overnight use at designated outfitter camps; c) Fullmer Boat Access to Byington Boat Access; d) Byington Boat Access to Lorenzo Boat Access; and e) Lorenzo Boat Access to Menan Boat Access; <p>Additionally, no outfitter may have more than twelve (12) boats on the SS1 in any one day.</p> <p>A one-time per year exception after July 15 may be granted from Conant Boat Access to Byington Boat Access that would allow two (2) additional boats per section to accommodate large client groups. During this one-time exception, if the two (2) additional boats do not accommodate the large client group, additional boats must come from slots allocated to other outfitters. The maximum daily boat limit for SS1 may not be exceeded. This would require written concurrence from the BLM/USFS and the IOGLB Executive Director.</p> <p>Float boats may use motors (5HP or less) for downstream steerage only within the entire SS1 reach. Downstream steerage would not include holding or upstream travel of watercraft with a motor.</p> <p>IOGLB licenses are for the entire SS1 segment; a section of SS1 cannot be separated from SS1 for the purposes of selling a portion of an outfitter's business.</p>	None*	8**
<p>* Each licensed float boat outfitter may use one (1) supply boat (float or power) that does not carry clients. During periods of preparing overnight camps (i.e., setting up tents and portable toilet facilities, boating in grills and other cooking supplies) for the season, usually May or June of each year; and removing the same items listed above from overnight camps at the end of the season, usually October or November; multiple supply boats may be used.</p> <p>** One (1) license additional for waterfowl hunting covering both BLM and USFS managed lands and waters for the South Fork (Palisades Dam to Wolf Flats Boat Access) may be issued. This license opportunity is in addition to the eight (8) float licenses and is limited to providing waterfowl hunting during waterfowl hunting season as defined by Idaho Fish and Game Rules and where no more than two (2) float or power boat boats per day per section a and b only can be used by the outfitter at any one time for that purpose. Fishing may not be provided or conducted unless the outfitter is also licensed and permitted as one (1) of the eight (8) outfitters addressed in this rule who may not provide hunting activities. This business opportunity may be sold separately.</p>		

River/Section	Maximum No. Power	Maximum No. Float
<p>(SN1) Snake River - For each license/permit issued, no more than four (4) boats per section/per day may be used by an outfitter at any one time in each of the following river sections:</p> <p>a) Menan Boat Access to Mike Walker Boat Access (includes Federally managed lands);</p> <p>b) Mike Walker Boat Access to Gem State Power Plant (includes non-Federal lands).</p> <p>Float boats may use motors (5HP or less) for downstream steerage only within the entire SS1 reach. Downstream steerage would not include holding or upstream travel of watercraft with a motor.</p> <p>OGLB licenses are for the entire SN1 segment; a section of SN1 cannot be separated from SN1 for the purposes of selling a portion of an outfitter's business.</p>	3 outfitters either float or power or combination thereof	
<p>(SN2) Snake River - Gem State Power Plant downstream to headwaters of American Falls Reservoir</p>	3	3
<p>(SN3) Snake River - American Falls Dam to Massacre Rocks State Park</p>	3	3
<p>(SN4) Snake River - Massacre Rocks State Park to Milner Dam</p>	3	3
<p>* (SN5) Snake River - Milner Dam to Star Falls</p>	none	3
<p>* (SN6) Snake River - Star Falls to Twin Falls</p>	none	5
<p>(SN7) Snake River - Twin Falls to Lower Salmon Falls Dam</p>	3	3
<p>(SN8) Snake River - Lower Salmon Falls Dam to Bliss Dam</p>	3	5
<p>(SN9) Snake River - Bliss Dam to headwaters of C.J. Strike Reservoir</p>	5	5
<p>(SN10) Snake River - C.J. Strike Dam to Walter's Ferry</p>	5 outfitters for either power or float or combination thereof	
<p>(SN11) Snake River - Walter's Ferry to headwaters of Brownlee Reservoir</p>	5	none

River/Section	Maximum No. Power	Maximum No. Float
* (SN12) Snake River - Hells Canyon Dam to Pittsburg Landing	18	15
* (SN13) Snake River - Hells Canyon Dam to Pittsburg Landing, two (2) one-day float trips only	none	2
(SN14) Snake River - Pittsburg Landing to Heller Bar or Lewiston	19	15
(SN15) Snake River - Washington/Oregon stateline to Lewiston	Limitations pending. (This section is set aside for future rules of fishing only outfitters.)	
(SJ1) St. Joe River - St. Joe River Headwaters to Red Ives. No outfitted boating. One (1) walk and wade only fishing outfitter.	none 2	none
(SJ2) St. Joe River - Red Ives to Avery. In addition to one (1) float boat license, three (3) walk and wade only outfitters. No fishing from float boats, boat clients may fish via walk and wade.	none	1
(SJ3) St. Joe River - Avery to St. Joe City Bridge	none	2
(SJ4) St. Joe River - St. Joe City Bridge to Lake Coeur d'Alene	2	none
(SM1) St. Maries River	5	5
(TE1) Teton River - Upper put-in to Cache Bridge, motors not to exceed 10 hp	5 outfitters for either power or float or combination thereof	
(TE2) Teton River - Cache Bridge to Harrop Bridge, motors not to exceed 10 hp	6 outfitters for either power or float or combination thereof	

River/Section	Maximum No. Power	Maximum No. Float
<p>(TE3) Teton River - No more than two (2) boats per section/per day may be used by an outfitter at any one time in each of the following river sections: a), b), d), e) and f). No more than four (4) boats per section/per day may be used by an outfitter at any one time on river section c) and where two (2) boats from same outfitter must be spaced at three-hour (3) intervals:</p> <p>a) Harrop Bridge Boat Access to Felt Dam Boat Access; b) Felt Dam Boat Access to Spring Hollow Boat Access; c) Spring Hollow Boat Access to Teton Dam Site Boat Access; d) Teton Dam Site Boat Access to Hog Hollow Bridge Boat Access e) Hog Hollow Bridge Boat Access to Teton Highway; f) Teton Highway to confluence with the Henrys Fork of the Snake River.</p> <p>Note: No boat access exists at the confluence with the Henrys Fork of the Snake River. Outfitters would utilize Hibbard Bridge or Warm Slough Access on SH3. No fishing on SH3</p> <p>No outfitter may have more than eight (8) boats on the TE3 in any one day.</p> <p>Float boats may use motors not to exceed 10 hp in section a) (Harrop Bridge to Felt Dam Access) only. Float boats may use motors (5HP or less) for downstream steerage only in sections d), e) and f). Motors are not allowed in other sections. Downstream steerage does not include holding or upstream travel of watercraft with a motor.</p> <p>IOGLB licenses are for the entire TE3 segment; a section of TE3 cannot be separated from TE3 for the purposes of selling a portion of an outfitter's business.</p>	none	5

* Classified rivers

Floatboat and powerboat outfitters on these sections are considered within their area of operations when hiking from the river or fishing in tributaries away from the river, but does not include overnight activities. Conflicts with land-based outfitters will be handled on a case-by-case basis. ()

04. Other -- Table. The following lakes and reservoirs or portions thereof that lie totally or partially within the state of Idaho are open to fishing by outfitters with the following limitations:

Lake or Reservoir	Maximum No. of Operators	Maximum No. Boats per Operator per Lake or Reservoir
Lake Coeur d'Alene	8	1
Dworshak Reservoir	7	2
Hayden Lake	1	2
Henry's Lake	8	2
Island Park Reservoir	7	2
Magic Reservoir	3	2
Palisades Reservoir	10	2

Lake or Reservoir	Maximum No. of Operators	Maximum No. Boats per Operator per Lake or Reservoir
Lake Pend Oreille	11	1
Priest Lake	5	1
American Falls Reservoir	3	2
C.J. Strike Reservoir	4	2
Brownlee Reservoir	5	2
Oxbow Reservoir	3	2
Hells Canyon Reservoir	3	2

()

05. Other Lakes and Reservoirs. All other Idaho lakes and reservoirs are limited to two (2) outfitters with a maximum of two (2) boats (float or power) per outfitter. ()

060. (RESERVED)

061. TECHNICAL MOUNTAINEERING/ROCK CLIMBING.

Any outfitter applicant for technical mountaineering/rock climbing must appear before the Board to explain in full detail his qualifications, experience, plans, and areas of operation demonstrating the necessary specialized training and skill. ()

062. (RESERVED)

063. SNOWMOBILING.

In addition to other requirements, outfitters and guides for snowmobiling must ensure the following: ()

01. Non-Groomed Trails. All machines are accompanied by at least one (1) guide for one (1) through five (5) snowmachines, two (2) guides for six (6) through twelve (12) snowmachines, and one (1) additional guide for each additional ten (10) snowmachines. The maximum number of snowmachines allowed in one (1) group may not exceed thirty (30). One (1) guide leads and one (1) trails where more than five (5) snowmachines are involved. ()

02. Groomed Trails. All machines are accompanied by at least one (1) guide for one (1) through fifteen (15) snowmachines, and two (2) guides for sixteen (16) through a total of thirty (30) snowmachines. One (1) guide leads and one (1) trails where more than fifteen (15) machines are involved. The maximum number of snowmachines allowed in one group may not exceed thirty (30). ()

03. Emergency Equipment. All snowmobiling tours have with them necessary emergency equipment, tools, and spare parts for the machine(s) in use. ()

04. Reduction in Guide Ratios. An outfitter may apply to the Board to reduce the number of guides on non-groomed trails to one (1) guide for six (6) through twelve (12) snowmachines and the number of guides on groomed trails to one (1) guide for sixteen (16) through thirty (30) snowmachines, when the guide has electronic communication for summoning assistance at all times during the excursion. ()

064. AUTHORIZATION FOR GRANTING, DENIAL AND REVOCATION OF LICENSES.

01. Executive Director Authorizations. The Executive Director is authorized to grant, issue or deny, temporary authorizations, licenses and license amendments, hot pursuit agreements and designations of allocated tags with the concurrence of the Board, under the following conditions: ()

a. The Executive Director may grant and issue all routine temporary authorizations, license applications, amendments and related matters when the applicant does not have any convictions for fish and game violations or other violations of the grounds enumerated in Section 36-2113(a), Idaho Code, has not falsified or provided any misleading information to the Board, and otherwise qualifies for licensure. ()

b. The Executive Director may grant all license applications which otherwise qualify for licensure, but which have violations of the grounds enumerated in Section 36-2113(a), Idaho Code, which occurred five (5) years prior to the date of application, except that a license will not be granted by the Executive Director to an applicant who has a felony conviction of any nature, or conviction of a flagrant violation pursuant to Section 36-1402(f), Idaho Code. ()

c. The Executive Director may grant a license with probationary status for conviction of minor fish and game violations or violations enumerated in Section 36-2113(a), Idaho Code, that occurred at least five (5) years prior to the date of application, excluding felony convictions. ()

d. The Executive Director may defer granting or denying any license or related matter to the Board for action by the Board. ()

e. The Executive Director may not waive fees. ()

02. Board Conditions. The Board may grant or deny a license pursuant to the provisions of Sections 36-2109 and 36-2113, Idaho Code, under the following conditions: ()

a. The Board may grant a license to an applicant with convictions of violations enumerated in Section 36-2113(a), Idaho Code, which are over five (5) years old and may place the licensee on probation. ()

b. The Board may grant a license to an applicant with convictions of violations enumerated in Section 36-2113(a), Idaho Code, which are less than five (5) years old and may place the licensee on probation. ()

c. The Board will proceed with the denial of an applicant for a hunting or fishing outfitter or guide license or proceed with the revocation process on a licensee upon conviction of a flagrant violation pursuant to Section 36-1402(f), Idaho Code, unless unusual mitigating circumstances exist. ()

065. -- 066. (RESERVED)

067. INSPECTIONS.

Outfitter camps and equipment may be inspected at any time by an authorized person or any member of the Board with a written report submitted to the Board to ensure adequate equipment and gear is utilized and maintained in a manner which meets minimum standards of public acceptability and which meets the requirements of applicable local, state, or federal laws and rules. ()

068. ADMINISTRATIVE FINES/PROBATION/RESTRICTIONS.

01. Penalties -- Table. In addition to suspension, probation, restriction or revocation of a license, the following penalties may be applied to that licensee or those licensees found to have violated the provisions of the Act, these rules, or both.

I.C. Section 36-2113(a)	First Offense	Second Offense	Third Offense
1.	\$100 - \$500 Fine	\$500 - \$5,000 Fine	Suspension or Revocation of License

I.C. Section 36-2113(a)	First Offense	Second Offense	Third Offense
2.	Probation/Restriction of License	\$100 - \$500 Fine	\$500 - \$5,000 Fine
3.	All Penalties Are Within The Board's Discretion.		
4.	Probation/Restriction of License	\$100 - \$500 Fine	\$500 - \$5,000 Fine
5.	\$100 - \$300 Fine	\$100 - \$500 Fine	\$500 - \$5,000 Fine
6.	Probation/Restriction of License	\$100 - \$500 Fine	\$500 - \$5,000 Fine
7.	Probation/Restriction of License	\$100 - \$500 Fine	\$500 - \$5,000 Fine
8.	\$100 - \$500 Fine	\$500 - \$5,000 Fine	Suspension or Revocation of License
9.	\$100 - \$500 Fine	\$500 - \$5,000 Fine	Suspension or Revocation of License
10.	\$100 - \$500 Fine	\$500 - \$2,500 Fine	\$2,500 - \$5,000 Fine
11.	\$100 - \$300 Fine	\$100 - \$500 Fine	\$500 - \$5,000 Fine
12.	\$100 - \$500 Fine	\$500 - \$2,500 Fine	\$2,500 - \$5,000 Fine
13.	All Penalties Are Within The Board's Discretion.		
14.	\$100 - \$300 Fine	\$100 - \$500 Fine	\$500 - \$5,000 Fine

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02. Restrictions. No license will be issued while any outstanding administrative fine monies are due unless an arrangement has been made and approved by the Board for the payment of same. ()

03. Terms of Probation. Typical terms of probation are that there are no violations of local, state or federal laws or ordinances, and no amendments to the license during the term of probation, and other restrictions as the Board orders. ()

069. -- 999. (RESERVED)

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-2001

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rule Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 2, 2020, [Vol. 20-9, pages 120 through 124](#).

After consideration of public comments, Subsection 251.02 has been revised. The remainder of the rule has been adopted as initially proposed. The board meeting documents can be obtained at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/water-quality-docket-no-58-0102-2001/> or by contacting the undersigned.

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

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

Dated this 19th day of November, 2020.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706-1255
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 18, 2020. If no such written request is received, a public hearing pursuant to Section 67-5222(2), Idaho Code, will not be held. Two public meetings were held during the negotiated rulemaking process. The public will have the opportunity to provide oral comments on the proposed rule during the meeting of the Idaho Board of Environmental Quality (Board) scheduled for November 2020. The meeting details are in the Notice of Meeting of the Idaho Board of Environmental Quality, Docket No. 58-0102-2001, published in the Idaho Administrative Bulletin on [September 2, 2020, Vol. 20-9](https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/water-quality-docket-no-58-0102-2001/), and available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/water-quality-docket-no-58-0102-2001/>.

DESCRIPTIVE SUMMARY: This rulemaking was initiated to: (1) revise water quality criteria based on stakeholder comments from the 2018 rulemaking and the 2019 legislative session regarding the implementation of the bacteria criteria; and (2) delete obsolete rule language contained in Subsection 260.02 as it is no longer needed due to disapproval of the standard by EPA.

Address Concerns Regarding Implementation of Bacteria Criteria

During 2019 legislative review of pending rule Docket No. 58-0102-1802, stakeholders raised concerns regarding the implementation of Idaho bacteria criteria as presented in the pending rule. On March 18, 2019, the House adopted House Concurrent Resolution No. 23 (HCR23) to reject Subsection 251.02, adopted as a pending rule under Docket No. 58-0102-1802. On March 19 2019, HCR23 was introduced in the Senate and referred to the Senate Health & Welfare Committee. HCR23 was not reported out of committee; the pending rule docket became final and effective on April 11, 2019. This rulemaking seeks to revise Idaho Water Quality Standards to address the stakeholders' unresolved concerns.

DEQ conducted another series of negotiations to better understand the stakeholder concerns regarding the recommended and subsequently proposed criteria. During these negotiations, DEQ agreed to include several provisions to help clarify the intent of the criteria and implementation of the criteria. DEQ has worked closely with the stakeholder groups who initially brought up the concerns and, due to their involvement in helping draft the proposed language, believes that the proposed language addresses their concerns. Specifically, language was included to address concerns regarding implementation of the statistical threshold value, increasing the time period used in calculating geometric mean values, and including a recommendation for public swimming beaches.

Delete Obsolete Rule Language

DEQ proposes to delete Subsection 260.02 including footnotes. Subsection 260.02, Variances from Water Quality Standards, Specific Variances, was adopted by the Board in 2000 and approved by the Idaho Legislature in 2001 (Docket No. 58-0102-0002). On May 29, 2003, DEQ submitted the final rule to EPA. On May 7, 2010, EPA disapproved the variance; therefore, Subsection 260.02 is not effective for Clean Water Act purposes and has been identified for deletion.

Idahoans that recreate in, drink from, or fish Idaho's surface waters, and any who discharge pollutants to those same waters, may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board in November 2020 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2021 legislative session if adopted by the Board and approved by the Legislature.

EFFECTIVE FOR CLEAN WATER ACT PURPOSES: Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see [40 CFR 131.21](https://www.ecfr.gov/current/title-40-chapter-131-subchapter-21-section-131.21)). This is known as the Alaska Rule. This rulemaking will be promulgated so that the existing rule

effective for CWA purposes remains in the Idaho Administrative Code until EPA approves the rule revisions. Notations explaining the effectiveness of the rule sections are also included. Upon EPA approval, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. Information regarding the status of EPA review will be posted at deq.idaho.gov, EPA Actions on Proposed Standards.

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

NEGOTIATED RULEMAKING: On April 1, 2020, the notice of negotiated rulemaking was published in the Idaho Administrative Bulletin and posted on DEQ's website. A meeting was held on May 7, 2020. On June 8, 2020, a preliminary draft rule was posted on DEQ's website. One additional meeting was held on June 11, 2020. Stakeholders and members of the public participated by signing up for email notifications, attending the meetings, and submitting comments. Key information was posted on DEQ's website and distributed to persons who participated in the negotiated rulemaking.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding the development of the rule. At the conclusion of the negotiated rulemaking process, DEQ submitted the draft rule to the Division of Financial Management to review for compliance with [Executive Order No. 2020-01, Zero-Based Regulation](#). Based on that review, DEQ has formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule drafts, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/water-quality-docket-no-58-0102-2001/>.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Michelle Dale at michelle.dale@deq.idaho.gov, (208) 373-0187.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 2, 2020.

Dated this 2nd day of September, 2020.

Red italicized double underscored text indicates amendments between the proposed and pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-2001

251. SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.

Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-~~4802~~2001 have been approved.

01. ***E. Coli* Bacteria.** Waters designated for recreation are not to contain *E. coli* bacteria, used as indicators of human pathogens, in concentrations exceeding: (4-11-06)

a. Geometric Mean Criterion. Waters designated for primary or secondary contact recreation are not to contain *E. coli* bacteria in concentrations exceeding a geometric mean of one hundred twenty-six (126) *E. coli* organisms per one hundred (100) mL based on a minimum of five (5) samples taken every three (3) to seven (7) days over a thirty (30) day period. (4-11-06)

b. Use of Single Sample Values. A water sample exceeding the *E. coli* single sample maximums below indicates likely exceedance of the geometric mean criterion, but is not alone a violation of water quality standards. If a single sample exceeds the maximums set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., then additional samples must be taken as specified in Subsection 251.01.c.: (4-11-06)

i. For waters designated as secondary contact recreation, a single sample maximum of five hundred seventy-six (576) *E. coli* organisms per one hundred (100) mL; or (4-11-06)

ii. For waters designated as primary contact recreation, a single sample maximum of four hundred six (406) *E. coli* organisms per one hundred (100) mL; or (4-11-06)

iii. For areas within waters designated for primary contact recreation that are additionally specified as public swimming beaches, a single sample maximum of two hundred thirty-five (235) *E. coli* organisms per one hundred (100) mL. Single sample counts above this value should be used in considering beach closures. (4-11-06)

c. Additional Sampling. When a single sample maximum, as set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., is exceeded, additional samples should be taken to assess compliance with the geometric mean *E. coli* criteria in Subsection 251.01.a. Sufficient additional samples should be taken by the Department to calculate a geometric mean in accordance with Subsection 251.01.a. This provision does not require additional ambient monitoring responsibilities for dischargers. (4-11-06)

251. SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.

Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-~~4802~~2001 have been approved.

01. **Toxics Criteria.** Waters designated for recreation must meet the Fish Only water quality criteria set forth in Subsection 210.01.b. (4-11-19)

02. **Fecal Indicators.** Waters designated for recreation must meet criteria for indicator ~~organisms~~ **bacteria** of fecal contamination. Either of the following indicators ~~is~~ **is** sufficient for determining compliance with the fecal indicator criteria: (4-11-19)()

a. *E. Coli* Bacteria. ()

i. Waters designated for recreation are not to contain *E. coli* bacteria, used as indicators of human pathogens, in concentrations exceeding: (4-11-06)

~~i.~~ **(1)** ~~Geometric Mean Criterion. Not to contain *E. coli* in concentrations exceeding a~~ **geometric mean** of one hundred twenty-six (126) *E. coli* counts per one hundred (100) mL based on a minimum of five (5) samples taken every three (3) to ~~seven eleven~~ **(7)11** days over a ~~thirty forty-five~~ **(30)45** day period; or (4-11-19)()

~~ii.~~(2) ~~SA statistical Threshold Value (STV). No greater than ten percent (10%) of valid samples collected over a thirty (30) day period are to contain E. coli bacteria in concentrations exceeding an STV~~ of four hundred and ten (410) *E. coli* counts per one hundred (100) mL. ~~or in more than ten percent (10%) of samples collected over a forty-five (45) day period. The Department will ensure samples collected represent the forty-five (45) day duration.~~ (4-11-19)()

ii. ~~For public swimming beaches, a single sample value of two hundred thirty-five (235) E. coli counts per one hundred (100) mL should be used in considering beach closures.~~ ()

b. Enterococci. Waters designated for recreation are not to contain enterococci bacteria, used as indicators of human pathogens, in concentrations exceeding: (4-11-19)

i. ~~Geometric Mean Criterion. Not to contain E. coli in concentrations exceeding a~~ geometric mean of thirty-five (35) enterococci counts per one hundred (100) mL based on a minimum of five (5) samples taken every three (3) to ~~seven~~ eleven (711) days over a ~~thirty~~ forty-five (3045) day period; or (4-11-19)()

ii. ~~SA statistical Threshold Value (STV). No greater than ten percent (10%) of valid samples collected over a thirty (30) day period are to contain enterococci bacteria in concentrations exceeding an STV~~ of one hundred and thirty (130) enterococci counts per one hundred (100) mL ~~in more than ten percent (10%) of samples collected over forty-five (45) day period. The Department will ensure samples collected represent the forty-five (45) day duration.~~ (4-11-19)()

c. ~~For comparing permit effluent bacteria samples to the criteria, the averaging period shall be thirty (30) days or less based on a minimum of five (5) samples.~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

260. VARIANCES FROM WATER QUALITY STANDARDS.

~~01.~~ ~~Variiances.~~ Variances from meeting certain water quality standards may be granted by the Department provided they are consistent with the following requirements: (8-24-94)()

~~01.~~ ~~When granted by the Department, i~~ **Procedure.** Individual variances are to be pollutant and discharger specific, and shall be granted pursuant to the following ~~procedure~~: (3-15-02)()

~~a.~~ Prior to granting a variance, the Department ~~shall will~~ publish notice of the Department's tentative determination to grant a variance and ~~shall will~~ receive written comments for not less than thirty (30) days after the date the notice is published. The notice ~~shall will~~ contain a clear description of the impacts of the variance upon the receiving stream segment. The Department ~~shall will~~ also provide an opportunity for oral presentation of comments, if requested in writing within fourteen (14) days of the notice, by twenty-five (25) persons, a political subdivision, or an agency. (3-15-02)()

~~b.~~ The Department's final ~~variance~~ decision ~~with respect to a variance~~ may be appealed pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The Department ~~shall will~~ maintain and make available to the public an updated list of variances. (3-15-02)()

~~02.~~ **Attainability.** In order to obtain a variance from a water quality standard, the discharger must demonstrate that meeting the standard is unattainable based on one or more of the following grounds: (8-24-94)()

~~a.~~ Naturally occurring pollutant concentrations prevent the attainment of the standard; or (8-24-94)

~~b.~~ Natural, intermittent, or low flow conditions or water levels prevent the attainment of the standard; or (4-5-00)

~~iii~~c. Human caused conditions or sources of pollution prevent the attainment of the standard and cannot be remedied or would cause more environmental damage to correct than to leave in place; or (8-24-94)

~~iv~~d. Dams, diversions or other types of hydrologic modifications preclude the attainment of the standard, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in attainment of the standard; or (8-24-94)

~~v~~e. Physical conditions related to the natural features of the water body, unrelated to water quality, preclude attainment of the standard; or (8-24-94)

~~vi~~f. Controls more stringent than technology-based effluent limitations would result in substantial and widespread economic and social impact. (8-24-94)

~~e03~~. **Documentation.** The discharger must submit to the Department documentation that treatment more advanced than required by technology-based effluent limitations have been considered and that alternative effluent control strategies have been evaluated. (8-24-94)()

~~#04~~. **Effective Period.** Any variance granted by the Department will remain in effect for a period of five (5) years or the life of the permit. (8-24-94)()

~~ia~~. Upon expiration ~~of the five (5) year time period or permit~~, the discharger must either meet the standard or **must** re-apply for the variance in accordance with these rules. (8-24-94)()

~~iib~~. ~~In considering a re-application for a variance, the Department will require t~~The discharger **must** demonstrate reasonable progress towards meeting the standard **when reapplying for a variance**. (8-24-94)()

~~02-~~ ~~Specific Variances. In addition to any variances listed separately from these rules as described in Subsection 260.01.a.ii., the following variances have also been granted by the Department in accordance with Subsection 260.01:~~ (3-15-02)

~~a-~~ ~~The South Fork Coeur d'Alene River Sewer District (Page Wastewater Treatment Facility) is granted variances from meeting water quality standards in Section 250 for ammonia and chlorine, and Section 210 for cadmium, lead, and zinc, discharged to the West Page Swamp, located in T49N, R2E, S32, Boise Prime Meridian.~~ (3-30-01)

~~b-~~ ~~The variances provided in Subsection 260.02.a. are conditioned upon the discharges showing reasonable progress toward reducing their discharge of ammonia and chlorine. Reasonable progress shall be measured according to the terms of the state's certification of the discharges.~~ (3-30-01)

Note: Final rule submitted to EPA on May 29, 2003 (docket 58-0102-0002). This revision grants a variance to the South Fork Coeur d'Alene River Sewer District (Page Wastewater Treatment Facility) from meeting water quality standards for ammonia, chlorine, cadmium, lead, and zinc discharged to the West Page Swamp. On May 7, 2010, EPA disapproved the variance; therefore, Subsections 260.02.a. and b. are not effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

**58.01.03 – INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES
AND RULES FOR CLEANING OF SEPTIC TANKS**

DOCKET NO. 58-0103-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rule Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 2, 2020, [Vol. 20-9, pages 126 through 140](#). After consideration of public comments, Subsection 009.04.d.ii. has been revised. In addition, Sections 004, 006, and 009 have been revised to correct publication errors overlooked during review of the proof copy proposed rule. The remainder of the rule has been adopted as initially proposed. The board meeting documents can be obtained at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/individual-subsurface-sewage-disposal-docket-no-58-0103-1901/> or by contacting the undersigned.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Peter Adams at peter.adams@deq.idaho.gov or (208) 373-0464.

Dated this 19th day of November, 2020.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706-1255
Phone: (208) 373-0418
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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 16, 2020. If no such written request is received, a public hearing will not be held. Four public meetings were held during the negotiated rulemaking process.

DESCRIPTIVE SUMMARY: This rulemaking was initiated in response to challenges made in enforcing and updating portions of the [Technical Guidance Manual for Individual Subsurface Sewage Disposal Systems](#) (TGM). The rules currently only specify the requirements for standard individual/subsurface sewage disposal systems to be installed in Idaho, while leaving the majority of the requirements for alternative/proprietary systems in the TGM. Currently, if a standard system cannot be installed on a parcel, an alternative system may be permitted if it is approved by the Director and in accordance with the recommendations of the Technical Guidance Committee as documented in the TGM.

This proposed rule revises the Individual/Subsurface Sewage Disposal System Rules and Rules for Cleaning of Septic Tanks, IDAPA 58.01.03, by adding into the rules requirements applicable to facilitate the permitting, design, and construction activities for alternative and/or proprietary systems currently in the TGM. The proposed rule also clarifies the operation and maintenance requirements currently required for all systems as well as service provider responsibilities and provides the basis under which approved systems may be revoked or amended.

Health districts, subsurface sewage disposal system installers and manufacturers of subsurface sewage disposal systems as outlined in the TGM, conservation and environmental groups, counties, cities, and citizens of Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in November 2020 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2021 legislative session if adopted by the Board and approved by the Legislature.

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

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On May 31, 2019, DEQ posted notice of the negotiated rulemaking on its website. On June 5, 2019, the notice of negotiated rulemaking was published in the Idaho Administrative Bulletin, and a meeting was held on July 10, 2019. On September 4, 2019, a preliminary draft rule was posted on DEQ's website. Three additional meetings were held between September 2019 and April 2020. Stakeholders and members of the public participated by signing up for email notifications, attending the meetings, and submitting comments. Key information was posted on DEQ's website and distributed to persons who participated in the negotiated rulemaking.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding the development of the rule. At the conclusion of the negotiated rulemaking process, DEQ submitted the draft rule to the Division of Financial Management to review for compliance with [Executive Order No. 2020-01, Zero-Based Regulation](#). Based on that review, DEQ has formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule drafts, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/individual-subsurface-sewage-disposal-docket-no-58-0103-1901/>.

IDAHO CODE SECTION 39-107D STATEMENT: This rule regulates an activity not regulated by the federal government. Chapters 1 and 36, Title 39, Idaho Code, grant authority to the Board to adopt rules and standards to protect the environment and health of the state of Idaho for the installation of cottage site sewage treatment facilities and for the issuance of pollution source permits.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Peter Adams at peter.adams@deq.idaho.gov or (208) 373-0464.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 30, 2020.

Dated this 2nd day of September, 2020.

Red italicized double underscored text indicates amendments between the proposed and pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0103-1901

~~000.~~ ~~(RESERVED)~~

~~0070.~~ **LEGAL AUTHORITY.**

Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code, grants authority to the Board of Environmental Quality to adopt rules and standards to protect the environment and the health of the State, for the installation of cottage site sewage treatment facilities and for the issuance of pollution source permits. Title 39, Chapter 1, Idaho Code, grants to the Director the authority to issue pollution source permits; charges the Director to enforce all laws, rules, regulations, and standards relating to environmental protection and health, and those relating to the storage, handling and transportation of solids, liquids and gases which may cause or contribute to water pollution, and authorizes the Department of Environmental Quality to review for approval the plans and specifications for all proposed waste treatment facilities prior to their construction. (5-7-93)

~~0021.~~ **TITLE, SCOPE, CONFLICT AND RESPONSIBILITIES.**

01. Title. These rules are titled IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks." (3-20-20)

02. Scope. The provisions of these rules establish limitations on the construction and use of individual and subsurface sewage disposal systems and establish the requirements for obtaining an installation permit and an installer's registration permit. These rules apply to every individual and every subsurface blackwaste and wastewater treatment system in Idaho. These rules also establish general requirements for the handling, transportation and disposal of septic tank wastes and for obtaining a septic tank pumping permit. (3-20-20)

03. Conflict of Rules, Standards, and Ordinances. In any case where a provision of these rules is found to be in conflict with a provision of any state or local zoning, building, fire, safety, or health regulation, standard or ordinance, the provision that, in the judgment of the Director, establishes the higher standard for the promotion and protection of the health and safety of the people, shall prevail. (5-7-93)

04. Responsibilities. (7-1-93)

a. Every owner of real property is jointly and individually responsible for: (10-1-90)

- i. Storing, treating, and disposing of blackwaste and wastewater generated on that property. (10-1-90)
- ii. Connecting all plumbing fixtures on that property that discharge wastewaters to an approved wastewater system or facility. (10-1-90)
- iii. Obtaining necessary permits and approvals for installation of individual or subsurface blackwaste and wastewater disposal systems. (10-1-90)
- iv. Abandonment of an individual or subsurface sewage disposal system. (10-1-90)
- b. Each engineer, building contractor, individual or subsurface system installer, excavator, plumber, supplier, and every other person, who for compensation shall design, construct, abandon, or provide any system or part thereof, is jointly and individually responsible for compliance with each of these rules that are relevant to that service or product. (5-7-93)

002. REFERENCED MATERIAL.

01. NSF International. The NSF International (NSF) NSF/ANSI 40: Residential Onsite Systems and NSF/ANSI 245: Nitrogen Reduction are referenced in these rules. The NSF/ANSI 40 and NSF/ANSI 245 are available at www.nsf.org/services/by-industry/water-wastewater/onsite-wastewater. ()

02. Technical Guidance Manual for Individual Subsurface Sewage Disposal Systems (TGM). The TGM is referenced in these rules and available at the Idaho Department of Environmental Quality, Water Quality Division, 1410 N. Hilton, Boise, ID 83706-1255, <https://www.deq.idaho.gov>. ()

003. DEFINITIONS.

For the purposes of these rules, the following definitions apply. (5-7-93)

01. Abandoned System. A system which has ceased to receive blackwaste or wastewater due to diversion of those wastes to another treatment system or due to termination of waste flow. (10-1-90)

02. Alternative System. Any system for which the Department has issued design guidelines or which the Director judges to be a simple modification of a standard system. (10-1-90)

03. Authorized or Approved. The state of being sanctioned or acceptable to the Director as stated in a written document. (10-1-90)

04. Blackwaste. Human body waste, specifically excreta or urine. This includes toilet paper and other products used in the practice of personal hygiene. (10-1-90)

05. Blackwater. A wastewater whose principal pollutant is blackwaste; a combination of blackwaste and water. (10-1-90)

06. Board. Idaho State Board Of Environmental Quality. (10-1-90)

07. Building Sewer. The extension of the building drain beginning five (5) feet outside the inner face of the building wall. (10-1-90)

08. Central System. Any system which receives blackwaste or wastewater in volumes exceeding twenty-five hundred (2,500) gallons per day; any system which receives blackwaste or wastewater from more than two (2) dwelling units or more than two (2) buildings under separate ownership. (10-1-90)

09. Construct. To make, form, excavate, alter, expand, repair, or install a system, and, their derivations. (5-7-93)

10. Director. The Director of the Idaho Department of Environmental Quality or the Director's designee or authorized agent. (10-1-90)

11. **Existing System.** Any system which was installed prior to the effective date of these rules. (5-7-93)
12. **Expand.** To enlarge any nonfailing system. (10-1-90)
- 13. Extended Treatment Package System (ETPS).** An advanced subsurface package sewage treatment product that provides secondary wastewater treatment and/or tertiary wastewater treatment to septic tank effluent. ()
- ~~134.~~ **Failing System.** Any system which exhibits one (1) or more of the following characteristics: (10-1-90)
- a. The system does not meet the intent of these rules as stated in Subsection 004.01. (5-7-93)
- b. The system fails to accept blackwaste and wastewater. (10-1-90)
- c. The system discharges blackwaste or wastewater into the waters of the State or onto the ground surface. (10-1-90)
- ~~145.~~ **Ground Water.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (5-7-93)
- ~~156.~~ **High Groundwater Level -- Normal, Seasonal.** High ground water level may be established by the presence of low chroma mottles, actual ground water monitoring or historic records. (5-7-93)
- a. The normal high groundwater level is the highest elevation of ground water that is maintained or exceeded for a continuous period of six (6) weeks a year. (5-7-93)
- b. The seasonal high groundwater level is the highest elevation of ground water that is maintained or exceeded for a continuous period of one (1) week a year. (5-7-93)
- ~~167.~~ **High Water Mark.** The line which the water impresses on the soil by covering it for sufficient periods of time to prevent the growth of terrestrial vegetation. (10-1-90)
- ~~178.~~ **Individual System.** Any standard, alternative or subsurface system which is not a central system. (10-1-90)
- ~~189.~~ **Install.** To excavate or to put in place a system or a component of a system. (10-1-90)
- ~~1920.~~ **Installer.** Any person, corporation, or firm engaged in the business of excavation for, or the construction of individual or subsurface sewage disposal systems in the State. (10-1-90)
- ~~201.~~ **Large Soil Absorption System.** A large soil absorption system is a subsurface sewage disposal system designed to receive two thousand five hundred (2,500) gallons of wastewater or more per day, including where the total wastewater flow from the entire proposed project exceeds two thousand five hundred (2,500) gallons per day but the flow is separated into absorption modules which receive less than two thousand five hundred (2,500) gallons per day. (5-7-93)
- ~~212.~~ **Limiting Layer.** A characteristic subsurface layer or material which will severely limit the capability of the soil to treat or absorb wastewater including, but not limited to, water tables, fractured bedrock, fissured bedrock, excessively permeable material and relatively impermeable material. (10-1-90)
- 23. Manufactured Medium Sand.** Sand that meets the following gradation requirements:

<u>Manufactured medium sand allowable particle size percent composition.</u>	
<u>Sieve Size</u>	<u>Passing (%)</u>
<u>4</u>	<u>95-100</u>
<u>8</u>	<u>80-100</u>
<u>16</u>	<u>50-85</u>
<u>30</u>	<u>25-60</u>
<u>50</u>	<u>10-30</u>
<u>100</u>	<u>2-10</u>
<u>200</u>	<u><2</u>

()

224. Mottling. Irregular areas of different color in the soil that vary in contrast, density, number and size. Mottling generally indicates poor aeration and impeded drainage. (5-7-93)

235. New System. A system which is or might be authorized or approved on or after the effective date of these rules. (5-7-93)

246. Nondischarging System. Any system which is designed and constructed to prevent the discharge of blackwaste or wastewater. (10-1-90)

257. Permit. An individual or subsurface system installation permit or installer's registration permit. (10-1-90)

268. Pollutants. 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 public nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, agricultural, recreational, aesthetic, or other beneficial uses. (10-1-90)

29. Proprietary Wastewater System Technology. A manufactured product through which effluent flows and may be stored before infiltration. ()

30. Proprietary Wastewater Treatment System. A subsurface sewage treatment system that incorporates proprietary wastewater system technology to provide additional treatment to a septic tank effluent system. ()

2731. Public System. Any system owned by a county, city, special service district, or other governmental entity or Indian tribe having the authority to dispose of blackwaste or wastewater; a municipal wastewater treatment facility. (10-1-90)

2832. Repair. To remake, reform, replace, or enlarge a failing system or any component thereof as is necessary to restore proper operation. (10-1-90)

2933. Scarp. The side of a hill, canyon, ditch, river bank, roadcut or other geological feature characterized by a slope of forty-five (45) degrees or more from the horizontal. (10-1-90)

304. Service Provider. Any person, corporation, or firm engaged in the business of providing operation, maintenance, and monitoring of complex alternative systems in the state of Idaho. (7-1-17)

345. Sewage. Sewage has the same meaning as wastewater. (10-1-90)

- ~~326~~. **Soil Texture.** The relative proportion of sand, silt, and clay particles in a mass of soil. (10-1-90)
- ~~337~~. **Standard System.** Any system recognized by the Board through the adoption of design and construction regulations. (10-1-90)
- ~~348~~. **Subsurface System.** Any system with a point of discharge beneath the earth's surface. (10-1-90)
- ~~359~~. **Surface Water - Intermittent, Permanent, Temporary.** (7-1-93)
- a.** Any waters of the State which flow or are contained in natural or man-made depressions in the earth's surface. This includes, but is not limited to, lakes, streams, canals, and ditches. (10-1-90)
- b.** An intermittent surface water exists continuously for a period of more than two (2) months but not more than six (6) months a year. (10-1-90)
- c.** A permanent surface water exists continuously for a period of more than six (6) months a year. (10-1-90)
- d.** A temporary surface water exists continuously for a period of less than two (2) months a year. (10-1-90)
- ~~3640~~. **System.** Beginning at the point of entry physically connected piping, treatment devices, receptacles, structures, or areas of land designed, used or dedicated to convey, store, stabilize, neutralize, treat, or dispose of blackwaste or wastewater. (10-1-90)
- ~~3741~~. **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 groundwater, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, grey water or commercial or industrial pollutants; and sewage. (10-1-90)
- ~~3842~~. **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 of Idaho. (10-1-90)
- ~~3943~~. **Water Table.** The surface of an aquifer. (10-1-90)

004. GENERAL REQUIREMENTS.

- 01. Intent of Rules.** The Board, in order to protect the health, safety, and environment of the people of the state of Idaho establishes these rules governing the design, construction, siting and abandonment of individual and subsurface sewage disposal systems. These rules are intended to ensure that blackwastes and wastewater generated in the state of Idaho are safely contained and treated and that blackwaste and wastewater contained in or discharged from each system: ~~(5-7-93)~~()
- a.** Are not accessible to insects, rodents, or other wild or domestic animals; (10-1-90)
- b.** Are not accessible to individuals; (10-1-90)
- c.** Do not give rise to a public nuisance due to odor or unsightly appearance; (10-1-90)
- d.** Do not injure or interfere with existing or potential beneficial uses of the waters of the State. (10-1-90)
- 02. Compliance with Intent Required.** The Director shall not authorize or approve any system if, in the opinion of the Director, the system will not be (is not) in compliance with the intent of these rules. (5-7-93)

03. System Limitations. Cooling water, backwash or backflush water, hot tub or spa water, air conditioning water, water softener brine, groundwater, oil, or roof drainage cannot be discharged into any system unless that discharge is approved by the Director. (10-1-90)

04. Increased Flows. Unless authorized by the Director, no person shall provide for or connect additional blackwaste or wastewater sources to any system if the resulting flow or volume would exceed the design flow of the system. (10-1-90)

05. Failing System. The owner of any failing system shall obtain a permit and cause the failing system's repair: (10-1-90)

a. As soon as practical after the owner becomes aware of its failure; or (10-1-90)

b. As directed in proper notice from the Director. (10-1-90)

06. Subsurface System Replacement Area. An area of land which is suitable in all respects for the complete replacement of a new subsurface system disposal field shall be reserved as a replacement area. This area will be kept vacant, free of vehicular traffic and free of any soil modification which would negatively affect its use as a replacement disposal field construction site. (10-1-90)

07. Technical Guidance Committee (TGC). The Director shall appoint a ~~Technical Guidance Committee~~ **TGC** composed of three (3) representatives from the seven (7) Health Districts, one (1) representative from the Department of Environmental Quality, one (1) professional engineer licensed in the state of Idaho and one (1) licensed installer. Initially two (2) committee members shall be appointed to each of one (1), two (2) and three (3) year terms. Appointments to vacancies thereafter shall be to three (3) year terms. ~~(12-31-91)~~()

08. Duties of the ~~Technical Guidance Committee~~ TGC. The ~~Committee~~ **TGC** shall maintain a ~~technical guidance manual which shall~~ **the TGM** to be used in the design, construction, alteration, operation, and maintenance of conventional systems, their components, and alternatives. The **TGC** shall review variances **and commercially manufactured wastewater treatment components and systems** at the request of the Director and provide recommendations ~~on such variances~~. ~~(10-1-90)~~()

09. ~~Technical Guidance Manual for Individual and Subsurface Alternative Sewage Disposal~~ TGM. The ~~manual~~ **TGM** maintained by the ~~Technical Guidance Committee~~ **TGC** shall provide state-of-the-art technical guidance on alternative sewage disposal components and systems, soil type determination methodology and other information pertinent to the best management practices of individual and subsurface sewage disposal. ~~(10-1-90)~~()

10. Alternative System. If a standard system as described in these rules cannot be installed on a parcel of land, an alternative system may be permitted if that system is in accordance with the recommendations of the ~~Technical Guidance Committee~~ **TGC** and is approved by the Director **as set forth in Section 009**. ~~(5-7-93)~~()

005. PERMIT AND PERMIT APPLICATION.

01. Permit Required. Except as specified in Subsection 005.02 it shall be unlawful for any person to cause or to perform the modification, repair or construction of any individual or subsurface sewage disposal system within the state of Idaho unless there is a valid installation permit authorizing that activity. (12-31-91)

02. Exceptions to Permit Requirement. The activities listed in this subsection may be lawfully performed in the absence of a valid installation permit. They are, however, subject to all other relevant rules and regulations. (10-1-90)

a. Portable nondischarging systems may be installed where needed as temporary blackwaste or wastewater systems if they are properly maintained and if they are of a design which has been approved by the Director. (10-1-90)

b. Individual and subsurface systems may be repaired when needed as a result of clogged or broken

solid piping or of malfunctions in an electrical or mechanical system. Such repair may not expand the system unless authorized by the Director. (10-1-90)

03. Permit Application. The owner of the system or the owner's authorized representative shall make application to the Director in writing and in a manner or form prescribed by the Director. (10-1-90)

04. Contents of Application. A permit application will be used to help determine if the proposed construction will be in conformance with applicable rules and regulations. Information required in the application may include, but is not limited to: (10-1-90)

- a. The name and address of the owner of the system and of the applicant, if different; (10-1-90)
- b. The legal description of the parcel of land; (10-1-90)
- c. The type of establishment served; (10-1-90)
- d. The maximum number of persons served, number of bedrooms, or other appropriate measure of wastewater flow; (10-1-90)
- e. The type of system; (10-1-90)
- f. The construction activity (new construction, enlargement, repair); (10-1-90)
- g. A scaled or dimensioned plot plan including, if needed, adjacent properties illustrating: (10-1-90)
 - i. The location and size of all existing and proposed wastewater systems including disposal field replacement areas; (10-1-90)
 - ii. The location of all existing water supply system features; (10-1-90)
 - iii. The location of all surface waters; (10-1-90)
 - iv. The location of scarps, cuts, and rock outcrops; (10-1-90)
 - v. Land elevations, surface contours, and ground slopes between features of interest; (10-1-90)
 - vi. Property lines, easements, and rights-of-way; and (10-1-90)
 - vii. Location and size of buildings and structures. (7-1-93)
- h. The plans and specifications of the proposed system which include: (10-1-90)
 - i. Diagrams of all system facilities which are to be made or fabricated at the site; (10-1-90)
 - ii. The manufacturer's name and identification of any component approved pursuant to Sections 007 and 009; and (12-31-91)
 - iii. List of materials. (10-1-90)
- i. Soil description and profile, groundwater data, percolation or permeability test results and/or a site evaluation report; (10-1-90)
- j. The nature and quantity of blackwaste and wastewater which the system is to receive including the basis for that estimate; (10-1-90)
- k. Proposed operation, maintenance, and monitoring procedures to insure the system's performance and failure detection; (10-1-90)

- l.** Copies of legal documents relating to access and to responsibilities for operation, maintenance, and monitoring; (10-1-90)
- m.** A statement from the local zoning or building authority indicating that the proposed system would not be contrary to local ordinances; (10-1-90)
- n.** The signature of the owner of the proposed system and, if different, of the applicant; and (10-1-90)
- o.** Any other information, document, or condition that may be required by the Director to substantiate that the proposed system will comply with applicable rules and regulations. (10-1-90)
- 05. Basis for Permit Application Denial.** The Director may deny a permit application if in the Director's judgment: (10-1-90)
- a.** The application is incomplete, inaccurate, or misleading; (10-1-90)
- b.** The system as proposed is not in compliance with applicable rules and regulations; (10-1-90)
- c.** The system as proposed would, when put into use, be considered a failing system; (10-1-90)
- d.** The design and description of a public system was not made by a professional engineer; (10-1-90)
- e.** Public or central wastewater treatment facilities are reasonably accessible. (10-1-90)
- 06. Notice of Denial.** Upon denial of an application the Director shall notify the applicant of the reason for denial. (10-1-90)
- 07. Issuance of Permit.** When, in the opinion of the Director the system as proposed will be in conformance with applicable rules and regulations, the Director shall issue an "Individual and Subsurface System Installation Permit". (10-1-90)
- 08. Application and Permit Valid for One Year.** Unless otherwise stated on the application or permit, it shall become invalid if the authorized construction or activity is not completed and approved within one (1) year of the date of issuance. (10-1-90)
- 09. Permit Renewal.** At the discretion of the Director, a permit may be renewed one (1) or more times upon request by the applicant or owner provided that the request is received by the Director prior to the permit's date of expiration. (10-1-90)
- 10. Immediate Effect of the Permit.** A valid permit authorizes the construction of an individual or subsurface system and requires that the construction be conducted in compliance with plans, specifications, and conditions contained in the approved permit application. Any deviation from the plans, specifications, and conditions is prohibited unless it is approved in advance by the Director. (10-1-90)
- 11. Cottage Site Facility Certification.** A valid permit shall constitute certification and approval for the purposes of Section 39-3637, Idaho Code. (10-1-90)
- 12. Existing Installation Permits.** Individual and subsurface sewage disposal installation permits or other lot-specific approvals for systems issued prior to February 7, 1978, pursuant to Idaho Code Title 39, Chapter 1 and Title 39, Chapter 36, will become invalid one (1) year after written notice is given by the Director notifying the owner or holder of such a permit or approval that the permit or approval will no longer be valid unless construction or installation of the system provided for in the permit or approval is commenced within one (1) year after giving of the notice. This provision does not apply to certificates filed to satisfy a sanitary restriction pursuant to Section 50-1326, Idaho Code. (10-1-90)
- 13. Abandonment May Be Required.** The Director may require as a condition for issuing a permit

that the system be abandoned by a specified date or under specific predetermined circumstances. The date or circumstances will be established before the issuance of the permit and be contained in the permit application. These conditions may relate to a specific date, dwelling density, completion of a municipal system or other circumstances relative to the availability of central sewerage system services. (10-1-90)

14. Operation, Maintenance and Monitoring. ()

a. The Director may require as a condition of issuing a permit, that specific operation, maintenance, and monitoring procedures be observed. Those procedures will be contained in the installation permit application. (10-1-90) ()

b. All operation, maintenance, and monitoring requirements of installation permits including effluent sampling shall be perpetual unless: ()

i. The system is not installed; ()

ii. The system is removed, abandoned, or replaced; or ()

iii. The permit is amended or revoked by the Director. ()

c. If a system gains approval as described by the TGM, sampling requirements may be removed. ()

15. As-Built Plans and Specifications. The Director may require as a condition of issuing a permit, that complete and accurate record drawings and specifications depicting the actual construction be submitted to the Director within thirty (30) days after the completion of the construction. Alternately, if the construction proceeded in compliance with the approved plans and specifications, a statement to that effect may be submitted. (10-1-90)

16. Permit Fee. All applications shall be accompanied by payment of the fee specified in IDAPA 58.01.14, Section 110, "Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services". (5-7-93)

006. INSTALLER'S REGISTRATION PERMIT AND SERVICE PROVIDER CERTIFICATION.

01. Permit and Certification Required. Every installer and service provider shall secure from the Director an installer's registration permit. Service providers must also obtain a service provider's certification. Two (2) types of installer permits and one (1) type of service provider certification are available. (7-1-17)

a. A standard and basic alternative system installer's registration permit is required to install all individual systems not listed under Subsection 006.01.b. (5-7-93)

b. A complex alternative system installer's registration permit is required to install evapotranspiration systems, ~~extended treatment package systems~~ ETPSs, lagoon systems, large soil absorption systems, pressure distribution systems, proprietary wastewater treatment systems intermittent sand filters, sand mounds, or other systems as may be specified by the Director. (7-1-17) ()

c. A service provider certification is required to perform operation, maintenance, or monitoring of ~~complex alternative systems~~ ETPSs and any other Director-identified complex alternative systems. (7-1-17) ()

02. Examination. The initial issuance of the installer's permit and service provider certification shall be based on the completion of an examination, with a passing score of seventy percent (70%) or more, of the applicant's knowledge of the principles set forth in these rules and the applicable sections of the Technical Guidance Manual. The examinations will be prepared, administered and graded by the Director. The installer examination and service provider examination shall be separate exams. (7-1-17)

03. Permits and Certifications Required Annually. Registration permits and service provider certifications expire annually on the first (1st) day of January, and all permits and certifications issued thereafter will

be issued for the balance of the calendar year. Additionally, installers and service providers shall attend at least one (1) refresher course approved by the state of Idaho, Department of Environmental Quality, every three (3) years. Individuals holding both a complex installer registration permit and service provider certification shall attend one refresher course for the complex installer registration permit and another course for the service provider certification. Installer and service provider refresher courses are not interchangeable. (7-1-17)

04. Contents of Application. (7-1-17)

a. Applications for installer permits and service provider certifications shall: (7-1-17)

i. Be in writing: (7-1-17)

ii. Be signed by the applicant or by an officer or authorized agent of a corporation: (7-1-17)

iii. Contain the name and address of the applicant: and ~~(7-1-17)~~()

iv. Indicate whether the permit is to be for: ~~(7-1-17)~~()

(1) Installation of standard and basic alternative systems; (7-1-17)

(2) Installation of standard, basic and complex alternative systems; or (7-1-17)

(3) Installation of standard, basic and complex alternative systems and certification as a service provider; and (7-1-17)

v. Contain the expiration date of the bond required by Subsection 006.05. (7-1-17)

b. Additionally, for applicants seeking certification as a service provider, the application shall also contain annual documentation of manufacturer specific training, as required by Subsection 006.06.a. ~~(7-1-17)~~()

05. Bond Required. At the time of application, all applicants, including those seeking a service provider certification, shall deliver to the Director a bond in a form approved by the Director in the sum of five thousand dollars (\$5,000) for a standard and basic alternative system installer's registration permit, or in the sum of fifteen thousand dollars (\$15,000) for standard, basic and complex alternative system installer's registration permit. The bond will be executed by a surety company duly authorized to do business in the state of Idaho and must run concurrent with the installer's registration permit. The bond shall be approved by the Director and must guarantee the installer or service provider's faithful performance of all work undertaken under the provisions of the installer's registration permit or service provider certification, or both. Any person who suffers damage as the result of negligent or wrongful acts of the installer or service provider or by the installer or service provider's failure to competently perform any of the work agreed to be done under the terms of the registration permit or certification shall, in addition to other legal remedies, have a right of action on the bond for all damages not exceeding five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems or required operation, maintenance, or monitoring by certified service providers. The maximum liability of the surety and/or sureties on the bond, regardless of the number of claims filed against the bond, shall not exceed the sum of five thousand dollars (\$5,000) for standard and basic alternative systems or fifteen thousand dollars (\$15,000) for complex alternative systems or required operation, maintenance, or monitoring by certified service providers. (7-1-17)

06. Service Provider Responsibilities. All certified service providers who provide operation, maintenance, or monitoring for any complex alternative system are responsible for compliance with each of these rules that are relevant to those services. Additionally, each certified service provider shall: (7-1-17)

a. Obtain documentation of the completed manufacturer-specific training of each manufactured and packaged treatment system for which the service provider intends to provide operation, maintenance, or monitoring. Proper documentation includes a certificate or letter of training completion provided by the manufacturer and an expiration date of the manufacturer's certification. If a system manufacturer is no longer in business, that manufacturer-specific training is not required: ~~(7-1-17)~~()

b. Maintain a comprehensive list of real property owners who contracted with the certified service provider. ~~The list shall include~~ing the current real property owner name, service property address, real property owner contact address, and subsurface sewage disposal permit number. This list shall be provided to the Director as part of the annual operation, maintenance, and monitoring reports for individual real property owners; ~~and (7-1-17)~~()

c. Notify the system owner in writing of any improper system function that cannot be remedied during the time of operation, maintenance, and monitoring services; and ()

d. Submit all operation, maintenance, and monitoring records in the form of an annual report for each individual real property owner ~~with for~~ whom the service provider ~~contracts~~ agrees to fulfill the real property owner's operation, maintenance, or monitoring responsibilities required ~~through the real property owner's subsurface sewage disposal installation permit as allowed~~ in Subsection ~~005.14~~ 009.03. The annual reports ~~shall~~ are to be provided to the Director by the timeframe specified in the ~~Technical Guidance Manual~~ TGM for the specific complex alternative system for which operation, maintenance, or monitoring is required. (7-1-17)()

07. **Exemption.** An installer's permit shall not be required for: (10-1-90)

a. Any person, corporation, or firm constructing a central or municipal subsurface sewage disposal system if that person, corporation, or firm is a licensed public works contractor as provided in Title 54, Chapter 19, Idaho Code, is experienced in the type of system to be installed and is under the direction of a professional engineer licensed in the state of Idaho; or (5-7-93)

b. Owners installing their own standard or basic alternative systems. (7-1-17)

08. **Application Fee.** All applications shall be accompanied by payment of the fee specified in IDAPA 58.01.14, Section 120, "Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services". (5-7-93)

09. **Grounds for Revocation.** Failure to comply with these rules shall be grounds for revocation of the permit or the certification, or both. (7-1-17)

10. **Transfer from Non-Profit Operation and Maintenance Entity to Certified Service Provider.** (7-1-17)

a. Real property owners who want to install ETPSs must retain a permitted installer and certified service provider. An easement granting general access to a non-profit operation and maintenance entity is no longer required for ETPS installation permits. (7-1-17)

b. Beginning July 1, 2017, real property owners who had ETPSs installed are not required to be members of non-profit operation and maintenance entities. To meet the operation, maintenance, and monitoring requirements of their ETPSs, real property owners shall retain a certified service provider for their existing ETPSs. (7-1-17)

(BREAK IN CONTINUITY OF SECTIONS)

009. OTHER COMPONENTS.

01. **Design Approval Required.** Commercially manufactured ~~blackwaste and~~ wastewater treatment ~~and storage~~ components ~~may~~ and systems ~~must~~ not be used in the construction of a subsurface sewage system unless their design is approved by the Director through the recommendation of the TGC as directed in Section 004. The Department has developed recommended standards and guidance for these systems in the TGM. Approval may be limited to those locations or conditions for which achievement of standards has been demonstrated. Commercially manufactured wastewater treatment components and systems may include but are not limited to: (10-1-90)()

- a. ETPSs (e.g., aerobic treatment systems); ()
- b. Proprietary wastewater treatment systems (e.g., proprietary wastewater system technology with specified sand); ()
- c. Proprietary wastewater system technology (e.g., gravelless distribution products); and ()
- d. Proprietary non-discharging systems (e.g., individual wastewater incinerators, composting toilets, or vault toilets). ()

02. Plan and Specification Submittal. Plans and specifications for all commercially manufactured ~~individual and subsurface~~ wastewater treatment ~~and storage~~ components and systems will be submitted to the Director for approval. Plans and specifications will ~~show or~~ include ~~as requested by the Director;~~ detailed construction drawings, capacities, structural calculations, lists of materials, evidence of stability and durability, performance standards, manufacturers' installation, operation and maintenance instructions, an installation inspection checklist, a list of all prior approvals from other states including any review or compliance related issues, and any other relevant information as requested by the Director. (10-1-99) ()

03. ETPSs. ()

a. In addition to the items listed in Subsection 009.02, ETPS plan and specification submittals must include; ()

- i. A plan for training and certifying system installers and service providers under Section 006; ()
- ii. An operation and maintenance manual which contains all operation and maintenance specified by the design engineer or manufacturer and the Department; and ()
- iii. A quality assurance project plan which documents how sampling will occur if sampling is required by the Director for product approval and continued monitoring. ()

b. Manufacturers seeking approval of these systems for reducing total suspended solids (TSS) and carbonaceous biological oxygen demand 5-day (CBOD5) when used with residential strength wastewater must submit NSF/ANSI 40: Residential Onsite Systems approvals, reports, and associated data or equivalent third-party standards. ()

c. Manufacturers seeking approval for reduction of total nitrogen (TN) must submit NSF/ANSI 245: Nitrogen Reduction approvals, reports, and associated data or equivalent third-party standards. ()

d. Design and installation of these systems must meet the following: ()

- i. The effluent is discharged to a drainfield meeting the requirements of a standard drainfield as directed in Section 008 or a Director-approved alternative. ()
- ii. Separation between the bottom of the trench or bed to limiting layers protects ground water quality if the distance deviates from the table in Subsection 008.02.c. ()
- iii. The distribution laterals within the trench or bed meet the requirements of Section 008 or a Director-approved alternative. ()
- iv. Tank access lids are to grade or above with a sealed riser and fitted with a secured lid for monitoring and maintenance. ()
- v. If vertical separation distances are reduced from the distances defined in the table in Subsection 008.02.c., a sampling port has to be installed to provide a representative sample of the effluent from the system. ()

e. Within thirty (30) days of completing installation of an ETPS, the property owner shall provide certification to the health district from a representative approved by the manufacturer that the system has been installed and will operate in accordance with the manufacturer's recommendations. The health district shall not finalize the subsurface sewage disposal permit until the certification of proper installation and operation is received and includes information on the manufacturer, product, model number, and serial number of the ETPS installed. ()

f. Property owners with an ETPS installed on their property must have all operation, maintenance, and monitoring requirements specified in the permit completed by June 30th each year by a certified service provider in accordance with Section 006, including effluent monitoring if required by the permit. The certified service provider who completed operation, maintenance, and monitoring for the system as specified in the TGM must submit an annual report by July 31st of each calendar year demonstrating that the system is working as designed. ()

g. Permit requirements for ETPSs transfer with ownership changes. Before transferring ownership of a property with an ETPS, the system owner must notify all transferees of the ETPS operation, maintenance, and monitoring requirements. Within thirty (30) days of transferring ownership of a property with an ETPS, the transferee must notify the health district of the new owner of the property. ()

04. Proprietary Wastewater Treatment Systems. ()

a. Manufacturers seeking approval for these systems for reducing total suspended solids (TSS) and carbonaceous biological oxygen demand 5-day (CBOD5) when used with residential strength wastewater must submit NSF/ANSI 40: Residential Onsite Systems approvals, reports, and associated data or equivalent third-party standards. ()

b. Manufacturers seeking approval for reduction of total nitrogen (TN) must submit NSF/ANSI 245: Nitrogen Reduction approvals, reports, and associated data or equivalent third-party standards. ()

c. Proprietary wastewater system media utilized with a proprietary wastewater treatment system must: ()

i. Be constructed or manufactured from materials that are non-decaying and non-deteriorating and do not leach unacceptable chemicals when exposed to sewage and the subsurface soil environment; ()

ii. Support the distribution pipe and provide suitable effluent distribution and infiltration rate to the absorption area at the soil interface; and ()

iii. Maintain the integrity of the trench or bed. The material used, by its nature and manufacturer-prescribed installation procedure, needs to withstand the physical forces of the soil sidewalls, soil backfill, and weight of equipment used in the backfilling. ()

d. Design and installation of these systems must meet the following: ()

i. The effluent is discharged to a drainfield that meets the required effective soil depth for standard drainfields as directed in Section 008. ()

ii. Separation between the bottom of the manufactured medium sand component of the *proprietary wastewater treatment system* to limiting layers protects ground water quality if the distance deviates from the table in Subsection 008.02.c. ()

iii. The distribution laterals within the trench or bed meet the requirements of Section 008 or a Director-approved alternative. ()

iv. Drainfields sized based on the manufacturer's recommended minimum sizing requirement or the maximum daily flow of effluent divided by the hydraulic application rate for the applicable soil design subgroup, whichever is greater. ()

v. Pressure distribution, when used with a proprietary wastewater treatment product, is designed by an Idaho licensed professional engineer. ()

e. A proprietary wastewater treatment system may be required to follow the same operation, maintenance, monitoring, and reporting requirements described in Subsection 009.03.f. due to factors such as product complexity and/or site specific constituent reduction requirements. ()

f. Permit requirements for these systems transfer with ownership changes. Before transferring ownership of a property with this system, the system owner must notify all transferees of the system operation, maintenance, and monitoring requirements. Within thirty (30) days of transferring ownership of a property with the system, the transferee must notify the health district of the new owner of the property. ()

035. Effect of Design Approval. The Director may condition a design approval by specifying circumstances under which the component must be installed, used, operated, maintained, or monitored. (7-1-17)

a. The Director shall specify the complex alternative systems that must undergo professionally managed operation, maintenance, service, or effluent testing. (7-1-17)

b. Manufacturers shall provide training to a reasonable number of service providers to perform required operation, maintenance, or monitoring as specified by the Director. (7-1-17)

c. Manufacturers may enter into agreements with certified service providers trained in their technology but shall not limit the service providers from being trained in the technology of other manufacturers. (7-1-17)

046. Notice of Design Disapproval. If the Director is satisfied that the component described in the submittal may not be in compliance with or may not consistently function in compliance with these rules, or that the manufacturer of the proposed system failed to comply with Subsection 009.03, the Director will disapprove the design as submitted. The manufacturer or distributor submitting the design for approval will be notified in writing of the disapproval and the reason for that action. (7-1-17)

07. Amendments or Revocations. The Director may amend or revoke any permit or system approved by the Department if: ()

a. Approval was based on false or misleading information; ()

b. The material, technology, or design no longer achieves performance standards for which it was approved or does not meet the intent of the rules; or ()

c. The manufacturer is not meeting the requirements of these rules or conditions of the approval. ()

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 – RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-1901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rule Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty- sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for repealing the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, November 6, 2019, [Vol. 19-11, page 310](#). DEQ received no public comments, and the rule has been repealed as initially proposed. More information regarding this rule docket is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/wastewater-facility-grants-docket-no-58-0104-1901/>.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the rulemaking, contact the undersigned.

Dated this 1st day of July, 2020.

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking 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 facility planning grant rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.04, Rules for Administration of Wastewater Treatment Facility Grants, and merge necessary and relevant sections of IDAPA 58.01.04 with IDAPA 58.01.22, Rules for Administration of Planning Grants for Public Drinking Water Facilities. DEQ has initiated a separate rulemaking for the revisions to IDAPA 58.01.22 (Docket No. 58-0122-1901).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, other funding agencies, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, **Vol. 19-8, pages 145–146**, and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/wastewater-facility-grants-docket-no-58-0104-1901/>.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 4, 2019.

Dated this 6th day of November, 2019.

IDAPA 58.01.04 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

**58.01.22 – RULES FOR ADMINISTRATION OF PLANNING GRANTS
FOR DRINKING WATER FACILITIES**

DOCKET NO. 58-0122-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Proposed Rule Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty- sixth Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, November 6, 2019, [Vol. 19-11, pages 366 through 381](#). DEQ received no public comments, and the rule has been adopted as initially proposed. More information regarding this rule docket is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/drinking-water-facility-planning-grants-docket-no-58-0122-1901/>.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the rulemaking, contact the undersigned.

Dated this 1st day of July, 2020.

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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking 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 facility planning grant rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.04, Rules for Administration of Wastewater Treatment Facility Grants, and merge necessary and relevant sections of IDAPA 58.01.04 with IDAPA 58.01.22, Rules for Administration of Planning Grants for Public Drinking Water Facilities. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.04 (Docket No. 58-0104-1901).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, other funding agencies, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, **Vol. 19-8, pages 160–161** and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/drinking-water-facility-planning-grants-docket-no-58-0122-1901/>.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 4, 2019.

Dated this 6th day of November, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0122-2001

**58.01.22 – RULES FOR ADMINISTRATION OF PLANNING GRANTS
FOR DRINKING WATER AND WASTEWATER FACILITIES**

000. LEGAL AUTHORITY.

The Idaho State Board of Environmental Quality, pursuant to authority granted in Chapters 1 and 36, Title 39, Idaho Code, adopted the following rules for the administration of ~~a~~ Drinking Water and Wastewater Planning Grant Programs in Idaho. (5-3-03)()

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.22, “Rules for Administration of Planning Grants for Drinking Water and Wastewater Facilities.” (3-30-01)()

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program providing financial assistance to qualifying entities to prepare a drinking water or wastewater facility planning document. (3-29-12)()

002. WRITTEN INTERPRETATIONS (RESERVED)

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. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. (4-2-08)

02. Availability of Referenced Material. The “Drinking Water Loan Handbook of Procedures” and “Clean Water Loan Handbook of Procedures” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502, or www.deq.idaho.gov. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

006. POLICY.

It is the policy of the Idaho Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water and Wastewater Grant Programs. The Drinking Water and Wastewater Grant Programs provides assistance to eligible public drinking water and wastewater systems for the planning of facilities to help ensure safe and adequate supplies of drinking water and appropriate processing and disposal of wastewater. It is ~~also~~ the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects ~~which shall~~ to facilitate the compliance of any eligible public drinking water system with national primary

drinking water regulations applicable to the system, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., and to administer the Wastewater Treatment Facility Grant Program to protect and enhance 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 in accordance with IDAPA 58.01.16, Wastewater Rules. (4-2-08)()

007. SYSTEM ELIGIBILITY.

01. Eligible Drinking Water Systems. Community water systems and nonprofit noncommunity water systems. (3-30-01)()

02. Eligible Wastewater Systems. Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof, having authority to collect, treat or dispose of wastewater. ()

023. Systems Not Eligible. The following public drinking water systems will not be considered eligible for project planning grants: (3-30-01)()

a. Systems that do not have the financial capability to pay their non-grant share of a planning project. (3-30-01)

b. Systems delinquent in payment of the annual state drinking water fee, Idaho Pollutant Discharge Elimination System (IPDES) permit assessments or state revolving fund loan repayments. (3-30-01)()

008. -- 009. (RESERVED)

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-30-01)

01. Applicant. Any qualifying entity making application for planning grant funds. (3-30-01)

02. Board. The Idaho Board of Environmental Quality. (4-2-08)

03. 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. (4-2-08)

04. 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. ()

045. Community Water System. A public drinking water system that: (3-30-01)

a. Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-30-01)

b. Regularly serves at least twenty-five (25) year-round residents. (3-30-01)

056. Contaminant. Any physical, chemical, biological, or radiological substance or matter in water. (3-30-01)

067. Department. The Idaho Department of Environmental Quality. (3-30-01)

078. Director. The Director of the Idaho Department of Environmental Quality or the Director's designee. (4-2-08)

089. 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. (3-29-12)

~~10.~~ **Domestic Wastewater.** Wastewater derived from public or private residences, business buildings or institutions and similar establishments and which contains water and human body wastes, specifically excreta and urine, along with such products designed to come in contact with excreta and urine in the practice of personal hygiene. ()

~~11.~~ **Eligible Costs.** Costs which are necessary for planning ~~public drinking water systems~~. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 032. (5-3-03)()

~~12.~~ **Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed drinking water project will 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 Handbook may be used as guidance when preparing the EIS. (4-2-08)

~~13.~~ **Environmental Information Document (EID).** Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed 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 environmental impact statement (EIS) is warranted. (3-29-12)

~~14.~~ **Financial Capability.** The ability to raise and manage funds to provide the necessary resources for proper operation of the system. (3-30-01)()

~~15.~~ **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 environmental impact statement (EIS) will not be prepared. It shall include the environmental information document or a summary of it and ~~shall~~ note any other environmental documents related to it. (3-29-12)()

~~16.~~ **Grant Recipient.** An applicant who has been awarded a grant. (3-29-12)

~~17.~~ **Handbook.** "Drinking Water Loan and Wastewater Loan Handbook ~~of Procedures~~." (4-2-08)()

~~18.~~ **Idaho Pollutant Discharge Elimination System.** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). ()

~~19.~~ **Ineligible Costs.** Costs which are not eligible for funding pursuant to these rules. (3-29-12)

~~20.~~ **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. ()

~~21.~~ **Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public drinking water system. (3-30-01)

~~22.~~ **Managerial Capability.** The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (3-30-01)

~~23.~~ **Noncommunity Water System.** A public water system that is not a community water system. (5-3-03)

~~24.~~ **Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. ()

~~25.~~ **Nonprofit Noncommunity Water System.** A public drinking water system that is not a

community water system and is governed by Section 501 of the Internal Revenue Code and includes, but is not limited to, state agencies, municipalities and nonprofit organizations such as churches and schools. (5-3-03)

~~266.~~ **Nontransient Noncommunity Water System.** A public drinking 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. (4-2-08)

~~27.~~ **Operation and Maintenance Manual.** A guidance and training manual delineating the optimum operation and maintenance of the facility or its components. ()

~~228.~~ **Person.** An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (5-3-03)

~~239.~~ **Planning Document.** A document which describes the condition of a public drinking water or wastewater 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 grant funds are provided in Section 030 of these rules and in the Handbook. (~~3-29-12~~)()

~~30.~~ **Point Source.** Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. ()

~~31.~~ **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. ()

~~2432.~~ **Priority List.** A list of proposed projects rated by severity of a 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., Sections 300f et seq., population affected, the need on a household basis for protection of Idaho's public drinking water supplies, and as otherwise as described in Section 020. (~~4-2-08~~)()

~~2533.~~ **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." (4-2-08)

~~2634.~~ **Qualifying Entity.** Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public drinking water system ~~or~~, irrigation system, or wastewater system. (~~4-2-08~~)()

~~2735.~~ **Rehabilitation.** The repair or replacement of segments of drinking water facilities. (3-30-01)

~~2836.~~ **Reserve Capacity.** That portion of the system in the planned facilities to handle future drinking water demand. (3-30-01)

~~37.~~ **Sewer Use Ordinance/Sewer Use Resolution.** An ordinance or resolution which 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. ()

~~2938.~~ **State.** The state of Idaho. (3-30-01)

~~309.~~ **Suspension.** An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-30-01)

~~3140.~~ **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. (3-29-12)

~~3241.~~ **Technical Capability.** The ability of the public drinking water or wastewater system to comply with existing and expected ~~drinking water~~ rules. ~~(3-30-01)~~()

~~3342.~~ **Termination.** An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (3-30-01)

43. 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 wastewater treatment facility. ()

44. 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. ()

45. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and appurtenances thereof, 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 and land disposal systems. ()

~~3446.~~ **Water Treatment Plant.** That portion of the public drinking water system whose primary purpose is to remove contaminants. (3-30-01)

011. -- 019. (RESERVED)

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. ~~Information is also received from the Department and consulting engineers.~~ Grant funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health, sustainability, and water quality criteria and condition of the existing system. ~~(3-29-12)~~()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance in accordance with these rules. (4-2-08)

02. Priority Rating for Drinking Water Systems. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points: ~~(3-29-12)~~()

a. Public Health Hazard. Any condition which 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: (3-29-12)

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 contaminates); (3-29-12)
- ii. Documented unresolved violations of pressure requirements; (3-29-12)
 - iii. Documented reduction in source capacity that impacts the system's ability to reliably serve water; ~~(3-29-12)~~ ()
 - iv. Documented significant deficiencies (e.g., documented in a sanitary survey) in the physical system that is causing the system to not be able to reliably serve safe drinking water. (3-29-12)

v. Documented unregulated contaminants that have been shown to be a hazard 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, storing, and delivering drinking water - up to sixty (60) points. (3-29-12)

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. (3-29-12)

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. (3-29-12)

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. (3-29-12)

f. Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. (3-30-01)

03. Priority Rating for Wastewater Systems. 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 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.
()

034. **Rating Forms.** Rating criteria for Subsections 020.02 and 020.03 is set forth in a rating form that is available *in the Handbook* at www.deq.idaho.gov. (3-29-12)()

045. **Priority List.** A list shall be developed from projects rated according to the priority rating system. *Such list shall be*, submitted for public review and comment, and *shall thereafter be* submitted to the Board for approval and adoption. (3-29-12)()

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. (3-30-01)

b. **Priority Target Date.** An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed grant application will be established. (3-29-12)

c. **Project Bypass.** A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of grant funds may be bypassed, substituting in its place the next highest ranking project that is ready to proceed. An eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. (3-29-12)

056. **Amendment of Priority List.** The Director may amend the Priority List as set forth in Section 080 of these rules. (3-29-12)

021. -- 029. (RESERVED)

030. PROJECT SCOPE AND FUNDING.

Grant funds awarded under this program will be used entirely to prepare a *drinking water facility planning document*. The planning document *will to* identify the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq.; or, maintain compliance with IDAPA 58.01.16, Wastewater Rules, and the federal Clean Water Act, 33 U.S.C. Sections 1381 et seq. The planning document must be approved by the Department. (3-29-12)()

01. Planning Document. (3-29-12)

a. A planning document shall include all items required by IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 503.03 or 502.04 or IDAPA 58.01.16, "Wastewater Rules," Subsection 411.03 or 410.04. Should the grant recipient proceed to construction using federal funds (e.g., a state revolving fund loan), then the items listed in Subsection 030.01.b. of these rules *shall will* be required prior to construction. (3-29-12)()

b. A planning document that is prepared anticipating the use of federal funds shall include an environmental review that will require the Department approval of both a draft and final planning document. (3-29-12)

i. The draft planning document shall include all items required by IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 502.04 or 503.03, as well as the following: or 58.01.16, "Wastewater Rules," Subsection 411.03 or 410.04 (3-29-12)()

- (1) Description of existing conditions for the proposed project area; (3-30-01)
- (2) Description of future conditions for the proposed project area; (3-30-01)
- (3) Development and initial screening of alternatives; (3-30-01)

- (4) Development of an environmental review specified by the Department as described in Section 040. (3-29-12)
- ii. The final planning document shall include all items required of the draft planning document as well as the following: (3-29-12)
- (1) Final screening of principal alternatives and plan adoption; (3-30-01)
- (2) Selected plan description and implementation arrangements; and (3-29-12)
- (3) Relevant engineering data supporting the final alternative. (3-29-12)
- (4) Assessment of the cost and effectiveness, to the maximum extent practicable, of efficient water use, reuse, recapture and conservation, and energy conservation, with cost including construction, operation and maintenance, and replacement. ()
- iii. The grant 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 grant recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the grant recipient during the public comment period. At the public meeting, the grant recipient shall present the draft planning document ~~shall be presented by the grant 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 may be prepared. (3-29-12)()
- c. The draft and final planning document shall bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. (3-29-12)
- d. The draft and final planning documents must be reviewed and approved by the Department. (3-29-12)
- e. The planning period shall be twenty (20) years for all facilities except for distribution and transmission systems which may be forty (40) years. (4-2-08)
- 02. Limitation on Funding Assistance.** The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (3-30-01)
- 031. REVIEW AND EVALUATION OF GRANT APPLICATIONS.**
- 01. Submission of Application.** Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application in a form prescribed by the Department. (3-30-01)
- 02. Application Requirements.** Applications shall contain the following documentation, as applicable: (5-3-03)
- a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; and (5-3-03)
- b. Contracts for engineering services 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 032; and (3-29-12)
- c. A plan of study describing the work tasks to be performed in the planning document, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; and (3-29-12)

d. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

~~i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)~~

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

~~iv.~~ Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and (5-3-03)

e. 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 032; and (3-29-12)

f. 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 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; and (4-2-08)

g. A statement regarding how the non-grant portion of the project will be funded; and (5-3-03)

h. For incorporated nonprofit applicants only, Articles of Incorporation and/or Bylaws showing nonprofit and incorporated status according to Chapter 3, Title 30, Idaho Code. (3-30-01)

03. Determination of Completeness of Application. Applications will be reviewed to determine whether they contain all of the information required by Subsection 031.02. (3-29-12)

04. Notification Regarding 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. (5-3-03)()~~

05. Reapplication for Grant. The action of disapproving, recalling, or terminating a grant in no way precludes or limits the former applicant from reapplying for another grant when the project deficiencies are resolved and project readiness is secured. (5-3-03)

032. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department ~~shall~~ will review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)()

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary costs; (3-29-12)

b. Reasonable costs; and (3-29-12)

c. Costs that are not ineligible as described in Subsection 032.05. (3-29-12)

02. Necessary Costs. The Department ~~shall~~ 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 the planning document. (3-29-12)()

03. Reasonable Costs. Costs ~~shall~~ 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 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. ~~(4-2-08)~~()

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary expenses such as salaries and expenses of a mayor; city council members; board; or a city, district or board attorney; (4-2-08)

b. Professional and consulting services ~~utilizing a lump sum contract~~, specifying costs of individual tasks. ~~(5-3-03)~~()

c. Engineering costs ~~pursuant to a lump sum contract~~, specifying costs of individual tasks, directly related to the planning of ~~public drinking water treatment, storage and distribution~~ facilities including but not limited to the preparation of a planning document and environmental review report; ~~(3-29-12)~~()

d. Financial, technical and management capability analysis; (5-3-03)

e. Public participation for alternative selection; (5-3-03)

f. Certain direct and other costs as determined eligible by the Department; and (5-3-03)

g. ~~Site acquisition services which could include legal fees, appraisals and surveys for land associated with the cost effective alternative in the report and for purchase from a willing seller~~ Legal costs necessary to allow for the completion of the facility plan. ~~(3-29-12)~~()

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (5-3-03)

a. ~~Basin or area wide p~~Planning not directly related to the project; ~~(5-3-03)~~()

b. Personal injury compensation or damages arising out of the project; (5-3-03)

c. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)

d. Costs outside the scope of the approved project; (5-3-03)

e. Ordinary operating expenses such as salaries and expenses of a mayor, city council members, city attorney, district or association personnel costs, and acquiring project funding; (4-2-08)

f. Preparation of a grant application; (5-3-03)

g. All costs related to assessment, defense and settlement of disputes, unless such costs are integral to the completion of the project; ~~(5-3-03)~~()

h. Costs of supplying required permits or waivers; and ~~(5-3-03)~~()

i. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department; (5-3-03)

~~j. Engineering costs incurred prior to approval of the engineering contract or those costs in excess of the contract ceiling unless preapproval has been given in writing by the Department; and~~ ~~(5-3-03)~~

06. Notification Regarding Ineligible Costs. Prior to providing a grant offer, the Department *shall will* notify the applicant that 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 *shall will* also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. ~~(5-3-03)~~()

07. Eligible Costs and the Grant Offer. The grant offer *shall will* reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs that have not yet been set. Actual eligible costs may differ from such estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified. ~~(4-2-08)~~()

033. -- 039. (RESERVED)

040. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. The grant recipient may complete an environmental review as part of and in conjunction with a planning document. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. If the grant recipient prepares an environmental review, then the Department *shall will* be consulted at an early stage in the preparation of the planning document to determine the required level of environmental review. Based on review of existing information and assessment of environmental impacts, the grant recipient may complete at least one (1) of the following: ~~(3-29-12)~~()

a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (4-2-08)

or
b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (4-2-08)

c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (4-2-08)

02. Categorical Exclusions. If the grant recipient requests a CE, the Department *shall will* review the request and, based upon the supporting documentation, take one (1) of the following actions: ~~(3-29-12)~~()

a. Determine if an action is consistent with categories eligible for exclusion whereupon the Department *shall will* issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper, following which the planning document can be approved; or ~~(3-29-12)~~()

b. Determine if an action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department *shall will* notify the grant recipient of the need to prepare an EID. ~~(3-29-12)~~()

03. Environmental Information Document Requirements. When an EID is required, the grant recipient shall prepare the EID in accordance with the following Department procedures: (3-29-12)

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. (4-2-08)

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. (4-2-08)

c. The Department *shall will* review the draft EID and either request additional information about one (1) or more potential impacts, or *shall will* draft a "finding of no significant impact" (FONSI). ~~(4-2-08)~~()

04. Final Finding of No Significant Impact. The Department ~~shall~~ will publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and shall 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 shall become final. The Department ~~shall~~ 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. ~~(3-29-12)~~()

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the grant recipient shall: (3-29-12)

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (4-2-08)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (4-2-08)

c. Conduct a public meeting which may be held in conjunction with a planning document meeting; and (3-29-12)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (4-2-08)

06. Final EIS. Upon completion of the EIS by the grant recipient and approval by the Department of all requirements listed in Subsection 040.05, the Department ~~shall~~ will issue a record of decision, documenting the mitigative measures ~~which shall to~~ be required of the grant recipient. The planning document can be completed once the final EIS has been approved by the Department. ~~(3-29-12)~~()

07. Use of Environmental Reviews Conducted by Other Agencies. If an 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 notification process of the other agency. (4-2-08)

08. Validity of Review. Environmental reviews, once completed by the Department, are valid for five (5) years from the date of completion. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department ~~shall~~ will reevaluate the project, environmental conditions, and public comments and ~~shall~~ will: ~~(3-29-12)~~()

a. Reaffirm the earlier decision; or (3-30-01)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department ~~shall~~ will issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. ~~(3-30-01)~~()

041. -- 049. (RESERVED)

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered by certified mail to applicants who received high priority ranking, were invited to submit an application, and provided a complete application. (3-30-01)

02. Acceptance of Grant Offer. Applicants have sixty (60) days in which to officially accept the grant offer on prescribed forms furnished by the State. The sixty (60) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the sixty (60) day period, the grant funds may be offered to the next project of priority. (3-30-01)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's

designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grant recipient, the grant offer ~~shall~~ **will** become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the grant recipient has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grant recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements shall be interpreted according to the law of grants in aid. No third party shall acquire any rights against the State or its employees from a grant contract agreement. ~~(3-29-12)~~()

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of conducting the planning study. Some eligible costs may be estimated and payments may be increased or decreased as provided in Section 060. (3-3-03)

05. Terms of Agreement. The grant offer shall contain terms of agreement as prescribed by the Department including, but not limited to special conditions as determined necessary by the Department for the successful planning of the project. (3-30-01)

a. Terms consistent with these rules and consistent with the scope of the grant project; and (3-29-12)

b. Special clauses as determined necessary by the Department for the successful investigation and management of the project; and (5-3-03)

c. Terms consistent with applicable state ~~and federal laws~~ pertaining to planning documents; and ~~(3-29-12)~~()

d. Requirement for the prime engineering firm(s) retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability 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 steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. (4-2-08)

051. -- 059. (RESERVED)

060. PAYMENTS.

01. Eligibility Determination. Grant funds will only be provided for eligible costs as defined at Section 010 and determined in accordance with Section 032. (3-29-12)

02. Payments for State Grants. Requests for payment shall be submitted to the Department on a form provided by the Department. The Department ~~shall~~ **will** pay for those costs that are determined to be eligible. ~~(3-30-01)~~()

03. Grant Increases. Grant amendment increase requests as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-30-01)

04. Grant Decreases. If the actual eligible cost is determined to be lower than the estimated eligible cost the grant amount will be reduced proportionately. (3-30-01)

05. Final Project Review to Determine Actual Eligible Costs. The Department may conduct a final project review to determine the actual eligible costs. The financial records of the grant recipient may be reviewed by the Department. (3-29-12)

06. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the requirements contained in the grant agreement have been satisfied. (3-29-12)

061. -- 069. (RESERVED)

070. SUSPENSION OR TERMINATION OF GRANT.

01. Causes. The Director may suspend or terminate any grant for failure by the grantee or its agents, including his engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (3-30-01)

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 (3-30-01)

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 (3-30-01)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-30-01)

d. Any willful or serious failure to perform within the scope of the project; or (4-2-08)

e. Debarment of an engineering firm, contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-30-01)

02. Notice. The Director will notify the grantee in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent shall state: (3-30-01)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-30-01)

b. That the grantee 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." (3-15-02)

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." (3-15-02)

04. Reinstatement of Suspended Grant. Upon written request by the grantee and evidence that the cause(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant. (3-30-01)

05. Reinstatement of Terminated Grant. No terminated grant shall be reinstated. (3-30-01)

071. -- 079. (RESERVED)

080. WAIVERS.

Waivers from the requirements of these rules may be granted by the Department on a case-by-case basis upon full demonstration that a significant public health ~~emergency~~ hazard exists. ~~(3-30-01)~~()

081. -- 999. (RESERVED)