

PENDING RULES COMMITTEE RULES REVIEW BOOK

**Submitted for Review Before
Senate Resources &
Environment Committee
67th Idaho Legislature
First Regular Session – 2023**



Prepared by:

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

January 2023

SENATE RESOURCES & ENVIRONMENT COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 13 – DEPARTMENT OF FISH AND GAME

13.01.04 – RULES GOVERNING LICENSING

DOCKET NO. 13-0104-2201

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

DESCRIPTIVE SUMMARY: The following is a concise explanation 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 rulemaking originated by petition. This rulemaking balances outfitting industry and other economic and social interests in the Commission's allocation of deer and elk tags for sale to outfitted hunters when the Commission sets tag limits only for nonresidents (residents unlimited) for a zone, unit, or hunt area with a history of outfitted hunter use.

The agency conducted negotiated rulemaking, with a meeting on June 15, 2022. The agency received no comment on the proposed rules. There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2022, Idaho Administrative Bulletin, Vol. 22-10, pages 269-272.

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 from this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Amber Worthington, Deputy Director, at 208-334-3771.

DATED this 18th day of November, 2022.

Amber Worthington
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(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Sections 36-104, 36-105, and 36-408, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2022.

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

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

This rulemaking balances outfitting industry and other economic and social interests in the Commission's allocation of deer and elk tags for sale to outfitted hunters when the Commission sets tag limits only for nonresidents (residents unlimited) for a zone, unit or hunt area with a history of outfitted hunter use. The proposed rulemaking would allocate tags in such zones, units or hunt areas by: defining an initial tag use number, based on verified outfitted hunter tag use history, which will remain the same for the zone/unit for subsequent consecutive years in which tag limits apply; allocating tags annually or for a two-year period in each zone/unit corresponding to the initial tag use number, before the Commission adopts annual or biennial tag nonresident tag limits for the zone/unit; subtracting the initial tag use number from the nonresident tag limit set for the zone/unit, after which the Commission may allocate an additional portion (not to exceed 50%) of tags remaining in the nonresident limit for outfitted hunter use based on verified tag use history in the two years preceding allocation; and making tags remaining after the allocation(s) for outfitted hunters available to nonresidents.

Consistent with the Governor's Zero-Based Regulation Executive Order, the agency also edited the rule sections to improve clarity and reduce duplication.

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

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

There is no fiscal impact associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022, Idaho Administrative Bulletin, [Vol. 22-4, pages 19-20](#) under Docket No. 13-0104-2201. The Department held a negotiated rulemaking meeting on June 15, 2022.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not Applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Amber Worthington, Deputy Director, at 208-334-3771.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2022.

DATED this 24th day of August 2022.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-2201

000. LEGAL AUTHORITY.

Sections 36-104(b), 36-301, 36-401 through 413, and 36-1101, Idaho Code, ~~authorize the Commission to adopt rules concerning issuance and sales of licenses.~~ (3-31-22)(____)

001. ~~TITLE AND SCOPE.~~

~~The title of this chapter for citation is IDAPA 13.01.04, "Rules Governing Licensing."~~ These rules govern licensing. (3-31-22)(____)

002. – 009. (RESERVED)

010. DEFINITIONS.

01. ~~Allocated Tag.~~ ~~Game tag allocated under Section 36-408, Idaho Code.~~ (____)

02. ~~Authorized Corporate Representative.~~ ~~Any Corporation~~ shareholder ~~in a corporation,~~ designated in writing by the corporation as the eligible ~~tag~~ applicant, ~~who is in actual physical control of the eligible property.~~ (3-31-22)(____)

03. ~~Blind Person or Visually Impaired.~~ ~~A blind person has a medically documented loss or impairment of vision and includes any person whose visual acuity with correcting lens does not exceed twenty-two hundred (20/200) in the better eye, or whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees. Persons meeting criteria set forth in Sections 36-202(w) or 67-5402(2), Idaho Code.~~ (3-31-22)(____)

04. ~~Domicile.~~ ~~The place where a~~ An individual's ~~has his~~ true, fixed, permanent home and ~~to which place he has the intention of where they intend to~~ returning whenever ~~he is~~ absent. ~~An individual~~ s can have ~~several dwelling places, but~~ only one (1) domicile. ~~Factors to consider establishing domicile include, but are not limited to~~ Determination of domicile may consider, without limitation: (3-31-22)(____)

a. ~~What address does the person use on tax returns and where does the person file a state resident~~ Income tax return ~~state of residency and filing address?~~ (3-31-22)(____)

b. ~~Where is the person registered to~~ voter registration? (3-31-22)(____)

c. Location ~~Where~~ do the person and ~~his~~ immediate family live? (3-31-22)(____)

d. ~~Where does the person have his mail sent or forwarded to?~~ Mailing/forwarding address: (3-31-22)(____)

e. ~~Where does he register his automobiles?~~ Vehicle registration: (3-31-22)(____)

f. ~~Where has the person~~ Location claimed ~~a~~ for homeowner exemption ~~on a personal residence?~~ or (3-31-22)(____)

g. ~~Where does he have a~~ State of driver's license? (3-31-22)(____)

05. ~~Disabled.~~ ~~A disabled person is defined as a person m~~ Meeting criteria set forth in Sections 36-406(g), or 36-1101(b), Idaho Code. (3-31-22)(____)

06. ~~Eligible Property.~~ At least three hundred twenty (320) acres of land, excluding any government

lands, in one (1) controlled hunt area determined by the Department to be valuable for habitat or propagation purposes for deer, elk, pronghorn, ~~and~~ or black bear, whether owned by one (1) or more persons, a partnership, or corporation. (3-31-22)()

~~067.~~ **Landowner.** ~~Any p~~Person or corporation whose name appears on a deed as the owner ~~of eligible property or whose name appears, or~~ on a ~~sales~~ contract ~~for sale of eligible property~~ as the purchaser, and any affiliates, management companies, associated entities, wholly-owned subsidiaries, corporations, or limited liability ~~corporations~~ ~~companies~~ wherein fifty percent (50%) or more of the ownership or controlling interest is maintained by a single individual, partnership, or corporation. (3-31-22)()

~~08.~~ **Non-Allocated Tag.** Game tag other than an allocated tag. ()

~~09.~~ **Outfitted Hunter.** Person who obtains hunting services (excluding meat pack-out) under written agreement with an outfitter licensed under Chapter 21, Title 36, Idaho Code, for the species and area for which the applicable game tag is valid. ()

~~0710.~~ **Permanent Disability.** ~~A m~~Medically determinable physical impairment, which a physician has certified ~~that the~~ ~~as a~~ condition has ~~ving~~ no expectation for a fundamental or marked ~~ehange~~ ~~improvement~~ at any time in the future. (3-31-22)()

~~0811.~~ **Physician.** ~~A p~~Person licensed to practice medicine pursuant to the Idaho Medical Practice Act (Sections 54-1801 through 54-1820, Idaho Code), or equivalent state licensing authority ~~if the person is not licensed to~~ ~~in the state of~~ practice ~~in Idaho~~. (3-31-22)()

~~09.~~ **Resident.** "Resident" is defined in Section 36-202(s), Idaho Code. (3-31-22)

~~12.~~ **Two-Year Outfitter Verified Use History.** Tag use by outfitted hunters, as verified and recorded in accordance with Section 36-408, Idaho Code, for each of the two (2) calendar years immediately preceding the date on which the Commission determines tag allocation for a hunt area. ()

(BREAK IN CONTINUITY OF SECTIONS)

506. DEER AND ELK TAG ALLOCATION IN GENERAL HUNTS LIMITED FOR NONRESIDENTS ONLY.

~~01.~~ **Tag Allocation.** When setting annual or biennial limits for general hunt deer or elk tags available to nonresidents without resident limits, in zones, units, or other hunt areas with historic outfitted hunter use, the Commission will first allocate, on a corresponding biennial or annual basis, the number of tags reserved for outfitted hunters equal to the Initial Tag Use Number determined under this Section 506. The Commission will subtract the number of tags so allocated from the nonresident tag limit. Subject to a maximum of fifty percent (50%) of the remaining nonresident tag limit, the Commission will allocate an additional number of tags reserved for outfitted hunters corresponding to the number by which the higher tag number from the Two-Year Verified Outfitter Use History exceeds the Initial Tag Use Number for the hunt area. The number of tags remaining in the nonresident limit after subtracting the Initial Tag Use Number, and any additional tags allocated under this section, will be available for purchase as non-allocated tags by outfitted or non-outfitted hunters. ()

~~02.~~ **Initial Tag Use Number.** ()

~~a.~~ For general hunts first limited for nonresidents while unlimited for residents in 2021 or subsequent years, the Initial Tag Use Number for outfitted hunters is the higher tag use number of the Two-Year Verified Outfitter Use History for 2021-2022, or the two (2) years immediately preceding the first year the hunt area is limited, whichever period is later. ()

~~b.~~ The Commission will increase the Initial Tag Use Number for a deer unit subject to a fifty percent (50%) restriction for allocated tag limits in 2021-2022, corresponding to the reduction in outfitted hunter use

demonstrated by outfitter(s). ()

c. If general hunt tags are allocated under this Section 506 for elk zones capped for all hunters before 2021, the Initial Tag Use Number will be the number determined to be historic outfitted hunter use at the time of prior capping, if greater than the otherwise applicable Two-Year Verified Outfitter Use History. ()

d. The Initial Tag Use Number will remain the same for the zone, unit, or hunt area for subsequent consecutive years in which nonresident tag limits apply. ()

5067. DEER AND ELK ~~OUTFITTER~~ ALLOCATED TAGS.

01. Distribution of ~~Outfitter~~ Allocated Tags. ~~Allocated tags will be sold by the Department, as designated by Section 36-2107, Idaho Code, and IDAPA 24.35.01.057, "Rules of Idaho Outfitters and Guides Licensing Board," to hunters with signed agreements with licensed outfitters in those zones with a cap on the number of tags sold and in outfitter allocated controlled hunts.~~ Application for ~~the purchase of~~ allocated tags will be made by the outfitter for the outfitted hunter, in accordance with tag designation by the Idaho Outfitters and Guides Licensing Board under Section 36-2107, Idaho Code, on a form prescribed by the Department. ~~The application shall be accompanied by the appropriate license fees, and a with outfitter's certification by the outfitter that the hunter has a signed a written agreement to hunt with the outfitter making application exists between the outfitter and outfitted hunter for the tag applied for.~~ (3-31-22)()

02. Designated Buyers. Purchasers of allocated tags, who return their unused tag ~~and a~~ with a notarized affidavit stating that ~~the tag buyer has~~ they have not hunted, may designate another person to purchase a replacement tag. If the original buyer does not make a designation, the outfitter may make the designation. The designated buyer must pay the regular fee for the replacement tag. (3-31-22)()

03. Unsold Tags. Any allocated tags not sold by August 1 of each year will be sold by the Department on a first-come, first-served basis. (3-31-22)

5078. – 549. (RESERVED)

IDAPA 13 – DEPARTMENT OF FISH AND GAME

13.01.04 – RULES GOVERNING LICENSING

DOCKET NO. 13-0104-2202

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

DESCRIPTIVE SUMMARY: The following is a concise explanation 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 rulemaking originated by petition. This rulemaking would allow reasonable modification of big game hunting equipment restrictions to allow the use of an electronic viewfinder or display screen to aid aiming by blind or visually impaired hunters. The agency held a negotiated rulemaking on July 21, 2022. No persons other than petitioners identified themselves as interested persons. The agency received no comment on the proposed rules. There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2022, Idaho Administrative Bulletin, [Vol. 22-10, page 273-274](#).

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 from this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Amber Worthington, Deputy Director, at 208-334-3771.

DATED this 18th day of November, 2022.

Amber Worthington
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(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Sections 36-104, 36-105, 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 October 19, 2022.

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

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

This rulemaking would establish an exception to the current prohibition against using an electronic device attached to, or incorporated in, a scope when taking big game (IDAPA rule 13.01.08.410.01.e.). The rulemaking would allow a blind or visually impaired hunter to attach a simple electronic device (such as a smartphone camera) to a scope as a viewfinder or display screen only to aid the hunter to line up on a target. This rulemaking would establish criteria for the exception and a permitting process.

Consistent with the Governor's Zero-Based Regulation Executive Order, the agency also edited the rule section to improve clarity and reduce duplication.

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

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

NEGOTIATED RULEMAKING: This rulemaking originated via petition. Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 6, 2022, Idaho Administrative Bulletin, [Vol. 22-4, page 21](#) under Docket No. 13-0104-2202. The Department held a negotiated rulemaking meeting on July 21, 2022. No persons other than petitioners identified themselves as interested persons. No members of the public attended the meeting. The Department reviewed draft rule language with petitioners.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not Applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Amber Worthington, Deputy Director, at 208-334-3771.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2022.

DATED this 24th day of August, 2022.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-2202

304. REASONABLE MODIFICATION PERMIT (WEAPON RESTRICTIONS).

01. **Application.** Applications for reasonable modification permits (for medical reasons) to allow use of equipment otherwise unauthorized ~~in a special weapon season (archery or muzzleloader only)~~ will include: (3-31-22)()

- a. All information requested on a form prescribed by the Department; (3-31-22)
- b. The applicant's signature; (3-31-22)
- c. Signed certification from the applicant's physician, physician assistant, optometrist, or nurse practitioner stating the criteria limiting the applicant's ability to participate without special accommodation, including checking of the appropriate box for short-term or long-term disability, and for short-term disability, including date when the disability is expected to end; (3-31-22)
- d. A copy of the license of the physician, physician assistant, optometrist, or nurse practitioner, if that person is not licensed to practice in Idaho; (3-31-22)
- e. Applicant's certification that applicant is able to hold and fire, without help from other persons, legal firearms or archery equipment; and (3-31-22)
- f. A description of ~~the~~ equipment accommodation requested, explaining how the requested accommodation will allow the applicant to participate ~~in the special weapon hunt~~ without enhancing their abilities beyond the limitations and purpose of the ~~special weapon~~ hunt. (3-31-22)()

02. **Determination.** The Department will make its determination based on ~~the~~ reasonableness of the accommodation and its consistency insofar as possible with all provisions guiding other ~~participants in the special weapon hunting season~~ hunters. The Department has discretion to deny ~~the~~ applications as unreasonable in light of restrictions for other ~~participants in the~~ hunters, or set a modification different from the modification requested. (3-31-22)()

- a. Reasonable modification related to accommodation for use of scope or sight magnification (including battery-powered or tritium-lighted reticles) for archery or muzzleloader equipment may include magnification up to 4x power because of equipment availability. (3-31-22)
- b. Reasonable modification related to archery only hunts may include the use of a crossbow or a device that holds a bow at partial or full draw. (3-31-22)

~~c. Reasonable modification for blind or visually impaired hunters may include a simple electronic device (e.g., smartphone camera), incorporated or attached to the scope (otherwise prohibited by IDAPA 13.01.08.410.01), for use by the hunter or companion, only as a viewfinder or display screen to aid in aiming. ()~~

03. **Authority.** Reasonable Modification Permits authorize holders to use equipment, as specified in the permit, that is otherwise prohibited ~~in a special weapon season~~. (3-31-22)()

04. **Expiration and Carrying.** (3-31-22)

- a. Reasonable modification permits expire no later than December 31 of the fifth year following the ~~issuance~~ date ~~of issuance~~, or the earlier ending of any shorter-term disability. (3-31-22)()
- b. A permit holder must carry a copy of the permit ~~while~~ during any hunting ~~in any special weapon hunt~~ in which the permit applies. (3-31-22)()

IDAPA 13 – DEPARTMENT OF FISH AND GAME

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

DOCKET NO. 13-0110-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-103, 36-104, 36-501, 36-504, 36-506, 36-701, 36-703, 36-704, 36-706, 36-708, 36-712, and 36-2201-2205, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanation of the reasons for adopting the pending rule and a summary of 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 rule is being presented for authorization as part of the agency's plan to review each rule chapter every five years, consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#). This rulemaking concerns the commercial and non-commercial importation, possession, release, sale, or salvage of wildlife. The rules under consideration govern import and transport permit issuance; captive wildlife; disease of captive wildlife; recovery, possession and sale of wildlife parts; prohibition on possession, importation and transportation of deer/moose/wild elk carcasses or parts from areas known to have animals with chronic wasting disease; private and commercial wildlife facilities; wildlife rehabilitation facilities; release of captively propagated game birds; and operation of shooting preserves.

The agency invited public participation in negotiated rulemaking, and no person expressed interest in participation. The agency also provided opportunities for public comment on proposed rules. The complete text of the proposed rule was published in the October 5, 2022 Idaho Administrative Bulletin, [Vol. 22-10, pages 275-286](#). The agency held a public meeting on October 18, 2022, at which it discussed potential changes to proposed rule sections regarding captive and commercial wildlife facilities based on initial comments received from commercial wildlife facilities regulated under both current agency rules and U.S. Department of Agriculture (USDA) regulations for exhibition of captive wildlife.

The text of the pending rule has been changed from the text of the proposed rule in accordance with Section 67-5227, Idaho Code. Changes in the pending rule text clarify points of confusion identified by commenters or upon further agency review. Changes also include the incorporation by reference of USDA regulations to align IDFG and USDA requirements for captive wildlife handling, care, treatment and transportation for warm blooded animals. Text changes regarding housing of captive wildlife provide flexibility measures to prevent escape, simplify or eliminate pieces of the rule that serve little purpose or create more burden or that are duplicative of USDA practices, and changes provide an exemption from state regulation for animal or public welfare activities (such as public handling or feeding) within commercial facilities licensed by USDA for public exhibition. The rulemaking continues state regulation of captive wildlife where there is not USDA licensing, and where there is greater potential to affect wildlife or the public at large, such as escape prevention, reporting of annual inventory and animal deaths, veterinary care for disease prevention and control, permitting for import and transport, and financial bonding for larger facilities to protect the state in case of escape or facility abandonment. The agency added Section 002 to comply with requirements of Section 67-5229, Idaho Code, to incorporate material by reference in administrative rule.

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 associated with this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions about this pending rule, contact Tricia Hebdon, Assistant Chief of Wildlife, 208-287-2704.

DATED this 18th day of November, 2022.

Amber Worthington
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(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Sections 36-103, 36-104, 36-701, 36-703, 36-704, 36-706, 36-708, 36-712, and 36-2201 to 36-2205 Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking has been scheduled and posted on agency website at <https://idfg.idaho.gov/about/rulemaking>.

PUBLIC MEETING

Tuesday, October 18, 2022 @ 12:00 p.m. (Mountain Time)

**In Person: IDFG Headquarters
600 South Walnut St.,
Boise, ID 83712**

Virtual by Zoom Meeting Link: <https://us06web.zoom.us/j/83077793532>

Additional public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2022.

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

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

This rule is being presented for authorization as part of the IDFG plan to review each rule chapter every 5 years. This rulemaking concerns the commercial and non-commercial importation, possession, release, sale, or salvage of wildlife. The rules under consideration govern import and transport permit issuance; captive wildlife; disease of captive wildlife; recovery, possession and sale of wildlife parts; prohibition on possession, importation and

transportation of deer/moose/wild elk carcasses or parts from areas known to have animals with chronic wasting disease; private and commercial wildlife facilities; wildlife rehabilitation facilities; release of captively propagated game birds; and operation of shooting preserves. Consistent with the Governor's [Zero-Based Regulation Executive Order](#), the agency has reorganized rule sections in this chapter and revised current rule language to improve clarity and reduce duplication.

This proposed rulemaking includes changes to current rules to clarify definitions, including those for agricultural/domestic animals, conventional pets, bona fide pet stores, captive wildlife facilities, private parks, commercial wildlife facilities, large commercial wildlife facilities, shooting preserves, and several acronyms. Proposed changes to current rule also: clarify that allowances for release of native wildlife without a permit does not apply to non-native wildlife; restrict the release of captured wild native reptiles and amphibians back into the wild in certain circumstances; and make the sale of rattlesnake parts consistent with other native reptile possession requirements. Proposed changes modify primary wolf characteristics to include both male and female weights and eliminate eye shine color as a characteristic. Proposed changes include language to distinguish a requirement for captive wildlife facilities to provide an inventory of animals yearly to the Department from a requirement that animal health records must be available for Department inspection upon request. Proposed changes shift reporting of animal deaths to the appropriate IDFG Regional Office from the Wildlife Health Laboratory. Proposed changes clarify requirements applicable to wildlife rehabilitation facilities. Proposed changes clarify requirements applicable to captively propagated game birds intended for release in Idaho, and delete a requirement for habitat verification for the Department's permitting of game bird shooting preserves.

Proposed change to the current rule would eliminate facility construction cost in the calculation of financial assurance requirements (via cash or surety bonds) for large commercial wildlife facilities. The proposed change would rely on a \$2,000 per animal held, or \$50,000 whichever amount is greater, financial assurance to guarantee performance of license conditions and to reimburse the Department for any costs incurred for cleanup of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control.

FEE SUMMARY: There is no fee associated with this rule.

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 associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-4, page 22](#) under Docket No. 13-0110-2201. No persons identified themselves as interested in participating in negotiated rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Tricia Hebdon, Assistant Chief of Wildlife, 208-287-2704.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2022.

DATED this 29th day of August, 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 13-0110-2201

Italicized red text indicates changes between the text of the proposed rule as adopted in the pending rule.

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

000. LEGAL AUTHORITY.

Sections 36-103, 36-104, 36-501, 36-504, 36-506, 36-701, 36-703, 36-704, 36-706, 36-708, 36-712, and 36-2201-2205, Idaho Code. ()

001. SCOPE.

These rules govern commercial and non-commercial importation, possession, release, sale, and salvage of wildlife. ()

002. INCORPORATION BY REFERENCE.

The code of federal regulations, title 9, part 2, section 131 (handling of animals), and part 3, sections 125-142 (specifications for humane handling, care, treatment, and transportation of certain warm-blood animals), (effective July 1, 2022) are incorporated by reference and available at <https://www.ecfr.gov/current/title-9/chapter-I/subchapter-A/>. ()

003. -- 009. (RESERVED)

010. DEFINITIONS.

In this chapter, “wildlife” excludes bullfrogs, fish, or crustaceans whose possession, transport, release, and sale are regulated by IDAPA 13.01.11 and 13.01.12 or by ISDA, unless they are or will be maintained in a zoo or aquarium for live exhibit to the public. ()

01. Agricultural/Domestic Animals. Animals or eggs normally considered to be of agricultural or domestic types currently common to Idaho that: (1) do not meet the definition of wildlife in Section 36-202, Idaho Code and (2) are not intended for release into the wild in Idaho. These include but are not limited to livestock, domestic bison, domestic cervids, and domestic furbearing animals regulated by ISDA under Title 25, Idaho Code. ()

02. Bona Fide Pet Store. Legitimate retail store that engages in the selling of conventional pets with a set location and regular business hours. ()

03. Captive Wildlife Facility. Facility where the operator obtains, possesses, or propagates wildlife for any purpose, including commercial, rehabilitation, private ownership (including private park) or sale. ()

04. Commercial Wildlife Facility. Facility where the operator obtains, possesses, or propagates wildlife for any commercial purpose, including exhibition, education, entertainment, or sale. ()

05. Commercial Wildlife Farm. Commercial wildlife facility where operator propagates big game animals not regulated by ISDA. ()

06. Conventional Pets. Privately owned companion animals not intended for research or resale that are not native wildlife captured from the wild in Idaho: dogs, cats ferrets, rabbits, rodents, non-venomous or non-dangerous reptiles and amphibians, non-poultry birds, hedgehogs, tenrecs, and sugar gliders. ()

07. CWD. Chronic Wasting Disease. ()

08. ISDA. Idaho State Department of Agriculture. ()

09. Large Commercial Wildlife Facility. Commercial wildlife facility housing three or more species or encompassing display or exhibit areas larger than one (1) acre. ()

10. NPIP. National Poultry Improvement Program for state-federal cooperative testing and certification. ()

11. Private Park. Facility where the owner or operator obtains, possesses, or propagates wildlife in captivity for personal pleasure and not for any commercial purpose. ()

12. Publicly Owned Zoo or Wildlife Exhibit. Zoo, aquarium, or similar facility exhibiting wildlife owned by any municipal, county, state, or federal agency. ()

13. Shooting Preserve. Privately owned or leased premises operated for hunting of captively propagated upland game birds. ()

14. Traveling Circus, Menagerie, or Trained Act of Wild Animals. Mobile wildlife display or exhibit maintained for instructional, educational, entertainment, or other commercial purposes that is not located within Idaho more than two (2) months during any calendar year. ()

011. -- 099. (RESERVED)

100. POSSESSION OR SALE OF WILDLIFE KILLED LAWFULLY.

In addition to the restrictions and permissions set forth in Sections 36-106, 36-501, 36-502, and 36-1107, Idaho Code: ()

01. Edible Flesh. No person may sell, purchase, or barter the edible flesh of game animals or other wildlife protected by classification under IDAPA 13.01.06. ()

02. Rattlesnakes. Skins or rattles of rattlesnakes lawfully killed in defense of people or property, or dying in lawful captivity, may be possessed, purchased, or sold, provided the person taking rattlesnake(s) from the wild or owning in captivity does not sell more than four (4) rattlesnakes per year. ()

03. Written Statement for Possession by Another. A written statement showing the taker's name, address, license and tag/permit numbers, date and location of kill, the part(s) possessed, and signed by the taker, must accompany wildlife or its parts when possessed by another person. Any buyer of black bear or mountain lion head, hide or parts (except tanned hides finished into rugs or mounts) must send a copy of the sales statement, or a Department Form CE-50, to the Department within ten (10) days after such purchase. ()

04. Lawfully Taken under other Jurisdiction. Wildlife or parts thereof that have been legally killed, collected, or salvaged under the laws of other states, Indian tribes, or countries may be possessed or sold in Idaho unless Idaho prohibits such possession or sale. ()

101. – 119. (RESERVED)

120. RECOVERY OF PROTECTED WILDLIFE.

Protected species of wildlife that have died naturally (not human-caused) or by accidental or unlawful human causes, remain in public trust to be disposed of by the Department. However, a person may recover, possess, sell or purchase parts protected wildlife dying of natural causes or accidental vehicle collision as follows: ()

01. Bighorn Sheep. ()

a. Horns of bighorn sheep dead of natural causes may be recovered and possessed, provided such horns are presented to a Department office for marking by permanent metal pin within thirty (30) days of recovery. Pin insertion is not Department certification that the animal was legally taken. No person may sell, barter, purchase, or transfer to another person any horn from bighorn sheep that have died from natural causes without a Department permit. ()

b. No person may alter, deface, or remove a pin placed in a bighorn sheep horn by the Department. No person may possess any horn of a bighorn sheep that bears an altered, defaced, or counterfeit Idaho pin or from which a state pin has been removed. ()

02. Big Game other than Bighorn Sheep. Antlers, hides, bones, horns, or teeth of big game animals other than bighorn sheep that have died of natural causes may be recovered, possessed, purchased, bartered or sold, provided that reporting of bear and mountain lion parts is in accordance with reporting under Section 100.03 of these rules. ()

03. Wildlife Salvaged from Vehicle Collision. Big game animals, upland game animals, upland game birds, or furbearing animals, which may be lawfully hunted or trapped in Idaho, or predatory or unprotected wildlife that have been killed or dispatched as a result of accidental vehicle collision and salvaged in compliance with Section 36-506, Idaho Code, may be recovered, possessed, provided that such taking is not in violation of state or federal law. Parts of said wildlife, excluding any meat and excluding any part of bighorn sheep, may also be purchased, bartered, or sold, where sale is not specifically prohibited by federal statute or regulation or state statute, provided a written statement as described in IDAPA 13.01.10.100.03 accompanies the wildlife part. ()

121. – 139. (RESERVED)

140. TAXIDERMY AND FUR BUYER LICENSE RECORDS.

Persons possessing a taxidermist or fur buyer license must keep a record of any wildlife received for mounting or preservation; and of any purchase of furbearers, or of raw skins or parts of black bear, mountain lion or wolves, with said record to be kept for two (2) years from the respective date of receipt or purchase. Records may be written or preserved by media complying with Section 9-328, Idaho Code; copies of completed Department Form CE-50 are also considered adequate records. ()

141. – 149. (RESERVED)

150. CWD MANAGEMENT RESTRICTIONS.

01. Designation of CWD Management Zone. The Commission may designate CWD Management Zone(s) where wildlife is subject to increased risk of acquiring CWD based on presence of CWD-infected animals and information on wildlife movement. The Director may designate CWD Management Zone(s) on a temporary basis, for a period not to exceed ninety (90) days and subject to Commission review. ()

02. Prohibitions. It is unlawful to: ()

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

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

c. Possess the carcass or any part of deer, elk, or moose that: has been imported from another state, Canadian province or country with a documented case of CWD; or transported out of any CWD Management Zone to or across any part of the state that is not a designated CWD Management Zone. ()

03. Exceptions. This section does not apply to: ()

a. Domestic cervids regulated under Chapter 37, Title 25, Idaho Code; ()

b. Meat that is cut and wrapped; ()

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

d. Edible organs, excluding brains; ()

e. Hides without heads; ()

f. Upper canine teeth (ivories); ()

- g.** Finished taxidermy; ()
- h.** Dried antlers; ()
- i.** Cleaned and dried skulls or skull caps; ()
- j.** Skull caps that do not include brain or spinal tissue; or ()
- k.** Head or tissue from a CWD Management Zone, provided it is presented to the Department for sampling purposes, with the Department to keep possession for appropriate tissue disposal. ()

04. Disposal of Carcasses or Parts in Violation. The Department may seize carcasses or parts imported, transported, or possessed in violation of this section, with a person in violation of this section responsible for handling and disposal costs, as authorized under Chapters 34 and 53, Title 19, Idaho Code. ()

151. – 199. (RESERVED)

200. LIVE WILDLIFE.

01. General. No person may import into Idaho, export from Idaho, transport, possess or otherwise hold in captivity, propagate, sell or release into the wild any live wildlife, except those animals exempted by Idaho Code or these rules, without a corresponding import, export, transport, captive possession (individual animal license or multiple animal license at a private, commercial or rehabilitation facility), sale or release license/permit from the Department. Use of raptors in falconry is governed by IDAPA 13.01.14, Rules Governing Falconry. ()

02. Compliance with Other Agency Requirements. No person may possess, hold in captivity, or propagate any wildlife without complying with relevant city or county ordinances, including any zoning and planning commission approval, and any ISDA or USDA requirements. ()

03. Restrictions on License Issuance. The Department will not issue any license/permit for import, export, transport, captive possession, sale, or release of live wildlife or eggs thereof, if the wildlife or eggs would pose a threat to the state of Idaho, including public safety, threat of disease, genetic contamination or displacement or of competition with existing species. Because of CWD, the Department will not issue any permit for the import into Idaho of any live cervid not regulated as a domestic cervid by ISDA. ()

04. Marking Big Game. All captive big game animals (excluding domestic cervids regulated by ISDA) must be uniquely marked via Department-approved method and numbering. ()

05. Inspections and Records. As a condition to any facility or individual captive animal license, the Department will be able to access for inspection at any reasonable time all records, all wildlife, and the facilities where the wildlife are kept, with records maintained as specified in Section 36-709(c), Idaho Code. ()

06. Exemptions for Import, Export, Transport, Possession or Sale. No permit is needed from the Department to import, export, transport, possess or sell the following animals, provided they are not intended for release into the wild (although another state or federal agency may regulate such activity): ()

- a.** Agricultural/domestic animals. ()
- b.** Conventional pets. ()

07. Exemptions for Unprotected and Predatory Wildlife. ()

a. Wildlife classified as Unprotected Wildlife or Predatory Wildlife that are lawfully taken by a person licensed or authorized to hunt or trap in accordance with Chapter 4, Title 36, Idaho Code, may be exported, transported, possessed, or sold without additional permit from the Department, provided such action is not otherwise in violation of federal, state, county, or city laws, rules, ordinances, or regulations. ISDA may restrict the possession,

sale, or import of fox, skunk, raccoon or other animals, such as restrictions under Section 25-236, Idaho Code. ()

b. Native unprotected or predatory wildlife lawfully captured alive may be released on private lands in the county of origin without a Department permit in accordance with Section 36-502, Idaho Code and with written landowner consent in possession while such wildlife is in transit to the release site. ()

08. Exemptions for Native Reptiles and Amphibians. A person licensed or authorized to hunt or trap in accordance with Chapter 4, Title 36, Idaho Code, may capture alive, or hold in captivity and possess, no more than four (4) individuals per species of Idaho native reptiles or amphibians at one time, provided such action is not otherwise in violation of federal, state, county, or city laws, rules, ordinances, or regulations. Because of disease concerns, native reptiles or amphibians held in captivity with another reptile or amphibian obtained from any other location may not be released back into the wild unless the Department provides advance authorization. ()

201. DISEASE OF CAPTIVE WILDLIFE.

The Department and ISDA will mutually determine diseases and parasites of concern and mechanisms and procedures for control of diseases and parasites in captive wildlife. Such mechanisms and procedures include but are not limited to examination, testing, quarantine, and slaughter or destruction, at the owner's expense, of individual animals or herds that are infected with or affected by diseases or parasites that may have significant detrimental effect on native wildlife, other captive wildlife, livestock or the public health of the citizens of the state of Idaho. ISDA authorizes such disease and parasite control measures under Title 25, Chapter 2, Idaho Code. ()

202. LIVE WILDLIFE IMPORT OR TRANSPORT.

01. Application. Application for a permit to import or transport wildlife will be on a form prescribed by the Department. The applicant must possess a valid commercial or private wildlife facility license or individual captive wildlife permit or make concurrent application for such facility or individual animal possession license. ()

02. Inspection and Examination. Upon Department request, the applicant must provide a valid Certificate of Veterinary Inspection from the state of origin for each animal imported or transported. ()

03. Additional Requirements. The Department may impose test and certification requirements related to genetic issues or diseases of concern for any animal to be imported or transported. ()

203. LIVE WILDLIFE IN TRANSIT.

All required licenses and certificates must accompany live wildlife while in transit. ()

204. POSSESSION OF UNLAWFUL IMPORT.

No person may possess any wildlife, progeny or eggs thereof, whose import into this state was unlawful. ()

205. – 249. (RESERVED)

250. CAPTIVE WILDLIFE POSSESSION.

01. Application. Application for a license to possess captive wildlife on an individual basis will be on a form prescribed by the Department. ()

02. Inspection and Examination. Upon Department request, the applicant or license holder must make animal(s) available to the Department for inspection during business hours or provide a valid Certificate of Veterinary Inspection for any captive wildlife possessed. ()

251. CAPTIVE WOLVES.

01. License and Tattoos. No person may possess a live wolf or other canine exhibiting primary wolf characteristics without proper identification and a license on an annual calendar year basis from the Department, to be obtained by no later than three days of commencing possession of the animal. Proper identification is a microchip and

tattoo inside the flank or ear for any animal six (6) months of age or older. Application for license will be on a form prescribed by the Department, and the applicant will provide written and photographic confirmation of tattooing. ()

- 02. Primary Wolf Characteristics.** ()
- a.** Rounded ears smaller in proportion to those of the coyote; ()
- b.** Broad snout with nose pad wider than one (1) inch; ()
- c.** Long legs, approximately twenty-six (26) to thirty-two (32) inches at the shoulder in adult height; ()
- d.** Four and one-half (4.5) to six (6) feet long from tip of nose to tip of tail; ()
- e.** Adult male weight at least eighty (80) pounds; adult female weighs at least sixty (60) pounds adult; ()
- f.** Tail carried high or straight out when running; ()
- g.** Long, coarse fur, variable from white to black (generally grayish). ()

252. – 259. (RESERVED)

260. HUMANE TREATMENT OF CAPTIVE WILDLIFE.

01. Humane Treatment. All captive wildlife must be handled in a humane manner and in a manner to prevent parasites, sickness, or disease, including but not limited to the following actions: ()

- a.** Any captive wildlife afflicted with parasites or disease is immediately given attention *by a licensed veterinarian* or destroyed in a humane manner. ()
- b.** Any captive wildlife is fed on a regular schedule. Food is adequate and varied and so far as possible, consistent with food ordinarily eaten by such animals. Food is of good quality and stores of same are kept in suitable containers with tight fitting covers so as to render it inaccessible to rats, flies, or other vermin. ()
- c.** Fresh or running water for drinking purposes is available in cages or enclosures at all times, and is kept clean and in a sanitary condition. ()
- d.** Enclosures will be kept in a clean and sanitary condition consistent with good animal husbandry. ()
- e.** Any animals with a propensity to fight or which are otherwise incompatible are kept segregated. ()
- f.** Suitable shelter or shields will be provided for all captive animals for protection from the elements, shelter and privacy. ()
- g.** Cages or enclosures will attempt to mimic the natural climate and habitat of the species being held, as nearly as possible. ()

261. PREVENTION OF ESCAPE OF CAPTIVE WILDLIFE.

All wildlife held in captivity must be confined at all times in cages or enclosures of such structure or type of construction that it will be impossible for such animals to escape (*including by flying, climbing, jumping, or digging*), meeting the following minimum specifications. The Department may *identify additional specifications for* enclosures by considering standards or guidelines *for the particular species of* the Association of Zoos and Aquariums *or other captive wildlife facility accreditation entities.* ()

- 01.** For ursids (bears), canids, or felids, the enclosure will: ()
- a.** Have a chain link fence at least eight (8) feet in height with *permanently anchored stakes, a chain link enclosure top, and buried fencing or a concrete apron to preclude escape by digging; or* ()
- b.** Have any other Department-approved configuration that will preclude escape. ()
- 02.** For all animals, cages or enclosures will be of sufficient size to give the animal or bird confined ample space for exercise and to avoid being overcrowded. ()
- a.** The length of the cage or enclosure will be a minimum of four (4) times the body length (tip of nose to base of tail) of the animal being kept, reptiles excepted. ()
- b.** The width will be at least three-fourths (3/4) of the cage length. ()
- c.** For the second animal housed in cage, floor space will be increased twenty-five percent (25%) and for each additional animal housed in the cage, floor space will be increased fifteen percent (15%). Cages with tops will be of reasonable height to accommodate the animals contained therein. No nails or other sharp protrusions that might injure or impair the animal will be allowed within the cages. ()
- d.** For all animals, cages or enclosures will be constructed to prevent entrance by other animals and prevent harm to or by the general public. Cages, fencing, and guardrails will be kept in good repair at all times; and gates will be securely fastened and locked. ()
- e.** For all venomous reptiles, enclosures will have safety glass and cages will have small enough mesh to prevent the animal's escape and double walls sufficient to prevent penetration of fangs to the outside; and all cages and enclosures will be kept locked. ()

262. RESPONSIBILITY OF POSSESSOR OF CAPTIVE WILDLIFE.

Any person possessing live wildlife in captivity is responsible for the care of the wildlife in possession and the protection of the public, and liable for the expense of capture or destruction of any escaped wildlife, including any costs incurred by the Department. The Department makes no representation concerning public safety of any licensed captive wildlife or facility. ()

263. – 299. (RESERVED)

300. CAPTIVE WILDLIFE FACILITIES (PRIVATE, COMMERCIAL, REHABILITATION).

- 01. General.** No person may own or operate or maintain a private park, commercial wildlife, or rehabilitation facility without obtaining the appropriate license for each facility from the Department. ()
- 02. Applications.** Application to operate a private, commercial or rehabilitation wildlife facility will be on a form prescribed by the Department, with separate application to be made for each facility and for any animal(s) imported after a facility is licensed. The Department will only consider an application that includes: ()
- a.** The name and address of the applicant and any owner(s) other than the applicant. ()
- b.** Proof of compliance with city/county zoning ordinance or zoning permit application. ()
- c.** The location of the proposed facility, including a legal description of the land, identification of property ownership, the approximate space devoted to the facility. ()
- d.** The number and kinds of wildlife being or to be kept. ()
- e.** The licensed veterinarian(s) *attending* the facility. ()

- f. Specifications of pens and shelters furnished for each kind of animal. ()
- g. Specifications of the guard fence or other security measures to prevent escape or protect the public from injury by the animals. ()
- h. For private and commercial facilities, the date upon which each animal was or is to be obtained. ()
- i. For private and commercial facilities, the source, including address and telephone number, from which each animal was, or is to be, obtained, and health certificate for all animals addressing diseases of concern. If already in possession, the type of license under which each animal is possessed. ()

03. *Renewal Applications.* *If the information is unchanged, renewal applications may incorporate by reference specifications in prior applications for enclosures, fences, or other security measures.* ()

04. **Records.** Persons operating a captive wildlife facility must provide the Department, at least once each license year, a list of wildlife by numbers of animals, and species, and keep a record of any wildlife received, born, dying, sold, exported or transported from the facility, with said record to be kept for five (5) years from the respective date of the action and available for Department inspection upon request. For private parks or commercial facilities, records must include documentation of legal possession of all wildlife kept at the facility including licenses, permits, receipts, invoices, bills of lading, or other satisfactory evidence of ownership. ()

301. – 399. (RESERVED)

400. COMMERCIAL WILDLIFE FACILITIES.

In addition to the rules for captive wildlife facilities in Section 300, the following apply to commercial wildlife facilities. ()

01. *USDA License.* *No person may operate a commercial wildlife facility exhibiting warm-blooded animals to the public without a USDA Exhibitor license.* ()

02. *Veterinary Care and Reporting.* *The facility must maintain adequate veterinary care, under a written care program with the attending licensed veterinarian(s). The licenseholder must maintain a complete record of veterinary examinations, illness, treatment and disposition for each permitted animal and make such record available to the Department upon request. Any warm-blooded animal death at the facility must be reported to the Department Regional Office where the facility is located within ten (10) days of the death, with veterinary inspection to occur for any such death unless it is reasonably expected based on care received under the veterinary care program.* ()

03. *Care Specifications.* *Any commercial wildlife facility must comply with requirements of 9 CFR 3.125-142 for warm-blooded animals specified in those regulations. Possession of warm-blooded animals under a valid USDA Exhibitor license is regulated by USDA under 9 CFR and is exempt from this subsection 03.* ()

04. *Public Handling or Feeding.* *Any commercial wildlife facility must comply with requirements of 9 CFR 2.131 for public handling or feeding of wildlife at commercial wildlife facilities not possessed under a valid USDA Exhibitor permit, including warm-blooded and non-warm-blooded wildlife. Public handling or feeding of warm-blood animals possessed under a valid USDA Exhibitor license is regulated by USDA under 9 CFR and is exempt from this subsection 04.* ()

05. **Sale of Animal Meat or Parts.** ()

i. A commercial wildlife facility licensee may sell or otherwise dispose of the carcass, parts, or by-products of a properly identified big game animal taken from a commercial wildlife facility only upon preparing an invoice or bill of sale as specified by the Department and attaching a copy of it to the lot shipment, carcass, or container and keeping a copy for his records. Upon the attaching of the invoice or bill of sale to the carcass, parts, or by-products of the animal, the same may be transported to the transferee named on the invoice or bill of sale. ()

ii. The licensee may sell commercial wildlife facility animals for meat upon compliance with all applicable health laws, USDA, and ISDA regulations. ()

401. – 409. (RESERVED)

410. LARGE COMMERCIAL WILDLIFE FACILITIES.

In addition to the rules for captive and commercial wildlife facilities in Section 300 and 400, the following apply to large commercial wildlife facilities: ()

01. Animal Display and Security. Commercial wildlife facilities that are of a size large enough or with a large number of animals incompatible with the cage or enclosure requirements of Section 260 may, in the Director's discretion, be addressed with facility-specific license terms to prevent escape of the captive wildlife, or damage to native wildlife through habitat degradation, genetic contamination, competition, or disease. In identifying facility-specific license terms, the Department may consider standards or guidelines *of captive wildlife facility accreditation entities* for cage, open space, shelter, enclosure, and display in a natural-appearing environment and in such a way as to preserve animal dignity. Terms may include, but are not limited to, fence specifications, electric fence specifications, pits or moats, buried fencing, and display features to enhance appreciation for the species and its natural history. ()

411. LARGE COMMERCIAL WILDLIFE FACILITY BOND.

Any large commercial wildlife facility must provide a bond to the Department in the amount of fifty thousand dollars (\$50,000), or two thousand dollars (\$2,000) per animal, whichever is greater, executed by a qualified surety duly authorized to do business in the state of Idaho, to guarantee performance of license conditions and to reimburse the Department for any costs incurred for cleanup of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. With prior approval, the applicant may instead submit a cash bond to the Department including, but not limited to, certificates of deposit, registered checks, certified funds, and money orders. ()

412. – 449. (RESERVED)

450. REHABILITATION FACILITIES.

In addition to the rules for captive wildlife facilities in Section 300, the Director has discretion to limit the species or numbers of wildlife accepted at or released from a wildlife rehabilitation facility, and may identify other specific license conditions to address relatively unique needs of rehabilitation, release into the wild or transfer or non-releasable animals. In identifying facility-specific license terms, the Department may identify standards or guidelines, such as those specific by the International Wildlife Rehabilitation Council for providing humane care. ()

451. – 499. (RESERVED)

500. CAPTIVELY PROPAGATED GAME BIRDS.

01. Import. No person may import captively propagated game birds into Idaho intended for release into the wild or on a shooting preserve in Idaho without a permit from the Department. ()

02. Permit for Field Release. No person may use captively propagated game birds at a shooting preserve or in field training for dogs or falconry unless the owner of the shooting preserve, or owner of any dog or raptor being field trained at a location other than a shooting preserve: ()

a. Has a valid shooting preserve or Bird-Dog/Falconry Training permit and makes it available to the Department in the field upon request. ()

b. Has documentation of the commercial supplier's compliance with the NPIP and, if imported into Idaho, a certificate of veterinary inspection, and makes it available to the Department in the field upon request. ()

501. – 549. (RESERVED)

550. SHOOTING PRESERVES.

01. Shooting Preserves. No person may operate a shooting preserve without a license from the Department and a vendorship contract with the Department under which the operator maintains a supply of shooting preserve hunting licenses for issuance to clients of the preserve. ()

02. Applications. Application for a shooting preserve license will be on a form prescribed by the Department. ()

03. Species Permitted. Only those species of upland game birds specified on the permit may be held or released on the shooting preserve. ()

04. Holding Facilities. The provisions of Sections 260 and 261 of these rules pertaining to bird enclosures apply to all rearing pens, holding pens, and other rearing or holding facilities. ()

05. Inspection. As a condition to any shooting preserve permit, the Department will have reasonable access to the premises of any authorized shooting preserve for the purpose of inspecting rearing, holding, and storage facilities, licenses, birds in hunters' possession, and records pertaining to the operation of said shooting preserve. ()

551. – 699. (RESERVED)

700. VIOLATION GROUNDS FOR LICENSING ACTION AND ANIMAL REMOVAL.

The Department may revoke any existing license for possession of captive wildlife or operation of any captive wildlife facility, and may refuse to issue any future license based on failure to remove or eliminate violations of Title 36 or these rules. Prior to revocation, non-renewal or non-issuance on such basis, the Department will give written notice of such violation(s) to the license-holder or applicant, and specify a reasonable timeframe of not less than ten (10) days to correct such violation(s). The Department's revocation or refusal to issue a future license may be in addition to any criminal charges or civil action that may be filed. All animals held under license(s) so revoked or held without appropriate license are subject to removal at owner's expense, with disposition as determined by the Department. ()

701. – 999. (RESERVED)

IDAPA 13 – DEPARTMENT OF FISH AND GAME
13.01.14 – RULES GOVERNING FALCONRY
DOCKET NO. 13-0114-2201 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

State regulation of falconry (the private possession of birds of prey in captivity for use in hunting) occurs under authority delegated by the U.S. Fish and Wildlife Service under the Migratory Bird Treaty Act. This rule is being presented for authorization as part of the agency’s plan to review each rule chapter every five years, consistent with the Governor’s [Executive Order 2020-01: Zero-Based Regulation](#).

The agency invited public participation in negotiated rulemaking and held a negotiated rulemaking meeting with participation by representatives of the Idaho Falconry Association. The agency also provided opportunities for public comment on proposed rules. The complete text of the proposed rule was published in the October 5, 2022 Idaho Administrative Bulletin, [Vol. 22-10, pages 287-292](#). As described in the Notice of Proposed Rulemaking, the U.S. Fish and Wildlife Service must be satisfied with Idaho’s regulatory framework to delegate authority for falconry regulation to the state. The U.S. Fish and Wildlife Service reviewed the proposed rule and required the agency to make changes to incorporate certain federal regulations more clearly to receive continued federal authorization for state regulation of falconry. The agency received no other comment on the proposed rules.

The text of the pending rule has been changed from the text of the proposed rule in accordance with Section 67-5227, Idaho Code. After reviewing the proposed agency rule, the U.S. Fish and Wildlife Service required the agency to adopt certain federal regulations by reference for continued federal authorization of Idaho’s state-regulated falconry program. The agency modified Section 100 to satisfy the U.S. Fish and Wildlife Service, and added Section 002 to comply with requirements of Section 67-5229, Idaho Code, to incorporate material by reference in administrative rule.

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 associated with this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions about this pending rule, contact Jeff Knetter, Upland Game & Migratory Bird Coordinator, 208-287-2747.

DATED this 18th day of November, 2022.

Amber Worthington 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(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Sections 36-104, 36-409, 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 October 19, 2022.

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

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

This rule is being presented for authorization as part of the IDFG plan to review each rule chapter every five years. The rule chapter under consideration governs falconry (the private possession of birds of prey in captivity for use in hunting). Consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#), the agency has reorganized rule sections in this chapter and revised current rule language to improve clarity and reduce duplication.

The U.S. Fish and Wildlife Service must be satisfied with Idaho's regulation of falconry to delegate authority for falconry regulation to the state under the federal Migratory Bird Treaty Act. IDFG will be reviewing the proposed rule with the Service and may have to make changes to the proposed rule to address federal requirements.

Proposed changes to the current IDAPA chapter 13.01.14 include: restructuring of the chapter to divide possession, import, sale, and propagation activities into separate rule sections; providing clarity on the classes of falconry permits; and revising reporting requirements for change in possession/ownership status for captive birds of prey. The proposed changes also consolidate requirements for release of captively propagated game birds associated with falconry into general requirements for captively propagated game birds in IDAPA 13.01.10, "Rules Governing Importation, Possession, Release, Sale or Salvage of Wildlife."

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

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

There is no fiscal impact associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2022 Idaho Administrative Bulletin, [Vol. 22-4, pages 23-24](#) under Docket No. 13-0114-2201. The Department held a public meeting on May 5, 2022, in which members of the Idaho Falconers Association participated and were generally unified in their perspective on rules.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not Applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Jeff Knetter, Upland Game & Migratory Bird Coordinator, 208-287-2747.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2022.

DATED this 29th day of August, 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 13-0114-2201

Italicized red text indicates changes between the text of the proposed rule as adopted in the pending rule.

13.01.14 – RULES GOVERNING FALCONRY

000. LEGAL AUTHORITY.

Sections 36-104 (b), 36-409, and 36-1102, Idaho Code. ()

001. SCOPE.

These rules establish a falconry program in the state of Idaho for federal certification. ()

002. INCORPORATION BY REFERENCE.

The code of federal regulations, title 50, part 21, sections 21.76, 21.82, and 21.85 (effective July 1, 2022) are incorporated by reference, and are available at: <https://ecfr.gov/current/title-50/chapter-I/subchapter-B/part-21>.

()

003. – 009. (RESERVED)

010. DEFINITIONS.

01. Captive-Bred. Raised in captivity from eggs laid by captive raptors. ()

02. Falconry. Capturing, possessing, caring for, transporting, training, or using raptors to take wild or artificially propagated animals as recreation. ()

03. Immature Raptor. A raptor that is less than one (1) year old. ()

04. New U.S. Resident. Any person who has moved legally into the United States or a recognized U.S. Territory to reside. ()

05. Non-Resident. Any person who does not qualify as an Idaho resident under Section 36-202(s), Idaho Code. ()

- 06. Raptor.** Any bird in the Order Falconiformes or Strigiformes. ()
- 07. Transfer.** To import, export, transport, convey, deliver, loan, gift, give, barter, or sell a raptor or raptor parts or any permit from one person, place, or situation to another. ()
- 08. Visitor.** Any person not residing in the United States or a recognized territory, and who is temporarily in the U.S. as a visitor. ()
- 09. Wild-Caught.** Bird originally captured from the wild, no matter how long held in captivity. ()

011. – 099. (RESERVED)

100. MIGRATORY BIRD TREATY ACT AND REGULATIONS.

As provided by Section 36-1102, Idaho Code, no person may take or possess any migratory birds, including raptors, except as provided by the Migratory Bird Treaty Act and implementing regulations (including 50 CFR, Parts 21 and 22), and in accordance with related rules and proclamations promulgated by the Commission. *Falconry must comply with 50 CFR 21.82 (Falconry Standards and Falconry Permitting), 50 CFR 21.85 (Raptor Propagation Permits), and 21.76 (Rehabilitation permits); these federal regulations apply to falconry, even when this chapter 13.01.14 does not address the activity or when this chapter is construed as less restrictive.* ()

101. TAKING WILDLIFE BY FALCONRY.

Idaho and federal laws regulating taking of wildlife, including possession of appropriate licenses, tags, permits, stamps, and validations; seasons and limits; and possession of wildlife apply to any species taken by falconry. ()

102. FALCONRY PERMIT.

01. Falconry Permit. No person may possess, capture, or transfer, any raptor for the purpose of falconry, or use a raptor for taking other wildlife, unless that person has an Idaho Falconry Permit. Idaho Falconry Permits are not transferable to another person. ()

02. Permit Classification. Three (3) classes of Idaho Falconry Permit are available: Apprentice, General, and Master. Only holders of Master Falconry permits are eligible to obtain Eagle Falconry or Peregrine Capture permits. Permits may be obtained by completing application on a form prescribed by the Department. Permit issuance is subject to the Department's verification the applicant meets federal age, experience, and other prerequisites for the respective permit class. Passage of the Idaho Falconry Examination administered by the Department by a score of at least eighty percent (80%) is a permit prerequisite for persons who have not held an Idaho falconry permit or equivalent authorization within the past five (5) years, or who are a new U.S. resident or visitor. The numbers and species authorized for possession by each class of Idaho Falconry Permit are subject to federal restrictions. ()

03. Exemption for Temporary Use. Nonresident falconers who do not intend to become Idaho residents, who have valid authorization from a federal, tribal, or another state, territory, or country's agency equivalent to an Idaho Falconry or federal Raptor Propagation Permit, may temporarily import from another state, possess, or transport raptor(s) listed under such authorization: ()

- a.** For not more than thirty (30) days in a calendar year, without purchasing an Idaho Falconry Permit. ()
- b.** For more than thirty (30) days in a calendar year, provided they have passed the Idaho Falconry Examination administered by the Department within the past five (5) years with a score of at least eighty percent (80%) and obtain a Temporary Idaho Falconry Permit (which is valid for up to four (4) months, and may be renewed). ()

04. Falconers Moving to Idaho. Any nonresident falconer moving into Idaho who intends to become an Idaho resident must: obtain an Idaho Falconry Permit within thirty (30) days of such move; provide signed verification of intent to become an Idaho resident; and surrender any equivalent permit issued by another state. The Department will determine the appropriate class of Idaho Falconry Permit equivalent to the non-Idaho authorization

held by the falconer, based on the documentation provided in the permit application. ()

103. INTERNATIONAL IMPORT.

No person may import into Idaho a raptor originating from a foreign country without first obtaining an Idaho Wildlife Import Permit, and complying with federal laws for raptor importation or pet passports under the Conference on International Trade in Endangered Species. ()

104. – 149. (RESERVED)

150. CAPTURE OF WILD RAPTORS.

01. Capture Permits. No person may capture a raptor from the wild unless that person has a valid Idaho Falconry Permit; or is a nonresident who has both: an equivalent falconry authorization from a federal, state, territorial, or tribal authority; and an Idaho Nonresident Falconry Capture Permit (valid on a calendar year basis). ()

02. Approved Species and Limitations. The Commission, pursuant to Section 36-105 (3), Idaho Code, may establish seasons, geographic areas, and limits for capture of wild raptors by proclamation, including limitations on permits available to nonresidents. ()

a. No person may capture or possess any wild-caught bald or golden eagle, any raptor classified under federal or state law as threatened or endangered, or any peregrine falcon without obtaining an individual species-specific capture/possession permit from the Department in addition to complying with federal permit regulations and limits. Bald eagles may not be used for falconry. ()

b. Subject to federal restrictions for the holder's permit class, an Idaho Falconry Permit authorizes the holder to capture (with subsequent possession) not more than a total of two (2) wild raptors each calendar year, which may be adult American kestrels or great horned owls; or immature raptors of species that are not referenced in the preceding Subsection 02.a. or that are otherwise closed or limited by Commission proclamation. ()

c. Non-resident falconers intending to capture any wild Idaho raptor using authorization from a non-Idaho Falconry Permit/Authorization are eligible to purchase only one (1) Nonresident Falconry Capture Permit for each calendar year and are authorized to only capture and possess the species of raptor specified on the permit. ()

d. A nonresident who successfully captures a raptor for intended removal from Idaho must notify the Department Regional Office of the capture location before transporting the raptor out of Idaho, not later than ten (10) days after capture. ()

03. Approved Capture Dates. ()

a. Immature raptors open to capture may be captured year-round. ()

b. American kestrels and great-horned owls that are one (1) year of age or older are only open to capture from August 1 through the last day of February. ()

151. – 159. (RESERVED)

160. CAPTIVE PROPAGATION PERMIT.

No person may propagate raptors in captivity, or take, possess, or transfer any raptor, raptor egg, or raptor semen for propagation purposes without a valid federal Raptor Propagation Permit. Holders of a federal Raptor Propagation Permit may only sell, purchase and barter raptor eggs and semen produced and originating from raptor propagation or captive breeding programs under valid permit. ()

161. TRANSFER OR SALE.

01. Lawfully Obtained. No person may sell, purchase, or barter any raptor or parts thereof, or possess raptors or parts unless the bird or parts have been lawfully obtained. ()

02. Captive-bred. Only live captive-bred raptors banded or micro-chipped in compliance with Section 400 of this rule and 50 CFR 21.82 may be sold, purchased or bartered. Any party to the transaction must hold a valid state, federal, tribal, territory or another country's Falconry or Raptor Propagation Permit. ()

03. Transfers. ()

a. Resident falconers/captive breeders may not transfer any raptor wild-caught in Idaho to a nonresident unless they obtain an Idaho Wildlife Export Permit from the Department. ()

b. With Department approval, wild-caught raptors, possessed less than two (2) years from date of capture, that have been injured and can no longer be flown for falconry purposes, as determined by a veterinarian or raptor rehabilitator, may be transferred to a federal Raptor Propagation Permit. ()

04. Temporary Care. An authorized person may temporarily care for the raptor of another in compliance with federal regulations. ()

162. – 199. (RESERVED)

200. FACILITIES AND INSPECTIONS.

01. Appropriate Holding Facilities. No person may begin possession of any raptor(s) under authority of an Idaho Falconry Permit or Propagation Permit unless the Department has inspected holding facilities and equipment to verify compliance with federal (50 CFR 21.82) and Idaho standards. Appropriate facilities may be indoor, including a personal residence, outdoor falconry facilities, or a combination of both. Persons changing the location of raptor holding facilities to any physical address other than that recorded on the Falconry permit must notify the Department before or within five (5) business days of any such move. ()

02. Temporary Housing. The Department has discretion to authorize temporary housing for not more than one hundred twenty (120) days. ()

03. Inspections. All raptors, facilities, equipment, falconry, and captive propagation records are subject to reasonable inspection during business hours in the presence of the permit holder or facility owner, or as arranged with the permit holder. ()

201. – 299. (RESERVED)

300. RAPTOR HACKING AND REHABILITATION.

01. Hacking. Idaho Falconry Permits authorize the holder to conduct hacking, subject to federal laws and landowner permission. ()

02. Rehabilitation. Persons with valid General or Master Falconry permits may assist the Department, or Department-licensed raptor rehabilitators, with rehabilitation activities, provided the taking of any raptor into possession for rehabilitative conditioning or training is pre-approved by the appropriate Department Regional Office. ()

301. – 349. (RESERVED)

350. EXEMPTION FROM RELEASE RESTRICTIONS.

Permanent release of wild-caught raptors of species native to Idaho by Idaho Falconry permit holders complying with 50 CFR are exempt from release restrictions of IDAPA 13.01.10.200, "Rules Governing Importation, Possession, Release, Sale, or Salvage of Wildlife." ()

351. – 399. (RESERVED)

400. RAPTOR BANDING AND RADIO-TRANSMITTERS.

Falconers and captive breeders must use bands, microchips, or radio-transmitters, singly or in combination, that comply with federal regulations (50 CFR 21.82) for any raptor possessed. ()

401. – 499. (RESERVED)

500. REPORTING.

A person owning or otherwise responsible for a raptor must complete and submit a Form 3-186A (federal Migratory Bird Acquisition and Disposition Form) into the United States Fish and Wildlife Service electronic records database not later than ten (10) days after any raptor is acquired, captured, re-captured, transferred, lost, escaped, stolen, released, banded, re-banded, micro-chipped, or deceased. ()

501. – 599. (RESERVED)

600. TRAINING WITH CAPTIVELY PROPAGATED GAME BIRDS.

IDAPA 13.01.10.500, “Rules Governing Importation, Possession, Release, Sale, or Salvage of Wildlife,” applies to anyone who possesses, releases, or uses artificially propagated game birds for field training raptors. ()

601. – 799. (RESERVED)

800. REVOCATION.

In addition to penalties set forth in Chapter 14, Title 36, conviction of a violation of these rules is grounds for revocation of an Idaho falconry permit or denial of any pending applications for an Idaho falconry permit, and corresponding seizure of raptor(s) identified in the permit. ()

801. – 999. (RESERVED)

IDAPA 13 – DEPARTMENT OF FISH AND GAME
13.01.18 – RULES GOVERNING FEEDING OF WILD CERVIDS
DOCKET NO. 13-0118-2201 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104, 36-105, and 36-111, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanation 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 rule is being presented for authorization as part of the agency’s plan to review each rule chapter every five years, consistent with the Governor’s [Executive Order 2020-01: Zero-Based Regulation](#). This rulemaking relates to criteria for determining emergencies warranting agency feeding of wild cervids (including wild elk, deer, and pronghorn), and restrictions on private feeding of wild cervids. This rulemaking includes changes to integrate current Idaho Department of Fish and Game (IDFG) and Idaho State Department of Agriculture (ISDA) restrictions on private feeding of wild cervids for continued protection of the health of livestock, domestic cervids, domestic bison, and wildlife. ISDA has concurrently adopted pending rules to repeal IDAPA 02.04.25, “Rules Governing Private Feeding of Big Game Animals,” published in this bulletin on page 14 under docket 02-0425-2201. In combination, the pending rulemakings by IDFG and ISDA would consolidate regulation related to private feeding of wild cervids into a single rule chapter under IDFG’s authority. This rulemaking does not impact domestic cervidae, which are regulated by ISDA (Section 25-3702, Idaho Code.)

The agency received no comment on the proposed rules. There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2022, Idaho Administrative Bulletin, [Vol. 22-10, pages 293-295](#).

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 because of the repeal of this rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Tricia Hebdon, Assistant Chief of Wildlife at 208-287-2704.

DATED this 18th day of November, 2022.

Amber Worthington 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(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Sections 36-104, 36-105, and 36-111, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2022.

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

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

This rule is being presented for authorization as part of the IDFG plan to review each rule chapter every 5 years. This rulemaking relates to criteria for determining emergencies warranting agency feeding of wild cervids (including wild elk, deer, and pronghorn), and restrictions on private feeding of wild cervids. Consistent with the Governor's [Executive Order 2020-01: Zero-Based Regulation](#), the agency has revised current rule language to improve clarity and reduce duplication.

IDFG and the Idaho State Department of Agriculture (ISDA) have evaluated the potential to consolidate regulation of private feeding of wild cervids under IDFG's authority in this rule chapter, such that IDAPA 02.04.25, "Rules Governing Private Feeding of Big Game Animals," may be repealed, as proposed concurrently in this bulletin under Docket No. 02-0425-2201.

This proposed rulemaking includes changes to integrate current IDFG and ISDA restrictions into a single rule chapter under IDFG's authority to regulate the feeding of wildlife, to continue protection of the health of livestock, domestic cervids, domestic bison, and wildlife. For example, the proposed rule specifically identifies geographic areas identified in ISDA's current rule to prevent brucellosis transmission between wildlife and livestock. IDFG proposes to change rule wording (previously "pronghorn, elk, and deer") to distinguish "wild cervids" managed under IDFG authority from "domestic cervids" regulated under ISDA authority. The agency also proposes to present the statement of rule intent in the cover sheet published in the Administrative Code, instead of in the rule chapter itself as done currently. The rule also incorporates language related to the Commission's management of Chronic Wasting Disease in wild cervids.

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

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

There is no fiscal impact associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 6, 2022, Idaho Administrative Bulletin, [Vol. 22-4, page 25](#) under Docket No. 13-0118-2201. No persons identified themselves as interested in participating in negotiated rulemaking.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not Applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Tricia Hebdon, Assistant Chief of Wildlife, 208-287-2704.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2022.

DATED this 24th day of August, 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 13-0118-2201

13.01.18 – RULES GOVERNING FEEDING OF WILD CERVIDS

000. LEGAL AUTHORITY.

Sections 36-104, 36-105 and 36-111, Idaho Code. ()

001. SCOPE.

These rules govern Department and private feeding of wild cervids. ()

002. – 009. (RESERVED)

010. DEFINITIONS.

01. CWD Management Zone. Chronic Wasting Disease Management Zone designated by the Commission under IDAPA 13.01.10.150. ()

02. DSA. Designated Surveillance Area for brucellosis designated by ISDA order or rule. ()

03. ISDA. Idaho State Department of Agriculture. ()

04. Supplemental Feed. Harvested hay, grain, or straw, or feed pellets. ()

05. Wild Cervids. Deer, elk, or other members of the family Cervidae not owned by a person. ()

011. – 099. (RESERVED)

100. EMERGENCY FEEDING CRITERIA.

01. Declaration of Feeding Emergency. The Department may declare a feeding emergency if one (1) or more of the following criteria are met: ()

a. Actual or imminent threat of depredation to private property. ()

b. Threat to public safety, including traffic hazards. ()

c. Excessive mortality that would affect herd recovery. ()

d. Limited or unavailable winter forage caused by fire or weather. ()

02. Additional Guidelines. Regional Supervisors may develop additional emergency feeding guidelines within the listed criteria, based on disease transmission risk, local conditions, and local public input. ()

101. FEED STOCKPILES.

The Department has identified locations for stockpiling emergency feed where it is impractical and cost-prohibitive to purchase and transport feed after snowfall. The Commission and Director declare stockpile maintenance constitutes a feeding emergency and authorize expenditure of funds for stockpile maintenance. ()

102. – 199. (RESERVED)

200. PRIVATE FEEDING OF WILD CERVIDS.

01. Private Feeding. It is unlawful to purposely or knowingly provide supplemental feed to wild cervids within any CWD Management Zone, within any county partially or entirely within any DSA, or within Clark, Madison, or Jefferson county east of Interstate 15, or in violation of any Commission, Department, or ISDA order, except supplemental feeding conducted or authorized by the Department. ()

02. Incidental Grazing. Incidental grazing by wild cervids on private rangeland forage, standing agricultural crops, or crop residue left on the ground following typical harvest practices does not violate this section. ()

03. Incidental Feeding. Incidental feeding of wild cervids during the normal practice of providing feed to livestock does not violate this section, provided the owner or operator of the premises feeding livestock cooperates with the Department to facilitate conducting wild cervid management activities to avoid feeding wild cervids. ()

201. – 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

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

DOCKET NO. 20-0214-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

Following [Executive Order 2020-01: Zero-Based Regulation](#), this rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying the rules for increased clarity and ease of use. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter.

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 7, 2022, Idaho Administrative Bulletin, Vol. 22-9, pages 205-208. An unofficial strikethrough version of the proposed rule, which shows the changes made through the rulemaking process, is available on the agency website at <https://www.idl.idaho.gov/rulemaking/docket-20-0214-2201/>.

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 Jeremy Shawver at (208) 666-8672 or jshawver@idl.idaho.gov.

DATED this 18th day October, 2022.

David Greenwood
Timber Management Bureau Chief
Idaho Department of Lands
3284 West Industrial Loop
Coeur d’Alene, Idaho 83815
Phone: (208) 769-1525
Fax: (208) 769-1524

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, 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 21, 2022.

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 Idaho Department of Lands initiated this rulemaking in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). This rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

The regulatory burden has been reduced by decreasing both the total word count (-19%) and the number of restrictive words (-11%) in the proposed rule. No changes were made that change the context of the previous rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the March 2, 2022, Idaho Administrative Bulletin, [Vol. 22-3, pages 22-23](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeremy Shawver at (208) 666-8672 or jshawver@idl.idaho.gov.

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 28, 2022.

DATED this 7th day of September 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 20-0214-2201

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

000. LEGAL AUTHORITY.

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

001. SCOPE.

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

002. -- 009. (RESERVED)

010. DEFINITIONS.

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

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

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

04. Development Credits. A stumpage credit received by the purchaser for road construction and improvements. ()

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

06. Forest Products. Marketable forest materials. ()

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

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

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

011. -- 018. (RESERVED)

019. FIREWOOD AND OTHER PERSONAL USE PRODUCT PERMITS.

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

020. DIRECT SALES.

The sale of forest products without advertisement may be authorized by the Director if the net appraised value does not exceed the maximum value established by the Board. The duration of a direct sale is six (6) months. The purchaser must furnish an acceptable performance bond in the amount of thirty percent (30%) of the sale value with a minimum bond of one hundred dollars (\$100). ()

021. TIMBER SALES.

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

022. -- 025. (RESERVED)

026. ANNUAL SALES PLAN.

The Department's annual sales plan will be presented to the Board for approval annually and upon approval made

available to all interested parties. The plan may be altered to respond to changing market conditions or to expedite the sale of damaged or insect-infested forest products. ()

027. -- 030. (RESERVED)

031. TIMBER SALE AUCTIONS.

- 01. Requirements.** Timber and Delivered Products sales must be sold at public auction. ()
- 02. Requirements for Bidding.** Bidders must: ()
 - a.** Present a bid deposit in a form acceptable to the State in the amount of ten percent (10%) of the net appraised value. ()
 - b.** Not be delinquent on any payments to the State at the time of sale. ()
 - c.** Not be a minor as defined in Section 32-101, Idaho Code. ()
 - d.** If a foreign corporation, have a completed and accepted foreign registration statement with the secretary of state and comply with Title 30, Chapter 21, Part 5, Idaho Code in order to do business in Idaho and be eligible to bid on and purchase State timber. ()

032. INITIAL DEPOSIT AND BONDS.

- 01. Initial Deposit.** The initial deposit (ten percent (10%) of net sale value) is paid in cash and retained by the state as a cash reserve for the duration of the contract; the purchaser is not entitled to any interest earned thereon. All or a portion of the initial deposit may be applied to charges as the contract nears completion. Any remaining initial deposit will be forfeited in the event the contract is terminated without being completed. ()
- 02. Performance Bond.** A bond of sufficient amount to ensure compliance with the terms and conditions of the sale contract or fifteen percent (15%) of the net sale value of the forest products (whichever is greater) must be executed within thirty (30) days from the date of sale and prior to contract execution. Failure to fully perform the contract may result in forfeiture of all or part of the performance bond. ()
- 03. Payment Bond.** Prior to cutting any forest products, the purchaser must provide a bond acceptable to the Department as assurance of payment for products to be cut or removed, or both, within the succeeding ninety (90) days. The Department will determine the payment bond amount on delivered product sales. Failure to make full and timely payment per contract terms may result in forfeiture of all or a portion of the payment bond. ()

033. -- 040. (RESERVED)

041. STUMPAGE AND INTEREST PAYMENT.

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

042. TIMBER SALE CANCELLATION.

It is the purchaser's responsibility to initiate cancellation by submitting a written request to the applicable supervisory area office. Once the cancellation process has finished, any credit balances and all cash bonds will be returned and/or transferred to other timber sale accounts within forty-five (45) days, as requested by the purchaser. ()

043. PREMATURE TIMBER SALE TERMINATION.

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

the contract should be terminated. ()

02. Termination Policy. ()

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

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

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

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

iii. For any credits given for developments that remain incomplete at the time of termination. ()

iv. For estimated Department costs associated with reoffering the timber sale. ()

v. For other expenses including, but not limited to, legal costs and Department staff time. ()

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

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

044. -- 999. (RESERVED)

IDAPA 24.35 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

24.35.01 – RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 24-3501-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule becomes final and effective at sine die 2023, 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 Section 67-2604, Idaho Code, and Sections 39-4113, 39-8007, 67-2614, 67-9406, and 67-9409, 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.

Changes between the text of the proposed rule and the text of the pending rule:

- Section 200 – Amended language regarding license production to update and clarify language in current rule.
- Section 201 – changed “shall” to “will”
- Section 202 – changed “shall” to “will”
- Section 259.01 – updated BO2 River section to allow 4 float outfitters, 2 of which may be licensed for fishing in addition to float boating.
- Section 259.01 – updated PN1 River section to remove the no fishing restriction.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2022, Idaho Administrative Bulletin, [Vol. 22-9, pages 217-240](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Tim Frost at (208) 577-2491 or tim.frost@dopl.idaho.gov.

DATED this December 7th, 2022.

Tim Frost, Deputy Administrator
Division of Occupational & Professional Licenses
Phone: (208) 577-2491
11341 W. Chinden Boulevard, Building #4
Boise, ID 83714
P.O. Box 83720
Boise, ID 83720-0063
tim.frost@dopl.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 procedures. The action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 39-4113, 39-8007, 67-2614, 67-9406, and 67-9409, Idaho Code.

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

***MEETINGS SET FOR PUBLIC PARTICIPATION
IN PERSON, TELEPHONE, AND WEB CONFERENCING***

24.35.01 – Rules of the Outfitters and Guides Licensing Board

Tuesday, September 20, 2022

Monday, October 3, 2022

**DOPL Board Conference Room
Chinden Campus – Building #4
11341 W Chinden Blvd Boise ID 83714
*Scheduled time is 9:00 a.m. (MT) for the meeting***

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

Under Executive Order 2020-01, Zero-Based Regulation, the Outfitters and Guides Licensing Board (OGLB) is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter, and use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and [Executive Order 2020-01: Zero-Based Regulation](#).

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

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

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under docket 24-ZBRR-2201. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the May 4, 2022, Idaho Administrative Bulletin, [Vol. 22-5, pages 73-77](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tim Frost, Deputy Administrator at (208) 577-2491.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 5, 2022.

DATED this 1st day of September, 2022.

Substantive changes have been made to the pending rule.
Italicized red text indicates changes between the text of the proposed rule as adopted in the pending rule.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 24-3501-2201

24.35.01 – RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

000. LEGAL AUTHORITY.

These rules have been promulgated pursuant to authority granted in the Outfitters and Guides Act. ()

001. SCOPE.

The rules 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 inspector in the employ of the Board, a conservation officer of the IFGC, or any local, state, or federal law enforcement officer. ()

03. 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 259.01. ()

04. Compensation. The receipt, exchange 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. ()

05. 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. ()

06. 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 and as authorized in the Outfitter’s Operating Plan. ()

07. 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. ()

08. Hazardous Desert or Mountain Excursions. Outfitted or guided activities conducted in a desert or mountainous environment that may constitute a potential danger to the health, safety, or welfare of participants involved and are known to involve inherent risk. These activities include day or overnight trailrides, backpacking, technical mountaineering/rock climbing, cross-country skiing, backcountry alpine skiing, animal pack trips, snowmobiling, ATV, paragliding, motored and non-motored cycling, wagon rides, sleigh rides, and dog sled rides. ()

09. 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. ()

10. IFGC. The Idaho Department of Fish and Game or the Idaho Fish and Game Commission. ()

11. 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. ()

12. 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. ()

13. 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. ()

14. Operating Area. The area assigned by the Board to an outfitter for the conduct of outfitting activities. ()

15. Operating Plan. A detailed schedule or plan of operation which an outfitter proposes to follow in the utilization of licensed privileges, areas, or activities. ()

16. Out-of-Pocket Expenses. The direct expenses attributable to a recreational activity. Such direct expenses 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. ()

17. 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. ()

18. 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. – 099. (RESERVED)

100. OUTFITTER OR DESIGNATED AGENT LICENSE OR AMENDMENT APPLICATION.

A complete application for a new outfitter or designated agent 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. Examinations. All new applicants applying for an outfitter or designated agent license must successfully pass a Board-approved examination on the Act, the rules, and general outfitting procedures germane to the license applied for. An applicant who fails the test may retake it after a five (5) day waiting period. ()

04. Operating Plan. An operating plan required by the germane land management agency or on a Board approved form. ()

05. Insurance. Current certificate or proof of insurance covering licensed activities. ()

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), the Board has the discretion 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. ()

09. Operating Area Limitations. To safeguard the health, safety, and welfare of the public and for the conservation of wildlife and fish resources, the Board may place a limit on the number of outfitter licenses issued within an operating area. ()

101. OUTFITTER AND DESIGNATED AGENT LICENSE RENEWAL.

01. Outfitter Licensing 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. ()

02. Renewal. All licenses expire on March 31 and every application for license renewal for an outfitter and designated agent must be complete and include a use report containing an activity, use, and harvest report on the actual use during the preceding year and other information as required by the Board. ()

03. Penalty Fee. When a completed renewal application is filed with the Board after the due date, a penalty fee must be paid before the license is issued. ()

04. License Expired and Reinstatement. Reinstatement of an expired license will be governed by Section 67-2614, Idaho Code. If an application for reinstatement is not received within six (6) months of expiration of the license, the Board may consider the operating area and activities as an available opportunity. ()

102. OUTFITTER OR DESIGNATED AGENT RESPONSIBILITIES.

An outfitter or designated agent is responsible for maintaining the standards set forth in the Operating Plan and for the actions of all guides and other employees while in the scope of their employment. ()

103. GUIDE LICENSE APPLICATION REQUIREMENTS.

All new applicants for a Guide license must submit a completed application on Board approved forms along with the required fee. ()

01. General Qualifications. The applicant must provide the following: ()

a. Documentation of requisite training and experience sufficient to perform the services and activities provided on the license; and ()

b. A current American Red Cross first aid certification or other comparable certification that is acceptable to the Board; ()

02. Activity-Specific Qualifications. In addition to the general qualifications, the applicant must provide evidence of activity-specific training submitted with application or amendment. ()

a. Hunting. ()

i. Experience 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. ()

ii. Ability to read and understand a map and compass or operate a global positioning system (GPS) or other computerized map system. ()

iii. Training and experience caring for meat and trophies, including the ability to correctly cape an animal and ability to instruct and assist clients in the proper care of meat. ()

b. Float Boating on Classified Water. ()

i. Three (3) complete float boat trips on each of the classified rivers applied for under the supervision of an outfitter or guide licensed for that river. Allowances may be made for experience gained as a commercial boat operator on selected whitewater rivers with characteristics similar to Idaho's classified rivers, 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. ()

ii. To document this experience, a statement signed by the applicant under oath or affirmation be recorded on a Board-approved form 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. ()

c. Power Boating on Classified Water. ()

i. Fifty (50) hours on the total length of the river or section of water applied for. ()

d. Float or Power Boating on Unclassified Water. ()

i. At least one (1) complete commercial float or power boat trip on each of the sections or lakes applied for. ()

e. ATV-UTV-Snowmobiling. ()

i. Experience in the outfitter's operating area for at least ten (10) days and is knowledgeable of the area's drainages, rideable terrain, and unique avalanche or other hazards as well as the machines being utilized by the outfitter. ()

ii. When operating in winter conditions in terrain with avalanche potential, must have Recreation level 1 avalanche training, American Avalanche Association or similar consisting of twenty-four (24) hours of training with over fifty percent (50%) in the field, and Avalanche Rescue through American Avalanche Association or similar, consisting of eight (8) hours of training with a minimum of five (5) hours in the field. ()

f. Snow-Based Non-Motorized Travel in Avalanche Terrain (backcountry skiing, Nordic skiing, or snow shoeing on non-groomed trails). ()

i. Experience in the outfitter’s operating area(s) for at least ten (10) days and is knowledgeable of the area’s drainages, rideable terrain, and unique avalanche hazards. ()

ii. Recreation level 1 avalanche training, American Avalanche Association or similar consisting of twenty-four (24) hours of training with over fifty percent (50%) in the field, and Avalanche Rescue through American Avalanche Association or similar, consisting of eight (8) hours of training with a minimum of five (5) hours in the field. ()

g. Rock Climbing/Mountaineering. ()

i. Experience in the outfitter’s operating area for at least ten (10) days and is knowledgeable of the area’s routes, navigable terrain, and unique hazards. ()

ii. When operating in winter conditions in terrain with avalanche potential, must have Recreation level 1 avalanche training, American Avalanche Association or similar consisting of twenty-four (24) hours of training with over fifty (50%) in the field, and Avalanche Rescue through American Avalanche Association or similar, consisting of eight (8) hours of training with a minimum of five (5) hours in the field. ()

h. Equestrian Activities. ()

i. Experience in the outfitter’s operating area for at least ten (10) days and is knowledgeable of horsemanship and the area’s routes, trails, terrain, drainages, and unique hazards. ()

03. Validity. A guide license is valid only while the guide is under the employment of an Idaho licensed outfitter. ()

04. Amendment. To add authorized activities to the license, a guide must submit a completed license amendment request on a Board-approved form, along with supplemental documentation of training and experience for each newly requested activity. ()

05. Renewal. A license must be renewed before it expires by submitting a complete application for renewal on Board-approved forms together with the renewal fee. A license expires biennially on the license holder’s birth date. Licenses not timely renewed will be immediately canceled in accordance with Section 67-2614, Idaho Code. ()

104. – 199. (RESERVED)

200. LICENSE PRODUCTION.

Upon request of an authorized person, a licensee must provide proof of licensure when engaged in licensed activities and identify a guide’s employing outfitter. ()

201. THIRD-PARTY AGREEMENT.

An outfitter *will* not allow, condone, or abet any third-party agreement involving activities for which they are licensed. An employee of the licensed outfitter acting in the scope of employment is not a third party. ()

202. STANDARDS FOR NON-USE.

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. ()

01. 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. ()

02. Required Records. Outfitters *will* maintain records sufficient to demonstrate to the Board use of their licensed activities and areas. ()

203. OPERATING AREA.

An outfitter's operating area may be adjusted for reasons of wildlife and fish conservation, where territorial conflict exists, or for the safety of persons utilizing the services of outfitters. Special circumstances may also warrant short term modification of an outfitters operating area. ()

01. Environmental Considerations. Any changes in wildlife population health, environmental conditions and/or new government regulation may result in the adjustment of an outfitter's operating area. ()

02. Conflict Considerations. An incident(s) of territorial conflict, particularly one that leads to public safety concerns, may result in the adjustment of an outfitter's operating area. ()

03. Safety Considerations. Any change(s) in the environmental condition(s), in the manner or amount of public use of the operating area and/or in a licensee's manner of operation within the operating area, that pose a threat to the health and safety of persons using the operating area may result in a change in the outfitters operating area. ()

04. Hot Pursuit. The Board may approve a minor amendment of an outfitters license 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. ()

05. Controlled Hunts Outside Operating Area. The Board may authorize an outfitter who is licensed for hunting moose, bighorn sheep, or mountain goat to conduct a one-time hunt outside of the outfitter's licensed area when the outfitter submits a request on a Board-approved form. ()

a. For changes of operation under Subsections 04 and 05 of this Rule, written permission from all outfitters licensed for the species in the hunt area being requested and all applicable landowners or land managers will be provided to the Board. ()

b. For changes under Subsection 04 and 05 of this Rule, under special circumstances the Board may waive the requirement of approval from the overlapping outfitter(s). ()

c. For changes under Subsection 05 of this Rule, 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. ()

06. Overlap Predator Areas. The Board may authorize outfitters to enter into a standing agreement with each other and the appropriate land manager(s) allowing the outfitters to hunt wolf, mountain lion, or black bear across multiple operating areas. ()

204. OUTFITTER BUSINESS PURCHASE, LICENSE CONSIDERATIONS.

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. The Board may consider prior non-use of licensed operating area or activities when evaluating priority for licensure or placing conditions on a license.

()

205. 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 259 and for each specific IFGC unit listed in IDAPA 13.01.08, "Rules Governing Taking of Big Game Animals."

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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.

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03. Notification. When public notice is used when an opening occurs, a public announcement will be made via the Board's website 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.

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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.

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206. BOAT EQUIPMENT REQUIREMENTS.

Each float or power boat used by an outfitting operation must be identified as follows:

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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.

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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.

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207. 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 has entered into an agreement with the licensed outfitter hunting for that area.

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208. – 256. (RESERVED)

257. 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 allocates tags, the allocated tags will be designated pursuant to Section 36-2120, Idaho Code, and this rule. The designation applies for the next season unless IFGC adjusts the number of allocated tags for the hunt.

()

01. Notification. All notices, orders, or other documents may be made to the email address on file with the Board. ()

02. Outfitted Hunter Tag Use History. Each outfitter's hunter tag use history will be determined from the use recorded by IFGC pursuant to Section 36-408(4), Idaho Code, and as may be adjusted as a result of a tag transfer or hardship request that is approved by the Board. ()

a. Transfers. An outfitting operation is credited for use of an allocated tag that it transfers to another outfitting operation for use that year in the same hunt. The receiving outfitting operation is not credited for using the transferred tag. ()

b. Surrenders. An outfitting operation may surrender a designated allocated tag(s) to the undesignated tag pool for use by any outfitting operation in the same hunt. The surrendering outfitting operation is not credited for use of the surrendered tag unless it later uses the tag from the pool. ()

03. New Hunt Allocated Tag Designation. When the IFGC allocates tags for a newly capped or controlled hunt, the allocated tags will be designated 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 Subsection 257.03.a. of these rules 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; in the event that IFGC adjusts the number of allocated tags in a hunt where there is only one (1) year of allocation, the Board will not average the use. ()

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 not designated above will be designated proportionately as follows: ()

a. Subtract each outfitting operation's use of previously designated allocated tags from Subsection 257.04 from its base allocation number to determine the number of non-allocated tags it used for a capped hunt or the matching hunt with non-allocated tags for a controlled hunt, when necessary to determine non-allocated tag use; 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 outfitting operations in that hunt. Truncate the decimal at the hundredths place; and finally ()

c. Multiply the percentage of total use from Subsection 257.05.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 (0.6) and rounded down when a decimal is less than six tenths (0.6). When calculating after a reduction 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 (0.5) and rounded down when a decimal is less than five tenths (0.5). ()

07. Tie-breaker. If, after applying Subsections 257.03 through 06, there is a surplus or deficit of allocated tags to be designated, the unrounded proportion from Subsection 257.05, with as many decimal places as necessary, will be used, and then as follows: ()

a. After a reduction in allocated tags, surplus tags will first be designated in amounts to restore outfitter operations to the number of tags that would have otherwise been designated pursuant to Subsection 257.04 or as close thereto as practicable. ()

b. If a surplus, the outfitting operation whose unrounded proportion is the greatest will be designated one (1) tag, and if there are additional surplus tags, the outfitter with the next greatest unrounded proportion will be designated one (1) allocated tag, and repeated in descending unrounded proportions until all surplus tags are designated. In the event there is more than one outfitting operation with the same unrounded proportion and there are insufficient undesignated tags to designate to each outfitter, the undesignated tag will be designated based on a random drawing between those outfitting operations. ()

c. A deficit will be resolved from the outfitting operation whose unrounded proportion is closest to six tenths (0.6), and then next closest to six tenths (0.6) when there is a deficit of more than one (1) allocated tag. 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 to each outfitting operation in that hunt. The stipulation must be signed by all eligible outfitting operations for the hunt; however, under special circumstances, the Board may waive the requirement of approval from all other outfitting operations. If the Board approves the stipulation, the stipulation will be effective until the next designation of allocated tags for the hunt. 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 this rule. ()

09. Undesignated Tag Pool. Any designated allocated tags that are surrendered or have not been utilized by an outfitting operation on or before July 16 or the next business day 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 may submit a request for an allocated tag from the pool. The request must be on a Board-approved form. ()

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 to an outfitting operation without any designated allocated tags or which has utilized all of its designated allocated tags, using a waiting list when necessary. A maximum of two (2) allocated tags will be 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. An outfitting operation may submit a written hardship request to maintain all or a portion of previous outfitted hunter tag use history when the outfitting operation shows good cause that its use of allocated designated tags was impacted by circumstances beyond the outfitting operation's control. The request must

be submitted on or before a deadline set by the Board. The outfitting operation must provide information or documentation as 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 through a sale and designated allocated tags are associated with the affected operating area, the associated designated allocated tags and tag use history will transfer to the new owner. ()

258. 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. ()

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

For the express purpose of safeguarding the health, safety and welfare of the public, for the conservation of wildlife and range resources, and to enable the outfitted and non-outfitted public to enjoy the recreational value of Idaho’s rivers, streams, lakes, reservoirs and other natural resources, the Board has discretion to limit the number of outfitters licensed on waters that lie totally or partially within the State of Idaho. Pursuant to Section 36-2107(e), Idaho Code, the Board may cooperate with federal and state government to evaluate relevant factors in decisions related to setting outfitter licensure limits on navigable waterways. 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. ()

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

River Sections (BL1) Blackfoot River through (PR1) Priest River

River/Section	Maximum No. Power	Maximum No. Float
<p>(BL1) Blackfoot River - Blackfoot Reservoir/Government Dam to Trail Creek Bridge. For each license/permit issued, no more than two (2) boats per section/ per day may be used by any outfitter at any one time in each of the following river sections:</p> <p>a) Blackfoot Reservoir/Government Dam to Sage Hen Flats/Cutthroat Camp-ground b) Sage Hen Flats/Cutthroat Campground to Morgan Bridge c) Morgan Bridge to Trail Creek Bridge</p> <p>No outfitter may have more than six (6) boats on the BL1 in any one (1) day.</p> <p>OGLB licenses are for the entire BL1 segment; a section of BL1 cannot be separated from BL1 for the purposes of selling a portion of an outfitter's business.</p>	none	2
<p>(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.</p>	none	2
<p>(BO1A) Boise River - Eckert Road Bridge to Main Street Bridge.</p>	none	
<p>(BO1B) Boise River - Main Street Bridge to West side of Garden City limits.</p>	none	

River Sections (BL1) Blackfoot River through (PR1) Priest River

River/Section	Maximum No. Power	Maximum No. Float
(BO2) Boise River - Downstream from the west side of the Garden City municipal limits to the east side of the Caldwell municipal limits. <i>A maximum of two (2) outfitters may be licensed for fishing in addition to float boating.</i> 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	4
(CF1) Clark Fork River - Montana state line 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
(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

River Sections (BL1) Blackfoot River through (PR1) Priest River

River/Section	Maximum No. Power	Maximum No. Float
(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
(KO1) Kootenai River - Montana state line to Canada boundary	5	5
(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 state line to Oregon state line 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. 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

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02. Licensable Waters – River Sections (MF1) Middle Fork Salmon River through (SE2) Selway River – Table:

River Sections (MF1) Middle Fork Salmon River through (SE2) Selway River

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 Officer.	14	31
* (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

River Sections (MF1) Middle Fork Salmon River through (SE2) Selway River

River/Section	Maximum No. Power	Maximum No. Float
* (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 Officer; 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 Officer.	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 Sections (SH1) Henry’s Fork Snake River through (TE3) Teton River

River/Section	Maximum No. Power	Maximum No. Float
(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.	none	7

River Sections (SH1) Henry’s Fork Snake River through (TE3) Teton River

River/Section	Maximum No. Power	Maximum No. Float
<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 Stone Bridge, Stone Bridge to Ashton Dam, and Ashton Dam to Chester Dam, and Chester 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> <p>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> <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 Board Executive Officer, 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>OGLB 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 Sections (SH1) Henry’s Fork Snake River through (TE3) Teton River

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> <p>a) Palisades Dam Boat Access to the Spring Creek Boat Access (Swan Valley Bridge) or Conant Boat Access. Exception: Not more than eight boats would be permitted between Spring Creek Boat Access and Conant Boat Access to allow for the flexibility to launch/take-out boats.</p> <p>b) Spring Creek or 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.</p> <p>c) Fullmer Boat Access to Byington Boat Access.</p> <p>d) Byington Boat Access to Lorenzo Boat Access.</p> <p>e) Lorenzo Boat Access to Menan Boat Access.</p> <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 Board Executive Officer.</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 SS1 segment; a section of SS1 cannot be separated from SS1 for the purposes of selling a portion of an outfitter's business.</p>	<p>None*</p>	<p>8**</p>

River Sections (SH1) Henry’s Fork Snake River through (TE3) Teton River

River/Section	Maximum No. Power	Maximum No. Float
<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>		
<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>	<p>3 outfitters either float or power or combination thereof</p>	

River Sections (SH1) Henry’s Fork Snake River through (TE3) Teton River

River/Section	Maximum No. Power	Maximum No. Float
<p>(SN2) Snake River - Gem State Power Plant. Idaho Falls, downstream to headwaters of American Falls Reservoir. For each license/permit issued, no more than four (4) boats per section/per day may be used by any outfitter at any one time in each of the following river sections:</p> <p>a) Gem State Power Plant to Shelley/Firth b) Shelley/Firth to Porterville c) Porterville to Blackfoot (Boating limited, walk-wade if there is access) d) Blackfoot to Tilden Bridge e) Tilden Bridge to the headwaters of American Falls Reservoir</p> <p>No outfitter may have more than twelve (12) boats on the SN2 in any one day.</p> <p>OGLB licenses are for the entire SN2 segment; a section of SN2 cannot be separated from SN2 for the purposes of selling a portion of an outfitter’s business.</p>	<p>3 outfitters either float or power or combination thereof</p>	
<p>(SN3) Snake River - American Falls Dam to Massacre Rocks State Park. For each license/permit issued, no more than five (5) boats per section/per day may be used by any outfitter at any one time in each of the following river sections:</p> <p>a) American Falls Dam to Pipeline (includes federally and non- federally managed lands) b) Pipeline to Vista (includes federally and non- federally managed lands) c) Vista to Eagle Rock (includes non-federally managed lands) d) Eagle Rock to Massacre Rocks (includes non-federally managed lands)</p> <p>No outfitter may have more than ten (10) boats on the SN3 in any one day.</p> <p>Float boats may use motors (5HP or less) for downstream steerage only. Downstream steerage does not include holding or upstream travel of watercraft with a motor.</p> <p>Sturgeon Fishing: Pipeline to Massacre Rocks, no more than five (5) boats per section/per day may be used by any outfitter at any one time in each of the river sections between Pipeline to Massacre Rocks.</p> <p>American Falls Dam to Pipeline, one (1) boat within this section/two (2) weekdays per week/two (2) weekend days per month. Idaho Department of Fish and Game, Southeast Region (Pocatello) needs to be notified prior to Sturgeon Fishing.</p> <p>OGLB licenses are for the entire SN3 segment; a section of SN3 cannot be separated from SN3 for the purposes of selling a portion of an outfitter’s business.</p>	<p>3 outfitters either float or power or combination thereof</p>	
<p>(SN4) Snake River - Massacre Rocks State Park to Milner Dam</p>	<p>3</p>	<p>3</p>
<p>* (SN5) Snake River - Milner Dam to Star Falls</p>	<p>none</p>	<p>3</p>
<p>* (SN6) Snake River - Star Falls to Twin Falls</p>	<p>none</p>	<p>5</p>

River Sections (SH1) Henry's Fork Snake River through (TE3) Teton River

River/Section	Maximum No. Power	Maximum No. Float
(SN7) Snake River - Twin Falls to Lower Salmon Falls Dam	3	3
(SN8) Snake River - Lower Salmon Falls Dam to Bliss Dam	3	5
(SN9) Snake River - Bliss Dam to headwaters of C.J. Strike Reservoir	5	5
(SN10) Snake River - C.J. Strike Dam to Walter's Ferry	5 outfitters for either power or float or combination thereof	
(SN11) Snake River - Walter's Ferry to headwaters of Brownlee Reservoir	5	none
* (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 Sections (SH1) Henry’s Fork Snake River through (TE3) Teton River

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. 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>OGLB 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

Lake or Reservoir	Maximum No. of Operators	Maximum No. Boats per Operator per Lake or Reservoir
Palisades Reservoir	10	2
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. ()

260. – 299. (RESERVED)

300. UNETHICAL AND UNPROFESSIONAL CONDUCT.

The Board may refuse to issue or renew a license or otherwise discipline a license holder for any of the following: ()

01. Harass. Harassment of the public in their use of Idaho’s outdoor recreational opportunities. ()

02. Endanger. Operating in a manner which endangers the health, safety, or welfare of the public. ()

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

301. – 399. (RESERVED)

400. INSPECTIONS.

The Board has the authority to inspect outfitter facilities and equipment. ()

401. – 999. (RESERVED)

IDAPA 26 – IDAHO DEPARTMENT OF PARKS AND RECREATION

26.01.30 – IDAHO SAFE BOATING RULES

DOCKET NO. 26-0130-2201 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2023 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 Section 67-5226, 67-4223, and Title 67 Chapter 70, 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.

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 7, 2022 Idaho Administrative Bulletin, [Vol. 22-9, page 265](#).

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 Seth Hobbs at (208) 514-2427.

DATED this 28th day of November 2022.

Seth Hobbs, Rules Review Officer
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, ID 83716
Phone: 208-514-2427
Seth.hobbs@idpr.idaho.gov

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

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2022.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5226, 67-4223, and Title 67 Chapter 70 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 21, 2022.

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

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

This temporary and proposed rule rescinds IDAPA 26.01.30, “Idaho Safe Boating Rules.” All rules in this chapter were moved to Idaho statutes Title 67, Chapter 70 by the 2022 Idaho Legislature.

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

This temporary rule confers a benefit on its citizens. The temporary rule repealing the chapter implements the duly enacted laws of the state of Idaho, provides citizens with one location for the standards for complying with those laws, and assists in the orderly execution and enforcement of those laws.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under docket 26-ZBRR-2101. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 2, 2021, Idaho Administrative Bulletin, [Vol. 21-6, pages 59-60](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Seth Hobbs at (208) 514-2427.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2022.

DATED this 11th day of August 2022.

IDAPA 26.01.30 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-2201

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule will become final and effective upon the adjournment sine die of the First Regular Session of the Sixty-seventh Idaho Legislature unless 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, March 2, 2022, [Vol. 22-3, pages 28 through 46](#).

After consideration of public comments, Subsection 210.01.b., Footnote k, and Subsection 210.03.e. have been revised. The remainder of the rule has been adopted as initially proposed. The board meeting documents are available at <https://www.deq.idaho.gov/water-quality-docket-no-58-0102-2201/> 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 questions concerning the rulemaking, contact the undersigned.

Dated this 6th day of July, 2022

Caroline Moores
Operations Senior Analyst
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
Phone: (208)373-0149
caroline.moores@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 March 18, 2022. If no such written request is received, a public hearing pursuant to Section 67-5222(2), Idaho Code, will not be held. Thirteen 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 May 25 and 26, 2022. The meeting details are in the Notice of Meeting of the Idaho Board of Environmental Quality, Docket No. 58-0102-2201, published in the March 2, 2022 Idaho Administrative Bulletin, Vol. 22-3, and available at <https://www.deq.idaho.gov/water-quality-docket-no-58-0102-2201>.

DESCRIPTIVE SUMMARY: This rulemaking was initiated to update Idaho's human health criteria for arsenic and negotiated under [Docket No. 58-0102-1801](#). The proposed revisions are found in Subsections 210.01.a. and b., 210.03.d. and e., and 210.05.b.

In May 2016, EPA entered into a Consent Decree with Northwest Environmental Advocates to reconsider EPA's 2010 approval of Idaho's human health criteria for arsenic. In September 2016, EPA disapproved Idaho's human health criteria of 10 µg/L arsenic for both consumption of fish only and consumption of fish & water. The [Consent Decree](#) requires that EPA propose new human health criteria for arsenic by November 15, 2018, and that EPA either approve Idaho's submittal of revised human health criteria for arsenic or promulgate federal criteria by July 15, 2019. In June 2018, the Court granted the [Unopposed Motion to Modify Consent Decree](#), extending the November 15, 2018, and July 15, 2019, deadlines to November 15, 2022, and November 15, 2023, respectively.

This rulemaking will enable Idaho to adopt human health criteria for arsenic under state rulemaking and may prevent federal promulgation of criteria for Idaho by EPA.

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 May 2022 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2023 legislative session if adopted by the Board and approved by the Idaho 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](#)). 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 [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: A robust negotiated process for this rulemaking was conducted under [docket 58-0102-1801](#). At the request of the Office of the Administrative Rules Coordinator and as a procedural requirement, a new docket number was generated for this proposed rulemaking. The Notice of Negotiated Rulemaking was published in the April 4, 2018, Idaho Administrative Bulletin, [Vol. 18-4, pages 82-83](#), and posted on DEQ's website. Eight meetings were held between April 2018 and November 2020. On December 9, 2020, a preliminary draft rule was posted on DEQ's website. Five additional meetings were held between December 2020 and November 2021 for a total of 13 negotiated rulemaking meetings. Stakeholders and members of the public participated by receiving email

notifications, attending the meetings, reviewing DEQ's presentations and supporting information, 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 for review. DEQ formatted the draft for publication as a proposed rule and is now seeking public comment. 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-58-0102-1801/>.

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 Beth Spelsberg at Elizabeth.spelsberg@deq.idaho.gov, (208)373-0158.

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 April 1, 2022.

Dated this 2nd day of March, 2022.

THE FOLLOWING IS THE TEXT OF PENDING DOCKET NO. 58-0102-2201

Substantive changes have been made in the pending rule.
Italicized red text *double underscored* indicates changes between the text of the proposed rule as adopted in the pending rule.

210. NUMERIC CRITERIA FOR TOXIC SUBSTANCES FOR WATERS DESIGNATED FOR AQUATIC LIFE, RECREATION, OR DOMESTIC WATER SUPPLY USE.

01. Criteria for Toxic Substances. The criteria of Section 210 apply to surface waters of the state as provided in Tables 1 and 2. (3-31-22)

a. Table 1 contains criteria set for protection of aquatic life. Criteria for metals (arsenic through zinc) are expressed as dissolved fraction unless otherwise noted. For purposes of these criteria, dissolved fraction means that which passes through a forty-five hundredths (0.45) micron filter. (3-31-22)

Subsections 210.01 and 210.01.a. are effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.

01. **Criteria for Toxic Substances.** The criteria of Section 210 apply to surface waters of the state as provided in Tables 1 and 2 Criteria for metals (arsenic through zinc) listed in Tables 1 and 2 are expressed as a dissolved fraction (i.e., passes through a forty-five hundredths (0.45) micron filter) unless otherwise noted. (3-31-22)()

a. Table 1 contains criteria set for to protection of aquatic life. Criteria for metals (arsenic through zinc) are expressed as dissolved fraction unless otherwise noted. For purposes of these criteria, dissolved fraction means that which passes through a forty five hundredths (0.45) micron filter. (3-31-22)()

Subsections 210.01 and 210.01.a. are not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.

Table 1. Criteria for Protection of Aquatic Life					
Compound	^a CAS Number	^b CMC (µg/L)		^b CCC (µg/L)	
Inorganic Compounds/Metals					
Arsenic	7440382	340	c	150	c
Cadmium	7440439	1.3	f	0.6	f
Chromium III	16065831	570	f	74	f
Chromium VI	18540299	16	c	11	c
Copper	7440508	12.3	k	7.6	k
Lead	7439921	65	f	2.5	f
Mercury	7439976		e		e
<p>Note: In 2005, Idaho adopted EPA's recommended methylmercury fish tissue criterion for protection of human health (docket 58-0102-0302). The decision was made to remove the old tissue-based aquatic life criteria and rely on the fish tissue criterion to provide protection for aquatic life as well as human health. Thus, current Idaho water quality standards do not have mercury water column criteria for the protection of aquatic life. While EPA approved Idaho's adoption of the fish tissue criterion in September 2005, it had withheld judgment on Idaho's removal of aquatic life criteria. On December 12, 2008, EPA disapproved Idaho's removal of the old aquatic life criteria. The water column criteria for total recoverable mercury published in 2004 Idaho Administrative Code continue to apply and are effective for CWA purposes. For more information go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards.</p>					
Nickel	7440020	470	f	52	f
Selenium	7782492	m		l	
Silver	7440224	3.4	f		
Zinc	7440666	120	f	120	f
Inorganic Compounds/Non-Metals					
Chlorine		19	h	11	h
Cyanide	57125	22	g	5.2	g

Table 1. Criteria for Protection of Aquatic Life					
Compound	^a CAS Number	^b CMC (µg/L)		^b CCC (µg/L)	
Organic Compounds					
Acrolein	107028	$\frac{--^1}{3^2}$		$\frac{--^1}{3^2}$	
¹ Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved. ² Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved.					
Aldrin	39002	3			
gamma-BHC (Lindane)	58899	2		0.08	
Carbaryl	63252	$\frac{--^1}{2.1^2}$		$\frac{--^1}{2.1^2}$	
¹ Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved. ² Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved.					
Chlordane	57749	2.4		0.0043	
4,4'-DDT	50293	1.1		0.001	
Diazinon	333415	$\frac{--^1}{0.17^2}$		$\frac{--^1}{0.17^2}$	
¹ Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved. ² Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-1802 have been approved.					
Dieldrin	60571	2.5		0.0019	
alpha-Endosulfan	959988	0.22		0.056	
beta-Endosulfan	33213659	0.22		0.056	
Endrin	72208	0.18		0.0023	
Heptachlor	76448	0.52		0.0038	
Heptachlor Epoxide	1024573	0.52		0.0038	
Pentachlorophenol	87865	20	i	13	i
Polychlorinated Biphenyls PCBs	j			0.014	j
Toxaphene	8001352	0.73		0.0002	

Table 1. Criteria for Protection of Aquatic Life					
Compound	^a CAS Number	^b CMC (µg/L)		^b CCC (µg/L)	
Footnotes for Table 1. Criteria for Protection of Aquatic Life					
a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.					
b. See definitions of Acute Criteria (CMC) and Chronic Criteria (CCC), Section 010 of these rules.					
c. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = CMC column value X WER. CCC = CCC column value X WER.					
d. Criterion expressed as total recoverable (unfiltered) concentrations.					
e. No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.					
f. Aquatic life criteria for these metals are a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the example values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).					
g. Criteria are expressed as weak acid dissociable (WAD) cyanide.					
h. Total chlorine residual concentrations.					
i. Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). CMC = $\exp(1.005(\text{pH})-4.830)$ CCC = $\exp(1.005(\text{pH})-5.290)$					
j. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.					
k. Aquatic life criteria for copper shall be derived in accordance with Subsection 210.03.c.v. For comparative purposes only, the example values displayed in this table correspond to the Biotic Ligand Model output based on the following inputs: temperature = 14.9°C, pH = 8.16, dissolved organic carbon = 1.4 mg/L, humic acid fraction = 10%, calcium = 44.6 mg/L, magnesium = 11.0 mg/L, sodium = 11.7 mg/L, potassium = 2.12 mg/L, sulfate = 46.2 mg/L, chloride = 12.7 mg/L, alkalinity = 123 mg/L CaCO ₃ , and sulfide = 1.00×10^{-8} mg/L.					
l. Chronic				Short-term	
Egg-Ovary (mg/kg dw)	Fish Tissue (mg/kg dw)		Water Column (µg/L)		Water Column (µg/L)
Egg-Ovary	Whole-Body	Muscle	Water Lentic	Water Lotic	Water
15.1 ¹	8.5 ²	11.3 ²	1.5 (30 day average) ³	3.1 (30 day average) ³	Intermittent Exposure Equation ^{3,4}
mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter					
1. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species. Not to be exceeded; DEQ will evaluate all representative egg-ovary data to determine compliance with this criterion element.					

Table 1. Criteria for Protection of Aquatic Life			
Compound	^a CAS Number	^b CMC (µg/L)	^b CCC (µg/L)
<p>2. Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual. Not to be exceeded; DEQ will evaluate all representative whole body or muscle data to determine compliance with this criterion element.</p> <p>3. Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, selenium concentrations in fish from the nearest downstream waters may be used to assess compliance using methods provided in Aquatic Life Ambient Water Quality Criterion for Selenium – Freshwater, EPA-822-R-16-006, Appendix K: Translation of a Selenium Fish Tissue Criterion Element to a Site-Specific Water Column Value (June 2016).</p> <p>4. Intermittent Exposure Equation=</p> $\frac{WQC - C_{bkgrnd}(1 - f_{int})}{f_{int}}$ <p>where WQC is the applicable water column element, for either lentic or lotic waters; C_{bkgrnd} is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to one day).</p> <p>m. There is no specific acute criterion for aquatic life; however, the aquatic life criterion is based on chronic effects of the selenium on aquatic life and is expected to adequately protect against acute effects.</p>			

(3-31-22)

b. Table 2 contains criteria ~~set for~~ to protection ~~of~~ human health. The Water & Fish criteria apply to waters designated for domestic water supply use. The Fish Only criteria apply to waters designated for primary or secondary contact recreation use. (3-31-22)()

Table 2. Criteria for Protection of Human Health (based on consumption of:)						
Compound	^a CAS Number	Carcinogen?	Water & Fish (µg/L unless otherwise specified)		Fish Only (µg/L unless otherwise specified)	
Inorganic Compounds/Metals						
Antimony	7440360		5.2	b	190	b
Arsenic ¹	7440382	Y	10	cdj	10	cdj
<p>Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water+fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA’s 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2015, Northwest Environmental Advocates challenged EPA’s 2010 approval. Court remanded action back to EPA. On September 15, 2016, EPA disapproved Idaho’s adoption of 10 µg/L. Neither EPA nor the state of Idaho has promulgated replacement criteria. For more information, go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards.</p>						

Table 2. Criteria for Protection of Human Health (based on consumption of:)						
Compound	^a CAS Number	Carcinogen?	Water & Fish (µg/L <u>unless</u> <u>otherwise specified</u>)		Fish Only (µg/L <u>unless</u> <u>otherwise</u> <u>specified</u>)	
¹ Effective for CWA purposes. Water & Fish value, Fish Only value, and footnotes continue to be effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved. See Arsenic ² immediately below.						
Arsenic ²	7440382	Y	10	cdj	40 4.3; 8.0 µg/kg fish tissue	cdj k
<i>Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2015, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016, EPA disapproved Idaho's adoption of 10 µg/L. Neither EPA nor the state of Idaho has promulgated replacement criteria. For more information, go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards.</i>						
² Not yet effective for CWA purposes. Fish Only value and footnote k are not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.						
Beryllium	7440417			e		e
Cadmium	7440439			e		e
Chromium III	16065831			e		e
Chromium VI	18540299			e		e
Copper	7440508		1300	j		
Lead	7439921			e		e
Methylmercury	22967926				0.3mg/kg	i
Nickel	7440020		58	b	100	b
Selenium	7782492		29	b	250	b
Thallium	7440280		0.017	b	0.023	b
Zinc	7440666		870	b	1,500	b
Inorganic Compounds/Non-Metals						
Cyanide	57125		3.9	b	140	b
Asbestos	1332214		7,000,000 Fibers/L	j		
Organic Compounds						
Acenaphthene	83329		26	b	28	b
Acenaphthylene	208968			e		e
Acrolein	107028		3.2	b	120	b
Acrylonitrile	107131	Y	0.60	bf	22	bf

Table 2. Criteria for Protection of Human Health (based on consumption of:)

Compound	a CAS Number	Carcinogen?	Water & Fish (µg/L <u>unless</u> <u>otherwise specified</u>)		Fish Only (µg/L <u>unless</u> <u>otherwise</u> <u>specified</u>)	
Aldrin	309002	Y	2.5E-06	bf	2.5E-06	bf
Anthracene	120127		110	b	120	b
alpha-BHC	319846	Y	0.0012	bf	0.0013	bf
beta-BHC	319857	Y	0.036	bf	0.045	bf
gamma-BHC (Lindane)	58899		1.4	b	1.4	b
delta-BHC	319868			e		e
Benzene	71432		3.0	bf	28	b
Benzidine	92875	Y	0.0014	bf	0.033	bf
Benzo(a)Anthracene	56553	Y	0.0042	bf	0.0042	bf
Benzo(b)Fluoranthene	205992	Y	0.0042	bf	0.0042	bf
Benzo(k)Fluoranthene	207089	Y	0.042	bf	0.042	bf
Benzo(ghi)Perylene	191242			e		e
Benzo(a)Pyrene	50328	Y	0.00042	bf	0.00042	bf
Bis(2-Chloroethoxy) Methane	111911			e		e
Bis(2-Chloroethyl) Ether	111444	Y	0.29	bf	6.8	bf
Bis(2-Chloroisopropyl) Ether	108601		220	b	1,200	b
Bis(Chloromethyl) Ether	542881	Y	0.0015	bf	0.055	bf
Bis(2-Ethylhexyl) Phthalate	117817	Y	1.2	bf	1.2	bf
Bromoform	75252	Y	62	bf	380	bf
4-Bromophenyl Phenyl Ether	101553			e		e
Butylbenzyl Phthalate	85687		0.33	b	0.33	b
Carbon Tetrachloride	56235	Y	3.6	bf	15	bf
Chlorobenzene	108907		89	b	270	b
Chlordane	57749	Y	0.0010	bf	0.0010	bf
Chlorodibromomethane	124481	Y	7.4	bf	67	bf
Chloroethane	75003			e		e
2-Chloroethylvinyl Ether	110758			e		e
Chloroform	67663		61	b	730	b

Table 2. Criteria for Protection of Human Health (based on consumption of:)

Compound	a CAS Number	Carcinogen?	Water & Fish (µg/L <u>unless</u> <u>otherwise specified</u>)		Fish Only (µg/L <u>unless</u> <u>otherwise</u> <u>specified</u>)	
2-Chloronaphthalene	91587		330	b	380	b
2-Chlorophenol	95578		30	b	260	b
Chlorophenoxy Herbicide (2,4-D)	94757		1,000	b	3,900	b
Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]	93721		82	b	130	b
4-Chlorophenyl Phenyl Ether	7005723			e		e
Chrysene	218019	Y	0.42	bf	0.42	bf
4,4'-DDD	72548	Y	0.00042	bf	0.00042	bf
4,4'-DDE	72559	Y	5.5E-05	bf	5.5E-05	bf
4,4'-DDT	50293	Y	9.8E-05	bf	9.8E-05	bf
Di-n-Butyl Phthalate	84742		8.2	b	8.3	b
Di-n-Octyl Phthalate	117840			e		e
Dibenzo (a,h) Anthracene	53703	Y	0.00042	bf	0.00042	bf
1,2-Dichlorobenzene	95501		700	b	1,100	b
1,3-Dichlorobenzene	541731		3.5	b	4.8	b
1,4-Dichlorobenzene	106467		180	b	300	b
3,3'-Dichlorobenzidine	91941	Y	0.29	bf	0.48	bf
Dichlorobromomethane	75274	Y	8.8	bf	86	bf
1,1-Dichloroethane	75343			e		e
1,2-Dichloroethane	107062	Y	96	bf	2,000	bf
1,1-Dichloroethylene	75354		310	b	5,200	b
2,4-Dichlorophenol	120832		9.6	b	19	b
1,2-Dichloropropane	78875	Y	8.5	bf	98	bf
1,3-Dichloropropene	542756	Y	2.5	bf	38	bf
Dieldrin	60571	Y	4.2E-06	bf	4.2E-06	bf
Diethyl Phthalate	84662		200	b	210	b
2,4-Dimethylphenol	105679		110	b	820	b
Dimethyl Phthalate	131113		600	b	600	b
Dinitrophenols	25550587		13	b	320	b

Table 2. Criteria for Protection of Human Health (based on consumption of:)

Compound	a CAS Number	Carcinogen?	Water & Fish (µg/L <u>unless</u> <u>otherwise specified</u>)		Fish Only (µg/L <u>unless</u> <u>otherwise</u> <u>specified</u>)	
2,4-Dinitrophenol	51285		12	b	110	b
2,4-Dinitrotoluene	121142	Y	0.46	bf	5.5	bf
2,6-Dinitrotoluene	606202			e		e
1,2-Diphenylhydrazine	122667	Y	0.25	bf	0.65	bf
2, 3, 7, 8-TCDD Dioxin	1746016	Y	1.8E-08	bf	1.9E-08	bf
alpha-Endosulfan	959988		7.0	b	8.5	b
beta-Endosulfan	33213659		11	b	14	b
Endosulfan Sulfate	1031078		9.9	b	13	b
Endrin	72208		0.011	b	0.011	b
Endrin Aldehyde	7421934		0.38	b	0.40	b
Ethylbenzene	100414		32	b	41	b
Fluoranthene	206440		6.3	b	6.4	b
Fluorene	86737		21	b	22	b
Heptachlor	76448	Y	2.0E-05	bf	2.0E-05	bf
Heptachlor Epoxide	1024573	Y	0.00010	bf	0.00010	bf
Hexachlorobenzene	118741	Y	0.00026	bf	0.00026	bf
Hexachlorobutadiene	87683	Y	0.031	bf	0.031	bf
Hexachlorocyclohexane (HCH)-Technical	608731	Y	0.027	bf	0.032	bf
Hexachloro- cyclopentadiene	77474		1.3	b	1.3	b
Hexachloroethane	67721		0.23	b	0.24	b
Ideno (1,2,3-cd) Pyrene	193395	Y	0.0042	bf	0.0042	bf
Isophorone	78591	Y	330	bf	6,000	bf
Methoxychlor	72435		0.0054	b	0.0055	b
Methyl Bromide	74839		130	b	3,700	b
Methyl Chloride	74873			e		e
3-Methyl-4-Chlorophenol	59507		350	b	750	b
2-Methyl-4,6- Dinitrophenol	534521		1.6	b	8.6	b
Methylene Chloride	75092		38	b	960	b
Naphthalene	91203			e		e

Table 2. Criteria for Protection of Human Health (based on consumption of:)

Compound	a CAS Number	Carcinogen?	Water & Fish (µg/L <u>unless</u> <u>otherwise specified</u>)		Fish Only (µg/L <u>unless</u> <u>otherwise</u> <u>specified</u>)	
Nitrobenzene	98953		12	b	180	b
2-Nitrophenol	88755			e		e
4-Nitrophenol	100027			e		e
N-Nitrosodimethylamine	62759	Y	0.0065	bf	9.1	bf
N-Nitrosodi-n-Propylamine	621647	Y	0.046	bf	1.5	bf
N-Nitrosodiphenylamine	86306	Y	3.14	bf	18	bf
Pentachlorobenzene	608935		0.035	b	0.036	b
Pentachlorophenol	87865	Y	0.11	bf	0.12	bf
Phenanthrene	85018			e		e
Phenol	108952		3,800	b	85,000	b
Polychlorinated Biphenyls PCBs	g	Y	0.00019	b ^{fh}	0.00019	b ^{fh}
Pyrene	129000		8.1	b	8.4	b
1,2,4,5-Tetrachlorobenzene	95943		0.0093	b	0.0094	b
1,1,2,2-Tetrachloroethane	79345	Y	1.4	bf	8.6	bf
Tetrachloroethylene	127184		15	b	23	b
Toluene	108883		47	b	170	b
Toxaphene	8001352	Y	0.0023	bf	0.0023	bf
1,2-Trans-Dichloroethylene	156605		120	b	1,200	b
1,2,4-Trichlorobenzene	120821		0.24	b	0.24	b
1,1,1-Trichloroethane	71556		11,000	b	56,000	b
1,1,2-Trichloroethane	79005	Y	4.9	bf	29	bf
Trichloroethylene	79016		2.6	b	11	b
2,4,5-Trichlorophenol	95954		140	b	190	b
2,4,6-Trichlorophenol	88062		1.5	b	2.0	b
Vinyl Chloride	75014	Y	0.21	bf	5.0	bf

Footnotes for Table 2. Criteria for Protection of Human Health

a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.

Table 2. Criteria for Protection of Human Health (based on consumption of:)

Compound	a CAS Number	Carcinogen?	Water & Fish (µg/L <u>unless</u> <u>otherwise specified</u>)	Fish Only (µg/L <u>unless</u> <u>otherwise</u> <u>specified</u>)
<p>b. This criterion is based on input values to human health criteria calculation specified in Idaho's Technical Support Document (TSD) for Human Health Criteria Calculations - 2015. Criteria for non-carcinogens are calculated using the formula:</p>				
$AWQC = RfD * RSC * \left(\frac{BW}{DI + (FI * BAF)} \right)$ <p>and criteria for carcinogens are calculated using the formula:</p> $AWQC = RSD * \left(\frac{BW}{DI + (FI * BAF)} \right)$ <p>Where: AWQC = Ambient water quality criterion (mg/L)</p> <p>BW = Human Body Weight (kg), 80 is used in these criteria DI = Drinking Water Intake, (L/day), 2.4 is used in these criteria FI = Fish Intake, (kg/day), 0.0665 is used in these criteria</p> <p>BAF = Bioaccumulation Factor, L/kg, chemical specific value, see TSD RfD = Reference dose (mg/kg-day), chemical specific value, see TSD</p> $RSD = \frac{\text{Target Incremental Cancer Risk}}{\text{Cancer Potency Factor}} \text{ (mg/kg-day), chemical specific value, see TSD}$ <p>RSC = Relative Source Contribution, chemical specific value, see TSD</p>				
<p>c. Inorganic forms only.</p>				
<p>d. Criterion expressed as total recoverable (unfiltered) concentrations.</p>				
<p>e. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.</p>				
<p>f. EPA guidance allows states to choose from a range of 10^{-4} to 10^{-6} for the incremental increase in cancer risk used in human health criteria calculation. Idaho has chosen to base this criterion on carcinogenicity of 10^{-5} risk.</p>				
<p>g. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.</p>				
<p>h. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).</p>				

Table 2. Criteria for Protection of Human Health (based on consumption of:)				
Compound	^a CAS Number	Carcinogen?	Water & Fish (µg/L <u>unless otherwise specified</u>)	Fish Only (µg/L <u>unless otherwise specified</u>)
<p>i. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: $TRC = [BW \times \{RfD - (RSC \times RfD)\}] / TL$. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.</p>				
<p>j. This criterion is based on the drinking water Maximum <u>Containment Contaminant</u> Level (MCL).</p>				
<p><u>k. For Fish Only exposure to inorganic arsenic, the human health criterion is:</u></p>				
<u>Fish Tissue (µg/kg wet-weight)</u>			<u>Water Column (µg/L)</u>	
<u>8.0¹</u>			<u>4.3²</u>	
<p><u>¹Fish tissue element is based on total recoverable inorganic arsenic in muscle or fillet. The fish tissue element supersedes the water column element provided at least ninety (90) days have passed since any new activity or discharge has occurred within the water body. Fish tissue element will be applied in accordance with Subsection 210.03.e.</u></p>				
<p><u>²Water column element is based on dissolved inorganic arsenic in water.</u></p>				
<p><u>Footnote k is not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.</u></p>				

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02. Factors for Calculating Hardness Dependent Metals Criteria. Hardness dependent metals criteria are calculated using values from the following table in the equations: (3-31-22)

a. $CMC = WER \exp \{mA[\ln(\text{hardness})] + bA\}$ X Acute Conversion Factor. (3-31-22)

b. $CCC = WER \exp \{mc[\ln(\text{hardness})] + bc\}$ X Chronic Conversion Factor.

Metal	mA	bA	mc	bc	aAcute Conversion Factor	aChronic Conversion Factor
Arsenic	b	b	b	b	1.0	1.0
Cadmium	0.8367	-3.560	0.6247	-3.344	0.944 see footnote a	0.909
Chromium (III)	0.819	3.7256	0.8190	0.6848	0.316	0.860
Chromium (VI)	b	b	b	b	0.982	0.962
Lead	1.273	-1.460	1.273	-4.705	0.791	0.791

Mercury	b	b	b	b	0.85	0.85
Nickel	0.846	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	-6.52	c	c	0.85	c
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

Note to table: The term “exp” represents the base e exponential function.

Footnotes to table:

a. Conversion factors (CF) are from “Stephan, C. E. 1995. Derivation of conversion factors for the calculation of dissolved freshwater aquatic life criteria for metals. U.S. Environmental Protection Agency, Environmental Research Laboratory – Duluth.” The conversion factors for cadmium and lead are hardness-dependent and can be calculated for any hardness (see limitations in Subsection 210.03.b.i.) using the following equations. For comparative purposes, the conversion factors for a total hardness of one hundred (100) mg/L are shown in the table. The conversion factor shall not exceed one (1).

Cadmium

Acute: $CF = 1.136672 - [(\ln \text{hardness})(0.041838)]$ NOTE: The cadmium acute criterion equation was derived from dissolved metals toxicity data and thus requires no conversion; this conversion factor may be used to back calculate an equivalent total recoverable concentration.

Chronic: $CF = 1.101672 - [(\ln \text{hardness})(0.041838)]$

Lead (Acute and Chronic): $CF = 1.46203 - [(\ln \text{hardness})(0.145712)]$

b. Not applicable

c. No chronic criteria are available for silver.

(3-31-22)

03. Applicability. The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications. Mixing zones may be applied to toxic substance criteria subject to the limitations set forth in Section 060 and set out below.

(3-31-22)

a. For all waters for which the Department has determined mixing zones to be applicable, the toxic substance criteria apply at the boundary of the mixing zone(s) and beyond. Absent an authorized mixing zone, the toxic substance criteria apply throughout the waterbody including at the end of any discharge pipe, canal or other discharge point.

(3-31-22)

b. Low flow design conditions. Water quality-based effluent limits and mixing zones for toxic substances shall be based on the following low flows in perennial receiving streams. Numeric chemical criteria may be exceeded in perennial streams outside any applicable mixing zone only when flows are less than these values:

Aquatic Life		Human Health	
CMC (“acute” criteria)	1Q10 or 1B3	Non-carcinogens	Harmonic mean flow
CCC (“chronic” criteria)	7Q10 or 4B3	Carcinogens	Harmonic mean flow

(3-31-22)

i. Where “1Q10” is the lowest one-day flow with an average recurrence frequency of once in ten (10) years determined hydrologically;

(3-31-22)

ii. Where “1B3” is biologically based and indicates an allowable exceedance of once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model);

(3-31-22)

iii. Where “7Q10” is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (3-31-22)

iv. Where “4B3” is biologically based and indicates an allowable exceedance for four (4) consecutive days once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model); (3-31-22)

v. Where the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows. (3-31-22)

c. Application of aquatic life metals criteria. (3-31-22)

i. For metals other than cadmium, for purposes of calculating hardness dependent aquatic life criteria from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. For cadmium, the minimum hardness for use in those equations shall not be less than ten (10) mg/l, as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, except as specified in Subsections 210.03.c.ii. and 210.03.c.iii., even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. (3-31-22)

ii. The hardness values used for calculating aquatic life criteria for metals at design discharge conditions shall be representative of the ambient hardnesses for a receiving water that occur at the design discharge conditions given in Subsection 210.03.b. (3-31-22)

iii. Except as otherwise noted, the aquatic life criteria for metals (arsenic through zinc in Table 1 in Subsection 210.01) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnotes c. and f. in Table 1 in Subsection 210.01, the water effect ratio is computed as a specific pollutant’s acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of calculating water effects ratios, the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC50) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC50) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of calculating water effects ratios, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.c.ii. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. (3-31-22)

iv. Implementation Guidance for the Idaho Mercury Water Quality Criteria. (3-31-22)

(1) The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” describes in detail suggested methods for discharge related monitoring requirements, calculation of reasonable potential to exceed (RPTE) water quality criteria in determining need for mercury effluent limits, and use of fish tissue mercury data in calculating mercury load reductions. This guidance, or its updates, will provide assistance to the Department and the public when implementing the methylmercury criterion. The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” also provides basic background information on mercury in the environment, the novelty of a fish tissue criterion for water quality, the connection between human health and aquatic life protection, and the relation of environmental programs outside of Clean Water Act programs to reducing mercury contamination of the environment. The [“Implementation Guidance for the Idaho Mercury Water Quality Criteria”](#) is available at the

Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at <https://www.deq.idaho.gov>. (3-31-22)

(2) The implementation of a fish tissue criterion in NPDES permits and TMDLs requires a non-traditional approach, as the basic criterion is not a concentration in water. In applying the methylmercury fish tissue criterion in the context of NPDES effluent limits and TMDL load reductions, the Department will assume change in fish tissue concentrations of methylmercury are proportional to change in water body loading of total mercury. Reasonable potential to exceed (RPTE) the fish tissue criterion for existing NPDES sources will be based on measured fish tissue concentrations potentially affected by the discharge exceeding a specified threshold value, based on uncertainty due to measurement variability. This threshold value is also used for TMDL decisions. Because measured fish tissue concentrations do not reflect the effect of proposed new or increased discharge of mercury, RPTE in these cases will be based upon an estimated fish tissue methylmercury concentration, using projected changes in waterbody loading of total mercury and a proportional response in fish tissue mercury. For the above purposes, mercury will be measured in the skinless filets of sport fish using techniques capable of detecting tissue concentrations down to point zero five (0.05) mg/kg. Total mercury analysis may be used, but will be assumed to be all methylmercury for purposes of implementing the criterion. (3-31-22)

v. Copper Criteria for Aquatic Life. (3-31-22)

(1) Aquatic life criteria for copper shall be derived using: (3-31-22)

(a) Biotic Ligand Model (BLM) software that calculates criteria consistent with the “[Aquatic Life Ambient Freshwater Quality Criteria – Copper](#)”: EPA-822-R-07-001 (February 2007); or (3-31-22)

(b) An estimate derived from BLM outputs that is based on a scientifically sound method and protective of the designated aquatic life use. (3-31-22)

(2) To calculate copper criteria using the BLM, the following parameters from each site shall be used: temperature, pH, dissolved organic carbon (DOC), calcium, magnesium, sodium, potassium, sulfate, chloride, and alkalinity. The BLM inputs for humic acid (HA) as a proportion of DOC and sulfide shall be based on either measured values or the following default values: 10% HA as a proportion of DOC, 1.00×10^{-8} mg/L sulfide. Measured values shall supersede any estimate or default input. (3-31-22)

(3) BLM input measurements shall be planned to capture the most bioavailable conditions for copper. (3-31-22)

(4) A criterion derived under Subsection 210.03.c.v.(1)(a) shall supersede any criterion derived under Subsection 210.03.c.v.(1)(b). Acceptable BLM software includes the “[US EPA WQC Calculation](#)” for copper in BLM Version 3.1.2.37 (October 2015). (3-31-22)

(5) Implementation Guidance for the Idaho Copper Criteria for Aquatic Life. The “Implementation Guidance for the Idaho Copper Criteria for Aquatic Life: Using the Biotic Ligand Model” describes in detail methods for implementing the aquatic life criteria for copper using the BLM. This guidance, or its updates, will provide assistance to the Department and the public for determining minimum data requirements for BLM inputs and how to estimate criteria when data are incomplete or unavailable. The “[Implementation Guidance for the Idaho Copper Criteria for Aquatic Life: Using the Biotic Ligand Model](#)” is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at <https://www.deq.idaho.gov>. (3-31-22)

d. Application of toxics criteria. (3-31-22)

i. Frequency and duration for aquatic life toxics criteria. CMC column criteria in Table 1 in Subsection 210.01 are concentrations not to be exceeded for a one-hour average more than once in three (3) years unless otherwise specified. CCC column criteria in Table 1 in Subsection 210.01 are concentrations not to be exceeded for a four-day average more than once in three (3) years unless otherwise specified. (3-31-22)

ii. Frequency and duration for human health toxics criteria. Criteria in Table 2 in Subsection 210.01 are not to be exceeded based on an annual harmonic mean. (3-31-22)

Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.

ii. Frequency and duration for human health toxics criteria. Criteria in Table 2-~~iii~~, Subsection 210.01, are not to be exceeded based on an annual *harmonic* arithmetic mean concentration. (3-31-22)()

Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.

e. Application of the fish tissue element of the arsenic criterion for human health. ()

i. The fish tissue element for total recoverable inorganic arsenic is based on a single measurement using sufficiently sensitive methods. ()

ii. The single measurement must be made on a sample that is an average or composite of a minimum of five (5) individual fish of the same species collected from the same water body within the same calendar year. When available, game fish species representative of the size and species that may be legally harvested within the waterbody are preferred. Results from multiple sample events may be averaged or composited provided they represent the same species collected from the same water body within the same calendar year. ()

iii. Not to be exceeded; the Department will evaluate all representative fish tissue data to determine compliance with this criterion element. ()

iv. For purposes of determining water column targets for the development of effluent limits, TMDL targets, or water column targets for fishless waters, the fish tissue element may be translated to a water column value using a site-specific bioaccumulation factor (BAF) based on the ratio of total recoverable inorganic arsenic in fish muscle or fillet tissue to dissolved inorganic arsenic in the water column using the following equation:

$$WC_T (\mu g/L) = \frac{8.00 \mu g/kg}{BAF_{SS} L/kg}$$

Where:

WC_T (μg/L) is the translated water column value; and

BAF_{SS} L/kg is the site specific BAF calculated consistent with 210.03.e.v.

In fishless waters, surface water and fish tissue from the immediate downstream waters may be used for bioaccumulation modeling. In the absence of sufficient fish tissue data, the water column element is the applicable criterion element in fishless waters. ()

v. When translating the fish tissue element to a water column value, the following procedures will be followed. ()

(1) Data used to translate the fish tissue element must be based on current conditions and consistent with Subsections 210.03.e.i. and ii. ()

(2) Whenever practical, fish tissue samples must be representative of the game fish species present within the waterbody and include game fish of legally harvestable size. In the absence of suitable game fish species, other resident fish species may be used. ()

(3) Water column samples must be representative of the annual average concentration of dissolved inorganic arsenic at the site. ()

(4) BAFs are calculated as a trophic-level weighted BAF or other scientifically defensible method for deriving protective BAF. ()

Subsection 210.03.e. is not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.

04. National Pollutant Discharge Elimination System Permitting. For the purposes of NPDES permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the following standards, that are hereby incorporated by reference, in addition to other scientifically defensible methods deemed appropriate by the Department; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02 of this rule. (3-31-22)

1993. a. "Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria," EPA, October 1993. (3-31-22)

b. "Guidance Document on Dynamic Modeling and Translators," EPA, August 1993. (3-31-22)

c. "Guidance Document on Clean Analytical Techniques and Monitoring," EPA, October 1993. (3-31-22)

1994. d. "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals," EPA, February 1994. (3-31-22)

e. "Technical Support Document for Water Quality-Based Toxics Control." EPA, March 1991. (3-31-22)

05. Development of Toxic Substance Criteria. (3-31-22)

a. Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not identified in these rules for toxic substances, may be derived by the Department from the following information: (3-31-22)

i. Site-specific criteria developed pursuant to Section 275; (3-31-22)

ii. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (3-31-22)

iii. The most recent recommended criteria defined in EPA's ECOTOX database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (3-31-22)

iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (3-31-22)

b. Human Health Criteria. (3-31-22)

i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department using best available science on toxicity thresholds (i.e. reference dose or cancer slope factor), such as defined in EPA's Integrated Risk Information System (IRIS) or other peer-reviewed source acceptable to the Department. (3-31-22)

ii. When using toxicity thresholds to derive water quality criteria to protect human health, a fish consumption rate representative of the population to be protected, a mean adult body weight, an adult 90th percentile water ingestion rate, a trophic level weighted BAF or BCF, and a hazard quotient of one (1) for non-carcinogens or a cancer risk level of 10^{-5} for carcinogens shall be utilized. (3-31-22)

Effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.

ii. When using toxicity thresholds to derive water quality criteria to protect human health, a fish consumption rate representative of the population to be protected, a mean adult body weight, an adult 90th percentile water ingestion rate, a trophic level weighted BAF or BCF, and a hazard quotient of one (1) for non-carcinogens or a cancer risk level of 10^{-5} for carcinogens ~~shall~~ will be utilized for any compound not listed in Subsection 210.05.b.iii. (3-31-22)()

Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.

iii. Subsection 210.05.b.ii. does not apply to the fish tissue element for inorganic arsenic. ()

Not effective for CWA purposes until the date EPA issues written notification that the revisions in Docket No. 58-0102-2201 have been approved.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.05 – RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-2201

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis \(IBRS\)](#)

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule will become final and effective upon the adjournment sine die of the First Regular Session of the Sixty-seventh Idaho Legislature unless 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 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

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 7, 2022, [Vol. 22-9, pages 489 through 490](#). DEQ received no comments, and the rule has been adopted as initially proposed. The board meeting documents are available at <https://www.deq.idaho.gov/hazardous-waste-docket-no-58-0105-2201/> 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 questions concerning the rulemaking, contact the undersigned.

Dated this 7th day of December, 2022.

Caroline Moores
Operations Senior Analyst
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
Phone: (208)373-0149
caroline.moores@deq.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

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 21, 2022. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: The purpose of this rulemaking is to ensure that the state rules remain consistent with federal regulations. Idaho's Rules and Standards for Hazardous Waste, IDAPA 58.01.05, are updated annually to maintain consistency with the federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). This proposed rule updates federal regulations incorporated by reference with the July 1, 2022 Code of Federal Regulations (CFR) effective date. The July 1, 2022 CFR is a codification of federal regulations published in the Federal Register as of July 1, 2022.

Citizens of the state of Idaho; environmental groups; persons interested in hazardous waste; and hazardous waste generators, transporters, and treatment, storage, and disposal facilities 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 in November 2022 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2023 legislative session if adopted by the Board and approved by the Idaho Legislature.

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

Adoption of federal regulations is necessary to maintain program primacy. Incorporation by reference allows DEQ to keep its rules up to date with federal regulation changes and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.

In compliance with Idaho Code 67-5223(4), DEQ prepared a brief synopsis detailing the substantive difference between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference can be obtained at <https://www.deq.idaho.gov/hazardous-waste-docket-no-58-0105-2201/>.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible pursuant to Section 67-5220, Idaho Code, due to the simple nature of this rulemaking and because DEQ has no discretion with respect to adopting EPA's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). Whenever possible, DEQ incorporates federal regulations by reference to ensure that the state rules are consistent with federal regulations.

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: 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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact Albert Crawshaw at albert.crawshaw@deq.idaho.gov or (208) 373-0554.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments regarding this proposed rulemaking. The Department will consider all comments received on or before September 28, 2022. Submit comments to:

Albert Crawshaw
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
albert.crawshaw@deq.idaho.gov

DATED this September 7, 2022

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0105-2201

002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260 - 268, 270, 273, 278, and 279 constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 202~~1~~², including any notes and appendices therein, unless expressly provided otherwise in these rules. (3-24-22)()

01. Exceptions. Nothing in 40 CFR Parts 260 - 268, 270, 273, 278, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (3-24-22)

02. Availability of Referenced Material. The federal regulations adopted by reference throughout these rules are maintained at the following locations: (3-24-22)

- a. U.S. Government Printing Office, <http://www.ecfr.gov/cgi-bin/ECFR> [https://www.ecfr.gov/current/title-40](https://www.ecfr.gov/current/title-40;); (3-24-22)()
- b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208) 334-3316; (3-24-22)
- c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502. (3-24-22)

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.17 – RECYCLED WATER RULES

DOCKET NO. 58-0117-2201 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2023 Idaho State Legislature for final approval. The pending rule will become final and effective upon the adjournment sine die of the First Regular Session of the Sixty-seventh Idaho Legislature unless the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

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

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 7, 2022, [Vol. 22-9, pages 491 through 515](#).

After consideration of public comments, Subsection 100.01.a. has been revised. The remainder of the rule has been adopted as initially proposed. The board meeting documents are available at <https://www.deq.idaho.gov/recycled-water-docket-no-58-0117-2201/> 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 questions concerning the rulemaking, contact the undersigned.

Dated this 7th day of December, 2022

Caroline Moores
Operations Senior Analyst
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
Phone: (208)373-0149
caroline.moores@deq.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 21, 2022. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in compliance with [Executive Order No. 2020-01, Zero-Based Regulation](#) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, shall be reviewed by the agency that promulgated the rule. The review will be conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at https://adminrules.idaho.gov/forms_menu.html. This is one of the DEQ rule chapters up for review in 2022.

The goal of the rulemaking is to perform a critical and comprehensive review of the entire chapter in an attempt to reduce overall regulatory burden, streamline various provisions, and increase clarity and ease of use.

This rulemaking also includes provisions that will allow DEQ to issue general reuse permits. General permits will be issued for specific but common uses of recycled water that need less DEQ oversight due to the nature and/or volume of the recycled water. General reuse permits will reduce the permitting process for certain uses of recycled water while still being protective of human health and the environment.

Because this is the promulgation of a new rule chapter, the proposed rule does not contain strike-out/underline text. A document prepared by DEQ showing the proposed rule revisions in strike-out/underline format can be viewed [here](#).

Citizens of the state of Idaho, environmental groups, and owners and operators of recycled water facilities 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 November 2022 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2023 legislative session if adopted by the Board and approved by the Idaho Legislature.

NEGOTIATED RULEMAKING: On April 6, 2022, the notice of negotiated rulemaking was published in the Idaho Administrative Bulletin, and on April 20, 2022, a preliminary draft rule was posted on DEQ's website. Meetings were held on May 4 and June 7, 2022. Stakeholders and members of the public participated by receiving email notifications, attending the meetings, reviewing DEQ's presentations, 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 DFM for review. DEQ formatted the draft for publication as a proposed rule and is now seeking public comment. 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/recycled-water-docket-no-58-0117-2201/>.

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.

IDAHO CODE SECTION 39-107D STATEMENT: IDAPA 58.01.17, Recycled Water Rules, ensure that the permitted use of recycled water does not harm human health and the environment or violate the Department's Water Quality Standards, IDAPA 58.01.02, or the Ground Water Quality Rule, IDAPA 58.01.11. The federal government does not regulate or permit the use of recycled water. The statutory authority for these rules is contained in Idaho Code §§ 39-102, 39-105, 39-115 and 39-118. Idaho Code § 39-115 provides the Director with the authority to issue pollution source permits in compliance with rules. Idaho Code § 39-118 requires all plans and specifications and record plans "for the construction of new sewage systems, sewage treatment plants or systems" to "be submitted to

and approved by the director before construction may begin, and all construction shall be in substantial compliance therewith.” Idaho Code § 39-105(2) requires the Director to “formulate and recommend to the board rules as may be necessary to deal with problems related to water pollution...and licensure and certification requirements pertinent thereto.” Idaho Code § 39-102(3)(a) states: “It is the policy of the state to prevent contamination of ground water from any source to the maximum extent practical.”

Most of the substantive provisions of these rules were adopted after 2003, thus, if they were based on science or included a standard necessary to protect human health and the environment, they have already been approved as meeting Idaho Code §§ 39-107D(2) and (3) requirements. The remaining provisions are not specific science-based requirements or standards. Rather, they are (1) procedural requirements that are primarily necessary for the Department to properly process reuse permits, or (2) construction-related requirements to ensure land application does not harm human health and the environment or violate Water Quality Standards or the Ground Water Quality Rule.

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 this proposed rulemaking, contact Matt Plaisted at matthew.plaisted@deq.idaho.gov, (208)373-0151.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments regarding this proposed rule. The Department will consider all written comments received on or before September 28, 2022. Submit comments to:

Matt Plaisted
Wastewater Engineering Bureau Chief
Department of Environmental Quality
1410 N. Hilton Street
Boise, Idaho 83706
matthew.plaisted@deq.idaho.gov

Dated this 7th day of September, 2022.

Substantive changes have been made to the pending rule.
Italicized red text indicates changes between the text of the proposed rule as adopted in the pending rule.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 58-0117-2201

58.01.17 – RECYCLED WATER RULES

000. LEGAL AUTHORITY.

Pursuant to Title 39, Chapter 1, Idaho Code, the Department of Environmental Quality is authorized to adopt or formulate and recommend to the Board of Environmental Quality (Board), and the Board is authorized to adopt, rules to protect the environment and the health of citizens of the state, including provisions for issuing pollution source permits, authorized by Section 39-115, Idaho Code, and reviewing plans and specifications for wastewater treatment

facilities, authorized by Section 39-118, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 58.01.17, “Recycled Water Rules.” ()

02. Scope. These rules establish the procedures and requirements to issue and maintain pollution source permits for reuse facilities, referred to as “reuse permits.” ()

002. ADMINISTRATIVE PROVISIONS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, Contested Case Rules and Rules for Protection and Disclosure of Records. ()

003. (RESERVED)

004. REFERENCED MATERIALS.

01. Idaho Guidance for Recycled Water. This document, and subsequent revisions, assist with applying and interpreting these rules. Review this document at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706, or online at <http://www.deq.idaho.gov/guidance-documents>. ()

02. Treatment Technology Report for Recycled Water. The [Alternative Treatment Technology Report for Recycled Water](#). ()

03. Recommended Standards for Wastewater Facilities. Recommended Standards for Wastewater Facilities - Great Lakes-Upper Mississippi River Board of State Sanitary Engineers, most current version, at <http://10statesstandards.com/wastewaterstandards.html>. ()

04. AWWA Manual M24. AWWA Manual M24, Chapter 4 for Dual Water Systems, 4th edition. Review this document at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502, or it can be purchased from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, (800) 926-7337. ()

05. Idaho Standards for Public Works Construction. Purchase this document through the Local Highway Technical Assistance Council (LHTAC), 3330 Grace Street, Boise, ID, 83703, (208) 344-0565. ()

06. American Water Works Association (AWWA) Standards. Review this document at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502, or it can be purchased from the AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235, (800) 926-7337. ()

005. – 009. (RESERVED)

010. DEFINITIONS.

The terms “department,” “person,” and “waters” have the meaning provided for those terms in [Section 39-103, Idaho Code](#). ()

01. Beneficial Use. Uses of the water of Idaho including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use depends upon actual use, ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. ()

02. Biochemical Oxygen Demand (BOD). Amount of oxygen necessary to satisfy the biochemical oxidation requirements of the organic materials at the time the sample is collected; unless otherwise specified, this term means the five (5) day BOD (BOD5). ()

03. Buffer Distances. Specified distance between an actual point of recycled water use and a land

- feature or resource use, such as wells, adjoining property, inhabited dwellings, or other features. ()
- 04. Ground Water Recharge.** Process of adding recycled water to the zone of saturation. ()
- 05. Industrial Wastewater.** All wastewater, treated or untreated, that is not defined as municipal wastewater. ()
- 06. Land Application.** Process of distributing wastewater or recycled water to the land surface. ()
- 07. Landscape Impoundment.** Any lake, pond, or other water-holding feature constructed or managed to store recycled water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. Landscape impoundment created for storage may incidentally serve a landscaping or aesthetic purpose. ()
- 08. Maximum Day Flow.** Largest volume of flow received during a 24-hour period expressed as a volume per unit time. ()
- 09. Modal Contact Time.** Amount of time elapsed between the time a tracer, such as salt or dye, is injected into the influent at the entrance to a chamber and the time the highest concentration of the tracer is observed in the effluent from the chamber. ()
- 10. Municipal Wastewater.** Wastewater containing sewage and associated solids, whether treated or untreated. Municipal wastewater, also known as domestic wastewater, may contain industrial wastewater. ()
- 11. Non-Potable Mains.** Pipelines that collect and/or convey non-potable discharges from or to multiple service connections. Examples include sewage collection and interceptor mains, storm sewers, non-potable irrigation mains, and recycled water mains. ()
- 12. Non-Potable Services.** Pipelines that convey non-potable discharges from individual facilities to a connection with the non-potable main. Term also refers to pipelines that convey non-potable water from a pressurized irrigation system, recycled water system, and other non-potable systems to individual consumers. ()
- 13. Non-Potable Water.** Any fluids that do not meet the definition of potable water. ()
- 14. Nephelometric Turbidity Unit (NTU).** Measure of turbidity that compares the intensity of the light scattered by the sample under defined conditions with the intensity of the light scattered by a standard reference suspension under the same conditions. ()
- 15. Peak Hour Flow.** Largest volume of flow received during a one (1) hour period expressed as a volume per unit time. ()
- 16. Plan of Operation.** Manual that describes in detail the current operation, maintenance, and management of a reuse facility. ()
- 17. Point of Compliance.** Point in the reuse facility where the recycled water must meet the requirements of the permit. A permit may require more than one (1) point of compliance within the facility depending on the constituents to be monitored. ()
- 18. Potable Water.** Water used by humans for drinking, bathing for purposes of personal hygiene (including hand-washing), showering, cooking, dishwashing, and maintaining oral hygiene. In common usage, the terms “culinary water,” “drinking water,” and “potable water” are frequently used as synonyms. ()
- 19. Purple.** For the purposes of these rules, purple is specified as Pantone 512, 522, or equivalent. ()
- 20. Rapid Infiltration System.** Permeable systems designed and operated for high rates of recycled water infiltration followed by rapid percolation using wetting and drying cycles. ()

21. **Recycled Water.** Water treated by a wastewater treatment system and used according to these rules. ()

22. **Restricted Public Access.** Preventing public entry within the area or a facility's point of reuse and the buffer distance around the area by site location or physical structures such as fencing. ()

23. **Reuse.** Use of recycled water or wastewater for beneficial purposes including irrigation, ground water recharge, landscape impoundments, toilet flushing in commercial buildings, dust control, and other uses. Also referred to as Beneficial Reuse. ()

24. **Reuse Facility or Facility.** Structure or system designed or used for reuse of municipal or industrial wastewater including, but not limited to, industrial and municipal wastewater treatment facilities, pumping and storage facilities, pipeline and distribution facilities, and the property to which the wastewater or recycled water is used. Does not include industrial in-plant processes and reuse of process waters within the plant. ()

25. **Sewage.** Water-carried human wastes from residences, buildings, and industrial establishments and other places, together with ground water infiltration and surface water as may be present. ()

26. **Subsurface Distribution System.** System with a point of discharge beneath the earth's surface. ()

27. **Turbidity.** Measure of the interference of light passage through water, or visual depth restriction from the presence of suspended matter such as clay, silt, nonliving organic particulates, plankton, and other microscopic organisms. Operationally, turbidity measurements are expressions of certain light-scattering and absorbing properties of a water sample. Turbidity is measured by the nephelometric method. ()

28. **Wastewater.** Combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions, and other establishments, together with any ground water, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, gray water, or commercial or industrial pollutants; and sewage. ()

011. – 099. (RESERVED)

100. APPLICABILITY.

01. **Applicability to Reuse Facilities.** All reuse facilities are subject to these rules except: ()

a. Land application of wastewater from mining, livestock truck washing facilities, feedlots, dairies, and digesters where the digestate is applied according to *the originating dairy's* Idaho Department of Agriculture approved nutrient management plan; ()

b. Recycled water used for landscape irrigation at a municipal wastewater treatment plant if: ()

i. No other recycled water use would subject the municipal wastewater treatment plant to these rules; ()

ii. The municipal wastewater treatment plant has, and is in compliance with, an IPDES permit; and ()

iii. Public access to the area of landscape irrigation is restricted; and ()

c. Other facilities identified by the Department, if covered adequately by other law. ()

02. **Reuse Policy.** Department policy promotes, where appropriate, reuse of both municipal and industrial recycled water. ()

101. – 299. (RESERVED)

300. PERMIT REQUIREMENTS AND APPLICATION.

01. Permit. No person may operate or continue to operate a reuse facility without a valid permit issued by the Department as provided in these rules. A permit does not relieve any person from meeting all applicable local, state, and federal laws. ()

02. Pre-Application Conference. New applicants must meet with the Department to discuss the application process before submitting an application. ()

03. Application Contents. Except as provided in Subsection 300.04, the following must be included in the application: ()

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

b. Name, mailing address, and phone number of the facility owner and signature of the owner or authorized agent; ()

c. Nature and identification of the entities or persons owning the facility, facility components, and related real property; ()

d. List of local, state, and federal permits, licenses, and approvals related to the activities applied for and the dates of application or approval and receipt; ()

e. Topographic map of the facility site showing the location and extent of: ()

i. Wastewater inlets, outlets, and storage structures and facilities, including the reuse area; ()

ii. Wells, springs, wetlands, and surface waters; ()

iii. Twenty-five (25), fifty (50), and one hundred (100) year flood plains, as available through the Federal Insurance Administration of the Federal Emergency Management Agency or through other sources acceptable to the Department; ()

iv. Service roads; ()

v. Natural or man-made features necessary for treatment; ()

vi. Buildings and structures; and ()

vii. Process chemicals and residue storage facilities. ()

f. Topographic map that may be separate from or combined with the facility site map, extending one quarter (1/4) mile beyond the outer limits of the facility site, and showing the location and extent of the following: ()

i. Wells, springs, wetlands, and surface waters; ()

ii. Public and private drinking water supply sources and source water assessment areas (public water system protection area information); ()

iii. Public roads; and ()

iv. Dwellings and private and public gathering places. ()

- g.** If the facility site or any portion thereof is not owned by the permittee, a copy of related agreements that allow the permittee access or use; ()
- h.** Sources and volume of wastewaters to be treated; ()
- i.** Physical, chemical, and biological characteristics of the recycled water to be used; ()
- j.** Climatic, hydrogeologic, and soil characteristics of the facility site; ()
- k.** Description of treatment process and alternatives for disposal of unanticipated excess recycled water that does not meet class specifications; ()
- l.** Site management plans, including a cropping plan where applicable; ()
- m.** Statement and supporting documentation demonstrating the proposed activity will comply with IDAPA 58.01.11, "Ground Water Quality Rule"; and ()
- n.** Other information as requested by the Department to issue the permit. The Permitting Guidance for Recycled Water assists applicants with obtaining a reuse permit and the Department in determining the need for other information. ()

04. Exceptions. Application content for permits will be clarified at the pre-application conference and may result in the omission of one (1) or more of the items listed in Subsection 300.03. ()

05. Reuse Facility Plan of Operation. A plan of operation must contain, as applicable, operation and management responsibility, permits and standards, general plant description, operation and control of unit operations, reuse area site maps, wastewater and recycled water characterization, cropping plan, hydraulic loading rate, constituent loading rates, compliance activities, seepage rate testing, site management plans, monitoring, site operations and maintenance, solids handling and processing, laboratory testing, general maintenance, records and reports, store room and inventory, personnel, and an emergency operating plan. Permittees are required to submit a plan of operation for review and approval. Amendments are also subject to review and approval. ()

301. – 399. (RESERVED)

400. APPLICATION PROCESSING.

01. Submittal. New facilities must submit applications at least one hundred eighty (180) days before beginning reuse activities. Existing facilities applying for permit renewals must submit an application at least one hundred eighty (180) days before the existing permit expires. ()

02. Completeness. ()

a. If the Department determines the application is complete, the Department will provide written notice to the applicant within thirty (30) days after receiving the application, specifying the effective date of application. ()

b. After the application is complete, the Department or applicant may initiate a consultation to clarify, modify, or supplement the application. ()

c. If the application is incomplete, the Department will provide written notice to the applicant within thirty (30) days after receiving the application, specifying the deficiencies and requesting additional information. The Department will not process an application until it is complete according to these rules. ()

03. Preliminary Decision/Application Denial. Within thirty (30) days of the effective date of the application, the Department will issue a written preliminary decision to prepare a draft permit or a written decision denying the application. ()

04. Staff Analysis. The staff analysis states the facts considered when preparing the draft permit conditions, or intent to deny, and summarizes the basis for draft conditions or denial with references to applicable requirements and supporting materials. The Department will provide the staff analysis with the draft permit issuance or with the written decision denying the application. ()

05. Draft Permit. ()

a. The Department will issue a draft permit within sixty (60) days of issuing a preliminary decision to prepare a draft permit. The draft permit specifies the conditions of operation and management necessary for issuing the permit. ()

b. The Department will provide a public notice for the draft permit. The notice specifies the time and manner that the public may provide written comments. The Department may offer an opportunity for oral comments. ()

06. Final Permit. The Department will issue a written final permit decision to the applicant within sixty (60) days from the issuance of the draft permit, except the Department may issue the decision at a later date in response to a written request to extend the public comment period. ()

07. Effective Date. The final permit becomes effective upon date of issue unless a later effective date is specified in the permit. ()

08. Expiring Permits. ()

a. The Department may administratively extend the terms and conditions of an expired permit pursuant to Section 67-5254, Idaho Code, provided a complete permit renewal application is submitted prior to the current permit expiration. ()

b. A permittee must operate under the terms of the administratively extended permit until a new permit is issued. ()

401. – 499. (RESERVED)

500. STANDARD CONDITIONS.

Permit conditions will protect human health and the environment from the potential hazard of an existing or proposed wastewater treatment system. The permittee must comply with all conditions of the permit. The following conditions apply to and are included in all permits. ()

01. Facility Operation. At all times, the permittee must properly maintain and operate all structures, systems, and equipment installed or used by the permittee for treatment, control, and monitoring to achieve compliance with the permit or these rules. ()

02. Provide Information. If requested by the Department, the permittee must provide the Department, within a reasonable time, information including copies of records, to help the Department determine whether cause exists for modifying, revoking, re-issuing, or terminating the permit, or to determine compliance with the permit or these rules. ()

03. Entry and Access. The permittee must allow the Department, consistent with Title 39, Chapter 1, Idaho Code, to: ()

a. Enter the permitted facility and all associated property; ()

b. Inspect any records kept under the conditions of the permit; ()

c. Inspect and photograph any permitted facility, equipment, practice, records, or operation; and ()

- d.** Sample or monitor any substance or any parameter at the facility to ensure permit compliance. ()
- 04. Reporting.** The permittee must report to the Department as specified in this section. ()
- a.** A written report submitted at least thirty (30) days before: ()
- i.** Any planned physical or operational alteration to the permitted facility that results or would result in a significant change in information submitted during the application process. If a major permit modification is needed, the alteration cannot be made before the Department issues approval. ()
- ii.** Any anticipated change that would result in noncompliance with any permit condition or these rules. ()
- b.** Orally within twenty-four (24) hours from the time the permittee became aware of any noncompliance that may endanger human health and the environment at telephone numbers provided in the permit. ()
- c.** A written report as soon as possible, but within five (5) days of the date the permittee knows, or should reasonably know, of any noncompliance unless extended by the Department, providing: ()
- i.** Description of the noncompliance and its cause; ()
- ii.** Period of noncompliance including, to the extent possible, times and dates, if the noncompliance has not been corrected, and the anticipated length of time it is expected to continue; and ()
- iii.** Steps taken or planned, including timelines, to reduce or eliminate the continuance or reoccurrence of the noncompliance. ()
- d.** In writing as soon as the permittee knows, or should reasonably know, of material facts not submitted or corrections to information submitted in a permit application, report, or notice provided to the Department. ()
- e.** No person may knowingly make any false statement, representation, or certification in any form, notice, or report required under any permit, or any applicable rule or order in force pursuant thereto. ()
- 05. Minimize Impacts.** The permittee must take all necessary actions to eliminate and correct any adverse impact on human health and the environment resulting from permit noncompliance. ()
- 06. Applied Waters Restricted to Premises.** Wastewater or recycled water applied to the land surface must be restricted to the premises of the reuse site. ()
- 07. Hazard or Nuisance Prohibited.** Wastewater or recycled water must not create a public health hazard or a nuisance condition. ()
- 08. Renewal.** If the permittee intends to continue operating the permitted facility after the existing permit expires, the permittee must apply for a permit renewal according to these rules. ()
- 501. – 599. (RESERVED)**
- 600. SPECIFIC CONDITIONS.**
- 01. Basis.** Conditions necessary for protecting human health and the environment may differ from facility to facility because of varying environmental conditions and wastewater and recycled water compositions. The Department may establish, on a case-by-case basis, specific conditions that consider facility characteristics and inherent hazards of those characteristics, including, but not limited to: ()

- a. Chemical, biological, physical, and volumetric characteristics of the wastewater and recycled water; ()
 - b. Geological and climatic nature of the facility site; ()
 - c. Size of the site and its proximity to population centers and to ground and surface water; ()
 - d. Legal considerations relative to land use and water rights; ()
 - e. Techniques used in wastewater or recycled water distribution and the disposition of vegetation exposed to wastewater or recycled water; ()
 - f. Abilities of soils and vegetative covers to treat the wastewater or recycled water without undue hazard to human health and the environment; and ()
 - g. Monitoring and record keeping that determine if the facility is operated in conformance with its design and if its design is adequate to protect human health and the environment. ()
- 02. Duration.** A permit is effective for a fixed term of not more than ten (10) years. ()
- 03. Operational Limitations.** Conditions of the permit may specify or limit: ()
- a. Wastewater and recycled water composition; ()
 - b. Method, manner, and frequency of wastewater treatment; ()
 - c. Wastewater pretreatment requirements; ()
 - d. Physical, chemical, and biological characteristics of a reuse facility; and ()
 - e. Other conditions the Department finds necessary to protect human health and the environment. ()
- 04. Compliance Schedules.** The Department may establish a compliance schedule for facilities as part of the permit conditions including: ()
- a. Specific steps or actions necessary for the permittee to achieve compliance or final permit conditions; ()
 - b. Dates by which those steps or actions are to be taken; and ()
 - c. When the time period for compliance exceeds one (1) year, the schedule may also establish interim requirements and dates for achievement. ()
- 05. Monitoring.** Any facility may be subject to monitoring conditions including, but not limited to: ()
- a. Installation, use, and maintenance of monitoring equipment; ()
 - b. Sampling methodology, frequency, and locations; ()
 - c. Monitored substances or parameters; ()
 - d. Testing and analytical procedures; and ()
 - e. Reporting requirements including both frequency and form. ()

601. MUNICIPAL RECYCLED WATER: CLASSIFICATION, TREATMENT, USE.

01. Class A Recycled Water. To be classified Class A recycled water, municipal wastewater must be treated using processes identified in Table 1, or an equivalent process, and adequately disinfected. Class A treatment systems are reviewed by the Department and approved on a case-by-case basis. The Department may require pilot testing or demonstration before approval, or may condition approval upon the success of testing or demonstration. ()

a. Total Coliform. ()

i. Recycled water must be disinfected by either: ()

(1) Chlorine disinfection process following filtration that provides a CT (the product of concentration and modal contact time measured at the same point) of four hundred and fifty (450) milligram-minutes per liter (mg-min/L) measured at the end of the contact time based on total chlorine residual and a modal contact time of not less than ninety (90) minutes based on maximum day flow; or ()

(2) Disinfection process that, when combined with filtration, has been demonstrated to achieve 5-log removal/inactivation of virus. Acceptance by the State of California as published in their Alternative Treatment Technology Report for Recycled Water is one (1) method to constitute such a demonstration. ()

ii. Median number of total coliform organisms may not exceed two and two-tenths (2.2) per one hundred (100) milliliters, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. No sample may exceed twenty-three (23) organisms per one hundred (100) milliliters. ()

iii. Daily sample and analyze recycled water for total coliform when allowed uses specifically require Class A recycled water. ()

b. Turbidity. ()

i. Recycled water must meet the following turbidity limits before disinfection: ()

(1) For filtration systems using sand or other granular media or cloth media, the daily arithmetic mean of all measurements of turbidity may not exceed two (2) NTU, and turbidity may not exceed five (5) NTU at any time. ()

(2) For filtration systems using membrane filtration, the daily arithmetic mean of all measurements of turbidity may not exceed zero point two (0.2) NTU, and turbidity may not exceed zero point five (0.5) NTU at any time. ()

ii. One (1) in-line, continuously monitoring, recording turbidimeter exists for each treatment train after filtration and before disinfection. ()

c. Nitrogen, pH, and BOD5. ()

i. Total nitrogen may not exceed ten (10) milligrams per liter (mg/L) for ground water recharge systems and thirty (30) mg/L for residential irrigation and other non-recharge uses based on a monthly arithmetic mean as determined from weekly composite sampling. If a ground water quality impact assessment indicates lower limits are necessary to protect existing ground water quality beneficial uses, the Department will require lower limits. ()

ii. The pH as determined by daily grab samples or continuous monitoring must be between six point zero (6.0) and nine point zero (9.0). ()

iii. BOD5 may not exceed five (5) mg/L for ground water recharge systems, and ten (10) mg/L for residential irrigation and other non-recharge systems, based on a monthly arithmetic mean as determined from weekly composite sampling. ()

02. Class B Recycled Water. To be classified Class B recycled water, municipal wastewater must be treated using processes identified in Table 1, or an equivalent process, and adequately disinfected. Class B treatment systems are reviewed by the Department and approved on a case-by-case basis. The Department may require pilot testing or demonstration before approval, or may condition approval upon the success of testing or demonstration. ()

a. Total Coliform. ()

i. Recycled water must be disinfected by either: ()

(1) Chlorine disinfection process that provides a residual chlorine at the point of compliance of not less than one (1) mg/L total chlorine residual after a contact time of thirty (30) minutes at peak hour flow; or ()

(2) An alternative disinfection process that has been demonstrated to the Department's satisfaction that the alternative process is comparable to that achieved by chlorination with a total chlorine residual of one (1) mg/L after a minimum contact time of thirty (30) minutes. ()

ii. Median number of total coliform organisms may not exceed two and two-tenths (2.2) per one hundred (100) milliliters, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. No sample exceeds twenty-three (23) organisms per one hundred (100) milliliters. ()

iii. Daily sample and analyze recycled water for total coliform when allowed uses specifically require Class B recycled water. ()

b. Turbidity. ()

i. Daily arithmetic mean of all measurements of turbidity may not exceed five (5) NTU, and turbidity may not exceed ten (10) NTU at any time. The turbidity standard is met before disinfection. ()

ii. One (1) in-line, continuously monitoring, recording turbidimeter exists for each treatment train after filtration and before disinfection. ()

03. Class C Recycled Water. To be classified Class C recycled water, municipal wastewater must be treated using the processes identified in Table 1. ()

a. Median number of total coliform organisms may not exceed twenty-three (23) per one hundred (100) milliliters, as determined from the bacteriological results of the last five (5) days for which analyses have been completed. No sample may exceed two hundred thirty (230) per one hundred (100) milliliters. ()

b. Weekly sample and analyze recycled water for total coliform when allowed uses specifically require Class C recycled water. ()

04. Class D Recycled Water. To be classified Class D recycled water, municipal wastewater must be treated using the processes identified in Table 1. ()

a. Median number of total coliform organisms may not exceed two hundred thirty (230) per one hundred (100) milliliters, as determined from the bacteriological results of the last three (3) days for which analyses have been completed. No sample may exceed two thousand three hundred (2300) organisms per one hundred (100) milliliters. ()

b. Monthly sample and analyze recycled water for total coliform when allowed uses specifically require Class D recycled water. ()

05. Class E Recycled Water. To be classified Class E recycled water, municipal wastewater must be treated with screening, degritting, sedimentation and/or skimming processes to remove substantially all floatable and settleable solids. ()

a. Class E recycled water has no disinfection requirements or applicable coliform standard. ()

b. No sampling and analysis of total coliform are required for Class E recycled water. When sampling and analysis are required (e.g., buffer distance change reduction), the sampling frequency for total coliform will be established consistent with these rules to adequately protect human health and the environment. ()

06. Point of compliance. For total coliform limits, the point in the system following final treatment and disinfection as defined in the permit. Recycled water disinfection requirements after storage will be determined by the Department on a case-by-case basis considering class and uses of recycled water, reuse site design, and protection of human health and the environment. ()

07. Alternative Monitoring Frequency. Alternative total coliform monitoring frequencies may be considered by the Department on a case-by-case basis based upon demonstration that the alternative frequency is protective of human health and the environment. ()

602. MUNICIPAL RECYCLED WATER: CLASSIFICATION AND USES TABLES

01. Municipal Recycled Water -- Classification Tables. The tables summarize treatment for municipal recycled water as outlined in Section 601. If discrepancies exist between Sections 601 and 602, follow Section 601.

TABLE 1 - CLASSIFICATION TABLE

		Class A	Class B	Class C	Class D	Class E
Oxidized		Yes	Yes	Yes	Yes	No
Filtered		Yes	Yes	No	No	No
Disinfected		Yes	Yes	Yes	Yes	No
Total coliform (organisms/100 milliliters)	Median results for last x-days for which analysis have been completed	2.2 7-day median	2.2 7-day median	23 5-day median	230 3-day median	No limit
	Maximum in any sample	23	23	230	2300	No limit
	Monitoring frequency	Daily	Daily	Once weekly	Once monthly	

()

TABLE 2 - CLASS A AND CLASS B ADDITIONAL REQUIREMENTS

		Class A	Class B
Turbidity (NTU)	24-hour - mean, Not to exceed	Granular or cloth media - 2 Membrane filter - 0.2	Granular or cloth media - 5
	Maximum, in any sample	Granular or cloth media - 5 Membrane filter - 0.5	Granular or cloth media - 10
	Monitoring frequency	Continuous	Continuous
Disinfection contact time requirements		CT of 450 mg-min/L with 90 minutes of modal contact time, or Disinfection to 5-log inactivation of virus	Total chlorine not less than 1 mg/L after 30 minute contact time, or Comparable alternate process
Maximum total nitrogen (mg/L) Monthly arithmetic mean, from weekly composite samples not to exceed		Ground water recharge - 10 Residential irrigation and other non-recharge uses - 30	
BOD5 (mg/L) Monthly arithmetic mean, from weekly composite samples not to exceed		Ground water recharge - 5 Residential irrigation and other non-recharge uses - 10	
pH Daily grab samples or continuous monitoring		Between 6.0 and 9.0	

()

02. Municipal Recycled Water - Uses Beneficial Reuse. This table summarizes municipal recycled water uses for specific classifications. Other uses not listed here may be considered on a case-by-case basis and approved by the Department.

TABLE 3 - RECYCLED WATER BENEFICIAL REUSE

Recycled Water Beneficial Reuse	Class A	Class B	Class C	Class D	Class E
Fodder, fiber crops	Yes	Yes	Yes	Yes	Yes
Commercial timber, firewood	Yes	Yes	Yes	Yes	Yes
Processed food crops or "food crops that must undergo commercial pathogen-destroying processing before being consumed by humans"	Yes	Yes	Yes	Yes	No

TABLE 3 - RECYCLED WATER BENEFICIAL REUSE

Recycled Water Beneficial Reuse	Class A	Class B	Class C	Class D	Class E
Ornamental nursery stock, or Christmas trees	Yes	Yes	Yes	Yes	No
Sod and seed crops not intended for human ingestion	Yes	Yes	Yes	Yes	No
Pasture for animals not producing milk for human consumption	Yes	Yes	Yes	Yes	No
Pasture for animals producing milk for human consumption	Yes	Yes	Yes	No	No
Orchards and vineyards irrigation during the fruiting season, if no fruit harvested for raw use comes in contact with the irrigation water or ground, or will only contact the inedible portion of raw food crops	Yes	Yes	Yes	No	No
Highway medians and roadside vegetation irrigation on sides	Yes	Yes	Yes	No	No
Cemetery irrigation	Yes	Yes	Yes	No	No
Parks, playgrounds, and school yards during periods of non-use	Yes	Yes	No	No	No
Parks, playgrounds, and school yards during periods of use	Yes	No	No	No	No
Golf courses	Yes	Yes	No	No	No
Food crops, including all edible food crops	Yes	Yes	No	No	No
Residential landscape	Yes	No	No	No	No
Dust suppression at construction sites and control on roads and streets	Yes	Yes	Yes	No	No
Toilet flushing at industrial and commercial sites, when only trained maintenance personnel have access to plumbing for repairs	Yes	Yes	Yes	No	No
Nonstructural fire fighting	Yes	Yes	Yes	No	No
Cleaning roads, sidewalks, and outdoor work areas	Yes	Yes	Yes	No	No
Backfill consolidation around non-potable piping	Yes	Yes	Yes	No	No
Soil compaction	Yes	Yes	Yes	No	No
Commercial campus irrigation	Yes	Yes	No	No	No
Fire suppression	Yes	Yes	No	No	No
Snowmaking for winter parks, resorts	Yes	No	No	No	No
Commercial laundries	Yes	No	No	No	No
Ground water recharge through surface application	Yes	No	No	No	No

TABLE 3 - RECYCLED WATER BENEFICIAL REUSE

Recycled Water Beneficial Reuse	Class A	Class B	Class C	Class D	Class E
Subsurface distribution	Yes	Yes	Yes	Yes	No

()

603. MUNICIPAL RECYCLED WATER: ACCESS, EXPOSURE, AND SIGNAGE.

01. Class A Recycled Water. When using Class A recycled water, notify the public and personnel in the area that recycled water is used and is not safe for drinking. Post signs stating “Caution: Recycled Water - Do Not Drink” or equivalent signage. ()

a. Distribution system identification and signage. ()

i. For all new buried pipe conveying Class A Recycled Water, including service lines, valves, and other appurtenances, must use the color purple consistently throughout the system. The color proposed for use will be identified in the plans and specifications and reviewed by the Department to ensure the pipes are adequately identifiable and distinguishable. If fading or discoloration of the purple pipe is experienced during construction, identification tape or locating wire along the pipe is required. Label piping every ten (10) feet with “Caution: Recycled Water - Do Not Drink” or equivalent signage in English and a secondary language as applicable. ()

ii. If identification tape is installed along with the purple pipe, use white or black printing on a purple color field as approved by the Department and label with “Caution: Recycled Water - Do Not Drink” or equivalent signage. The overall width of the tape is at least three (3) inches. Install identification tape eighteen (18) inches above the transmission pipe longitudinally, center over the pipe, and run continuously along the pipe’s length. ()

iii. Ensure all valves have locking valve covers that are non-interchangeable with potable water valve covers and inscribed on the top surface with “Recycled Water.” Ensure all above ground pipes and pumps are consistently color coded purple and marked to differentiate Class A recycled water facilities from potable water facilities. ()

b. Pumping facilities identification and signage. ()

i. Paint all exposed and above ground piping, risers, fittings, pumps, and valves in purple. Label all piping using a means accepted by the Department with “Caution: Recycled Water - Do Not Drink” or equivalent signage. In a fenced pump station area, post signs on all sides. ()

ii. Install warning labels with “Caution: Recycled Water - Do Not Drink” or equivalent signage on designated facilities such as, but not limited to, controller panels and washdown or blow-off hydrants on water trucks, hose bibs, and temporary construction services. ()

c. Where Class A recycled water is stored or impounded, or used for irrigation in public areas, install warning signs with, at a minimum, one (1) inch purple letters on a white or other high contrast background notifying the public the water is unsafe to drink. Signs may also have a purple background with white or other high contrast lettering. Label warning signs with “Caution: Recycled Water - Do Not Drink” or equivalent signage. ()

d. Place drinking fountains, picnic tables, food establishments, and other public eating facilities out of any spray irrigation area, or otherwise protect areas in which Class A recycled water is used. In construction plans, indicate exterior drinking fountains, picnic tables, food establishments, and other public eating facilities or, if these areas do not exist, state this in the plans and specifications. ()

02. Class B Recycled Water. When using Class B recycled water, notify the public and personnel in the area that recycled water is used and is not safe for drinking. Post signs stating “Caution: Recycled Water - Do Not Drink” or equivalent signage in English and a secondary language as applicable. ()

03. Class C Recycled Water. When using Class C recycled water for irrigation, notify the personnel in the area that recycled water is used and is not safe for drinking. For the public, post signs around the perimeter of the irrigation site stating “Warning: Recycled Water - Do Not Enter” or equivalent signage in English and a secondary language as applicable. ()

04. Class D Recycled Water. When using Class D recycled water for irrigation, notify the personnel in the area that recycled water is used and is not safe for drinking. For the public, post signs around the perimeter of the irrigation site stating “Recycled Water - Do Not Enter” or equivalent signage in English and a secondary language as applicable. ()

05. Class E Undisinfected Recycled Water. When using Class E undisinfected recycled water for irrigation, prevent public access to the irrigation site using a physical barrier or other measure approved by the Department. Post signs around the perimeter of the irrigation site stating “Warning: Recycled Water - Do Not Enter” or equivalent signage in English and a secondary language as applicable. ()

604. REUSE FACILITIES: BUFFER DISTANCES.

01. Considerations. Buffer distances are established to: ()

a. Protect human health by limiting exposure to recycled water and conditions associated with reuse facilities; ()

b. Protect waters, including surface water, ground water and drinking water supplies; and ()

c. Ensure use of recycled water is restricted to within the physical boundaries of the reuse facilities. ()

02. Distances. To determine buffer distances in a reuse permit, the Department considers the following: ()

a. Characterization of the recycled water; ()

b. Method of irrigation; ()

c. Physical or vegetative barriers; ()

d. Microbial risk assessments; ()

e. Applicable best management practices; ()

f. Environmental conditions, such as wind speed and direction; and ()

g. Other information relevant to this section. ()

605. REUSE FACILITY: DESIGN AND CONSTRUCTION.

The design and construction of new reuse facilities, or existing facilities undergoing material modification, must comply with these rules and applicable provisions of IDAPA 58.01.16, “Wastewater Rules.” ()

01. Distribution Pipelines. ()

a. Recycled water mains are treated as non-potable mains when considering their separation from potable water mains. Recycled water mains are treated as potable water mains when separated from sewer mains. ()

b. When a system proposes using an alternative to the distribution pipeline requirements in these rules, IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” or IDAPA 58.01.16, “Wastewater Rules,” the design engineer submits data to the Department for review and approval to demonstrate that installing an

alternative will protect human health and the environment. ()

02. Pumping Stations. ()

a. Protect potable water used as seal water for recycled water pump seals from backflow using a Department-approved backflow prevention device or air gap. ()

b. Ensure no direct connection is made between the potable and recycled water system. If it is necessary to put potable water into the recycled water distribution system, provide a Department-approved reduced pressure principal device or air gap to protect the potable water system. ()

c. Equipment or facilities such as tanks, temporary piping or valves, and portable pumps used or considered for use with recycled water may not be used with potable water or sewage. Any equipment or facilities such as tanks, temporary piping or valves, and portable pumps used or considered for use with sewage may not be used with recycled water or potable water. ()

03. Requirements for Class A Recycled Water. ()

a. Distribution System. ()

i. Where Class A recycled water will be provided by pressure pipeline, use the following guidance: current edition of “Recommended Standards for Wastewater Facilities - Great Lakes-Upper Mississippi River Board of State Sanitary Engineers,” “AWWA Manual M24” Chapter 4 for dual water systems, and current edition of “Idaho Standards for Public Works Construction.” ()

ii. Irrigation systems proposed for conversion from non-Class A recycled water to Class A recycled water use will be reviewed on a case-by-case basis to evaluate the protection of human health and the environment. ()

(1) Existing water lines converted to use with Class A recycled water or a combination of Class A recycled water and irrigation water must be accurately located, pressure tested, and leakage tested before conversion in coordination with the Department. Use AWWA Standard(s) for pressure and leakage testing of drinking water lines to be converted. ()

(2) Physically disconnect the pipeline from any potable water lines and bring into compliance with applicable cross-connection rules as stated in IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems” and meet minimum separation requirements. ()

(3) If the existing lines meet water supplier and Department approval based on these rules, the lines will be approved for Class A recycled water distribution. If compliance of the system (accurate location, pressure testing, and verification of no cross-connections) cannot be verified with record drawings, testing, televising, or otherwise, uncover the lines and inspect, identify, or otherwise verify compliance to the Department’s satisfaction before use. Retrofit accessible portions of the system to meet the provisions of these rules. ()

(4) After converting the water or irrigation line to a Class A recycled water line, mark the lines as stated in Subsection 603.01.a.iii. ()

iii. If either an in-line type or end-of-line type blow-off or drain assembly is installed in the system, submit a plan for proposed discharge locations to the Department for review and approval. ()

iv. Mixing Class A recycled water with other irrigation waters may be conducted pipe-to-pipe if both the other irrigation water source and the Class A source are protected by Department-approved backflow devices. Class A recycled water may be mixed with other irrigation water in an unlined pond if the Class A recycled water is permitted for ground water recharge. Class A recycled water that is permitted for irrigation only and not ground water recharge may be mixed with other irrigation water only in a lined pond. Water from these mixed ponds may then be used for permitted Class A uses. ()

v. Operators of Class A recycled water distribution systems, including operators of distribution systems that use a combination of Class A recycled water and other irrigation waters, operators of the distribution system from the wastewater treatment plant to the point of compliance or point of use or point of sale, as applicable, and operators employed by buyers of the Class A recycled water for subsequent use, including home occupants, must sign a utility user agreement from the utility providing the Class A recycled water that states the user understands the origin of the effluent and the concept of agronomic rate for applying the Class A recycled water. Include these requirements in contracts for sale of Class A recycled water for subsequent use. Individual homeowners are allowed to operate or maintain Class A recycled water distribution systems. Providers of the Class A recycled water must offer a public education program within its service area to teach potential customers the benefits and responsibilities of using Class A recycled water. ()

b. Surface water features, such as landscape impoundments used for Class A recycled water, that are not lined or sealed to prevent seepage may be approved if ground water quality standards for ground water protection are met. ()

c. The Department approves the use of the following filter technologies to comply with these rules: ()

i. Technologies approved and listed in the State of California Alternative Treatment Technology Report for Recycled Water. ()

ii. The Department may approve filtration technologies other than those referenced in Subsection 605.03.c.i. if a written request is submitted with the product information. Approval of these filtration technologies will be in accordance with procedures in the State of California Alternative Treatment Technology Report for Recycled Water. ()

d. The Department may require certain types of Class A recycled water filtration facilities to install and operate a filter-to-waste system that operates each time a filter starts up. Filter-to-waste systems automatically filter to waste until the effluent meets the required turbidity standard. ()

e. Reliability and Redundancy Standards. ()

i. Treatment systems must treat maximum day flow for the season in which Class A recycled water is produced and provide one (1) of the following alternative back-up systems: ()

(1) Another permitted disposal option; or ()

(2) Diversion to adequate lined storage capable of storing Class A recycled water during a malfunction or emergency. ()

ii. An alternative back-up system is automatically activated if turbidity exceeds or chlorine residual drops below the instantaneous required value for more than five (5) minutes, or if the alternative filtration/disinfection system is not achieving its required 5-log removal/inactivation of virus for more than five (5) minutes. The maximum number of times a facility could exceed on this basis is twice in one (1) week, and both times must be immediately reported. Failure to report or exceeding more than twice in one (1) week are sufficient grounds for the Department to shut down the system for inspection and repair. ()

iii. Redundant monitoring equipment and automatic by-pass equipment must be provided. ()

iv. Standby power is sufficient to maintain all treatment and distribution works or to meet the requirements for an alternative back-up system for the Class A recycled water facilities. ()

f. New Class A recycled water systems defined as public utilities in Sections 61-104 (Corporation), 61-124 (Water System), 61-125 (Water Corporation), and 61-129 (Public Utility), Idaho Code, are governed by and must meet the requirements of Chapter 1, Title 61, Idaho Code, Public Utilities Law, and IDAPA 31.01.01, "Rules of Procedure of the Idaho Public Utilities Commission." In any conflict arising out of the application of these rules and IDAPA 31.01.01, follow IDAPA 31.01.01. ()

606. REUSE FACILITY: RAPID INFILTRATION SYSTEM.

01. Criteria. Plans and specifications submitted to the Department for review and approval must demonstrate compliance with the following design criteria: ()

a. Design the system to allow complete infiltration of recycled water into the soil followed by subsurface soil percolation where applied recycled water is transmitted down and away from the infiltration basins, without excessive mounding; ()

b. Ensure the system consists of either two (2) or more cells that can be alternately loaded and rested, or one (1) cell preceded by an effluent storage or stabilization pond system. Where only one (1) cell is provided, ensure the storage and stabilization pond(s) have sufficient capacity to allow intermittent loading of the rapid infiltration systems; ()

c. Design the rapid infiltration system to provide even distribution of the recycled water and prevent erosion; and ()

d. Design the system to ensure proper operation during cold weather conditions. ()

02. Requirements. Loading to a rapid infiltration system may not exceed the hydraulic, organic, nitrogen, suspended solids, or other limits specified in the permit or plans and specifications developed pursuant to a permit requirement. The Department will consider past operating performance, ability of the soils to treat the pollutants in the recycled water, hydrogeologic characteristics of the site such as permeability and infiltration rates, and other relevant information when determining discharge limitations. ()

607. GROUND WATER RECHARGE THROUGH SURFACE APPLICATION.

01. Requirements. Minimum requirements for site location and aquifer storage time are based on site-specific modeling. ()

02. Ground Water Monitoring. Provision must be made for monitoring the quality of the ground water in proximity of the application site. The ground water monitoring program is subject to approval by the Department. ()

03. Down Gradient Beneficial Uses. Ground water recharge systems must be designed and operated in a manner that protects the beneficial uses of ground water on down gradient properties not under the control of the system owner. ()

608. PERMIT FOR INDUSTRIAL REUSE FACILITIES.

01. Requirements. Industrial wastewater or recycled water may only be used according to a permit issued pursuant to these rules. Permit conditions and limitations are developed by the Department on a case-by-case basis and take into account specific characteristics of the wastewater to be recycled and treatment needed to ensure recycled water use complies with IDAPA 58.01.11, "Ground Water Quality Rule," and IDAPA 58.01.02, "Water Quality Standards." The permit application, processing, and issuance procedures set forth in these rules apply to industrial reuse permits. ()

02. Permit Content. The Department includes provisions from Section 500, Standard Conditions, in all permits issued for industrial recycled water use. The Department will develop additional permit conditions on a case-by-case basis considering the following: ()

a. Risk to human health and the environment; ()

b. Degree of public access to the facility site where the recycled water is used and degree of human exposure anticipated; ()

- c. Additional measures to prevent nuisance conditions; ()
- d. Specific recycled water quality needed for the intended type of reuse; and ()
- e. Means of applying the recycled water. ()

609. GENERAL REUSE PERMITS.

01. General Reuse Permit. The Department may issue at its discretion a general reuse permit according to the following: ()

- a. For wastewater or recycled water reuse that is determined by the Department to have minimal impact to human health and the environment; and ()
- b. Involves the same or substantially similar: ()
 - i. Wastewater sources; ()
 - ii. Treatment practices; ()
 - iii. Reuse methods; or ()
 - iv. Monitoring. ()

02. Conditions. General reuse permits must include applicable conditions from Sections 500 and 600. ()

03. Application for Coverage. Facilities applying for coverage of a general reuse permit must provide the applicable information required under Section 300.03. ()

04. Administration. ()

- a. When issuing general reuse permits, the Department will follow Section 400 as applicable. ()
- b. When modifying general reuse permits, the Department will follow Section 700 as applicable. ()
- c. The Department will develop a staff analysis for each general reuse permit. ()
- d. The Department may terminate, revoke, or deny coverage under a general permit, and require the applicant to apply for and obtain a reuse permit. ()
- e. Any owner authorized by a general permit may request to be excluded from the coverage of the general permit by applying for a reuse permit. ()

610. -- 699. (RESERVED)

700. PERMIT MODIFICATION.

01. Causes. A permit modification may be initiated by a permittee through a modification request or by the Department if one (1) or more of the following causes exist. ()

- a. Material and substantial alterations or additions to the permitted facility or activity occurred after permit issuance which justify applying permit conditions that are different or absent in the existing permit. ()
- b. Standards or regulations on which the permit was based amended by promulgation or by judicial decision after the permit was issued. ()

c. The Department determines good cause exists for modifying a compliance schedule or terms and conditions of a permit. ()

d. Level of discharge of any pollutant that is not limited in the permit exceeds the level that may cause an adverse impact to surface or ground waters. ()

e. Correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions. ()

f. When a treatment technology proposed, installed, and properly operated and maintained by the permittee fails to achieve the requirements of the permit. ()

02. Minor Modifications. Minor permit modifications may be made without issuing a draft permit or public review. Examples include: ()

a. The correction of typographical errors or formatting changes; ()

b. Transfer of ownership or operational control, or responsible official; ()

c. Change in monitoring or reporting frequency requirements, or revision of a laboratory method; ()

d. Extend the permit expiration date or change compliance due date; ()

e. Change or add a sampling location; ()

f. Change to a higher level of treatment without a change in end uses; ()

g. Change in terminology; ()

h. Removal of an allowed use; ()

i. Correct minor technical errors, such as citations of law, and citations of construction specifications; ()

j. Change in a contingency plan resulting in equal or more efficient responsiveness; or ()

k. Removal of acreage from irrigation without an increase in loadings. ()

03. Major Modifications. The procedure for major modifications is the same as for a new permit. Examples include: ()

a. Changes in the treatment system; ()

b. Adding an allowed use; ()

c. Changes to a lower (less treated) class of water; ()

d. Adding acreage used for irrigation; or ()

e. Changes to less stringent discharge limitations. ()

701. -- 799. (RESERVED)

800. PERMIT TRANSFER.

01. General. A permit may be transferred only upon Department approval. No transfer is required for a corporate name change if the permittee, via secretary of state filings, can verify a change in name alone occurred. An attempted transfer is not effective until approved in writing by the Department. ()

02. Request. Either the permittee or the person to whom the permit is proposed to be transferred (transferee) must submit to the Department for transfer at least thirty (30) days before the proposed transfer date. The request for transfer includes: ()

a. Legal name and address of the permittee; ()

b. Legal name and address of the transferee; ()

c. Location and the common name of the facility; ()

d. Date of proposed transfer; ()

e. Sufficient documentation for the Department to determine that the transferee will comply with IDAPA 58.01.16, "Wastewater Rules," relating to technical, financial, and managerial capacity; ()

f. Signed declaration by the transferee that the transferee has reviewed the permit and understands the terms of the permit; ()

g. Sworn statement that the request is made with the full knowledge and consent of the permittee if the transferee is submitting the request; ()

h. Identification of any judicial decree, compliance agreement, enforcement order, or other outstanding obligating instrument, the terms of which have not been met, along with legal instruments sufficient to address liabilities under such decree, agreement, order, or other obligating instrument; and ()

i. Other information the Department may reasonably request. ()

03. Effective Date. The effective date of the transfer is the date of the Department's approval. ()

04. Compliance with Permit Conditions. Responsibility for compliance with the permit and liability for any associated violation is assumed by the transferee upon the effective date. Before transfer approval, the permittee is responsible for complying with the permit and is liable for any associated violation, regardless of whether ownership or operational control of the permitted facility has been transferred. ()

05. Transferee Liability Before Transfer Approval. If a proposed transferee causes or allows operation of the facility under his ownership or control before approval of the permit transfer, the transferee is considered to be operating without a permit or authorization required by these rules and may be cited for additional violations as applicable. ()

06. Compliance Record of Transferee. The Department may consider the prior compliance record of the transferee, if any, in the decision to approve or disapprove a transfer. ()

801. TEMPORARY CESSATION OF OPERATIONS AND CLOSURE.

01. Temporary Cessation. A permittee must implement any applicable conditions specified in the permit for temporary cessation of operations. When the permit does not specify applicable temporary cessation conditions, the permittee must notify the Department before a temporary cessation of reuse operations at the facility greater than sixty (60) days in duration and any cessation not for regular maintenance or repair. Cessation of operations necessary for regular maintenance or repair of a duration of sixty (60) days or less do not require Department notification under this section. Notification compliance under this section includes a proposed temporary cessation plan to ensure the cessation of operations will not pose a threat to human health and the environment. ()

02. Closure. A closure plan is required when a facility is closed voluntarily and when a permit is revoked. A permittee implements any applicable conditions specified in the permit for facility closure. Unless otherwise directed by the terms of the permit or by the Department, the permittee submits a closure plan to the Department for approval at least ninety (90) days before ceasing operations. The closure plan ensures the closed facility will not pose a threat to human health and the environment. Closure plan approval may be conditioned upon a permittee's agreement to complete such site investigations, monitoring, and any necessary remediation activities. A permittee must complete all closure plan activities. ()

802. -- 919. (RESERVED)

920. PERMIT REVOCATION.

01. Conditions. The Department may revoke a permit or coverage under a reuse general permit if the permittee violates any permit condition or these rules, or the Department becomes aware of any omission or misrepresentation of condition or information relied upon when issuing the permit. ()

02. Notice. Except in emergencies, the Department will issue a written notice of intent to revoke to the permittee before final revocation. Revocation becomes final within thirty-five (35) days of the permittee receiving notice unless, within that time, the permittee requests an administrative hearing in writing. The hearing is conducted according to IDAPA 58.01.23, Contested Case Rules and Rules for Protection and Disclosure of Records. ()

03. Emergency Action. If the Department finds the human health, safety, or welfare requires emergency action, the Department will incorporate findings to support the action and issue a written notice of emergency revocation to the permittee. Emergency revocation is effective upon receipt by the permittee. If requested by the permittee in writing, the Department will provide the permittee a revocation hearing. Hearings are conducted according to IDAPA 58.01.23, Contested Case Rules and Rules for Protection and Disclosure of Records. ()

04. Revocation and Closure. A permittee must perform the closure requirements in a permit and these rules and complete all closure plan activities regardless of the permit revocation. ()

921. -- 939. (RESERVED)

940. WAIVERS.

Waivers from these rules may be granted by the Department on a case-by-case basis upon full demonstration by the person requesting the waivers that activities for which the waivers are granted will not have a detrimental effect upon existing water quality and beneficial uses are adequately protected. A violation of a waiver from these rules is a violation of the rules. ()

941. -- 999. (RESERVED)