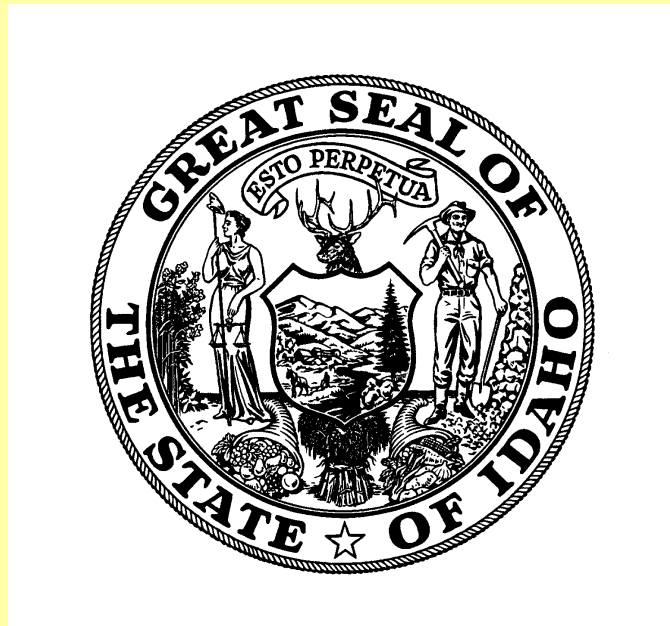


# **PENDING RULES COMMITTEE RULES REVIEW BOOK**

**Submitted for Review Before  
Senate Resources &  
Environment Committee  
68th Idaho Legislature  
First Regular Session – 2025**



*Prepared by:*

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

*January 2025*

**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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## IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

### 13.01.02 – RULES GOVERNING MANDATORY EDUCATION, MENTORED HUNTING, AND SHOOTING RANGES

DOCKET NO. 13-0102-2401

#### 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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-103, 36-104, 36-401, 36,409, 36-412, and 36-1101, Idaho Code.

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

This rulemaking addresses a United States Fish and Wildlife Service (USFWS) recommendation to adopt a bear identification test, (as between black bear and grizzly bear) to avoid take of grizzly bear by misidentification.

There are no substantive changes to the pending rule. One minor, typographical correction was made to the rule that was adopted as originally proposed. The complete text of the proposed rule was published in the October 2, 2024, Idaho Administrative Bulletin, [Vol. 24-10, pages 201-202](#).

**FEE SUMMARY:** There is no fee associated with the change brought by this rulemaking.

**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 associated with this rulemaking.

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

DATED this 15th day of November, 2024.

Amber Worthington  
Deputy Director  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
(208) 334-3771

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

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2025.

**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. The action is authorized pursuant to Section(s) 36-103, 36-104, 36-401, 36,409, 36-412, and 36-1101 Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2024.

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

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

Killing of grizzly bears as a result of misidentification by black bear hunters has involved a small number of bears in Idaho over the past 20 years, and grizzly bear populations have continued to increase and expand during that time. To reduce this limited source of human-caused mortality, the Department has conducted outreach, included bear identification in its general mandatory hunter education, and provided voluntary education measures on bear identification.

This rulemaking addresses a United States Fish and Wildlife Service (USFWS) recommendation to adopt a bear identification test (as between black bear and grizzly bear) to avoid take of grizzly bear by misidentification. The temporary rule is similar to mandatory education requirements in Washington and Montana, and Idaho's rule would recognize completion of education in those states as meeting education requirements in Idaho.

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

This temporary rule protects public safety and welfare by promoting proper identification of grizzly and black bears during hunting activities and by aligning with the recommendation of the USFWS in a timely manner, avoiding imposition of additional regulatory burden under the Endangered Species Act, and supporting reduction in federal regulatory burden under the Endangered Species Act by providing additional state regulatory mechanisms to achieve removal of grizzly bears from the federal list of endangered and threatened wildlife.

**FEE SUMMARY:** There is no fee associated with the change brought by this rulemaking.

**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 associated with this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need to promptly address the USFWS recommendation for mandatory bear identification.

**INCORPORATION BY REFERENCE:** This rulemaking contains no incorporation by reference.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2024.

DATED this 21st day of August, 2024.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0102-2401**

[Italicized red text that is *double underscored* indicates amendments to the proposed text as adopted in the pending rule.]

**13.01.02 – RULES GOVERNING MANDATORY EDUCATION,  
MENTORED HUNTING, AND SHOOTING RANGES**

**221. BEAR IDENTIFICATION.**

No person may hunt black bear unless they have completed an online bear identification test (as between grizzly bear and black bear) administered by the Department or other state wildlife management agency with a passing score, as proven by printed certification. One may take a test repeatedly to pass. ( )

~~221~~<sup>2</sup>. – 249. (RESERVED)

# IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

## 13.01.07 – RULES GOVERNING TAKING OF WILDLIFE

DOCKET NO. 13-0107-2401

### 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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-103, 36-104, 36-504, and 36-1101, Idaho Code.

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

This rulemaking addresses two items. First, this rulemaking modifies four game management zones to align with changes in elk zones presented in the Department's Idaho Elk Management Plan 2024-2030. Zone changes comprise the following: Owyhee (remove GMU 38), Boise River (add GMU 38), Big Desert (add GMUs 53 and 68A), and Snake River (remove GMUs 53 and 68A).

Second, this rulemaking adds language to clarify that Department and Commission regulatory actions do not authorize any person to violate federal laws relative to federally protected wildlife when there is not a valid federal take authorization under federal law, regulation, or permit.

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 2, 2024 Idaho Administrative Bulletin, [Vol. 24-10, pages 203-205](#).

**FEE SUMMARY:** There is no fee associated with the change brought by this rulemaking.

**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 associated with this rulemaking.

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

DATED this 15th day of November, 2024.

Amber Worthington  
Deputy Director  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
(208) 334-3771

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-103, 36-104, 36-504, and 36-1101, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2024.

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

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

This rulemaking addresses two items. First, this rulemaking modifies four game management zones to align with changes in elk zones presented in the Department's Idaho Elk Management Plan 2024-2030. Zone changes comprise the following: Owyhee (remove GMU 38), Boise River (add GMU 38), Big Desert (add GMUs 53 and 68A), and Snake River (remove GMUs 53 and 68A).

Second, this rulemaking adds language to clarify that Department and Commission regulatory actions do not authorize any person to violate federal laws relative to federally protected wildlife when there is not a valid federal take authorization under federal law, regulation, or permit.

**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(2), Idaho Code, negotiated rulemaking was not conducted for proposed rule IDAPA 13.01.07.250. This proposed rule is consistent with the 2024-2030 Idaho Elk Management Plan, which the Commission adopted in July 2024 after holding open houses in the seven Fish and Game Regions, public meetings of the Commission, draft plan issuance, and public comment opportunities.

Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted for proposed Rule IDAPA 13.01.07.900 due to the simple nature of the rulemaking. The rulemaking clarifies that Department or Commission authorization of an activity does not authorize any person to violate federal law when there is not valid federal take authorization in place.

**INCORPORATION BY REFERENCE:** This rulemaking contains no incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Amber Worthington, Deputy Director 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 23, 2024.

DATED this 21st day of August, 2024.



THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0107-2401

13.01.07 – RULES GOVERNING TAKING OF WILDLIFE

250. GAME MANAGEMENT ZONE DESCRIPTIONS.

- |     |  |                          |
|-----|--|--------------------------|
| 01. | <b>Panhandle Zone.</b> All of Units 1, 2, 3, 4, 4A, 5, 6, 7, and 9.    | (3-31-22)                |
| 02. | <b>Palouse Zone.</b> All of Units 8, 8A, and 11A.                      | (3-31-22)                |
| 03. | <b>Dworshak Zone.</b> All of Unit 10A.                                 | (3-31-22)                |
| 04. | <b>Hells Canyon Zone.</b> All of Units 11, 13, and 18.                 | (3-31-22)                |
| 05. | <b>Lolo Zone.</b> All of Units 10 and 12.                              | (3-31-22)                |
| 06. | <b>Elk City Zone.</b> All of Units 14, 15, and 16.                     | (3-31-22)                |
| 07. | <b>Selway Zone.</b> All of Units 16A, 17, 19, and 20.                  | (3-31-22)                |
| 08. | <b>Middle Fork Zone.</b> All of Units 20A, 26, and 27.                 | (3-31-22)                |
| 09. | <b>Salmon Zone.</b> All of Units 21, 21A, 28, and 36B.                 | (3-31-22)                |
| 10. | <b>Weiser River Zone.</b> All of Units 22, 32, and 32A.                | (3-31-22)                |
| 11. | <b>McCall Zone.</b> All of Units 19A, 23, 24, and 25.                  | (3-31-22)                |
| 12. | <b>Lemhi Zone.</b> All of Units 29, 37, 37A, and 51.                   | (3-31-22)                |
| 13. | <b>Beaverhead Zone.</b> All of Units 30, 30A, 58, 59, and 59A.         | (3-31-22)                |
| 14. | <b>Brownlee Zone.</b> All of Unit 31.                                  | (3-31-22)                |
| 15. | <b>Sawtooth Zone.</b> All of Units 33, 34, 35, and 36.                 | (3-31-22)                |
| 16. | <b>Pioneer Zone.</b> All of Units 36A, 49, and 50.                     | (3-31-22)                |
| 17. | <b>Owyhee Zone.</b> All of Units <del>38</del> , 40, 41, and 42.       | <del>(3-31-22)</del> ( ) |
| 18. | <b>South Hills Zone.</b> All of Units 46, 47, 54, 55, 56, and 57.      | (3-31-22)                |
| 19. | <b>Boise River Zone.</b> All of Units <del>38</del> and 39.            | <del>(3-31-22)</del> ( ) |
| 20. | <b>Smoky - Bennett Zone.</b> All of Units 43, 44, 45, 48, and 52.      | (3-31-22)                |
| 21. | <b>Big Desert Zone.</b> All of Units 52A, <del>53, 68</del> , and 68A. | <del>(3-31-22)</del> ( ) |
| 22. | <b>Island Park Zone.</b> All of Units 60, 60A, 61, 62, and 62A.        | (3-31-22)                |

- 23. **Palisades Zone.** All of Units 64, 65, and 67. (3-31-22)
- 24. **Tex Creek Zone.** All of Units 66 and 69. (3-31-22)
- 25. **Bannock Zone.** All of Units 70, 71, 72, 73, 73A, and 74. (3-31-22)
- 26. **Bear River Zone.** All of Units 75, 77, and 78. (3-31-22)
- 27. **Diamond Creek Zone.** All of Units 66A and 76. (3-31-22)
- 28. **Snake River Zone.** All of Units ~~53~~, 63, and 63A, ~~and 68A~~. (~~3-31-22~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**501. – ~~98~~99. (RESERVED)**

**900. FEDERALLY PROTECTED WILDLIFE.**

No authorization of an activity by the Commission or Department should be interpreted as state authorization to take federally protected wildlife in the absence of a federal take authorization, or as an exemption from prosecution for unauthorized take under federal or state law. In any instance where federal law prohibits taking of wildlife without federal authorization, authorization by the Commission or Department of an activity taking such federally protected wildlife is contingent upon that person also having valid federal take authorization. “Federal take authorization” includes authorization under federal law, regulation, permit, incidental take statement, or other valid federal authorization. “Authorization by the Commission or Department” includes authorization under Idaho law, administrative rule, proclamation, order, issuance of any license, or other state authorization. (    )

**901. – 999. (RESERVED)**

# IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

## 13.01.11 – RULES GOVERNING FISH

DOCKET NO. 13-0111-2401

### 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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-103, 36-104, 36-401, 36-406A, 36-407, 36-410, 36-701, 36-706, 36-901, 36-902, and 36-1001, Idaho Code.

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

This rulemaking includes modifications of IDAPA 13.01.11.200.01.d. and 13.01.11.220.04, Rules Governing Fish, Definitions and Fishing Methods and Gear sections that add a definition for “spearfishing,” expand opportunities for spearfishing to include take of certain game fish species and provide authority to the Commission through proclamation to determine seasons, fish species, and take limits for spearfishing.

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 2, 2024 Idaho Administrative Bulletin, [Vol. 24-10, pages 206-208](#).

**FEE SUMMARY:** There is no fee associated with the change brought by this rulemaking.

**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 associated with this rulemaking.

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

DATED this 15th day of November, 2024.

Amber Worthington  
Deputy Director  
Idaho Department of Fish and Game  
600 S. Walnut Street  
P.O. Box 25  
Boise, ID 83707  
(208) 334-3771

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-103, 36-104, 36-401, 36-406A, 36-407, 36-410, 36-701, 36-706, 36-901, 36-902, and 36-1001, 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 16, 2024.

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

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

This rulemaking includes modifications of IDAPA 13.01.11.200.01.d and 13.01.11.220.04, Rules Governing Fish, Definitions and Fishing Methods and Gear sections that add a definition for “spearfishing,” expand opportunities for spearfishing to include take of certain game fish species and provide authority to the Commission through proclamation to determine seasons, fish species, and take limits for spearfishing.

**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, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 3, 2024, Idaho Administrative Bulletin, [Volume 24-7](#), pages 78-79.

**INCORPORATION BY REFERENCE:** This rulemaking contains no incorporation by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Amber Worthington, Deputy Director 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 23, 2024.

DATED this 23rd day of August, 2024.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0111-2401**

13.01.11 – RULES GOVERNING FISH

011. DEFINITIONS – CONDUCT OF FISHING.

01. **Catch-and-Release.** Effort to catch fish, provided that any fish so caught is released immediately back to the water after landing and not reduced to possession. (7-1-24)
02. **Commercial Fishing.** Fishing or transporting fish or crayfish for the purpose of selling. (7-1-24)
03. **Fly Fishing.** Fishing with a fly rod, fly line, and artificial fly. (7-1-24)
04. **Harvest.** Reduce a fish to possession. (7-1-24)
05. **Ice Fishing.** Fishing through an opening broken or cut through the ice. (7-1-24)
06. **Length.** The length between the tip of the nose or jaw and the tip of the tail fin. (7-1-24)
07. **Snagging.** Taking fish by use of a hook or lure in any manner or method other than enticing or attracting a fish to strike with, and become hooked in, its mouth or jaw. (7-1-24)
08. **Spearfishing.** Taking of fish by a person while underwater, with the aid of a manually or mechanically propelled single- or multiple-pronged spear. ( )
- ~~08~~9. **Trolling.** Taking a fish from a moving watercraft by dragging or pushing any fly, lure, bait, or hook using a motor, oars, or other forms of propulsion. (7-1-24)
- ~~09~~10. **Unattended Line.** Line not under the immediate surveillance by the angler. (7-1-24)

(BREAK IN CONTINUITY OF SECTIONS)

200. FISHING METHODS AND GEAR.

01. **General Restrictions.** Unless modified by rule (such as exceptions in the following subsections), order, or proclamation, it is unlawful to: (7-1-24)
- a. Fish in any waters of Idaho with more than one (1) handline or pole with a line attached, unless in possession of a valid two-pole permit. (7-1-24)
- b. Leave an unattended line. (7-1-24)
- c. Have more than five (5) hooks attached per line. (7-1-24)
- d. Use more than five (5) lines while ice fishing. (7-1-24)
- e. Fish by archery, spearfishing, snagging, hands, trapping, seining, or netting. (7-1-24)
- f. Use live fish, leeches, frogs, salamanders, waterdogs, or shrimp as bait. (7-1-24)
- g. Land any fish with a gaff hook. (7-1-24)
- h. Molest any fish by shooting at it with a firearm or pellet gun, striking at it with a club, hands, rocks, or other objects, building obstructions for catching fish, or chasing fish up or downstream in any manner. (7-1-24)

- i. Fish from a watercraft with a motor attached in waters listed in proclamation as “no motors.” (7-1-24)
- j. Use gas (internal combustion) motors on fishing waters listed in proclamation as “electric motors only,” although it may be attached to the boat. (7-1-24)
- 02. Snagging, Archery, and Spear-Fishing Exceptions. ( )**
- a.** ~~The Unprotected fish may be taken by~~ use of snagging, bow and arrow, crossbow, spear or mechanical device, excluding firearms, ~~is permitted for the taking of unprotected fish,~~ provided there is an open season for game fish. (7-1-24)( )
- b.** Game fish may be taken by spearfishing as authorized by Commission proclamation. ( )
- 03. Gaff Hook Exceptions.** The use of a gaff hook is permitted while ice fishing in waters which have no length restrictions or harvest closures for that species, or when landing unprotected fish species taken with archery equipment. (7-1-24)
- 04. Trapping and Seining Exceptions.** It is lawful to take unprotected fish, crayfish, and yellow perch with a minnow net, seine, or up to five (5) traps, unless there is an open season for game fish, and provided the following conditions are met: (7-1-24)
- a.** The seine or net does not exceed ten (10) feet in length or width, and the seine has three-eighths (3/8) inch square or smaller mesh; and the minnow or crayfish trap does not exceed two (2) feet in length, width or height. If the trap is of irregular dimension, but its volume does not exceed the volume of an eight (8) cubic foot trap, it is lawful to use. (7-1-24)
- b.** Nets and seines are not left unattended. (7-1-24)
- c.** Traps are checked at least every forty-eight (48) hours. (7-1-24)
- d.** All game fish and protected nongame fish incidentally captured while trapping or seining are immediately released alive. (7-1-24)
- e.** All traps have a tag attached bearing the owner's name and address, license number, or sportsman identification number. (7-1-24)
- 05. Use of Bait Exceptions.** Live crayfish and bullfrog may be used for bait if caught on the body of water being fished. (7-1-24)
- 06. Use of Hands Exceptions.** Bullfrog and crayfish may be taken with the hands. (7-1-24)
- 07. Fishing Shelters.** Any enclosure or shelter left unattended overnight on the ice of any waters of the state shall have the owner's name, telephone numbers, and current address, or sportsman identification number legibly marked on two (2) opposing sides of the enclosure or shelter. (7-1-24)

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**  
**20.03.13 – ADMINISTRATION OF COTTAGE SITE LEASES ON STATE LANDS**  
**DOCKET NO. 20-0313-2401 (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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1, 2025, in the year of the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 2024 with the goal of simplifying the rules for increased clarity and ease of use. The overall regulatory burden has been reduced by decreasing the total word count and number of restrictive words. The pending rule carries a 19.43 percent net reduction in word count, and a 50 percent net reduction in restrictive word count.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 3, 2024, Idaho Administrative Bulletin, [Vol. 24-7, pages 116-117](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: 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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Kemp Smith at 208-334-0202.

DATED this 20th day of August, 2024.

Kemp Smith, Commercial and Residential Program Manager  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
P.O. Box 83720  
Boise, Idaho 83702  
Phone: 208-334-0202  
Fax: 208-334-3698  
[rulemaking@idl.idaho.gov](mailto:rulemaking@idl.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 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 July 17, 2024.

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](#). IDAPA 20.03.13 provides guidance for residential cottage site leasing on state lands by establishing restrictions regarding assignments and describing how annual rent will be determined. It is the Department's intention to make minimal updates to the rule text.

**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 6, 2024 edition of the Idaho Administrative Bulletin, [Vol. 24-3, pages 14-15](#).

**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 Kemp Smith at 208-334-0202 or [KeSmith@idl.idaho.gov](mailto:KeSmith@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 July 24, 2024.

DATED this 3rd day of June, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 20-0313-2401**



20.03.13 – ADMINISTRATION OF COTTAGE SITE LEASES ON STATE LANDS

000. LEGAL AUTHORITY.

The ~~State Board of Land Commissioners~~ has adopted these rules in accordance with Article IX, Section 8 of the Idaho Constitution and Sections 58-104(1) and 58-304, Idaho Code. (3-18-22)( )

001. ~~TITLE AND SCOPE.~~

~~01. Title. These rules are titled IDAPA 20.03.13, “Administration of Cottage Site Leases on State Lands.” (3-18-22)~~

~~02. Scope. It is the intent and express policy of the Board in administration of eCottage sSite leases located on state-owned lands administered by the Board, to provide for a reasonable rental income from those lands in accordance with the requirements of the Idaho Constitution of the State of Idaho. (3-18-22)( )~~

002. -- 009. (RESERVED)

010. DEFINITIONS.

~~For the purposes of these rules, unless otherwise indicated by express term or by context, the term: (3-18-22)~~

01. **Annual Rental.** The rental paid on or before January 1, in advance, for the following year. (3-18-22)

02. **Board.** The State Board of Land Commissioners, or its designee. (3-18-22)( )

03. **Cottage Site.** Any state-owned lot that is leased for recreational residential purposes. (3-18-22)

04. **Department.** The Idaho Department of Lands. (3-18-22)

~~05. Lessee. A tenant of a cottage site. (3-18-22)~~

011. -- 019. (RESERVED)

020. SALE AND ASSIGNMENT ~~—REQUIRED DOCUMENTATION.~~

01. **Documentation of Sale.** The Prior to the assignment of a Cottage Site Lease, the lessee must provide the Department, at their expense, the following documents concerning associated with a eCottage sSite sale prior to assignment of the cottage site lease. (3-18-22)( )

a. The original of the current lease; or (3-18-22)

b. A signed and notarized Affidavit of Loss if the current lease has been lost. (3-18-22)

02. **Assignments.** A lease may ~~only~~ be assigned only to an individual or to a husband or wife. The Board will not recognize assignments to corporations, partnerships, or companies. Leases may be assigned to and held by an estate only if one (1) individual or husband or wife are designated as the sole contact for all billing and correspondence. A lessee may only hold one (1) eCottage sSite lease at a time. (3-18-22)( )

021. -- 024. (RESERVED)

025. ~~LEASE RATE ANNUAL RENTAL DETERMINATION — ANNUAL RENTAL.~~

Annual rRental is set by the Board ~~from time to time as deemed necessary.~~ It is the intent of the ~~State Board of Land Commissioners~~ that ~~those~~ rental rates be determined through market indicators of comparable land values. (3-18-22)( )

026. -- 999. (RESERVED)

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**  
**20.03.14 – RULES GOVERNING GRAZING, FARMING, AND CONSERVATION LEASES**  
**DOCKET NO. 20-0314-2401 (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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1, 2025, in the year of the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 58-104, 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 2024 with the goal of simplifying the rules for increased clarity and ease of use. The overall regulatory burden has been reduced by decreasing the total word count and number of restrictive words. The pending rule carries a 10 percent net reduction in word count, and a 38 percent net reduction in restrictive word count.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 3rd, Idaho Administrative Bulletin, [Vol. 24-7, pages 118-129](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: 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.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Addie Faust at (208) 334-0275.

DATED this 20th day of August, 2024.

Addie Faust  
Natural Resource Leasing Program Manager  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
P.O. Box 83720  
Boise, Idaho 83702  
Phone: (208) 334-0275  
[rulemaking@idl.idaho.gov](mailto:rulemaking@idl.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 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 July 17, 2024.

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 2024 and legislative review in 2025 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 (-10.35%) and the number of restrictive words (-37.8%) in the proposed rule. No changes were made that changed 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 6, 2024, Idaho Administrative Bulletin, [Vol. 24-3, pages 16-17](#).

**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 Addie Faust at (208) 334-0275 or [afaust@idl.idaho.gov](mailto:afaust@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 July 24, 2024.

DATED this 3rd day of June, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 20-0314-2401**

20.03.14 – RULES GOVERNING GRAZING, FARMING, **AND** CONSERVATION, ~~NONCOMMERCIAL-RECREATION, AND COMMUNICATION SITE LEASES~~

**000. LEGAL AUTHORITY.**

These rules are promulgated by the ~~Idaho State Board of Land Commissioners~~ pursuant to Section 58-104, Idaho Code. (3-18-22)(    )

**001. ~~TITLE AND SCOPE.~~**

~~**01. Title.** These rules are titled IDAPA 20.03.14, “Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases.” (3-18-22)~~

**021. Scope.** These rules constitute the Department’s administrative procedures for leasing of state endowment trust land (endowment lands) for grazing, farming, conservation, ~~noncommercial recreation, communication sites~~ and other uses that are treated similarly under ~~the provisions of~~ Section 58-307, Idaho Code, regarding a lease term for no longer than twenty (20) years, and under ~~the provisions of~~ Section 58-310, Idaho Code regarding lease auctions. These rules are to be construed in a manner consistent with the duties and responsibilities of the ~~Idaho State Board of Land Commissioners~~ as set forth in Title 58, Chapter 3, Idaho Code; Article 9, Sections 3, 7 and 8, of the Idaho Constitution; and Section 5 of the Idaho Admission Bill. (3-18-22)(    )

**002. ADMINISTRATIVE APPEALS.**

**01. Board Appeal.** All decisions of the Director are appealable to the Board. An aggrieved party ~~desiring to make such an~~ may appeal ~~must, within twenty (20) days after receiving by filing with the Director a written notice of the final decision being appealed or in case of a conflict auction within twenty (20) days after the auction is held, file with the Director a written notice~~ of appeal setting forth the basis for the appeal within twenty (20) days of: (    )

**a. Receiving notice of the Board’s decision, which is being appealed or;** (    )

**b. ~~The Board has the discretion to accept or reject any timely appeal. In the event that the Board rejects hearing the appeal, the decision of the Director will be deemed final.~~The date that the conflict auction is held.** (3-18-22)(    )

**02. Board Decision.** In the event the Board hears an appeal, it will do so at the earliest practical time or, in its discretion, appoint a Board sub-committee or a hearing officer to hear the appeal. ~~The Board sub-committee or hearing officer will make findings and conclusions which the Board accepts, rejects or modifies. The decision of the Board after a hearing, or upon a ruling concerning the Board sub-committee or hearing officer’s findings and conclusions, are final.~~ (3-18-22)(    )

**03. Judicial Review.** Judicial review of the final decision of the Board is in accord with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (3-18-22)

**003. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Amortization.** The purchase of Department authorized, lessee installed, lease improvements by the Department through allowance of credit to the lessee’s annual lease payments. (3-18-22)(    )

**02. Animal Unit Month (AUM).** The amount of forage necessary to feed one (1) cow or one (1) cow with one (1) calf under six (6) months of age or one (1) bull for one (1) month. One (1) yearling is considered seven tenths (.7) of an AUM. Five (5) head of sheep, or five (5) ewes with lambs are considered one (1) AUM. One (1) horse is considered one and one-half (1 1/2) AUM. (3-18-22)

**03. Assignment.** The Department approved transfer of all, or a portion of, a lessee's right to another ~~p~~Person wherein the second ~~p~~Person assumes the ~~L~~Lease contract with the Department. (3-18-22)(    )

**04. Board.** The Idaho State Board of Land Commissioners, ~~or such representatives as may be designated~~ its designee. (3-18-22)(    )

**05. Conflict Application.** An application to ~~L~~Lease ~~state endowment trust~~ land for grazing, farming, ~~or~~ conservation, ~~noncommercial recreation or communication site~~ use when one (1) or more applications have been submitted for the same parcel of ~~state endowment trust~~ land and for the same or an incompatible use. (3-18-22)(    )

**06. Department.** The Idaho Department of Lands. (3-18-22)

**07. Director.** The Director of the Idaho Department of Lands, ~~or such representative as may be designated by the Director~~ their designee. (3-18-22)(    )

**08. Extension.** An approved delay in the due date of the rental owed on a farming ~~L~~Lease without risk of loss of the ~~L~~Lease. (3-18-22)(    )

**09. Improvement Credit Valuation.** The process or processes of estimating the value of Department authorized improvements associated with a ~~L~~Lease, as defined in Section 102. (3-18-22)(    )

**10. Lease.** A written agreement between the Department and a ~~p~~Person containing the terms and conditions upon which the ~~p~~Person will be authorized to use ~~state endowment trust~~ land. (3-18-22)(    )

**11. Herd Stock.** Livestock leased or managed, but not owned, by the lessee. (3-18-22)

~~**12. Lease Application.** An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation, or communication site purposes. (3-18-22)~~

~~**13. Manageable Unit.** A unit of ~~state endowment trust~~ land designated by the Department, geographically configured and sufficiently large to achieve the proposed use. (3-18-22)(    )~~

~~**14. Management Plan.** The signed ~~state endowment trust land L~~Lease for grazing, farming, and/or conservation, and any referenced attachments such as annual operating plans or federal allotment management plans; ~~is considered the management plan.~~ (3-18-22)(    )~~

~~**15. Mortgage Agreement.** Department authorization for the lessee to obtain a mortgage on a state endowment trust land lease. (3-18-22)~~

**16. Person.** An individual, partnership, limited liability company, association, trust, unincorporated organization ~~corporation~~ or ~~any~~ other legal entity qualified to do business in the state of Idaho and any federal, state, county, or local unit of government. (3-18-22)(    )

~~**17. Proposed Management Plan.** A document written and submitted by the lease applicant detailing the management objectives and strategies associated with their proposed activity. (3-18-22)~~

~~**18. Sublease.** An agreement in which the ~~state endowment trust land lease holder~~ lessee conveys the right of use and occupancy of the ~~property~~ leased land to another party on a temporary basis. (3-18-22)(    )~~

**011. -- 018. (RESERVED)**

**019. LESSEE MAILING ADDRESS.** Unless otherwise notified by the lessee, the Department will send all ~~L~~Lease correspondence ~~from the Department will be sent~~ to the name and address as it appears on the lease application. It is the lessee's duty to notify the Department, in writing, of any change in mailing address. (3-18-22)(    )

020. APPLICATIONS AND PROCESSING.

**01. Eligible Applicant.** Any ~~p~~Person legally competent to contract may submit an application to lease ~~state~~ endowment-~~trust~~ land provided such ~~p~~Person is not then in default of any contract with the Department ~~of Lands~~; provided further, that the Department may, in its discretion, exclude any ~~p~~Person in breach of any contract with the state of Idaho or any department or agency thereof. (3-18-22)(    )

**02. Application Process.** ~~All lease applications must be submitted to the Department on the appropriate Department form. The applications must be signed by the applicant, must be submitted in such manner as determined by the Department, and must meet the following criteria:~~ (3-18-22)(    )

**a. Applications. All applications must:** (    )

**i. Be submitted to the Department on the appropriate Department form:** (    )

**ii. Be signed by the applicant:** (    )

~~iii. Non-refundable Fee. Each application for a lease must b~~**Be** accompanied by a non-refundable application fee in the amount specified by the Board. (3-18-22)(    )

~~biv. Application Deadline. The deadline to apply to lease a parcel of state endowment trust land already covered by a lease is as established by the Department for the year the existing lease expires. Applications to lease unleased-state~~ endowment-~~trust~~ land may be submitted at any time, or at such time as designated by the Department. **Be accompanied with a Proposed Management Plan;** (3-18-22)(    )

~~ev. Proposed Management Plan. All applicants for state grazing, farming and conservation leases must submit a proposed management plan with their application. Where~~ **If the** current lessee is an applicant, the Department will recognize the existing ~~m~~**M**anagement ~~p~~**P**lan, as described by the existing ~~l~~**L**ease provisions, as the ~~p~~**P**roposed ~~m~~**M**anagement ~~p~~**P**lan required to complete the lease application. The Department may require amendments to the ~~p~~**P**roposed ~~m~~**M**anagement ~~p~~**P**lan in accordance with Subsections 020.02.e. and 020.02.f. (3-18-22)(    )

**vi. Include a legal description of the endowment land sought to be leased. The Department may require an amendment of the legal description of lands identified in a lease application to ensure the parcel is a Manageable Unit or for any other reason the Department deems appropriate. If the applicant fails to provide an amended application, referencing a Manageable Unit as designated by the Department, the application is considered invalid.** (    )

~~d. Legal Description on Application. All applications must include a legal description of the state endowment trust land applied on. The Department reserves the right to require an amendment of the legal description of state endowment trust lands identified in a lease application to ensure the parcel is a manageable unit or for any other reason deemed appropriate by the Department. If the applicant fails to provide an amended application, referencing a manageable unit as designated by the Department, the application is considered invalid.~~ (3-18-22)

**eb. Nonconflicted Applications.** (3-18-22)

**i.** If the current lessee is the only applicant and the Department does not have concerns with the lessee's current management of the leased-~~state~~ endowment-~~trust~~ land, a new lease will be issued. (3-18-22)(    )

**ii.** If the current lessee is the only applicant and the Department has concerns with the lessee's current management of the-~~state~~ ~~leased~~ endowment-~~trust~~ lands, the Department will request in writing a new ~~p~~**P**roposed ~~m~~**M**anagement ~~p~~**P**lan and meet with the current lessee to develop terms and conditions of a proposed lease. (3-18-22)(    )

**fc. Conflicted Applications.** (3-18-22)

i. All applicants submitting ~~e~~C~~o~~n~~f~~l~~i~~c~~t~~ ~~a~~A~~p~~p~~l~~i~~c~~a~~t~~i~~o~~n~~s~~ must meet with the Department to develop the terms and conditions of a proposed lease specific to each applicant's ~~p~~P~~r~~o~~p~~o~~s~~e~~d~~ ~~m~~M~~a~~n~~a~~g~~e~~m~~e~~n~~t~~ ~~p~~P~~l~~a~~n~~. (3-18-22)(    )

ii. The Department will provide all applicants for conflicted leases with the list of criteria that will be used to develop lease provisions. Among the factors to be addressed in the criteria are the following: (3-18-22)

(1) The applicant's proposed use and the compatibility of that use of the ~~state~~ endowment ~~trust~~ land with preserving its long-term leasing viability for purposes of generating maximum return to trust beneficiaries; i.e., the impact of the proposed use and any anticipated improvements on the parcel's future utility and leasing income potential. (3-18-22)(    )

(2) The applicant's legal access to and/or control of land or other resources that will facilitate the proposed use and is relevant to generating maximum return to trust beneficiaries. (3-18-22)

(3) The applicant's previous management of land leases, land management plans, or other experience relevant to the proposed use or ability/willingness to retain individuals with relevant experience. (3-18-22)

(4) Potential environmental and land management constraints that may affect or be relevant to assessing the efficacy or viability of the proposed use. (3-18-22)

(5) Mitigation measures designed to address trust management concerns such as: (3-18-22)

(a) Construction of improvements at lessee's expense. (3-18-22)

(b) Payment by lessee of additional or non-standard administrative costs where the nature of the proposed use and/or the applicant's experience raises a reasonable possibility that greater monitoring or oversight by the Department than historically provided will be necessary to ensure lease-term compliance. (3-18-22)

(c) Bonding to ensure removal of any improvements installed for the lessee's benefit only and which would impair the future utility and leasing income potential of the ~~state~~ endowment ~~trust~~ land. (3-18-22)(    )

(d) Bonding to ensure future rental payments due under the ~~l~~L~~e~~a~~s~~e in cases where the lessee is determined by the Department to pose a significant financial risk because of lack of experience or uncertain financial resources. (3-18-22)(    )

(6) Any other factors the Department deems relevant to the management of the ~~state~~ endowment ~~trust~~ land for the proposed use. (3-18-22)(    )

~~g~~iii. Proposed Lease. Within ten (10) days of the final meeting with the applicant to discuss lease provisions, the Department will provide the applicant with a proposed lease containing those terms and conditions upon which it will lease the ~~state~~ endowment ~~trust~~ land. If the applicant does not accept in writing the lease as proposed by the Department within seven (7) days of receipt, the application will be rejected in writing by the Department. Within twenty (20) days of the date of mailing of the rejection notice, the applicant may appeal the Department's determination as to the lease's terms and conditions to the ~~Land~~ Board. If the appeal is denied, the applicant may continue with the auction process by accepting the lease terms and conditions initially offered by the Department. No auction may be held until the ~~Land~~ Board resolves any such appeal. (3-18-22)(    )

**03. Expiring Leases.** ~~The Department will mail l~~lease applications ~~will be mailed by the Department~~ to all holders of expiring ~~l~~L~~e~~a~~s~~e~~s~~ ~~no less than at least~~ thirty (30) days prior to the application deadline. ~~Signed applications and the application fee must be returned to the Department by the established deadline or postmarked no later than midnight of that date. It is the lessee's responsibility to ensure applications are delivered or postmarked by the deadline. It is the lessee's responsibility to ensure that the signed applications and associated fees are delivered to the Department by the established deadline.~~ (3-18-22)(    )

**04. Rental Deposit.** (3-18-22)

a. Existing Lessee. If the existing lessee is the sole applicant, the lessee may submit the rental deposit at the normal due date. If a ~~e~~C~~o~~n~~f~~l~~i~~c~~t~~ ~~a~~A~~p~~p~~l~~i~~c~~a~~t~~i~~o~~n is also filed on the expiring ~~H~~L~~e~~a~~s~~e and the existing lessee is awarded the lease by the ~~L~~a~~n~~d Board, the lessee must deposit, with the Department, the estimated first year's rental for the ~~H~~L~~e~~a~~s~~e at the time the ~~H~~L~~e~~a~~s~~e is submitted to the Department with lessee's signature. (3-18-22)(    )

b. New Applicants. (3-18-22)

i. Expiring Lease. New applicants for expiring ~~H~~L~~e~~a~~s~~e must ~~submit~~ pay the estimated first year's rental to the Department at the time ~~of~~ the application's is ~~submission~~ tted. (3-18-22)(    )

ii. Unleased ~~State~~ Endowment ~~Trust~~ Land. All applicants for unleased ~~state~~ endowment ~~trust~~ land are deemed new applicants. If ~~an applicant for unleased state endowment trust land is~~ a new applicant is the sole applicant, the applicant may submit the rental deposit at the normal billing cycle, unless the time of application and desired time of use do not coincide with the normal billing cycle, in which case payment must be rendered at the direction of the Department. (3-18-22)(    )

**021. LEASE LENGTH OF LEASE.**

The Department may issue a ~~H~~L~~e~~a~~s~~e for any period of time up to the maximum term provided by law. (3-18-22)(    )

**022. -- 029. (RESERVED)**

**030. CHANGE IN LAND USE.**

The Director may change the use of any ~~state~~ endowment ~~trust~~ land, in whole or in part, for other uses that will better achieve the objectives of the Board. (3-18-22)(    )

**031. -- 039. (RESERVED)**

**040. RENTAL.**

**01. Rental Rates.** The Board determines the methodology used to calculate rental rates ~~is determined by the Board.~~ (3-18-22)(    )

**02. Special Uses.** The Department determines ~~F~~ees for special uses requested by the lessee and approved by the Department ~~are determined by the Department.~~ (3-18-22)(    )

**03. Rental Due Date.** Lease rentals are due in accordance with the terms of the ~~H~~L~~e~~a~~s~~e. (3-18-22)(    )

**041. CHANGE OF RENTAL.**

The Department reserves the right to increase the annual lease rental. Notice of any increase will be provided in writing to the lessee at least one hundred eighty (180) days prior to the lease rental due date. (3-18-22)

**042. LATE PAYMENTS.**

Rental not paid by the due date is considered late. Late payment charges from the due date forward are specified in the ~~H~~L~~e~~a~~s~~e. (3-18-22)(    )

**043. -- 048. (RESERVED)**

**049. BREACH.**

**01. Non-Compliance.** A lessee is in breach if the lessee's use is not in compliance with the Lease's provisions ~~of the lease.~~ (3-18-22)(    )

**02. Damages for Breach.** A lessee is responsible for all damages resulting from breach and for other damages, as provided by law. (3-18-22)(    )



**050. LEASE CANCELLATION.**

Leases may be canceled by the Director for the following reasons: (3-18-22)

**01. Non-Compliance.** If the lessee is not complying with the HLease provisions or if resource damage attributable to the lessee's management is occurring to ~~state leased~~ endowment ~~trust~~ land ~~within a lease~~, the lessee will be provided written notification of the violation by regular and certified mail. The letter will set forth the reasons for the Department's cancellation of the HLease and provide the lessee thirty (30) days' notice of the cancellation. (3-18-22)(    )

**02. Change in Land Use.** ~~A lease may be canceled in whole or in part upon one hundred eighty (180) days written notice by the Department if the~~ state endowment ~~trust~~ lands are to be leased for any other use as designated by the Board or the Department and the new use is incompatible with the existing HLease; then a Lease may be canceled in whole or in part upon one hundred eighty (180) days written notice by the Department. In the event of early cancellation due to a change in land use, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. (3-18-22)(    )

**03. Land Sale.** The Department reserves the right to sell state endowment ~~trust~~ lands covered under the HLease. The lessee will be notified that the state endowment ~~trust~~ lands are being considered for sale prior to submitting the sales plan to the Board for approval. The lessee will also be notified of a scheduled sale at least thirty (30) days prior to sale. In the event of early cancellation due to land sale, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. (3-18-22)(    )

**04. Mutual Agreement.** Leases may be canceled by mutual agreement between the Department and the lessee. (3-18-22)

**051. LEASE ADJUSTMENTS.**

**01. Department ~~Required~~ Initiated.** The Department may make adjustments to the HLease for resource protection or resource improvement. (3-18-22)(    )

**02. Lessee Requested.** Lessee requested changes in HLease conditions must be submitted in writing and ~~must~~ receive written approval from the Department before implementation. (3-18-22)(    )

**052. EXTENSIONS OF ANNUAL FARMING LEASE PAYMENT.**

**01. Farming Lease Extensions.** An eExtension of the annual lease payment may be approved for farming leases only. Each HLease is limited to no more than two (2) successive or five (5) total eExtensions during any ten (10) year lease period. Requests for eExtensions must be submitted in writing and ~~must~~ include the extension fee, which is determined by the Board. The lessee must provide a written statement from a financial institution verifying that money is not available for the current year's farming operations. (3-18-22)(    )

**02. Liens.** When an eExtension is approved, the Department will file a lien on the lessee's pertinent crop in a manner provided by ~~Idaho Code law~~. (3-18-22)(    )

**03. Due Date.** Rental plus interest at a rate established by the Board will be due ~~not later than by~~ November 1 of the year the eExtension is granted. (3-18-22)(    )

**053. -- 059. (RESERVED)**

**060. FEES.**

Fees for HLease administration ~~will be periodically set~~ are set by the Board and must be paid in full before a transaction can occur. All HLease administration fees are non refundable. The Board ~~has the authority to~~ may set fees related to administration of the leasing process ~~including, but not limited to the following such as:~~ lease applications; full HLease aAssignment; partial HLease aAssignment; ~~mortgage agreement;~~ sSubleases; late rental payment; minimum lease fee; and lease payment eExtension request. (3-18-22)(    )

**061. -- 069. (RESERVED)**

**070. SUBLEASING.**

~~A lessee may not authorize another person to use state endowment trust land without prior written approval from the Department.~~ The lessee must receive the Department's written approval before authorizing another Person to use leased endowment land. The lessee must provide the name and address of sublessee, purpose of ~~s~~Sublease, and a copy of the proposed sublease agreement. Lessee controlled ~~h~~Herd ~~s~~Stock does not require ~~s~~Sublease approval.

(3-18-22)(    )

**071. ASSIGNMENTS.**

~~The lessee may not assign a lease, or any part thereof, without prior written approval of the Department.~~ The lessee must complete a Department assignment form and receive the Department's written approval of that form before assigning a lease form.

(3-18-22)(    )

**072. MORTGAGE AGREEMENTS.**

~~The lessee may not enter into a mortgage agreement that involves state endowment trust land lease without prior written approval of the Department. The lessee must submit the required filing fee. The term of a mortgage agreement may not exceed the lease term.~~

(3-18-22)

**073. -- 079. (RESERVED)**

**080. MANAGEMENT PLANS.**

**01. Federal Plan.** When ~~state~~ endowment ~~trust~~ land is managed in conjunction with federal land, the management plan prepared for the federal land may be deemed by the Department, at its discretion, the ~~m~~Management ~~p~~Plan.

(3-18-22)(    )

**02. Modification of Plan.** The Department may review and modify any ~~grazing m~~Management ~~p~~Plan upon changes in conditions, laws, or regulations, provided that the Department will give the lessee at least thirty (30) day's notice of any ~~such~~ modification's ~~prior to the~~ effective date ~~thereof~~. Modifications mutually agreeable to both the Department and lessee may be made at any time and may be initiated ~~by~~ at the lessee's request.

(3-18-22)(    )

**081. -- 089. (RESERVED)**

**090. TRESPASS.**

**01. Loss or Waste.** The lessee must use the ~~property within the~~ leased lands in ~~such a~~ manner ~~as that~~ will best protect the state of Idaho against loss or waste.

(    )

**02. Trespass.** Unauthorized activities occurring on ~~state~~ endowment ~~trust~~ land are considered trespass; these include dumping of garbage, constructing improvements without a permit, and other unauthorized actions.

(3-18-22)(    )

**023. Civil Action by Lessee.** The lessee is encouraged to take civil action against owners of trespass livestock on ~~state~~ endowment ~~trust~~ lands to recover damages to the lessee for lost forage or other values incurred by the lessee.

(3-18-22)(    )

**034. Continuing Trespass.** When continued trespass causes resource damage, the Department will initiate proceedings to restrict further trespass and recover damages as necessary.

(3-18-22)

**045. Trespass Claims.** Trespass claims initiated by the Department will be assessed as triple the current State AUM rate for forage taken.

(3-18-22)

**091. -- 099. (RESERVED)**

**100. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS.**

**01. Prior Written Approval.** The lessee must secure the Department's written approval ~~of the~~

~~Department~~ prior to constructing any improvements or buildings, or clearing any ~~state~~ endowment ~~trust~~ land. Failure to secure such approval eliminates any right to an improvement credit and may, at the Department's discretion, be deemed a material breach of the ~~L~~ease and ~~be~~ cause for cancellation. Any arrangement for cost sharing or improvement crediting will be identified in the improvement permit. Routine farming practices identified in a farm plan will not require prior approval. (3-18-22)( )

**02. Maintenance.** ~~All~~ The lessee must maintain authorized improvements ~~must be maintained in so that they are in a functional condition by the lessee.~~ The lessee may be required to remove or reconstruct improvements in poor or non-serviceable condition. Existing maintenance agreements on lands acquired from the federal government remain in effect until amended by the parties involved. If maintenance is not being accomplished, the Department will provide a certified letter to the lessee informing the lessee of the rule violation. If work is not begun within thirty (30) days of the letter being sent, the Department may contract repairs and add the amount to the annual rental. (3-18-22)( )

**03. Bond.** The Department may, as it deems necessary, require the lessee to furnish a bond prior to constructing improvements ~~as deemed necessary~~ to protect endowment assets or to ensure performance under the ~~L~~ease. (3-18-22)( )

#### **101. IMPROVEMENT CREDIT.**

**01. Sale or Auction.** In the event of sale of the ~~state~~ leased endowment ~~trust~~ land ~~covered under the lease~~ or if the existing lessee is not the successful bidder at the auction of the lease, the creditable value of the authorized improvements, as determined by the Department, will be paid to the former lessee by the Department or the purchaser where a sale occurs or by the successful bidder where a new lease is issued. (3-18-22)( )

**02. Exchange.** In the event of exchange of the ~~state~~ leased endowment ~~trust~~ land ~~covered under the lease~~, the creditable value of authorized improvements, as determined by the Department, will be paid to the former lessee by the acquiring party, if other than the existing lessee. (3-18-22)( )

**03. Crediting.** Improvement credit may be allowed when the Department determines that such credit would further the objective of maximizing long-term financial return to trust beneficiaries and if the improvements are: (3-18-22)( )

- a. Authorized in writing by the Department or lacking written authorization, but in existence prior to 1970; (3-18-22)
- b. Not expressly permitted "for lessee's benefit only"; and (3-18-22)
- c. Maintained during the ~~L~~ease term. (3-18-22)( )

**04. Value Only to Lessee.** Where improvements are approved, but due to their nature, are not acceptable to receive improvement credit because no value exists for a future lessee, a notation will be made in the permit, "For lessee's benefit only." If the succeeding lessee or assignee chooses not to purchase the non-creditable improvements, the former lessee will be required to remove them. (3-18-22)

**05. Maintenance Costs.** Maintenance of improvements will be considered a normal cost of doing business and no improvement credit will be allowed, except that, with prior written approval from the Department, improvement crediting may be allowed for materials used for the maintenance of Department-funded improvements. (3-18-22)

**06. Unauthorized Improvements.** No credit will be allowed for unauthorized improvements. At the discretion of the Department, the lessee may be required to remove unauthorized improvements. (3-18-22)

**07. Cost Sharing.** Federal or state cost-share amounts are not included in the allowable improvement credit. (3-18-22)

#### **102. VALUATION OF IMPROVEMENTS.**

Credited improvements will be valued ~~on the basis of~~ based on replacement cost, including lessee provided labor, equipment and materials, less depreciation based on loss of utility. Improvements cannot be appraised higher than current market value, regardless of lessee's cost. Any improvement ~~with~~ with amortization or cost limitations identified by the Department will be considered in determining a final value. (3-18-22)(    )

**01. Applicant Review of Department Improvement Credit Valuation.** All applicants for a conflicted lease will be provided a copy of the Department's improvement credit valuation for review and a notice of objection form. Any applicant objecting to the appraisal will have twenty-one (21) days from the date of the valuation mailing to submit the notice of objection form to the Department. If no objections are received during the twenty-one (21) day review period, the lease auction will be scheduled and will proceed using the Department's improvement credit valuation. (3-18-22)

**02. Failure to File a Timely Notice of Objection.** Failure to submit a notice of objection within the specified twenty-one (21) day period will preclude any applicant from further administrative remedies ~~and the auction will proceed using the Department's improvement credit valuation.~~ (3-18-22)(    )

**03. Notice of Objection.** Any applicant objecting to the Department improvement credit valuation must submit ~~a complete and timely notice of objection form, and payment of~~ with the completed, and timely, notice of objection for a payment of two thousand five hundred dollars (\$2,500) or ten percent (10%) of the total Department improvement credit valuation whichever is greater, to pay for an independent third party. Within five (5) days of receipt of the notice of objection, the Department will notify all applicants in writing that an objection has been received and provide them with a list of certified appraisers. (3-18-22)(    )

**04. Selection of an Independent Third Party.** The applicants will have twenty-one (21) days from the date of the Department's notification of an objection to select by mutual agreement, one individual from the list of certified appraisers to serve as an independent third party. If the applicants cannot agree on an independent third party within the twenty-one (21) day time period, the Department will randomly select one individual from the list to serve as the independent third party. (3-18-22)

**05. Duties of the Independent Third Party.** The independent third party will review the Department improvement credit valuation and alternate valuations provided by the applicants. ~~Following this review, the independent third party will select from among the Department valuation and alternate valuations, the one value that~~ she from those determines ~~is to be~~ is to be the most accurate value of the improvements, ~~and will.~~ The independent third party will notify the Department of this value in writing. (3-18-22)(    )

**06. Notification of Final Improvement Value.** Within five (5) days of receiving the independent third party's final determination of improvement credit value, the Department will mail ~~to~~ each applicant an auction notice that will reference the independent third party's determined value of improvements. The determination by the independent third party of the improvement value will be deemed final, and the appraised value of improvements will not be allowed as a basis for appeal of the auction. (3-18-22)(    )

**103. -- 104. (RESERVED)**

**105. CONFLICT AUCTIONS.**

**01. Two or More Applicants.** When two (2) or more eligible applicants apply to lease the same ~~state~~ state endowment ~~trust~~ land for grazing, farming, or conservation, ~~nonecommercial recreation, or communication site~~ purposes and the Department determines the proposed uses are not compatible, the Department will hold an auction. (3-18-22)(    )

**02. Minimum Bid.** Bidding begins at two hundred fifty dollars (\$250) or the cost of preparing any required ~~improvement~~ improvement ~~Credit~~ Credit ~~Valuation~~ Valuation in connection with the expiring ~~lease~~ lease, whichever is greater. (3-18-22)(    )

**03. Auction Bidding.** Each applicant who appears in person or by proxy at the time and place so designated in ~~said~~ the ~~the~~ the auction notice and bids for the lease is deemed to have participated in the auction. A proxy must be authorized by the lease applicant in writing prior to the start of the auction. (3-18-22)(    )

**04. Withdrawal Prior to or Failure to Participate in an Auction.** Applicants who either withdraw their applications after accepting the Department offered lease ~~per Subsection 020.02 of this rule~~ and ~~prior to~~ before the auction that results in no need to schedule an auction or cancellation of a scheduled auction; or applicants who fail to participate at the auction by not submitting a bid which results in only one (1) participant at the scheduled auction, forfeit an amount equal to the ~~lesser~~ greater of the following: (3-18-22)(    )

- a. The Department's cost of making any required improvement credit valuation; (3-18-22)
- b. For existing lessee applicants, any improvement credit payment that would otherwise be due if not awarded the lease; or (3-18-22)
- c. For conflict applicants, the rental deposit made. (3-18-22)

**05. High Bid Deposit.** The high bidder ~~is required to~~ must submit payment in the amount of the high bid at the conclusion of the auction. (3-18-22)(    )

**06. Auction Procedures.** The Department will prescribe the procedures for conducting conflicted lease auctions. (3-18-22)

**07. Withdrawal After Auction.** (3-18-22)

a. If the high bidder withdraws or refuses to accept the lease, the Department retains the high bid payment ~~will be retained by the Department.~~ (3-18-22)(    )

i. If the auction involved only two (2) participants, the second high bidder will be awarded the lease. (3-18-22)

ii. If the auction involved more than two (2) participants, the lease will be reauctioned. (3-18-22)

b. If an auction bidder, other than the high bidder, withdraws a bid before ~~Land Board review and~~ action on the auction results, no adjustment will be made in the payment deposited by the high bidder. (3-18-22)(    )

**106. BOARD REVIEW OF AUCTION.**

The Board will review the proposed leases and auction results and make the determination required under Section 58-310, Idaho Code, consistent with its obligations under Article ~~IX~~ 9, Section 8 of the Idaho Constitution and all relevant statutory provisions. (3-18-22)(    )

**107. -- 110. (RESERVED)**

**111. NOXIOUS WEED CONTROL.**

**01. Weed Control.** The lessee must cooperate with the Department, or any other authorized agency, to undertake programs for control or eradication of noxious weeds on ~~state~~ endowment ~~trust~~ land. The lessee will take measures to control noxious weeds on the leased ~~state~~ endowment ~~trust~~ land in accordance with Title 22, Chapter 24, Idaho Code. (3-18-22)(    )

**02. Responsibility.** The lessee will not be held responsible for the control of noxious weeds resulting from other land management activities such as temporary permits, easements, special leases and timber sales. Control of noxious weeds on state grazing lands will be shared by the lessee and Department, with the Department's share subject to funds appropriated for that purpose. (3-18-22)(    )

**112. LIVESTOCK QUARANTINE.**

**01. Cooperation.** The lessee must cooperate with the state ~~and~~ and federal agency responsible for the control of livestock diseases. (3-18-22)(    )

**02. Non-Compliance.** Non-compliance with state~~/~~or federal regulations will be considered a lease violation and may result in cancellation of the lease. (3-18-22)(    )

**113. ANIMAL DAMAGE CONTROL.**

The lessee may request the services of USDA Animal and Plant and Health Inspection Service-Wildlife Services to remove animals causing crop damage or harassing/killing the lessee's livestock. The Department is not liable for any consequence from any animal control actions. (3-18-22)

~~**114. LIABILITY (INDEMNITY).**~~

~~The lessee must indemnify and hold harmless the state of Idaho, its departments, agencies and employees for any and all claims, actions, damages, costs and expenses which may arise by reason of lessee's occupation of the leased state endowment trust land, or the occupation of the leased parcel by any of the lessee's agents or by any person occupying the same with the lessee's permission. (3-18-22)~~

**114. (RESERVED)**

**115. RULES AND LAWS OF THE STATE.**

The lessee must comply with all applicable rules, regulations and laws of the state of Idaho and the United States insofar as they affect the use of the state endowment trust lands described in the lease. (3-18-22)

**116. -- 999. (RESERVED)**

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**  
**20.03.15 – RULES GOVERNING GEOTHERMAL LEASING ON IDAHO STATE LANDS**  
**DOCKET NO. 20-0315-2401 (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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1, 2025, in the year of the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 58-104(6) and 58-105, Idaho Code.

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

The Idaho Department of Lands initiated this rulemaking in compliance with [Executive Order 2020-01: Zero-Based Regulation](#) with the goal of simplifying and streamlining the rules for increased clarity and ease of use. There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 3, 2024, Idaho Administrative Bulletin, [Vol. 24-7, pages 130-145](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature.

No changes have been made to any fees in this pending rule. The application fee (\$250) and assignment fee (\$150) remain the same. Rule language regarding late payment was removed to allow the Department to be consistent with statute as to how late fees are assessed.

**FISCAL IMPACT:** There is no negative fiscal impact on the state General Fund resulting from this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Mike Murphy at (208-334-0290 or [mmurphy@idl.idaho.gov](mailto:mmurphy@idl.idaho.gov)).

DATED this 20th day of August, 2024.

Mike Murphy  
Minerals Program Manager  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
P.O. Box 83720 Boise, Idaho 83720-0050  
Phone: (208)334-0290  
Fax: (208)334-3698  
[rulemaking@idl.idaho.gov](mailto:rulemaking@idl.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 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 July 17th, 2024.

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](#) with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

**FEE SUMMARY:** No changes have been made to any fees in this proposed rule. The application fee (\$250) and assignment fee (\$150) remain the same. Rule language regarding late payment was removed to allow the Department to be consistent with statute as to how late fees are assessed.

**FISCAL IMPACT:** There is no negative fiscal impact on the state General Fund resulting from this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the March 6, 2024, Idaho Administrative Bulletin, [Vol. 24-3, pages 18-19](#).

**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 with technical questions concerning the proposed rule, contact Mike Murphy at (208) 334-0290 or [mmurphy@idl.idaho.gov](mailto:mmurphy@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 July 24, 2024.

DATED this 3rd day of June, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 20-0315-2401**



20.03.15 – RULES GOVERNING GEOTHERMAL LEASING ON IDAHO STATE LANDS

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Sections 58-104(1), 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code; and Section 58-307, Idaho Code; Title 47, Chapter 7, Idaho Code; Title 47, Chapter 16, Idaho Code; and Title 67, Chapter 52, Idaho Code. (3-18-22)( )

001. ~~TITLE AND SCOPE.~~

~~01. Title. These rules are titled IDAPA 20.03.15, “Rules Governing Geothermal Leasing on Idaho State Lands.” (3-18-22)~~

~~021. Scope. These rules apply to the exploration and extraction of any and all geothermal resources situated in state-owned mineral lands. (3-18-22)( )~~

~~032. Other Laws. In addition to these rules, the Lessee must comply with all applicable federal, state and local laws, rules and regulations. The violation of violating any applicable law, rule, or regulation constitutes a breach of any lease issued in accordance with these rules. (3-18-22)( )~~

002. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final agency action will be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code; IDAPA 20.01.01; and Title 47, Chapter 16, Idaho Code. (3-18-22)( )

003. -- 009. (RESERVED)

010. DEFINITIONS.

The terms Mineral Lands, Mineral Rights, and Mineral are defined in Section 47-701, Idaho Code. The term Casual Exploration and Motorized Exploration are defined in Section 47-703A, Idaho Code. The term Geothermal Resource is defined in Section 47-1602, Idaho Code. In addition to the identified definitions in Idaho Code, the following definitions apply to these rules: ( )

01. Associated By-Products or By-Product: (3-18-22)

a. Any mineral(s) or minerals (exclusive of excluding oil, hydrocarbon gas, any other hydrocarbon compound, and helium) that are found in solution or developed in association with geothermal resources; or (3-18-22)( )

b. Demineralized or mineralized water found or developed in association with Geothermal Resources. (3-18-22)( )

02. Board. The Idaho State Board of Land Commissioners or its designee. (3-18-22)

~~03. Casual Exploration. Casual exploration means entry and/or exploration that does not appreciably disturb or damage the land or resources thereon. Casual exploration includes, but is not limited to, geochemical and/or geophysical exploration techniques, sampling with hand tools, and entry using wheeled vehicles for transportation to conduct such exploration. (3-18-22)~~

043. Completion. A well is considered to be completed thirty (30) days after drilling operations have ceased and the drill rig is removed from the premises or thirty (30) days after the initial production or injection test has been completed, whichever occurs last first. (3-18-22)( )

054. Department. The Idaho Department of Lands or its designee. (3-18-22)( )

065. Director. The director of the Idaho Department of Lands or his their designee. (3-18-22)( )

~~07. Direct Use.~~ The use of geothermal resources for direct applications, including, but not limited to, road surface heating, resorts, hot spring bathing and spas, space heating of buildings, recreation, greenhouse warming, aquaculture, or industrial applications where geothermal heat is used in place of other energy inputs. (3-18-22)

~~086. Electrical Power Generation.~~ The use of ~~g~~Geothermal ~~r~~Resources to either directly generate electricity or to heat a secondary fluid and use it to generate electricity. (3-18-22)(    )

~~097. Field.~~ A geographic area overlying a ~~geothermal system~~ geologic setting with ~~one (1) or more~~ ~~g~~Geothermal ~~reservoirs~~ Resource(s) or pool(s), including any porous, permeable geologic layer, that may be formed along one (1) fault or fracture, or a series of connected faults or fractures. (3-18-22)(    )

~~10. Geothermal Resources.~~ The natural heat energy of the earth, the energy, in whatever form, that may be found in any position and at any depth below the surface of the earth present in, resulting from, or created by, or that may be extracted from such natural heat, and all minerals in solution or other products obtained from the material medium of any geothermal resource. When used without restriction, it includes associated by products. (3-18-22)

~~108. Lease.~~ A lease covering the geothermal resources and associated by products in state lands written agreement between the Department and a Person containing the terms and conditions upon which the Person will be authorized to use State Lands. (3-18-22)(    )

~~1209. Lessee.~~ The ~~p~~Person to whom a geothermal ~~H~~Lease has been issued and ~~his~~ their successor in interest or assignee. It also means any agent of the Lessee or an ~~o~~Operator holding authority by or through the Lessee. (3-18-22)(    )

~~130. Market Value.~~ The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which the property or commodity should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. (3-18-22)

~~14. Motorized Earth Moving Equipment.~~ Backhoes, bulldozers, front loaders, trenchers, core drills, drill rigs, power augers, and other similar equipment. (3-18-22)

~~151. Navigable Water Courses.~~ The state-owned beds of active lakes, rivers, and streams ~~that do not include formerly submerged lands where the state retains ownership,~~ excluding formerly submerged public lands. (3-18-22)(    )

~~162. Operator.~~ The ~~p~~Person having control or management of operations on the leased lands or a portion thereof. The ~~o~~Operator may be the Lessee, designated operator, or agent of the Lessee, or holder of rights under an approved operating agreement. (3-18-22)(    )

~~173. Overriding Royalty.~~ An interest in the ~~g~~Geothermal ~~r~~Resource produced at the surface free of any cost of production. It is a royalty in addition to the royalty reserved to the ~~s~~State. (3-18-22)(    )

~~184. Person.~~ Any natural person, corporation, association, partnership, or other entity recognized and authorized to do business in Idaho, receiver, trustee, executor, administrator, guardian, fiduciary, or other representatives of any kind, and includes any government or any political subdivision of any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter genders Any individual, corporation, partnership, limited liability company, association, trust, unincorporated organization or other legal entity qualified to do business in the state of Idaho, and any federal, state, county, or local unit of government. (3-18-22)(    )

~~195. Record Title.~~ The publicly recorded ~~H~~Lease that ~~is the~~ evidences ~~of the~~ right that a ~~p~~Person has to the possession of the leased property. (3-18-22)(    )

~~2016. Reservoir or Pool.~~ A porous, permeable geologic layer containing ~~g~~Geothermal ~~r~~Resources.

(3-18-22)( )

**217. Shut In.** To close the valves at the wellhead so that the well stops flowing or producing. Also describes a well on which the valves have been closed. (3-18-22)

**2218. State Lands.** Without limitation, lands in which the title to the ~~m~~Mineral ~~r~~Rights are owned by the state of Idaho and are under the jurisdiction and control of the Board or ~~under the jurisdiction and control of~~ any other state body or agency, having been obtained from any source and by any means whatsoever, including the beds ~~and banks~~ of navigable waters of the state of Idaho. (3-18-22)( )

**2319. Waste.** Any physical loss of ~~g~~Geothermal ~~r~~Resources including, ~~but not limited to:~~ (3-18-22)( )

a. Underground loss of ~~g~~Geothermal ~~r~~Resources resulting from inefficient, excessive, or improper use, or dissipation of geothermal energy, or of any ~~g~~Geothermal ~~r~~Resource ~~p~~Pool, ~~r~~Reservoir, or other source; ~~or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner that results, or tends to result in, reducing the quantity of geothermal energy to be recovered from any geothermal area in the state;~~ (3-18-22)( )

b. ~~The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well.~~ Underground loss of Geothermal Resources resulting from the locating, spacing, constructing, equipping, operating, or producing of any well in a manner which results in inefficient, excessive or improper use or dissipation of the quantity of geothermal energy to be recovered; (3-18-22)( )

c. The inefficient above-ground transporting or storage of geothermal energy; ( )

d. The inefficient above-ground locating, spacing, equipping, operating, or producing of any well, including injection well, in a manner causing unnecessary or excessive surface loss or destruction of geothermal energy; or ( )

e. The escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development of or production from a well. ( )

## 011. ABBREVIATIONS.

01. IDWR. Idaho Department of Water Resources. (3-18-22)

## 012. -- 019. (RESERVED)

## 020. QUALIFIED APPLICANTS AND LESSEES.

Any ~~p~~Person legally competent to contract may submit an application to lease ~~s~~State ~~l~~and provided such ~~p~~Person ~~is not then in default of~~ does not have any contract in default with the state of Idaho or any department or agency thereof. (3-18-22)( )

## 021. LEASE AWARD THROUGH AUCTION.

If more than one (1) application is received for geothermal development on the same parcel of land, a lease auction will be held. (3-18-22)

## 022. -- 029. (RESERVED)

## 030. TERMLEASE PROVISIONS.

~~01. Lease Term.~~ Lease Term. All leases may be for a term of up to forty nine (49) years from the effective date of the lease. (3-18-22)

**021. Diligence in Utilization.** Lessee will use due diligence to market or utilize ~~g~~Geothermal ~~r~~Resources in paying quantities. If leased land is capable of producing ~~g~~Geothermal ~~r~~Resources in paying quantities, but production is shut-in, the ~~l~~Lease will continue in force upon payment of rentals for the duration of the ~~l~~Lease term or two (2) years after shut-in, whichever is shorter. If the Department determines that the Lessee is proceeding diligently to acquire a contract to sell or to utilize the production or is progressing with installations needed for production, the ~~l~~Lease may continue in force for one (1) additional year if rental payments are kept current. The Department will continue to review a shut-in ~~l~~Lease every year until production and payment of royalties takes place, or the ~~l~~Lease is terminated for Lessee's lack of due diligence or surrendered by the Lessee. (3-18-22)(    )

**032. Yearly Reporting.** A report of all exploration, development, and production activities must be submitted to the Department at the close of each ~~l~~Lease year. (3-18-22)(    )

031. -- 034. (RESERVED)

**035. RENTALS.**

**01. Advance Annual Rental.** Lessee will pay ~~to~~ the Department, in advance, ~~each year an~~ yearly annual rental. The annual rental for the first year of the Lease's term will be ~~due and payable and will be received by the Department, paid to the Department within thirty (30) days of the date of notice of Lease approval or award.~~ Together with the payment, the Lessee must submit a lease agreement that it executed ~~by Lessee within thirty (30) days of the date of notice of approval or award.~~ Second year and subsequent rental payments must be received by the Department ~~on or before the anniversary date of the lease~~ before the Lease's anniversary date. (3-18-22)(    )

**02. Amount.** Annual rentals will be set by the Board through competitive bidding, negotiation, fixed amounts, formulas, or some other method of valuation that a prudent investor might reasonably apply to establish such rental amounts. (3-18-22)

**036. ROYALTIES.**

**01. Royalty Payments.** The Lessee will ~~cause to be paid to~~ pay the Department royalties on the value of geothermal production from the leased ~~premises lands.~~ The royalty rate will be established ~~by the Board based on the market value of the geothermal resources produced from the lands under lease. The royalties specified in geothermal leases will be fixed in any manner by the Board, including but not limited to competitive bidding, negotiation, fixed amounts, or formulas per Section 47-1605(2), Idaho Code.~~ Royalty rates may be adjusted through ~~out the term of the lease in order~~ the Lease's term to keep pace with ~~m~~Market ~~v~~Values. When ~~l~~Leases are issued, the following guidelines will be used for royalty rates not subject to competitive bidding: (3-18-22)(    )

a. A royalty of ~~between at least~~ at least five percent (5%) ~~and twenty percent (20%)~~ of the amount or value of ~~g~~Geothermal ~~r~~Resources, or any other form of heat or energy excluding ~~e~~Electrical ~~p~~Power ~~g~~eneration, derived from production under the ~~l~~Lease and sold or utilized by the Lessee or reasonably susceptible to sale or utilization by the Lessee; (3-18-22)(    )

b. A royalty of ~~between at least~~ at least two percent (2%) ~~and fifteen percent (15%)~~ of the amount or value of any ~~a~~Associated ~~b~~By-~~p~~Product derived from production under the ~~l~~Lease and sold or utilized or reasonably susceptible of sale or utilization by the Lessee, including commercially demineralized water, ~~and;~~ (3-18-22)(    )

c. A royalty of ~~between at least~~ at least two percent (2%) ~~and five percent (5%)~~ of gross receipts for sale of electrical power. (3-18-22)(    )

**02. Calculation of Value.** The value of geothermal production from the leased ~~premises lands~~ for the purpose of computing royalties is based on a total of the following: (3-18-22)(    )

a. The total consideration accruing to the Lessee from the sale of ~~g~~Geothermal ~~r~~Resources to another party in an arms-length transaction; and (3-18-22)(    )

b. The value of the end product attributable to the ~~g~~Geothermal ~~r~~Resource produced from a particular

~~H~~Lease where ~~g~~Geothermal ~~r~~Resources are not sold by the Lessee before being utilized, but are instead directly used in manufacturing power production, or other industrial activity; and (3-18-22)(\_\_\_\_)

c. The value of all renewable energy credits or similar incentives based on a proportionate share of the leased lands in the entire project area qualifying for the credits. (3-18-22)

**03. Due Date.** Royalties will be due and payable monthly to the Department on or before the last day of the calendar month following the month in which the ~~g~~Geothermal ~~r~~Resources and/or their ~~a~~Associated ~~b~~By-~~p~~Products are produced and utilized or sold. (3-18-22)(\_\_\_\_)

**04. Utilization of Geothermal Resources.** The Lessee, within thirty (30) days of execution, must file with the Department ~~within thirty (30) days after execution~~ a copy of any contract for the utilization of ~~g~~Geothermal ~~r~~Resources from the ~~H~~Lease. Unless otherwise authorized, in writing, by the Department, ~~R~~reports of sales or utilization by Lessee and royalty for each productive ~~H~~Lease must be filed ~~each month~~ monthly once production begins, even though production may be intermittent, ~~unless otherwise authorized by the Department.~~ The report must include Ttotal volumes of ~~g~~Geothermal ~~r~~Resources produced and utilized or sold, including ~~a~~Associated ~~b~~By-~~p~~Product(s), the value of production, and the royalty due to the state of Idaho ~~must be shown.~~ This ~~The~~ report is due on or before the last day of the month following the month in which production was obtained and sold or utilized, together with the royalties due to the state of Idaho. (3-18-22)(\_\_\_\_)

**05. Measurement.** The Lessee will measure ~~or gauge~~ all production in accordance with Department approved ~~approved by the Department~~ methods. The quantity and quality of all production will be determined in accordance with the standard practices, procedures, and specifications generally used in industry. All measuring equipment must be tested consistent with industry practice and, if found defective, the Department will determine the quantity and quality of production from the best evidence available. (3-18-22)(\_\_\_\_)

**06. By-Product Testing.** The Lessee ~~will periodically~~ must furnish the Department the results of periodic tests consistent with industry practice showing the content of ~~b~~By-~~p~~Products in the produced ~~g~~Geothermal ~~r~~Resources. ~~Such tests will be taken as specified by the Department and by the method of testing approved by him, except that tests not consistent with industry practices will be conducted at the expense of the Department. The Department may require additional tests be taken at Lessee's expense. Any additional tests which are not consistent with industry practices will be conducted at the expense of the Department.~~ (3-18-22)(\_\_\_\_)

**07. Commingling Pooling.** The Department may authorize a Lessee to ~~commingle~~ pool production from wells on ~~his~~ their State ~~H~~Lease(s) with production from non-state lands. Department approval of ~~commingling~~ pooling will not be unreasonably withheld, and will consider the following: (3-18-22)(\_\_\_\_)

a. The ~~e~~Operator's economic necessity of ~~commingling~~ pooling; (3-18-22)(\_\_\_\_)

b. The type of geothermal use proposed for the ~~commingled~~ pooled waters; and (3-18-22)(\_\_\_\_)

c. Sufficient measurement and accounting of all the ~~commingled~~ pooled waters to ensure that the Department is appropriately compensated by royalties. (3-18-22)(\_\_\_\_)

037. -- 039. (RESERVED)

#### 040. SIZE OF A LEASABLE TRACT.

**01. Surface Area.** Geothermal ~~H~~Leases are not limited in surface area. The Board will determine the surface area of a ~~H~~Lease after consultation with other state agencies and prospective Lessees. The probable extent of a geothermal ~~r~~Reservoir, the surface area needed for a viable project, and other relevant factors will be used to help determine ~~H~~Lease surface area. (3-18-22)(\_\_\_\_)

**02. Navigable Water Courses.** Geothermal ~~r~~Resources ~~H~~Leases may be issued for ~~s~~State ~~H~~Lands underlying ~~n~~Navigable ~~w~~Water ~~e~~Courses ~~in Idaho~~. Such lands are considered ~~"s~~State ~~H~~Lands" and will be leased in accordance with these rules. Operations in the beds of ~~n~~Navigable ~~w~~Water ~~e~~Courses will not be authorized except in necessary circumstances and then only with the Board's express written approval ~~of the Board and~~ upon such

conditions and security as the Department deems appropriate.

(3-18-22)( )

**041. -- 049. (RESERVED)**

**050. LAND SURFACE USE RIGHTS AND OBLIGATIONS.**

**01. Use and Occupancy.**

(3-18-22)

a. Lessee will be entitled to use and occupy only so much of the surface of the leased lands as may be required for all purposes reasonably incident to exploration, ~~for, drilling for, production and marketing or drilling, producing, or marketing for~~ gGeothermal rResources and aAssociated bBy-pProducts produced from the leased lands, including the right to construct and maintain thereon all works, buildings, plants, waterway, roads, communication lines, pipelines, reservoirs, tanks, pumping stations or other structures necessary to the full enjoyment and development thereof, consistent with Department approved plan of operations and amendments, ~~thereto, as approved by the Department if amended.~~ (3-18-22)( )

b. Uses occurring on the leased area related to exploration, development, production, or marketing of gGeothermal rResources and aAssociated bBy-pProducts ~~produced from off lease lands may require the Lessee to pay additional rent.~~ (3-18-22)( )

~~**02. Supervision.** Uses of state lands within the jurisdiction and control of the Board are subject to the supervision of the Department. Other state lands are subject to the supervision of the appropriate state agency consistent with these rules.~~ (3-18-22)

~~**03. Distance from Residence.** No well may be drilled within two hundred (200) feet of any house or barn on the premises leased lands, without the written consent of the Department and its surface Lessees, grantees, or contract purchasers.~~ (3-18-22)( )

~~**04. Disposal of Leased Land.** The Board reserves the right to sell or otherwise dispose of the Leased Land's surface ~~of the lands embraced with a lease, insofar as said to the extent that the~~ surface is not necessary for the Lessee's use ~~of the Lessee~~ in the exploration, development, and production of the gGeothermal rResources and aAssociated bBy-pProducts, ~~but aAny sale disposal~~ of surface rights made subsequent to ~~execution~~ executing of a Lease will be subject to all of that Lease's the terms and provisions ~~of that lease during the life thereof for the Lease's duration.~~ (3-18-22)( )~~

~~**05. Damage.** Lessee must pay ~~to~~ the Board, its surface Lessees or grantees, or contract purchasers, for any damage done to the surface of said lands and improvements thereon, including without limitation growing crops, by reason of Lessee's operations.~~ (3-18-22)( )

**051. -- 053. (RESERVED)**

**054. EXPLORATION UNDER THE LEASE.**

**01. Diligent Exploration.** Lessees must perform diligent exploration and development activities in the first five (5) years of the initial Lease term or as otherwise extended by Lease provision. Diligent exploration includes seismic, gravity, and other geophysical surveys, geothermometry studies, drilling temperature gradient wells, or similar activities that seek to determine the presence or extent of gGeothermal rResources. This exploration may occur off of leased lands if it is being done on the same geothermal rField. Failure to perform diligent exploration as described may result in Lease cancellation. (3-18-22)( )

~~**02. Casual Exploration.** At any time after formal approval by the Board of a lease application, Lessee may enter upon the leased lands for casual exploration or inspection without notice to the department. As an express condition of an application to lease and of the right of casual inspection without notice, Lessee agrees to the indemnity conditions provided in Section 102 of these rules without a formally executed lease.~~ (3-18-22)

~~**03. Plan Required.** Lessee must submit a Research and Analysis Plan to the Department before any exploration using motorized equipment or before otherwise engaging in operations that may lead to an appreciable~~

~~disturbance or damage to lands, timber, other resources, or improvements on or adjacent to the~~ Motorized Exploration on leased lands. The proposed activities may not start until the Department approves the plan and the applicable ~~preconditions in Sections 100 and 101 of these rules~~ have been satisfied. The plan of operations may be amended as needed with Department approval. The plan includes all items that the Department deems necessary or useful in managing the ~~g~~Geothermal ~~r~~Resources including, ~~but not limited to, the following:~~ (3-18-22)( )

~~a.~~ A narrative statement describing all diligent exploration activities that Lessee will conduct, including the type; location; expected impact, disturbance, or damage to the land or existing natural resources; and schedule of all proposed or planned diligent exploration. ( )

~~a~~b. A narrative statement describing the proposed measures to be taken for protection of the environment, including, but not limited to the prevention or control of: (3-18-22)

- i. Fires; (3-18-22)
- ii. Soil loss and erosion; (3-18-22)
- iii. Pollution of surface and ground waters; (3-18-22)
- iv. Damage to fish and wildlife or other natural resources; (3-18-22)
- v. Air and noise pollution; and (3-18-22)
- vi. Hazards to public health and safety during ~~H~~Lease activities. (3-18-22)( )

~~b~~c. All pertinent information or data that the ~~d~~Department may require to support the plan of operations for the utilization of ~~g~~Geothermal ~~r~~Resources and the protection of the environment; (3-18-22)( )

d. A proposed schedule, which includes major milestones with sufficient detail to assess progress. ( )

## 055. DEVELOPMENT AND PRODUCTION UNDER THE LEASE.

**01. Diligent Development of Lease and Production.** Lessee must develop the ~~g~~Geothermal ~~r~~Resources on their leased ~~d~~area lands for the Lease's duration and start production within the first ten (10) years of the initial ~~H~~Lease term or as otherwise extended by ~~H~~Lease provision. Development of the leased ~~d~~area lands requires ~~drilling wells to be drilled and constructing other necessary infrastructure to be built to enable production.~~ Production on the leased ~~d~~area lands means that ~~g~~Geothermal ~~f~~luids ~~R~~esources are being used and royalties are being paid to the ~~s~~State. Failure to develop ~~under~~ the ~~H~~Lease and start production as described may result in ~~H~~Lease cancellation unless the Lessee applies to the Department, ~~for and the Department grants~~ an extension ~~and the extension is granted.~~ (3-18-22)( )

**02. Best Practices.** All operations will conform to the best practice and engineering principles in use in the industry. Operations must be conducted in such a manner as to: protect the natural resources on the leased lands, including without limitation ~~g~~Geothermal ~~r~~Resources, ~~and to:~~ result in the maximum ultimate recovery of ~~g~~Geothermal ~~r~~Resources with ~~a minimum of minimal~~ waste; and be consistent with the principles of the ~~land's use of the land~~ for other purposes and of the protection of the environment. Lessee must promptly remove from the leased lands or store, in an orderly manner, all scraps or other materials not in use and not reasonably incident to the operation. (3-18-22)( )

**03. Plans Required.** Prior to development, Lessee must submit a ~~D~~development ~~P~~plan, ~~O~~perating ~~P~~plan, and ~~D~~decommissioning and ~~R~~reclamation ~~P~~plan for the leased lands. All plans must be approved by the Department, in writing, prior to Lessee beginning a phase of the ~~H~~Lease in which those plans are performed or as otherwise required by the ~~H~~Lease. ~~All required p~~Plans must include all items that the Department deems necessary or useful in managing the ~~g~~Geothermal ~~r~~Resources, including, ~~but not limited to, those the~~ items referred to in ~~Paragraphs Sections~~ 054.03.a. and 054.03.b. ~~of these rules.~~ (3-18-22)( )

- 04. Waste and Damage.** (3-18-22)
- a.** Lessee must take all reasonable precautions to prevent the following: (3-18-22)
- i.** Waste; (3-18-22)
- ii.** Damage to other natural resources; (3-18-22)
- iii.** Injury or damage to ~~p~~Persons, real or personal property; and (3-18-22)(    )
- iv.** Any environmental pollution or damages that may constitute a violation of state or federal laws. (3-18-22)
- b.** The Department may inspect Lessee's operations and issue ~~such any orders as are~~ necessary to accomplish the purposes in ~~Paragraph Section~~ 055.04.a. Any significant effect on the environment created by the Lessee's operations or failure to comply with environmental standards must be reported to the Department by Lessee within twenty-four (24) hours and confirmed in writing within thirty (30) days. (3-18-22)(    )

**05. Notice of Production.** Lessee must notify the ~~d~~DePARTMENT within sixty (60) days before any ~~g~~Geothermal ~~r~~Resources are used or removed for commercial purposes. (3-18-22)(    )

**06. Amendments.** ~~Lessee may amend T~~he plan of operations ~~must be amended by the Lessee for the Department's approval and submit it to the Department for written approval~~ to reflect changes in operations on the leased lands, including the installation of works, buildings, plants, or structures for the production, marketing, or utilization of ~~g~~Geothermal ~~r~~Resources. (3-18-22)(    )

**056. WASTE PREVENTION, DRILLING AND PRODUCTION OBLIGATIONS.**

**01. Waste.** All ~~H~~Leases are subject to the condition that the Lessee will, in conducting ~~his~~ exploration, development, and ~~producing production~~ operations, use all reasonable precautions to prevent ~~w~~Waste of ~~g~~Geothermal ~~r~~Resources and other natural resources found or developed in the leased lands. (3-18-22)(    )

**02. Diligence.** The Lessee must, subject to the right to surrender the ~~H~~Lease, diligently drill and produce, or unitize such wells as are necessary to protect the Board from loss by reason of production on other properties. (3-18-22)(    )

**03. Prevention of Waste Through Reinjection.** ~~Geothermal~~ Lessees must return geothermal waters to the geothermal aquifer in a manner that supports geothermal development. (3-18-22)(    )

**04. Additional Requirements.** The selection of the types and weights of drilling fluids and provisions for controlling fluid temperatures, blowout preventers, and other surface control equipment and materials, casing and cementing programs, etc., to be used must be based on sound engineering principles and must take into account apparent geothermal gradients, depths and pressures of the various formations to be penetrated, and other pertinent geologic and engineering data and information about the area. In addition, the Lessee must ~~do the following:~~ (3-18-22)(    )

- a.** Take all necessary precautions to keep all wells under control at all times; (3-18-22)
- b.** Utilize trained and competent personnel; (3-18-22)
- c.** Utilize properly maintained equipment and materials; and (3-18-22)
- d.** Use operating practices that ensure the safety of life and property. (3-18-22)

**05. Unused Wells.** Except as provided in Subsection 070.02 ~~of these rules~~, the Lessee must promptly plug and abandon any ~~unused or non-useful~~ well on the leased land ~~that is not used or useful~~ in conformity with IDWR's regulations ~~promulgated by the IDWR~~ or its successor agency. ~~No A~~ production well ~~will may not~~ be



abandoned until its lack of capacity for further profitable production of ~~g~~Geothermal ~~r~~Resources has been demonstrated to the ~~Department's~~ satisfaction ~~of the Department~~ and the Department has been given an opportunity to either acquire the well permit or assign it to another party. A producible well may be abandoned only after ~~receipt of written approval by the Department~~ Department's written approval. Equipment will be removed, and premises at the well site will be restored as near as reasonably possible to its original condition immediately after plugging operations are completed on any well, except as otherwise authorized by the Department in writing. Drilling equipment must not be removed from any suspended drilling well without taking adequate measures to close the well and protect subsurface resources. ~~Upon Lessee's failure of Lessee~~ to comply with any requirements under this rule, may result in the Department ~~is authorized to cause~~ causing the work to be performed at the expense of the Lessee and the surety. (3-18-22)(\_\_\_\_)

**057. -- 059. (RESERVED)**

**060. EXPLORATION AND OPERATION RECORDS, CONFIDENTIALITY.**

**01. Drilling Records.** Lessee must keep or cause to be kept and filed, with the IDWR such careful and accurate well drilling records as are ~~now or may hereafter be~~ required by ~~that Department~~ IDWR. As an express condition of the Lease, the Department may, at any time, inspect and copy well drilling records filed with IDWR. Lessee must file with the Department such production records and exploration evidence as required by Sections 030, 036, and 055 of these rules, ~~which~~ The production records will be are subject to public inspection ~~by the public~~ at the Department's offices, ~~of the Department~~ during regular business hours and under such conditions as the Department deems appropriate, subject, ~~however, to exemptions from~~ except for disclosure ~~as exemptions~~ set forth in Section 74-107, Idaho Code. ~~As an express condition of the lease, the Department may inspect and copy well drilling records filed with the IDWR at any time after the records are filed.~~ (3-18-22)(\_\_\_\_)

**02. Continuing Obligations.** Lessee's obligations under this rule will continue beyond assignment, surrender, termination, or expiration of the Lease. ~~Unless Lessee is specifically released in writing by the Department~~ the Department releases the Lessee, in writing, of all or any portion of its obligations under the lease upon the assignment, surrender, termination or expiration of the Lease. ~~Lessee's obligations under this rule will continue beyond assignment, surrender, termination or expiration of the lease.~~ Lessee must file all outstanding data and records required by law with the Department, within thirty (30) days after assignment, surrender, termination or expiration, or such additional time as the Department may grant, ~~file all outstanding data and records required by this rule with the Department.~~ (3-18-22)(\_\_\_\_)

**03. Well Logs.** The confidentiality of well logs is limited to one (1) year from well eCompletion as stated in Section 42-4010(b), Idaho Code. (3-18-22)(\_\_\_\_)

**061. -- 064. (RESERVED)**

**065. LESSEE'S RECORDS, RIGHT OF INSPECTION BY DEPARTMENT.**

~~Lessee will permit~~ The Department to may examine, during ~~reasonable~~ business hours, all books, records, and other documents and matters pertaining to operations under a Lease, which are in Lessee's custody or control, and ~~to~~ may make copies of and extracts therefrom. (3-18-22)(\_\_\_\_)

**066. -- 069. (RESERVED)**

**070. WATER RIGHTS.**

**01. Water Rights.** Lessee must comply with all applicable federal and state laws, rules and regulations regarding the appropriation of public waters of Idaho to beneficial uses. The establishment of any new water rights on sState Lands must be by and for the Lessor and no claim thereto may be made by the Lessee. Such water rights will attach to and become appurtenant to the sState Lands, and the Lessor will be the owner thereof. (3-18-22)(\_\_\_\_)

**02. Potable Water Discovery.** ~~All~~ Lleases ~~issued under these rules will be~~ are subject to the condition that, ~~where~~ if the Lessee finds only potable water ~~of, which has~~ no commercial value as a gGeothermal rResource, in any well drilled for exploration or production of gGeothermal rResources, and ~~when~~ the water is of such quality and quantity so as to be valuable and usable for agricultural, domestic, or other purpose, the Board, or where appropriate,

the surface Lessee, grantee or contract purchaser, will have the right to acquire the well with whatever casing is installed ~~in the well~~ at the ~~casing's~~ fair ~~m~~Market ~~v~~Value of the casing, and upon the assumption ~~assuming~~ of all future liabilities and responsibilities for the well, ~~and~~ with the approval of ~~the~~ IDWR's director ~~of the~~ IDWR.

(3-18-22)( )

071. -- 074. (RESERVED)

075. ASSIGNMENTS.

**01. Prior Written Approval.** ~~In order for Lessee to effect an assignment, Lessee must, prior to the consummation of an effective sale, transfer or assignment of the lease between Lessee and its proposed assignee, provide to the Department certain information about the proposed assignment, including identification of A Lessee must obtain the Department's written approval for an assignment to be effective. Before consummating a sale, transfer, or assignment of the Lease, Lessee must provide the Department with certain information about the proposed assignment. Such information includes identifying the proposed assignee and the general terms of the proposed assignment on Department assignment application forms provided by the Department. Any proposed total or partial assignment of a lease must be preapproved in writing by the Department prior to any proposed sale, transfer or assignment of the lease is consummated between Lessee and the proposed assignee. Approval will not be unreasonably withheld. Following the Department's written preapproval of the proposed assignee and general terms of the proposed assignment, Lessee and assignee may consummate any such sale, transfer, or assignment of Lessee's leasehold interest in the Lease. The consummation of any assignment agreement by the Lessee without the Department's prior written preapproval constitutes a default of the Lease, and such sale, transfer, or assignment may be rejected in the Department's sole discretion; and, such assignment will only be effective if the default is expressly waived in writing by the Department. In order f~~ For an assignment of Lessee's interest in the Lease to be acceptable for ~~Department~~ approval ~~by the Department~~, the consummated sale, transfer or assignment must include provisions wherein Lessee has sold, transferred, or assigned to the assignee any and all interest that Lessee has in the Lease together with any ~~and all~~ interest Lessee has in any ~~and all~~ improvements located upon the leased ~~premises~~ lands, and assignee must assume all liabilities of Lessee under the Lease together with ownership of all improvements owned by Lessee. An assignment between Lessee and its assignee will only take effect following the Department's final written approval of the assignment following receipt of copies of the final, consummated sale, transfer or assignment agreement between Lessee and assignee.

(3-18-22)( )

**02. Full or Partial.** A Lease may be assigned as to all or part of the acreage included therein to any ~~qualified p~~Person ~~qualified to hold a state lease~~, provided that neither the assigned nor the retained part created by the assignment contains less than forty (40) acres. ~~No An assignment cannot create an~~ undivided interest in a Lease of less than ten percent (10%) ~~may be created by assignment.~~

(3-18-22)( )

**03. Overriding Royalty Disclosure.** Overriding royalty interests created by an assignment are subject to the requirements in Section 080 ~~of these rules.~~

(3-18-22)( )

**04. Responsibility.** ~~In an assignment of assigning a partial or complete interest in all of leased the lands in a lease, the assignor Lessee and its surety continue to be responsible for performance of any and performing all obligations under the Lease until such time as the Department, in writing, releases Lessee and its surety from obligations arising under the Lease after the Department accepts any such assignment and provides a release of any or all obligations in writing. After the an assignment's effective date of any assignment, the assignee and its surety will be bound by the terms of the lease to the same extent as if the assignee were the original Lessee, any conditions in the assignment to the contrary notwithstanding.~~

(3-18-22)( )

**05. Segregation of Assignment.** An assignment of all or any portion of Lessee's ~~R~~Record ~~T~~Title of the complete interest in a portion of the leased lands ~~in a lease~~ must clearly identify and segregate the assigned and retained portions. After the effective date, the assignor will be released and discharged from any obligations thereafter accruing with respect to the assigned portion of the leased lands. Such segregated Leases continue in full force and effect for the primary term of the original Lease or as further extended pursuant to the terms of these rules.

(3-18-22)( )

**06. Joint Principal.** Where an assignment does not segregate the ~~R~~Record ~~T~~Title to the Lease, the assignee, ~~if the assignment so provides,~~ may become a joint principal on the bond with the assignor, ~~if the assignment~~

so provides. The application must ~~also~~ be accompanied by ~~a consent of the~~ assignor's surety's written consent to remain bound under the bond of record, if the bond's ~~by its~~ terms, ~~does~~ not contain such consent. If a party to the assignment has previously furnished a statewide bond, no additional showing by such party is necessary as to the bond requirement. (3-18-22)(    )

**07. Application.** The application for approval of an assignment must be on Department approved forms ~~approved by the Department~~. (3-18-22)(    )

**08. Denial.** If the Lessee is in default of the HLease at the time of a request for assignment approval, the Department may, ~~at in~~ its sole discretion, reject any proposed assignment until the HLease is brought into full compliance. The approval of an assignment of a HLease in good standing will not be unreasonably withheld, provided such consent of the Department is requested and obtained prior to any assignment. (3-18-22)(    )

**076. -- 079. (RESERVED)**

**080. OVERRIDING ROYALTY INTERESTS.**

**01. Statements.** An overriding royalty interest, or any similar interest whereby an agreement is made to pay a percentage based on production, must be disclosed at the time of assignment or transfer by filing a statement of such interest with the Department. Assignees must meet the requirements of Section 0210 ~~of these rules~~. All assignments of overriding royalty interests without a working interest and otherwise not contemplated by Section 075 ~~of these rules~~, must be filed with the Department within ninety (90) days from the date of execution. (3-18-22)(    )

**02. Maximum Amount.** No eOverriding rRoyalty on the production of gGeothermal rResources created by an assignment ~~contemplated by under~~ Section 075, ~~of these rules~~ or otherwise, will exceed five percent (5%) nor will an eOverriding rRoyalty, when added to eOverriding rRoyalties previously created, exceed five percent (5%). (3-18-22)(    )

**03. Conformance with Rules.** The creation of an eOverriding rRoyalty interest that does not conform to the requirements of this rule is ~~be~~ deemed a violation of the HLease terms, unless the agreement creating eOverriding rRoyalties provides for a prorated reduction of all eOverriding rRoyalties so that the aggregate rate of eOverriding rRoyalties does not exceed five percent (5%). (3-18-22)(    )

**04. Director's Authority.** In addition to the foregoing limitations, any agreement to create, or any assignment creating, royalties or payments out of production from the leased lands is subject to the authority of the Director, after notice and hearing, to require the proper parties thereto to suspend or modify such royalties or payments out of production in such manner as may be reasonable when and during such periods of time as they may constitute an undue economic burden upon the reasonable operations of such HLease. (3-18-22)(    )

**081. -- 084. (RESERVED)**

**085. UNIT OR COOPERATIVE PLANS OF DEVELOPMENT OR OPERATION.**

**01. IDWR Approval.** Nothing in this rule ~~will~~ excuses the parties to a unit agreement from procuring the IDWR's approval ~~of the IDWR, if required~~, pursuant to Section 42-4013, Idaho Code, ~~if approval is required~~. (3-18-22)(    )

**02. Unit Plan.** For the purpose of conserving the natural resources of any geothermal pPool, fField, or like area, Lessees ~~under lease issued by the Board are authorized may~~, with the Department's written consent ~~of the Department, to~~ commit the sState HLands to unit, cooperative, or other plans of development or operation with other sState HLands, federal lands, privately-owned lands, or Indian lands. The Department's consent will not be unreasonably withheld. Applications to unitize, or a copy of the application filed with IDWR, ~~will must~~ be filed with the Department who will certify whether ~~such the~~ plan is necessary or advisable in the public interest. The Department may require whatever documents or data ~~that the Department~~ deemed necessary ~~in its reasonable the~~ Department's discretion. To implement such unitization, the Board may, with the consent of its Lessees, modify and change any ~~and all~~ terms of leases ~~issued by it~~ that are committed to such unit, cooperative, or other plans of

development or operations.

(3-18-22)( )

**03. Contents.** The agreement must describe the separate tracts comprising the unit; disclose the apportionment of the production of royalties and costs to the several parties; ~~and disclose~~ the name of the operator; and ~~must~~ contain adequate provisions for the protection of the interests of all parties, including the state of Idaho; ~~be signed by, or on behalf of all interested necessary parties, and be submitted to the Department.~~ The agreement ~~should~~ must be signed by or ~~in on~~ behalf of all interested necessary parties before being submitted to the Department. It will be effective only after written approval by the Department. The unit operator must be a ~~p~~Person, as defined by these rules and ~~must be~~ approved by the Department.

(3-18-22)( )

**04. Lease Modification.** Any modification of an approved agreement will require the Department's written approval ~~of the Department~~ under procedures similar to those ~~cited~~ in Subsection 085.02 ~~of these rules.~~

(3-18-22)( )

**05. Term.** At the sole discretion of the Department, the term of any leases included in any cooperative or unit plan of development or operation may be extended for the term of such unit or cooperative agreement, but in no event beyond ~~that the~~ time provided in Subsection 030.01 ~~of these rules.~~ Rentals or royalties on leases so extended may be reassessed for such extended term of the lease.

(3-18-22)( )

**06. Continuation of Lease.** Any lease that will be eliminated from any such cooperative or unit plan of development or operation, or any lease that will be in effect at the termination of any such cooperative or unit plan of development or operation, unless relinquished, will continue in effect for the term of the lease.

(3-18-22)

**07. Evidence of Agreement.** Before ~~issuance of~~ issuing a lease for lands within an approved unit agreement, the lease applicant or successful bidder ~~will be required to~~ must file evidence that they have entered into an agreement with the unit operator for the development and operation of the lands in a lease if the lease is issued to ~~him them~~ under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, the lease applicant or successful bidder ~~will be permitted to~~ may operate independently, but ~~will be required to~~ must perform ~~his their~~ operations in a manner that the Department deems to be consistent with the unit operations.

(3-18-22)( )

086. -- 094. (RESERVED)

#### 095. SURRENDER, TERMINATION, EXPIRATION OF LEASE.

**01. Procedure.** A Lease, or any surveyed subdivision of the ~~area covered by such lease~~ leased lands, may be surrendered by the ~~r~~Record ~~t~~Title holder by filing with the Department a written relinquishment on a Department form, in the office of the Department, on a form furnished by the Department, provided that a partial relinquishment ~~does can~~ not reduce the remaining acreage in the Lease to less than forty (40) acres. The minimum acreage provision of this section may be waived by the Department ~~where if~~ the Department finds such exception is justified ~~on the basis of~~ based on exploratory and development data derived from activity on the leasehold. The relinquishment must:

(3-18-22)( )

a. Describe the lands to be relinquished;

(3-18-22)

b. Include a statement as to whether the relinquished lands ~~had have~~ been disturbed and, if so, whether they were restored as prescribed by the Lease's terms ~~of the lease~~; and

(3-18-22)( )

c. State whether wells ~~had have~~ been drilled on the lands and, if so, whether they have been plugged and abandoned pursuant to ~~the~~ IDWR's rules ~~of the IDWR.~~

(3-18-22)( )

**02. Continuing Obligations.** A relinquishment takes effect on the date it is filed, subject to the continued obligation of the Lessee and ~~his their~~ surety to:

(3-18-22)( )

a. ~~To m~~Make payments of all accrued rentals and royalties;

(3-18-22)( )

b. ~~To p~~Place all wells on the relinquished land ~~to be relinquished~~ in condition for suspension of

operations or abandonment; (3-18-22)( )

c. ~~To~~Restore the surface resources in accordance with these rules and the terms of the Hlease; and (3-18-22)( )

d. ~~To~~Comply with all other environmental stipulations provided for by ~~these rules or lease~~ the Lease and applicable law. (3-18-22)( )

**03. Failure to Pay Rental or Royalty.** The Director may terminate a Hlease for failure to pay rentals or royalties thirty (30) days after mailing a notice of delinquent payment. ~~However, if~~ the time for payment falls upon any day in which the ~~office of the~~ Department is not open, payment received on the next official working day will be deemed to be timely. The termination of the Hlease for failure to pay the rental will be noted on the Department's official records ~~of the Department.~~ Upon termination the lands included in such lease may become subject to leasing as provided by these rules. (3-18-22)( )

**04. Termination for Cause.** A Hlease may be terminated by the Department for any violation of ~~these rules, or the lease terms,~~ the Lease's terms or of applicable laws sixty (60) days after notice of the violation has been given to Lessee by personal service or certified mail, return receipt requested, to the address of record last appearing in the Department's files ~~of the Department,~~ unless: (3-18-22)( )

a. The violation has been corrected; or (3-18-22)

b. The violation is one that cannot be corrected within the notice period and the Lessee has in good faith commenced, within the notice period, ~~to~~ correcting the violation and ~~thereafter~~ has diligently proceeded diligently to complete the correction. (3-18-22)( )

**05. Equipment Removal.** Prior to the Lease's expiration, ~~of the lease, or the earlier~~ termination, or surrender ~~thereof pursuant to this rule,~~ and provided the Lessee is not in default, the Lessee ~~will have the privilege at any time during the term of the lease to~~ may remove from the leased ~~premises lands~~ any materials, tools, appliances, machinery, structures, and equipment, other than improvements needed for producing wells. ~~Any materials, tools, appliances, machinery, structures and equipment~~ Anything subject to removal, but not removed ~~prior to any termination of the lease or any extension thereof that may be granted because of adverse climatic conditions during that period, will,~~ may become property of the state of Idaho, at the option of the Department, ~~become property of the state of Idaho, but the Lessee must remove any or all such property where so directed by the Department;~~ be removed by the Department, at the Lessee's expense; or be removed by the Lessee, at the Department's request. (3-18-22)( )

**06. Surrender After Termination.** Upon the expiration or termination of a Hlease, the Lessee will quietly and peaceably surrender possession of the premises to the state, and if the Lessee is surrendering the leased premises or any portion thereof, the Lessee must deliver to the state a good and sufficient release on a form furnished by the Department. (3-18-22)( )

096. -- 099. (RESERVED)

## 100. BOND REQUIREMENTS.

**01. Minimum Bond.** ~~Prior to initiation of operations using motorized earth moving equipment~~ Before using Motorized Exploration Lessee must furnish a bond. This bond will be in favor of the state of Idaho, conditioned on the payment of all damages to the land surface and all improvements thereon, including without limitation crops on the lands, whether or not the leased lands ~~under this lease~~ have been sold or leased by the Board for any other purpose; conditioned also upon ~~compliance by Lessee of his~~ Lessee complying with their obligations under ~~this their~~ Hlease ~~and these rules.~~ The Department may require a new bond in a greater amount at any time after operations have begun, upon a finding that such ~~action~~ bond is reasonably necessary to protect state resources. (3-18-22)( )

**02. Statewide Bond.** In lieu of the aforementioned bonds, Lessee may furnish a good and sufficient "statewide" bond ~~conditioned as~~ in Subsection 100.01. This bond will cover all Lessee's Hleases and operations carried on under all geochemical resource Hleases issued and outstanding to Lessee by the Board at any given time

during the period when the “statewide” bond is in effect. The amount of such bond will be equal to the total of the requirements of the separate bonds being combined into a single bond. (3-18-22)( )

**03. Period of Liability.** The period of liability ~~of any for a~~ bond will not be terminated until all ~~L~~lease terms and conditions have been fulfilled and the bond is released in writing by the Department. (3-18-22)( )

**04. Operator Bond.** ~~In the event~~ If suit is filed to enforce the terms of ~~any~~ bond furnished by an ~~e~~Operator in which the Lessee (if a different ~~p~~Person) is not a named party, the Department may, in its sole discretion, join the Lessee as a party to such suit. (3-18-22)( )

#### **101. LIABILITY INSURANCE.**

**01. Liability Insurance Required.** ~~The Department will~~ Lessee is required ~~d the Lessee~~ to purchase and maintain suitable insurance for the duration of the ~~L~~lease. ~~The insurance must be obtained~~ prior to entry upon the leased lands for ~~purposes~~ other than ~~e~~Casual ~~e~~Exploration or inspection ~~as contemplated by Subsection 054.02 of these rules.~~ (3-18-22)( )

**02. Insurance Certificate Required.** No work under ~~this a~~ ~~L~~lease will commence prior to the Department’s receipt of a certificate, signed by a licensed insurance agent, evidencing existence of insurance as required above. ~~Further, such~~ ~~The~~ certificate must reflect that no change or cancellation in such coverage will become effective until after the Department receives written notice of such change or cancellation. (3-18-22)( )

#### **102. -- 104. (RESERVED)**

#### **105. TITLE.**

The state of Idaho does not warrant title to the leased lands, ~~or~~ the ~~g~~Geothermal ~~r~~Resources, ~~and nor~~ ~~a~~Associated ~~b~~By-~~p~~Products that may be discovered thereon; ~~t~~The ~~L~~lease is issued only under such title as the state of Idaho may have as of the ~~Lease’s~~ effective date ~~of the lease~~ or ~~has~~ thereafter acquired. If the interest owned by the state in the leased lands includes less than the entire interest in the ~~g~~Geothermal ~~r~~Resources and ~~a~~Associated ~~b~~By-~~p~~Products for which royalty is payable, then the royalties provided for in the ~~L~~lease will be paid to the state only in the proportion that its interest bears to said whole and undivided interest in said ~~g~~Geothermal ~~r~~Resources and ~~a~~Associated ~~b~~By-~~p~~Products for which royalty is payable; ~~provided, however, that~~ ~~t~~The state is not liable for any damages sustained by the Lessee; nor is the Lessee entitled to, ~~nor~~ may claim any refund of rentals or royalties ~~therefore~~ paid to the state in the event that the state does not own title to said ~~g~~Geothermal ~~r~~Resources and ~~a~~Associated ~~b~~By-~~p~~Products, or if its title thereto is less than whole and entire. (3-18-22)( )

#### **106. -- 110. (RESERVED)**

#### **111. TAXES.**

~~Lessee must pay, when due, all taxes and assessments of any kind lawfully assessed and levied against Lessee’s interests or operations under the laws of the state of Idaho.~~ (3-18-22)

#### **112. RENTAL NOTICES.**

~~Advance notice of rental due is usually sent to the Lessee by the Department, but~~ ~~f~~Failure to receive ~~such notices~~ ~~an~~ ~~advance notice of rental due~~ does not ~~act to~~ relieve the Lessee from ~~the payment of~~ ~~paying~~ the rental, ~~and~~ ~~t~~The ~~L~~lease will be in default if such payment is not made ~~as provided in these rules.~~ (3-18-22)( )

#### **113. OUTSTANDING LEASES.**

No right to seek, obtain, or use ~~g~~Geothermal ~~r~~Resources has passed, or will pass, with any existing or future license, permit, or lease of ~~s~~State ~~L~~ands, including without limitation, mineral leases and oil and gas development leases, except upon ~~the issuance of~~ a ~~g~~Geothermal ~~r~~Resources ~~L~~lease ~~being issued.~~ (3-18-22)( )

#### **114. -- 119. (RESERVED)**

#### **120. FEES.**

The following fees apply: (3-18-22)

- 01. Non-Refundable Application Fee for Lease.** Two hundred fifty dollars (\$250) per application. (3-18-22)
- 02. Application Fee for Approval of Assignment.** One hundred fifty dollars (\$150) per lease involved in the assignment. (3-18-22)
- ~~**03. Late Payment Fee.** The greater of the following: (3-18-22)~~
- ~~**a.** Twenty five dollars (\$25); or (3-18-22)~~
- ~~**b.** One percent (1%) per month (or portion thereof) on the unpaid balance. (3-18-22)~~
- 121. -- 999. (RESERVED)**

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**  
**20.03.16 – RULES GOVERNING OIL AND GAS LEASING ON IDAHO STATE LANDS**  
**DOCKET NO. 20-0316-2401 (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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1, 2025, in the year of the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 47-802, Idaho Code.

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

The Idaho Department of Lands initiated this rulemaking in compliance with [Executive Order 2020-01: Zero-Based Regulation](#) with the goal of simplifying and streamlining the rules for increased clarity and ease of use. There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 3, 2024 Idaho Administrative Bulletin, [Vol. 24-7, pages 146 – 161](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature.

No changes have been made to any fees in this pending rule. The exploration permit fee remains \$100 per linear mile or a minimum of \$100 per section. Nomination fees continue to be set by the State Board of Land Commissioners (Land Board), at a minimum of \$250 per tract. Processing fees continue to be set by the Land Board at a minimum of \$100 per each document.

**FISCAL IMPACT:** There is no negative fiscal impact on the state General Fund resulting from this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Mike Murphy at (208) 334-0290 or at [mmurphy@idl.idaho.gov](mailto:mmurphy@idl.idaho.gov).

DATED this 20th day of August, 2024.

Mike Murphy  
Minerals Program Manager  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
P.O. Box 83720 Boise, Idaho 83720-0050  
Phone: (208)334-0290  
Fax: (208)334-3698  
[rulemaking@idl.idaho.gov](mailto:rulemaking@idl.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 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 July 17th, 2024.

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](#) with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

**FEE SUMMARY:** No changes have been made to any fees in this proposed rule. The exploration permit fee remains \$100 per linear mile or a minimum of \$100 per section. Nomination fees continue to be set by the State Board of Land Commissioners (Board), which a minimum of \$250 per tract. Processing fees continue to be set by the Board at a minimum of \$100 per each document.

**FISCAL IMPACT:** There is no negative fiscal impact on the state General Fund resulting from this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the March 6, 2024 Idaho Administrative Bulletin, [Vol. 24-3, pages 20-21](#).

**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 with technical questions concerning the proposed rule, contact Mike Murphy at (208) 334-0290 or [mmurphy@idl.idaho.gov](mailto:mmurphy@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 July 24, 2024.

DATED this 3rd day of June, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 20-0316-2401**

20.03.16 – RULES GOVERNING OIL AND GAS LEASING ON IDAHO STATE LANDS

**000. LEGAL AUTHORITY.**

This Chapter is adopted under the legal authorities of Sections 58-104(1), 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code, and Section 58-307, Idaho Code; Title 47, Chapter 7, Idaho Code; Title 47, Chapter 8, Idaho Code, and Title 67, Chapter 52, Idaho Code. (3-18-22)( )

**001. TITLE AND SCOPE.**

~~01. Title.~~ These rules are titled IDAPA 20.03.16, “Rules Governing Oil and Gas Leasing on Idaho State Lands.” (3-18-22)

~~021. Scope.~~ These rules apply to the eExploration and extraction of eOil and gGas resources situated in state-owned mMineral lLands. (3-18-22)( )

~~032. Other Laws.~~ In addition to these rules, the lLessee must comply with all applicable federal, state and local laws, rules, and regulations. ~~The violation of Violating~~ any applicable law, rule, or regulation may constitute a breach of any violation of the lLease issued in accordance with these rules. (3-18-22)( )

**002. ADMINISTRATIVE APPEALS.**

**01. Appeal to Board.** All decisions of the Director are appealable to the Board. An aggrieved party desiring to take such an appeal must, within thirty (30) days after notice of the Director’s decision, file with the Director a written notice of appeal setting forth the basis for the appeal. (3-18-22)

**02. Hearing.** The Board will hear the appeal at the earliest practical time, or in its discretion, appoint a hearing officer to hear the appeal, within sixty (60) days after filing of the notice of appeal. The hearing officer will make findings and conclusions that the Board may accept, reject or modify. The decision of the Board after hearing or upon a ruling concerning the hearing officer’s findings and conclusions is final. (3-18-22)( )

**03. Judicial Review.** Judicial review of the final decision of the Board will be in accord with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, by filing a petition in the district court in Ada County, or the county where the Board heard the appeal and made its final decision, within thirty (30) days after notice of the Board’s decision. Service of the Board’s decision may be by personal service or by certified mail to the lLessee. (3-18-22)( )

**003. -- 009. (RESERVED)**

**010. DEFINITIONS.**

The terms Mineral Lands, Mineral, and Mineral Right are defined in Section 47-701, Idaho Code. The terms Casual Exploration and Motorized Exploration are defined in Section 47-703A, Idaho Code. The term Legal Subdivision is defined in Section 58-809, Idaho Code. In addition to the identified definitions in Idaho Code, the following definitions apply to these rules: ( )

**01. Board.** The Idaho State Board of Land Commissioners or its ~~authorized representative designee~~, or where appropriate, the state of Idaho. (3-18-22)( )

**02. Commission.** The Idaho Oil and Gas Conservation Commission. (3-18-22)

~~03. Collateral Surety Bond and Corporate Surety Bond.~~ See Subsections 080.04.a. and 080.04.b. (3-18-22)

~~043. Department.~~ The Idaho Department of Lands. (3-18-22)

- ~~054.~~ **Director.** The Director of the Idaho Department of Lands or ~~his authorized representative~~ their designee. (3-18-22)(    )
- ~~06.~~ **Discretion.** ~~Exercising authority to make a decision, choice or judgment without being arbitrary, capricious or illegal.~~ (3-18-22)
- ~~075.~~ **Exploration.** Activities related to the various geological and geophysical methods used to detect and determine the existence and extent of hydrocarbon deposits. (3-18-22)
- ~~086.~~ **Final Board Approval.** Approval of a Hlease occurs after the Hlease is signed by the Governor, ~~the~~ Secretary of State, ~~and the~~ Director, on behalf of the Board, after approval of the Hlease by a majority of the Board. All approved Hleases must first be signed by the Lessee and then by the above-entitled state officials. (3-18-22)(    )
- ~~097.~~ **Lease.** A written agreement between the Department and a pPerson containing the terms and conditions upon which the Person will be authorized to use sState Hlands. (3-18-22)(    )
- ~~10.~~ **Legal Subdivision.** See Subsection 071.04. (3-18-22)
- ~~108.~~ **Lessee.** The pPerson to whom a Hlease has been issued and his successor in interest or assignee(s). More than one (1) pPerson may be entered as an applicant on the application form but only one (1) pPerson ~~shall~~ will be designated in the application for Hlease or assignment as the Hlessee of record with sole responsibility for the Hlease under these rules. (3-18-22)(    )
- ~~1209.~~ **Lessor.** The Board on behalf of the state of Idaho. (3-18-22)
- ~~13.~~ **Motorized Exploration Equipment.** ~~The equipment used in exploration that may appreciably disturb or damage the land or resources thereon as defined in Section 47-703(a), Idaho Code.~~ (3-18-22)
- ~~140.~~ **Natural Gas Plant Liquids.** Hydrocarbon compounds in raw gas that are separated as liquids at gas processing plants, fractionating plants, and cycling plants. Includes ethane, liquefied petroleum gases (propane and the butanes), and pentanes plus any heavier hydrocarbon compounds. Component products may be fractionated or mixed. (3-18-22)
- ~~151.~~ **Oil and Gas.** ~~Oil and gas means~~ Oil or gas, or both. (3-18-22)(    )
- ~~162.~~ **Person.** An individual, corporation, partnership, limited liability company, association, trust, unincorporated organization or other legal entity qualified to do business in the state of Idaho, and any federal, state, county, or local unit of government. (3-18-22)(    )
- ~~a.~~ An individual of legal age; (3-18-22)
- ~~b.~~ Any firm, association or corporation that is qualified to do business in the state of Idaho; (3-18-22)
- ~~e.~~ Or any public agency or governmental unit, including without limitation, municipalities. (3-18-22)
- ~~173.~~ **Production in Paying Quantities.** That gross income from oil and/or gas produced and saved (after deduction of taxes and royalty) that exceeds the cost of operation. (3-18-22)
- ~~184.~~ **State Lands.** Lands, including the beds of navigable waters within Idaho in which the title to mMineral rights is owned by the state of Idaho, that are under the jurisdiction and control of the Board or any other state agency. (3-18-22)(    )
- ~~195.~~ **Tract.** An expanse of land representing the surface expression of the underlying mMineral estate, which includes oil and gas rights owned by the State, that:
- a. May be identified by its public land survey system of rectangular surveys that subdivides and

describes land in the United States in the public domain and is regulated by the U.S. Department of the Interior, Bureau of Land Management; (3-18-22)

- b. Is of no particular size; (3-18-22)
- c. Is a maximum size of six hundred forty (640) acres or one section, unless otherwise determined by the Director; (3-18-22)
- d. May be irregular in form; (3-18-22)
- e. Is contiguous; (3-18-22)
- f. May lie in more than one township or one section; (3-18-22)
- g. May have a boundary defined entirely or in part by natural monuments such as streams, divides, or straight lines connecting prominent features of topography; (3-18-22)
- h. May include the ~~m~~Mineral estate beneath navigable waters of the State; and (3-18-22)(\_\_\_\_)
- i. May be combined with other ~~t~~Tracts to form a ~~H~~Lease. (3-18-22)(\_\_\_\_)

~~011. — 014.~~ (RESERVED)

~~015. CONTROL OF STATE LANDS.~~

~~The Director will regulate and supervise pursuant to law and these rules all state lands within the custody and control of the Board. State lands subject to the custody and control of other state agencies will be regulated and supervised by the respective agency in accord with state laws and rules; provided that any lease for oil and gas thereon complies with these rules.~~ (3-18-22)

~~016. WITHDRAWAL OF LANDS.~~

~~At any time prior to final Board approval of a lease, the Board reserves the right to withdraw state lands entirely from oil and gas leasing if consistent with its constitutional and statutory duties and in the state's best interests.~~ (3-18-22)

~~017.1. -- 019.~~ (RESERVED)

~~020. QUALIFIED APPLICANTS AND LESSEES.~~

~~Any ~~p~~Person who ~~is not then in default of any contract~~ does not have a contract in default with the state of Idaho or any department or agency thereof is a qualified applicant and ~~L~~Lessee. ~~No member of the Board or employee of the Department~~ Neither Board members nor Department employees may take or hold such ~~L~~Lease. (3-18-22)(\_\_\_\_)~~

~~021. EXPLORATION.~~

~~01. Written Permit Required.~~ Any appreciable surface disturbing activity, including, ~~but not limited to, ~~m~~Motorized ~~e~~Exploration,~~ on ~~s~~State ~~L~~Lands is prohibited, ~~except by~~ when a written exploration permit is received for exploration for a period of time as determined by the Director. This permit is in addition to any permit required by the Commission. (3-18-22)(\_\_\_\_)

~~02. Permit Conditions.~~ The Director will determine when the exploration permit expires. The permit ~~will contain ~~s~~such conditions ~~as that~~~~ the Director determines will protect the existing surface uses and resources of the ~~s~~State. The permit applicant must pay ~~in advance~~ in advance of the permit being issued. (3-18-22)(\_\_\_\_)

~~022. LEASE ACQUISITION PROCESS.~~

~~01. Acquiring a Lease.~~ A ~~L~~Lease may be acquired for the exclusive right and privilege to explore for and produce ~~e~~Oil and ~~g~~Gas by oral auction, online auction, or such other method of competitive bidding, which is authorized by the Board, ~~in its~~ and, based on the Board's discretion, determined to be in the ~~state's~~ best interest, ~~of the~~

~~state, and~~ The Lease will be awarded to the winning bidder at close of auction. The winning bidder at auction will be issued the Lease by the Department on the first day of the month following Final Board Approval. The Board and Department reserve the right to reject any or all nominations or bids, and expressly disclaim any liability for inconvenience or loss caused by errors that may occur concerning lease offerings. (3-18-22)(    )

**02. Lease Provisions.** (3-18-22)

**a.** Advance Annual Rental. The Lessee must pay to the state of Idaho an advance annual rental for each lease of three dollars (\$3) per acre with a minimum of two hundred fifty dollars (\$250) per Lease. (3-18-22)(    )

~~**b.** Diligent Drilling. Diligent and continuous drilling operations means no delay or cessation of drilling for a period greater than one hundred twenty (120) days, unless extended in writing by the Director. The Director must receive a written request for an extension at least ten (10) days prior to the expiration of the one hundred twenty (120) day period.~~ (3-18-22)

~~**eb.** Notification at End of Lease Period. The Lessee must notify the Director in writing prior to the expiration of the final year of his Lease that drilling or reworking operations has commenced on the leased premises, or on lands pooled or unitized therewith, and will extend beyond the expiration date of the Lease. Advance Annual Rental, in the amount required by per Section 022.a, for any additional and each succeeding year, must be received by the Department prior to the Lease's expiration date and entitles the Lessee to hold the Lease only as long as drilling or rework operations are pursued in accord with these rules. There will be no refund of unused rental.~~ (3-18-22)(    )

~~**dc.** Abandonment. During any additional or succeeding year of any Lease, cessation of production for a period of six (6) months, or cessation of continuous operations as provided in Section 055.03.b, is considered as an abandonment. The Lease will then automatically terminate at its next anniversary date unless the Director determines that such cessation of production or continuous operations is justified or the well meets the requirements of a shut in well under Subsection 022.02.ed.~~ (3-18-22)(    )

~~**e.** Suspension of Production. The Director may grant a suspension of production not to exceed one (1) year upon a written application showing that the lessee is unable to market oil or gas from a well located on the leased premises capable of oil and gas production in paying quantities due to a lack of suitable production facilities or a suitable market for the oil or gas and such conditions are outside the reasonable control of lessee and the lease is not being otherwise maintained in force and effect. If such well is shut in and the Director approves the application for suspension of production requirements prior to the expiration or termination of the lease, then the lease will be extended in accordance with the terms of Section 47-801, Idaho Code, for a period of one (1) year if the lessee timely submits an application in a form approved by the Director and, upon approval of said application, pays a shut in royalty in the amount equal to double the annual rental provided for by these rules for each well capable of producing oil or gas in paying quantities. The lessee must remit the shut-in royalty payment while the lease is otherwise maintained in force and effect. Payment of shut-in royalty after the expiration or other termination of the lease will not revive or extend the lease. The Lessee may request continuation of this suspension of production, provided such request is received in writing by the Director at least thirty (30) days prior to the expiration date of the period of suspension.~~ (3-18-22)

~~**d.** Suspension of Production. The Director may grant a suspension of production after receiving a Lessee's written application. The Lessee must show: that they are unable to market Oil and Gas from a well located on the leased premises, which is capable of Oil and Gas Production in Paying Quantities, due to a lack of suitable production facilities, of a lack of a suitable market for Oil and Gas, and that such conditions are outside of the reasonable control of the Lessee, and; that the Lease is being otherwise maintained in force and effect. The suspension of production cannot exceed one (1) year. The Lessee may request an extension of the suspension of production by submitting a written request to the Director at least thirty (30) days before the suspension period expires. If the well is shut in, and the Director approves the application for suspension of production prior to the expiration or termination of the Lease, then the Lease will be extended, per Section 47-801, Idaho Code, for a period of one (1) year if: (i) the well is shut in; (ii) the Lessee timely submits an application in a form approved by the Director, and; (iii) upon approval of said application, pays a shut-in royalty in the amount equal to double the annual rental, per Subsection 022.02.a, for each well capable of producing Oil or Gas in paying quantities. The Lessee must~~

remit the shut-in royalty payment while the Lease is otherwise maintained in force and effect. Payment of shut-in royalty after the expiration or other termination of the Lease will not revive or extend the Lease. ( )

e. Water Rights. The Lessee will comply with all state laws and rules regulating the appropriation of water rights. No water rights developed or obtained by the Lessee in conjunction with operations under a Lease may be sold, assigned, or otherwise transferred without the Director's written approval. Upon surrender, termination, or expiration of the Lease, the Lessee must take all actions required by the Director to assign to the Board all water rights, including applications and permits, subject to applicable laws regarding the transfer or assignment of permits to appropriate water. ( )

**03. Nominating a Tract for Auction.** A ~~¶~~Tract may be nominated for auction either by the Department or by application to the Department. Nomination must be made at least ninety (90) days prior to a Department-defined close of auction date, ~~or by Department nomination at least ninety (90) days prior to a Department-defined close of auction date.~~ Any qualified ~~p~~Person may nominate a ~~¶~~Tract for lease auction by submitting a Department nomination form to the Department; and paying the nomination fee, ~~in an amount which is~~ determined by the Board, ~~during regular business hours on the Department nomination form. Each nominated tract must be a maximum size of six hundred forty (640) acres or one section. The nominating person may propose that multiple tracts be included in a single lease.~~ Each nomination for a ~~¶~~Tract for auction is deemed an offer by the nominating ~~p~~Person to ~~H~~Lease the ~~¶~~Tract for the advance annual rental amount, ~~as defined in per~~ Subsection 022.02.a. above. (3-18-22)( )

**04. Withdrawing a Tract for Auction.** ~~Any person nominating a tract for auction~~ A Tract nomination may ~~be~~ withdrawn ~~in their nomination by the nominator~~ if a written request for ~~such~~ withdrawal is received by the Department at least ten (10) business days prior to the auction's opening date ~~of auction.~~ The nomination fee will not be refunded. (3-18-22)( )

**05. Auction Conditions.** The Department will determine the conditions associated with the auction, ~~which may including, but not limited to, the following include:~~ when, or if, a ~~¶~~Tract will be offered for auction; whether the ~~¶~~Tract is to be removed from the auction; whether multiple ~~¶~~Tracts will be combined in a single ~~H~~Lease ~~at the discretion of the Department;~~ and any disclaimers, additional information, and any other such terms and conditions associated with the auction of the ~~¶~~Tracts. Any such terms and conditions, disclaimers, and additional information will be posted on the Department's website. (3-18-22)( )

**06. Lease Information for Auction.** For each lease to be auctioned, the Department's website will provide ~~on the website the following:~~ a lease number designated by the Department; the legal description; the lease length; the number of acres; a minimum bid ~~per acre;~~ a lease template; any lease stipulations; any other lease information; ~~a specific date designated for the beginning and ending dates that a bidder may conduct due diligence;~~ and a specific date ~~designated for the opening of auction; and a close of auction date, time, and location of the auction.~~ A notice of lease auction will be published at least once per week for the four (4) consecutive weeks prior to the date of auction in a newspaper in general circulation in the county in which the nominated lease is located and in a newspaper in general circulation in Ada County. (3-18-22)( )

**07. Auction Procedure.** The Department will determine the procedures associated with the auction, ~~including, but not limited to place of auction, time of auction, and~~ such as the bidder registration procedure. Additional auction procedures are as follows: (3-18-22)( )

a. Bid Increments. The minimum bid increment is one dollar (\$1). (3-18-22)

b. Winning Bid. At close of auction, the winning bid ~~for a Lessee is the number of dollars bid multiplied by the number of acres in the lease, with fractions of an acre rounded up to the next whole acre~~ will be the highest dollar amount offered by an auction participant. If, at close of auction, a bid for a lease has not been submitted by a bidder, then the lease will be awarded to the nominating applicant. ~~The entry of a bid~~ Entering a bid constitutes an enforceable contractual obligation. (3-18-22)( )

c. Amount Due. The amount due for a lease is the winning bid, plus the first year's annual rental amount, ~~as~~ per Subsection 022.02.a., plus the nomination fee. If the nominator of the Tract(s) submits the winning bid ~~was submitted by the nominator of the tract(s), then~~ the nomination fee ~~will already have been~~ will not be included in the amount due since the fee was already submitted to the Department ~~and will not be included in the amount due.~~

~~The nominator. If the nominator is not the winning bidder, they~~ will be refunded the nomination fee ~~if they are not the winning bidder.~~ (3-18-22)(\_\_\_\_)

d. Transfer of Funds. Unless otherwise required in the notice of auction, the winning bidder for each lease has five (5) full business days after the close of auction to complete the transfer of funds to the Department. Failure of the winning bidder to transfer funds within the specified period ~~specified~~ constitutes a breach of contract, and the state may pursue any action or remedy at law or in equity against the winning bidder. (3-18-22)(\_\_\_\_)

08. **Execution of Lease.** The completed lease ~~will~~ must be executed by the winning bidder within thirty (30) days from the date of mailing after the close of auction, or from the date of receipt if personally delivered to the applicant or ~~his their~~ agent by the Department, ~~within thirty (30) days from the date of receipt.~~ An individual who executes a lease on behalf of another Person must submit a power of attorney outlining such delegated authority. (3-18-22)(\_\_\_\_)

023. -- 044. (RESERVED)

045. ROYALTIES.

01. **Royalty Payments.** Unless otherwise specified by the Board, the Lessee will pay to the state of Idaho, in money or in kind, ~~to the state at its option~~ a royalty of no less than twelve and one-half percent (12.5%) of the eOil and/or gGas or nNatural gGas pPlant Liquids produced and saved. The Lessee will make payments in cash unless the state sends written instructions for payment in kind ~~are received from the state.~~ Royalty is due on all production from the leased premises except that which was consumed for the direct operation of the producing wells ~~and that or~~ lost through no fault of the Lessee. (3-18-22)(\_\_\_\_)

02. **Royalty Not Reduced.** ~~Where~~ If royalties are paid in cash, then costs of marketing, transporting and processing eOil and/or gGas or nNatural gGas pPlant Liquids, or all of them produced, are borne entirely by the Lessee, and such cost will not reduce the Lessor's royalty directly or indirectly. If the Director elects to take royalty in kind, ~~the state will reimburse~~ the Lessee will be reimbursed for reasonable additional storage and transportation costs. (3-18-22)(\_\_\_\_)

03. **Oil, Gas, and Natural Gas Plant Liquids Royalty Calculation and Reporting.** All royalty owed to the Lessor, ~~hereunder~~ and not paid in kind, ~~at the election of the lessor~~ will be paid to the Lessor in the following manner: (3-18-22)(\_\_\_\_)

a. Payment of royalty on production of eOil is due and must be received by the Lessor on or before the 65th day after the month of production; (3-18-22)(\_\_\_\_)

b. Payment of royalty on production of gGas and nNatural gGas pPlant Liquids is due and must be received by the lessor on or before the 95th day after the month of production; (3-18-22)(\_\_\_\_)

c. All royalty payments must be completed in the form and manner approved by the Department including, ~~but not limited to,~~ the gross amount and disposition of all eOil, gGas, and nNatural gGas pPlant Liquids produced and the market value of the eOil, gGas, and nNatural gGas pPlant Liquids; (3-18-22)(\_\_\_\_)

d. Lessee must maintain, and make available to the Lessor upon request, copies of all documents, records or reports confirming the gross production, disposition, and market value, This including includes gas meter readings, pipeline receipts, gas line receipts, and other checks or memoranda of the amount produced and put into pipelines, tanks, ~~or~~ pools, ~~and~~ gas lines, or gas storage, and any other reports or records that the Lessor may require to verify the gross production, disposition, and market value; and (3-18-22)(\_\_\_\_)

e. Each royalty payment must be accompanied by a check ~~stub, schedule, summary or other remittance advice showing, by the assigned lessor lease number, the amount of royalty being paid on each lease stub that includes: all information required by Idaho Code § 47-332: a schedule, summary, or other remittance advice showing the Lease number; and the amount of royalty being paid on the Lease.~~ (3-18-22)(\_\_\_\_)

04. **Overriding Royalty.** ~~All assignments of overriding royalty without a working interest made~~

~~directly by the lessee and not included with an assignment of lease must be filed with the Department with the processing fee within ninety (90) days from the date of execution; provided that it is the lessee's responsibility, and not the Department's, to process such assignments by third parties. Any assignment that creates an overriding royalty exceeds the royalty previously payable to the state by greater than five percent (5%), is deemed a violation of the terms of the lease unless such an assignment expressly provides that the obligation to pay such excess overriding royalty is suspended when the average production of oil per well per day, averaged on a monthly basis, is fifteen (15) barrels or less. Any assignment of overriding royalty without a working interest made directly by Lessee, from Lessee's working interest, and not included with an assignment of this Lease, must be filed with the Department, along with the processing fee, per Subsection 120.03, within ninety (90) calendar days from the date of execution of the valid assignment. It is Lessee's responsibility, not the Department's, to process and administer any overriding royalty. Any assignment that creates an overriding royalty that cumulatively exceeds the royalty payable to Lessor by greater than five percent (5%), is deemed a violation of this Lease, unless that assignment expressly provides that the obligation to pay the excess overriding royalty is suspended when the average production of oil per well per day, averaged on a monthly basis, is fifteen (15) barrels or less at sixty (60) °F at atmospheric pressure, or; the average Production of gas per day, averaged on a monthly basis, is 60,000 cubic feet (1,700 m<sup>3</sup>) or less at fourteen and seventy-three hundredths (14.73) pounds per square inch absolute and the standard temperature base of sixty (60) °F. A reservation or assignment of an overriding royalty will not relieve Lessee of any of Lessee's obligations for payment of Royalties to Lessor. Any reservation or assignment of overriding royalty by Lessee must terminate upon the termination of this Lease.~~ (3-18-22)(\_\_\_\_)

046. -- 049. (RESERVED)

#### 050. LAND USE, SURFACE RIGHTS AND OBLIGATIONS.

~~01. Use and Occupancy. Notwithstanding other leases for other uses of state lands, the lessee is entitled to use and occupy as much of the surface of the leased lands as may be required for all purposes reasonably incident to exploration, drilling and production and marketing of oil and gas produced from the leased land, including the right to construct and maintain all works, buildings, plants, waterways, roads, communication lines, pipelines, reservoirs, tanks, pumping stations or other structures necessary to full enjoyment and development; provided that lessee's operation does not unreasonably interfere with or endanger operations under any lease, license, claim, permit or other authorized, lawful use.~~ (3-18-22)

021. **Prevention of Injury or Damage.** The Lessee, its assignees, agents, and/or contractors must take all reasonable precautions to prevent injury or damage to persons, real and personal property, and to prevent waste or damage to the oil, gas, and other surface and subsurface natural resources and the surrounding environment including ~~but not limited to,~~ vegetation, livestock, fish and wildlife and their natural habitat, streams, rivers, lakes, timber, and forest and agricultural resources. The Lessee, ~~his its~~ assignees, agents, and/or contractors will compensate the Board, ~~his its~~ surface lessees, grantees, or contract purchasers for any damage resulting ~~by reason of from~~ their operations or any damage resulting from their failure to take all reasonable precautions to prevent injury or damage to persons, real and personal property, and to prevent waste or damage to the oil, gas, and other surface and subsurface natural resources and surrounding environment, as set forth above. The Lessee, its assignees, agents, and/or contractors must comply with all environmental laws, rules, and regulations as they pertain to its operation. (3-18-22)(\_\_\_\_)

032. **Blowout or Spill.** The Lessee must report to the Director any blowout, fire, uncontrolled venting, or oil spill on the leased land within twenty-four (24) hours and confirm this report in writing within ten (10) days. (3-18-22)(\_\_\_\_)

~~04. Fences. The lessee may not at any time fence any watering place upon leased lands where it is the only accessible and feasible watering place upon the lands within a radius of one (1) mile, without first having secured the written consent of the Director.~~ (3-18-22)

053. **Timber Removal.** The Lessee may not unreasonably interfere with the removal of timber purchased prior or subsequent to the issuance of an ~~e~~Oil and ~~g~~Gas Lease. The Lessee may remove any timber required for ingress or egress or ~~as otherwise~~ necessary for operations. The Lessee must pay ~~the current stumps~~ price, as determined by the Director for any timber cut or removed ~~on a current stumps price basis as determined by the Director, and, Such proceeds therefrom accrue go~~ to the state agency that has custody and control over the leased lands. (3-18-22)(\_\_\_\_)



~~064.~~ **Potable Water Discovery.** If the Lessee finds only potable water in any well drilled for exploration or production of oil and gas, and the water is of such quality and quantity as to be valuable and usable for agricultural, domestic, or other purposes, the Board may acquire the well with whatever casing is installed in the well at the casing's fair market value ~~of the casing upon the assumption by its surface lessee, grantee, or contract purchaser of surface lessee, grantee, or contract purchaser assuming~~ all future liabilities and responsibilities for the well, with the approval of the eCommission, ~~and if such acquisition is~~ in compliance with Section 058; provided that the surface lessee, grantee, or contract purchaser also complies with applicable laws and rules of the Department of Water Resources. (3-18-22)(    )

~~075.~~ **Reclamation.** The Lessee must reclaim all state Lands disturbed by its exploration and operations so that they are, at least, consistent with previous use by the surface owner; ~~This may including include~~ segregating and protecting topsoil and regrading to approximate previous contour. If ~~the Director has determined that~~ substantial removal of topsoil has occurred ~~as determined by the Director~~, the Lessee will replace the topsoil and revegetate to the extent necessary to minimize erosion. (3-18-22)(    )

~~086.~~ **Entry by Director.** The Director is permitted, at all reasonable times, to go in and upon the leased lands and premises to inspect the operations and ~~the~~ products obtained and to post any lawful notice. The Director may, at any time, require that reasonable tests, surveys, samples, etc., be taken to assure compliance with these rules, in accord with ~~his~~ their instruction, without cost to the state of Idaho, to assure compliance with these rules. The Director may at any reasonable time and at state expense, inspect and copy ~~at his own expense~~ all of Lessee's books and records pertaining to a Lease under these rules. ~~Upon failure of lessee~~ If the Lessee fails to take timely, corrective measures, as ordered by the Director, ~~or the Board, or the e~~ Commission, bond forfeiture may occur and the Director may shut down Lessee's operations if ~~he~~ the Director determines they are unsafe or are causing or may cause waste or pollution to oil, gas, or other resources, or; or the Director may terminate the Lease and cause damage or unsafe conditions to be repaired or corrected, at the expense of the Lessee ~~and forfeiture of bond in accordance with these rules~~. (3-18-22)(    )

~~09.~~ **Other Uses.** ~~Subject to Subsection 050.01, the Director may issue leases for other uses of state lands leased under these rules. All lessees have the right of reasonable ingress and egress at all times during the term of the lease.~~ (3-18-22)

~~10.~~ **Disposal of Leased Lands.** ~~The Board reserves the right to sell or otherwise dispose of the surface of the leased lands; provided that any sale of surface rights made subsequent to execution of the lease is subject to all terms and provisions of the oil and gas lease during its life including extensions and continuations under Section 040.~~ (3-18-22)

**051. DILIGENT EXPLORATION REQUIRED.**

~~The lessee must perform diligent exploration during the entire term of a lease. Diligent exploration means that the lessee provides continuing efforts as a reasonably prudent operator toward achieving production, including, without limitation, performing geological and geophysical surveys and/or the drilling of a test well.~~ (3-18-22)

~~052~~1. -- 054. (RESERVED)

**055. OPERATIONS UNDER THE LEASE.**

**01. Best Practices.** The Lessee will, at all times, conduct exploration, development, drilling and all operations as a reasonably prudent operator and will conform to the best practice and engineering principles in use in the oil and gas industry. (3-18-22)(    )

~~02.~~ **Compliance with Rules.** ~~The lessee will comply with all rules of the oil and gas commission, including amendments promulgated pursuant to Title 67, Chapter 52, Idaho Code, and any violations of the commission's rules or other applicable state laws and rules may constitute a violation of the lease under these rules.~~ (3-18-22)

~~032.~~ **Designation of Operator.** ~~In all cases where~~ A designation of operator must be submitted to the Director prior to operations commencing when the operations are not conducted by the Lessee ~~but~~ and are to be

conducted under authority of an approved operating agreement, assignment or other arrangement, ~~a designation of operator must be submitted to the Director prior to commencement of operations. Such a~~ The designation authorizes the operator, ~~or his~~ their local representative, to act for the Lessee and to sign any papers or reports ~~required under these rules~~. The Lessee must immediately report all address changes and termination of an operator's authority to the Director ~~all changes of address and termination of the authority of the operator~~. (3-18-22)(    )

~~04. Legal Representative. When required by the Director, the lessee must designate a local representative empowered to receive service of civil or criminal process and notices and orders of the Director issued pursuant to these rules.~~ (3-18-22)

~~053. Diligence. The lessee will, subject to the right to surrender the lease, diligently drill and produce such wells as are necessary to protect the Board from loss by reason of production on other properties, or with the consent of the Director, compensate the Board for failure to drill and produce any such well. All wells under lease must be drilled, maintained and operated to produce the maximum amount of oil and/or gas that can be secured without injury to the well.~~ (3-18-22)(    )

a. Lessee must diligently explore for the entire Lease. Diligent exploration means that the Lessee continually provides effort, as a reasonably prudent operator would, to achieving production on the leased premises or on lands pooled or unitized therewith, such as performing geological and geophysical surveys and/or drilling a test well. (    )

b. Following Lessee's diligent exploration, Lessee must engage in continuous drilling operations on the leased premises or on lands pooled or unitized therewith during the remaining Lease term or any extension of the Lease pursuant to Section 022.02.b. until Production in Paying Quantities is achieved This means there is to be no delay or cessation of drilling for more than one hundred twenty (120) days, unless an extension is granted by the Director in writing. The Director must receive a written request for the extension at least then (10) days prior to the one hundred twenty (120) day period ending. (    )

c. All wells under a Lease must be drilled, maintained, and operated to produce the maximum amount of oil and/or gas possible, without injury to the well. The Lessee will, subject to the right to surrender the Lease, diligently drill and produce as many wells as necessary to protect the Board from loss resulting from production on other properties. The Lessee may, with the Director's written consent, compensate the Board for failure to drill and produce such wells. (    )

~~064. Loss Through Waste or Failure to Produce. The~~ If there is loss through waste or failure to drill and produce protection wells on the leased lands, the Director will determine the value of production accruing to the Board ~~where there is loss through waste or failure to drill and produce protection wells on the leased lands~~ and the compensation due to the Board as reimbursement for such loss. Payment for such losses must be made within sixty (60) days after the date of billing. The value of production resulting from a loss through waste or failure to take corrective measures to protect a well is calculated at ninety percent (90%) of the last year's actual production royalty or a minimum royalty of five dollars (\$5) per acre or fraction thereof, whichever is greater. (3-18-22)(    )

~~075. By-Products. Where production, use or conversion of eOil and gGas under a lLease, is susceptible of producing a valuable by-product(s) or by-products, including, without limitation, commercially demineralized water, carbon dioxide, or helium, the lLessee must submit to the Director all available information concerning the potential by-product(s). The Department may conduct tests or studies, at its expense, and may issue reasonable orders to produce and preserve such by-product(s).~~ (3-18-22)(    )

~~086. Geothermal Information. Prior to abandoning any well, the lLessee must submit to the Director all available information concerning geothermal resource potential. The Department may conduct tests or studies, at its expense, prior to the abandoning of any well to determine geothermal resource potential. Except as provided in Subsection 040.05 022.02.d., the lLessee must promptly plug and abandon any well on the leased land that is not used or useful, in accord with these rules, and the Commission's rules of the commission, and any applicable rules and regulations of the Department of Water Resources. When drilling in a known geothermal resources area, the applicant Lessee may need a geothermal resource well permit from the Department of Water Resources.~~ (3-18-22)(    )

**056. WATER RIGHTS.**

~~The lessee will comply with all state laws and rules regulating the appropriation of water rights. No water rights developed or obtained by the lessee in conjunction with operations under a lease may be sold, assigned or otherwise transferred without written approval of the Director. Upon surrender, termination or expiration of the lease, the lessee must take all actions required by the Director to assign to the Board all water rights, including applications and permits, subject to applicable laws regarding the transfer or assignment of permits to appropriate water. (3-18-22)~~

**057~~6~~ -- 059. (RESERVED)**

**060. ASSIGNMENTS.**

**01. Prior Written Approval.** No Hlease assignment is valid ~~until unless~~ approved by the Director in writing ~~by the Director, and no. The~~ assignment does not take effect until the first day of the month following its approval. (3-18-22)(    )

**02. Qualified Assignee.** A Hlease may be assigned to any qualified person ~~qualified to hold a state lease~~, provided that in the event an assignment partitions leased lands between two (2) or more persons, neither the assigned nor the retained part created by the assignment may contain less than forty (40) acres or a government lot, whichever is less. (3-18-22)(    )

**03. Responsibilities.** In an assignment of the complete interest of the leasehold, the assignor and ~~his~~ their surety must continue to comply with the Hlease and these rules until the effective date of the assignment. After the effective date of any assignment, the assignee and ~~his~~ their surety are bound by the Hlease ~~and these rules~~ to the same extent as if the assignee were the original Hlessee, notwithstanding any conditions in the assignment to the contrary; however, the assignor-lessee remains liable for rentals and royalties due and damages accruing prior to the effective date of the assignment. (3-18-22)(    )

**04. Segregation of Assignment.** If an assignment partitions leased lands between two (2) or more persons, it must clearly segregate the assigned and retained portions of the leasehold. Resulting segregated Hleases continue in full force and effect for the balance of the ten-year term of the original Hlease or as further extended pursuant to these rules. (3-18-22)(    )

**05. Joint Principal.** Where an assignment does not segregate the record title to the Hlease, the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. The application must be accompanied by a consent of assignor's surety to remain bound under the bond of record, if the bond by its terms does not contain such consent. If a party to the assignment has previously furnished a statewide bond, no additional showing by such party is necessary as to the bond requirement. (3-18-22)(    )

**06. Form of Assignment.** An assignment is a valid legal instrument, properly executed and acknowledged, setting forth the number of the Hlease, a legal description of the land involved, the name and address of the assignee, the interest transferred and the consideration. A fully executed copy of the instrument of assignment must be filed with the application for approval pursuant to Subsection 060.07. An assignment may affect or concern more than one (1) Hlease. (3-18-22)(    )

**07. Application.** The application for approval of an assignment must be submitted ~~in duplicate~~ on Department forms ~~of the Department or exact copies of such forms~~. The "lessee/assignee of record" must be designated in accordance with Subsection 010.11. If payments out of production are reserved, a statement must be submitted stating the amount, method of payment, and other pertinent items. The statement must be filed with the Department no later than fifteen (15) days after the filing of the application for approval of an assignment. (3-18-22)(    )

**08. Denial.** The Director may deny an application for assignment if the Hlessee or the assignee is delinquent in payment of rentals or royalties or ~~otherwise~~ otherwise violated these rules. (3-18-22)(    )

**09. Fee.** All applications for approval of assignment must be accompanied by the fee required by Section 120. (3-18-22)

**061. -- 069. (RESERVED)**

070. SURRENDER - RELINQUISHMENT.

01. **Procedure.** The Lessee may surrender its Lease, or any surveyed subdivision of the area covered by such Lease, by filing a written relinquishment with the Department, ~~provided that a~~ A partial relinquishment ~~does~~ may not reduce the remaining acreage in the Lease to less than forty (40) acres or a government lot, whichever is less. The Director may waive the minimum acreage ~~provision of this rule requirement~~ if he finds it is found to be justified on the basis of exploratory and development data derived from activity on the leasehold. (3-18-22)(    )

02. **Effective Date.** A relinquishment takes effect thirty (30) days after it is received by the Department. ~~Thereafter~~ After effective relinquishment, the Lessee is relieved of liability under these rules except for the continued obligation of the Lessee and ~~his~~ their surety to: (3-18-22)(    )

- a. Make payments of all accrued rentals and royalties; (3-18-22)
- b. Place all wells on the relinquished land ~~to be relinquished~~ in a condition for suspension of operations or abandonment; (3-18-22)(    )
- c. Comply with all of the Commission's rules ~~of the commission~~ for plugging of abandoned wells; (3-18-22)(    )
- d. Comply with applicable laws and rules of the Department of Water Resources; and (3-18-22)
- e. Reclaim the surface and natural resources in accord with these rules. (3-18-22)

03. **Partial Surrender.** In the event of a partial surrender ~~of the land covered by such lease~~, the annual rental ~~thereafter payable~~ rate will be reduced proportionately. (3-18-22)(    )

071. TERMINATION - CANCELLATION OF LEASE.

01. **Cause.** Except as otherwise provided in these rules, the Director may terminate the Lease for any substantial violation of ~~these rules, the lease, or the rules of the commission, ninety (90) days after notice of the violation has been given to lessee by personal service or by certified mail to the lessee, unless~~ the Lease ninety (90) days after notice of the violation has been given to Lessee by personal service or certified mail, in which case notice is deemed served upon mailing, unless: (3-18-22)(    )

- a. The violation has been corrected; or (3-18-22)
- b. The violation is one that cannot be corrected within the notice period and the Lessee has in good faith commenced ~~within the notice period to~~ correcting the violation, within the notice period, and diligently proceeds diligently to complete corrective action, within a the time period set by the Director. ~~If sent by certified mail, such notice will be deemed served upon mailing.~~ (3-18-22)(    )

02. **Surrender After Termination.** Upon the expiration or termination of the Lease, the Lessee will quietly and peaceably surrender possession of the premises to the state. ~~Thereafter, lessee's obligations under these rules that have accrued prior to the date of expiration or termination continue in full force and effect~~ Such surrender does not relieve the Lessee of liabilities that may have accrued in connection with the Lease prior to the surrendering. (3-18-22)(    )

03. **Other Wells.** Default by the Lessee ~~in the performance of performing~~ any of the Lease's conditions or provisions ~~of the lease~~ concerning a well(s) or wells on any Legal subdivision of the leasehold do not affect the right of the Lessee to continue the possession or operation of any other well (s) or wells, that are situated upon any other Legal subdivision of the leasehold. ~~The term "legal subdivision" as herein used means a subdivision as established by the United States land survey that most nearly approximates in size the area allocated to one well under any approved well spacing program; provided that if no special program has been approved, "legal subdivision" means the parcel upon which such well is located, but in any event not less than forty (40) acres surrounding such well.~~ Where such a default involving one (1) or more well (s) results in cancellation, and the Lessee

has other wells on the Lease, which are not in default, such cancellation will result in the division of the defaulting acreage from the Lease and resultant reduction in the size of the Lease held by the Lessee. (3-18-22)(    )

**04. Equipment Removal.** Upon the expiration of the Lease, ~~or its earlier termination,~~ or surrender pursuant to these rules, the Lessee must, ~~within a period of ninety (90) days,~~ remove from the premises all materials, tools, appliances, machinery, structures. The Lessee must do so within ninety (90) days or within the extension that may be granted because of adverse climatic conditions. Equipment subject to removal but not removed ~~within the ninety (90) day period or any extension that may be granted because of adverse climatic conditions during that period within the allotted time,~~ may, at the option of the Director, become property of the state of Idaho, or the Director may cause the property to be removed at the Lessee's expense. (3-18-22)(    )

**072. -- 079. (RESERVED)**

**080. BOND REQUIREMENTS.**

**01. Minimum Bond.** Prior ~~entry with m~~ Motorized ~~e~~ Exploration ~~equipment up~~ on leased lands, the surface of which has been sold or leased, the Lessee must submit to the Director a corporate surety bond or collateral bond in the amount of one thousand dollars (\$1,000) in favor of the state of Idaho conditioned upon the payment of all damages to the surface that result from the Lessee's operation. Prior to entry upon the leased land with drilling equipment or prior to commencing any construction in preparation for drilling upon leased lands, the Lessee must submit to the Director a corporate security bond or collateral bond in the amount of six thousand dollars (\$6,000) in favor of the state of Idaho ~~bond will be~~ conditioned upon compliance with the Lease, these rules, ~~the removal of all materials, etc. per Subsection 071.04,~~ and the payment of all damages to the land surface and all improvements thereon, including crops, which result from the Lessee's operation, regardless of whether the lands under this Lease have been sold or leased by the Board for any other purpose. This bond is in addition to the drilling bond pursuant to the eCommission's rules. This rule notwithstanding, the ~~oil and gas~~ Lessee may be required, on a case-by-case basis, to post a bond ~~in excess of that exceeds~~ six thousand dollars (\$6,000) to protect a surface lessee's or surface owner's interests, ~~pursuant to per~~ Section 47-708, Idaho Code. (3-18-22)(    )

**02. Statewide Bond.** In lieu of the aforementioned bonds, the Lessee may furnish a good and sufficient "statewide" bond conditioned as above in the amount of fifty thousand dollars (\$50,000) in favor of the state of Idaho to cover all Lessee's Leases and operations carried ~~on~~ out under these rules. (3-18-22)(    )

**03. Period of Liability.** The period of liability of any bond is not to be terminated until all obligations under the Lease and these rules have been fulfilled and the bond is released in writing by the Director. (3-18-22)(    )

**04. Form of Performance Bond.** (3-18-22)

**a.** Corporate surety bond means an indemnity agreement executed by or for the Lessee and a corporate surety licensed to do business in the state of Idaho on ~~a~~ Department ~~e~~ Oil and ~~g~~ Gas Lease ~~b~~ Bond form, ~~supplied by the Department~~ conditioned in accord with Subsection 080.01; and payable to the state of Idaho. (3-18-22)(    )

**b.** Collateral bond means an indemnity agreement executed by or for the Lessee and payable to the state of Idaho, pledging cash deposits, negotiable bonds of the United States, state or municipalities, or negotiable certificates of deposit of any bank doing business in the United States. Collateral bonds are subject to the following conditions: The Department obtains possession and deposits such with the state treasurer. The Department will value collateral at its current market value, not face value. Certificates of deposit are made payable to the "State of Idaho or the lessee." Amount of an individual certificate may not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors. Banks issuing such certificates waive all rights of set-off or liens that they have of may have against such certificates. Any such certificates are automatically renewable. The certificate of deposit must be of sufficient amount to ensure that the Department would be able to liquidate such certificates prior to maturity, upon forfeiture, for the amount of the required bond including any penalty for early withdrawal. (3-18-22)(    )

**05. Bond Cancellation.** Any surety company or indemnitor canceling a bond must give the

Department at least sixty-days' (60) notice prior to cancellation. The Department will not release a surety or indemnitor from liability under existing bonds until the Hlessee has submitted to the Department an acceptable replacement bond. Such replacement bond must cover any liability accrued against the bonded principal on the Hlease covered by the previous bond. (3-18-22)(\_\_\_\_)

**06. Surety License.** If the license to do business in Idaho of any surety is suspended or revoked, the Hlessee must find a substitute for such surety within thirty (30) days after notice by the Department. If the lessee fails to secure a substitute surety, ~~he~~ they must cease operations ~~upon~~ under the Hlease. The substitute surety must be licensed to do business in Idaho. (3-18-22)(\_\_\_\_)

**07. Form.** All bonds furnished must be on the Department bond form ~~or exact copy of it.~~ (3-18-22)(\_\_\_\_)

**081. -- 089. (RESERVED)**

**090. UNIT OR COOPERATIVE PLANS OF DEVELOPMENT OR OPERATION.**

**01. Unit Plan.** For the purpose of properly conserving the natural resources of any eOil and gGas pool, field, or like area, the Hlessee may, with the Director's written consent ~~of the Director,~~ commit the leased lands to a unit, cooperative or other plan of development or operation with other state, federal, Indian, or privately-owned lands. (3-18-22)(\_\_\_\_)

**02. Contents.** An agreement to unitize must: describe the separate ttracts comprising the unit; disclose the apportionment of the production of royalties and costs to the several parties; disclose the name of the operation; and contain adequate provisions for the protection of the interests of all parties, including the state. The agreement must: be signed by or ~~in~~ on behalf of those persons ~~or entities~~ having effective control of the geologic structure; be submitted to the Director with the application to unitize; ~~and.~~ The agreement is effective only after approval by the Director. (3-18-22)(\_\_\_\_)

**03. Interested Parties.** The owners of any right, title, or interest in the eOil and gGas resources to be developed or operated under an agreement may be regarded as interested parties to a proposed unitization agreement. Signature of a party with only an overriding royalty interest in unnecessary. (3-18-22)(\_\_\_\_)

**04. Collective Bond.** In lieu of separate bonds for each Hlease committed to a unit agreement, the unit operator may furnish and maintain a collective corporate surety bond or a collateral bond, conditioned upon faithful performance of the duties and obligations of the agreement, the Hlease that is subject to the agreement and these rules. The liability under the bond will be for such amount the Director determines to be adequate to protect the state's interests ~~of the state.~~ If the unit operator is changed, a new bond or consent of surety to the change in principal under the existing bond must be filed within thirty (30) days of assignment. (3-18-22)(\_\_\_\_)

**05. Lease Modification.** The terms of any Hlease included in any cooperative or unit plan of development or operation may be modified by the Director with approval of the Hlessee, except that a unit agreement must have final approval by the Director for a state cooperative plan or the final approval by the secretary of interior for a federal cooperative plan prior to extending any Hlease into its eleventh year and each year thereafter. A Hlease so extended expires two (2) years after the unit plan expires provided the Hlessee continues to pay the annual rental, ~~as outlined in per~~ Subsection ~~041.03~~ 022.02.a. (3-18-22)(\_\_\_\_)

**06. Rentals.** Rentals and royalties on Hleases so extended are at the rates specified in these rules. Advanced rental must be paid on or before the extended Hlease's anniversary date. Any unused portion of annual rental will not be refunded. (3-18-22)(\_\_\_\_)

**07. Evidence of Agreement.** Before issuance of a Hlease for lands within an approved unit agreement, the Hlease applicant must file with the Department evidence that ~~he has~~ they have entered into an agreement with the unit operator for the development and operation of the lands in a Hlease, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, the applicant will be permitted to operate independently but be required to perform its operations in a manner that the Director deems to be consistent with the unit operations. (3-18-22)(\_\_\_\_)

**08. Segregation Prohibited.** A lease may not be segregated if any part thereof is included in a cooperative plan until the pool or field has been defined. Once defined, those areas outside the unit area or pool boundary can be surrendered as provided in Section 070. (3-18-22)( )

**091. -- 094. (RESERVED)**

**095. LIABILITY INSURANCE; SPECIAL ENDORSEMENTS.**

**01. Liability Insurance Required.** ~~Prior to entry upon the leased lands for any reason other than casual exploration or inspection pursuant to Section 021, the lessee must secure and maintain during the term of this lease, public liability, property damage, and products liability insurance in the sum of four hundred thousand dollars (\$400,000) for injury or death for each occurrence; in the aggregate sum of two million dollars (\$2,000,000) for injury or death; and in the sum of four hundred thousand dollars (\$400,000) for damages to property and products damages caused by any occupancy, use, operations of any other activity on leased lands carried on by the lessee, its assigns, agents, operators or contractors. The lessee must insure against explosion, blow out, collapse, fire, oil spill and underground hazards and submit evidence of such insurance to the Director. If the land surface and improvements thereon covered by the lease have been sold or leased by the state of Idaho, the owner or lessee of the surface rights and improvements will be an additional named insured. The state of Idaho is a named insured in all instances. This policy or policies of liability insurance must contain the following special endorsement:~~

~~“The state of Idaho, the Idaho State Board of Land Commissioners, the Director of the Department of Lands, the Department of Lands, (or other state agency exercising custody and control over the lands), and (herein insert name of owner or lessee of surface rights, if applicable) and the officers, employees and agents of each and every of the foregoing are additional insureds under the terms of this policy. Provided, however, these additional insureds shall not be insured hereunder for any primary negligence or misconduct on their part, but such additional insureds shall be insured hereunder for secondary negligence or misconduct, which shall be limited to failure to discover and cause to be corrected the negligence or misconduct of the lessee, its agents, operators or contractors. This insurance policy shall not be canceled without thirty (30) days prior written notice to the Idaho Department of Lands. None of the foregoing additional insureds is liable for the payment of premiums or assessments of this policy.”~~

~~No cancellation provision in any insurance policy is in derogation of the continuous duty of the lessee to furnish insurance during the term of this lease. Such policy or policies must be underwritten to the satisfaction of the Director. A signed complete certificate of insurance, with the endorsement required by this paragraph, must be submitted to the Director prior to entry upon the leased land with motorized exploration equipment after award of a lease and may be required prior to such entry under Rule 021 Prior to entry upon the leased lands for purposed other than Casual Exploration or inspection, the Lessee is required to purchase and maintain suitable insurance for the duration of the Lease. (3-18-22)( )~~

**02. Certificate of Insurance.** ~~At least thirty (30) days prior to the expiration of any such policy, a signed complete certificate of insurance, with the endorsement required by Subsection 095.01, showing that such insurance coverage has been renewed or extended, must be filed with the Director No work under this Lease will commence prior to the Department’s receipt of a certificate, signed by a licensed insurance agent, evidencing existence of insurance as required above. Further, such certificate must reflect that no change or cancellation in such coverage will become effective until after the Department receives written notice of such change or cancellation. (3-18-22)( )~~

**096. HOLD HARMLESS.**

~~The state of Idaho, the Board, the Director, the Department, and any other state agency that may have custody or control of the leased lands, and the owner of the surface rights and improvements, if not the state of Idaho, or state lessee of surface rights, if there be one, the officers, agents and employees of each of the foregoing, are free from any and all liabilities and claims for damages and/or suits for or by reason of death or injury to any person or damage of property of any kind whatsoever, caused by a negligent or otherwise wrongful act or omission of the lessee, its assigns, agents, operators, employees or contractors; and lessee covenants and agrees to indemnify and to save harmless the state of Idaho, the Board, the Director, the Department, or other state agency, or the lessee of surface rights if there be one, and their officers, agents, and employees from all liabilities, charges, expense, including attorney fees, claims, suits or losses caused by a negligent or otherwise wrongful act or omission of the lessee, its~~

~~assigns, agents, operators, employees or contractors. The lessee's signature to a lease under these rules constitutes express agreement to this rule.~~ (3-18-22)

**097~~6~~ -- 099. (RESERVED)**

**100. TITLE.**

The state of Idaho does not warrant title to the leased lands or the ~~o~~Oil and ~~g~~Gas resources that may be discovered thereon; the ~~I~~Lease is issued only under such title as the state of Idaho may have as of the ~~Lease's~~ effective date ~~of the lease~~ or thereafter acquires. (3-18-22)(    )

**~~101. IMPOSSIBILITY OF PERFORMANCE.~~**

~~Whenever, as a result of any act of God, or law, order or regulation of any governmental agency, it becomes impossible for the lessee to perform or to comply with any obligation under the lease or these rules, other than payment of rentals or royalties, the Director in his discretion, may by written order excuse lessee from damages or forfeiture of the lease, and the lessee's obligations may be suspended and the term of the lease may be extended provided that the Director finds that good cause exists.~~ (3-18-22)

**~~102. TAXES.~~**

~~The lessee pays, when due, all taxes and assessments of any kind lawfully assessed and levied against the lessee's interest or operations under the laws of the state of Idaho.~~ (3-18-22)

**103~~1~~ -- 119. (RESERVED)**

**120. FEES.**

**01. Exploration Permit.** One hundred dollars (\$100) per linear mile or a minimum of one hundred dollars (\$100) per section. (3-18-22)

**02. Nonrefundable Nomination Fee.** The nomination fee is set by the Board at a minimum of two hundred fifty dollars (\$250) per ~~tract~~. (3-18-22)(    )

**03. Processing Fee.** The processing fee is set by the Board at a minimum of one hundred dollars (\$100) per each document. (3-18-22)

**04. Fee Adjustment.** The Board may annually adjust these fees without formal rulemaking procedures. (3-18-22)

**121. -- 999. (RESERVED)**



**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**  
**20.04.01 – RULES PERTAINING TO FOREST FIRE PROTECTION**  
**DOCKET NO. 20-0401-2301 (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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 3, 2024, Idaho Administrative Bulletin, [Vol. 24-7, pages 162-171](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: 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: No Fiscal Impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Brooke Heasty at [bheasty@idl.idaho.gov](mailto:bheasty@idl.idaho.gov).

DATED this 6th day of November, 2024.

Joshua J. Harvey  
Fire Management Chief  
Forestry and Fire Division  
Idaho Department of Lands  
3284 W Industrial Loop  
Coeur d'Alene, Idaho, 83815  
Phone: (208) 666-8650  
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 July 17, 2024.

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 2024 and legislative review in 2025 with the goal of simplifying and streamlining the rules for increased clarity and ease of use. The rule provides standards for forest fire protection, non-fee, burn permitting, and for firefighting water supply and tool requirements for Forest Operations.

**FEE SUMMARY:** N/A

**FISCAL IMPACT:** None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted and concluded February 22, 2024. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the October 4, 2023 Idaho Administrative Bulletin, [Vol. 23-10, page 512](#).

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

The San Dimas Technology & Development Center (SDTDC) Spark Arrestor Guide is a US Forest Service standard applied to spark arrestors for internal combustion engines used on lands administered by the Forest Service, other Federal agencies and most States and municipalities.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Brooke Heasty at [bheasty@idl.idaho.gov](mailto:bheasty@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 July 24, 2024.

DATED this 3rd day of June, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 20-0401-2301**

20.04.01 – RULES PERTAINING TO FOREST FIRE PROTECTION

000. AUTHORITY.

This chapter is adopted under the legal authority of Sections 38-115, 38-132, 38-402, 58-104(6), 58-105, and 67-5201 et seq., Idaho Code. (3-31-22)

001. TITLE AND SCOPE.

~~01. Title.~~ These rules are titled IDAPA 20.04.01, “Rules Pertaining to Forest Fire Protection.” and implement the provisions of Title 38 Chapter 1, Idaho Code. They provide (3-31-22)

~~02. Scope.~~ These rules govern requirements, standards pertaining to for forest fire protection, permitting, and for firefighting water supply and tool requirements for Forest Operations. (3-31-22)( )

002. INCORPORATION BY REFERENCE.

01. **Incorporated Document.** IDAPA 20.04.01 adopts and incorporates by reference the full text of the following documents published by the San Dimas Technology & Development Center (SDTDC). (3-31-22)

a. Spark Arrester Guide – General Purpose and Locomotive (GP/Loco), Volume 1, September 2012, 1251 1809-SDTDC. (3-31-22)

b. Spark Arrester Guide – Multiposition Small Engine (MSE), Volume 2, August 2012, 1251 1808-SDTDC. (3-31-22)

c. Spark Arrester Guide – Off- Highway Vehicles (OHV), Volume 3, April 2012, 1251 1805-SDTDC. (3-31-22)

02. **Printed and Bound Copies.** Printed copies or bound copies may be viewed at any District Office or requested through SDTDC, 444 E. Bonita Ave, San Dimas, 91773. (3-31-22)

003. -- 009. (RESERVED)

010. DEFINITIONS.

The terms Fire Warden, Forest Land, Forest Products, Person, Range Land, Slash, and State are defined in Section 38-101, Idaho Code. In addition to the definitions set forth in the Idaho Forestry Act, the following definitions apply to these rules: ( )

01. **Block.** A piece of logging equipment where steel rope or cable ~~is actively turning~~ turns the block’s pulley ~~and used~~ as part of a cable logging yarding system. ~~for the specific purposes of establishing~~ It is used to install tail hold anchor points, intermediate support of main lines, or carriage haul-back capability ~~for the purposes of~~ for yarding or hauling ~~of trees or~~ logs to a log landing ~~for transportation to a mill or processing facility.~~ (3-31-22)( )

02. **Cable or Cable Assisted Logging.** A harvest system for felling or yarding ~~of forest product materials consisting of the use of~~ trees or logs for transport to a landing using a cable assisted harvester or ~~the use of~~ a yarder, spar tree, or intermediate support with a motorized or non-motorized carriage ~~to transport logs to the landing for further processing purposes.~~ (3-31-22)( )

03. **Closed Fire Season.** The calendar period from May 10 to October 20, ~~inclusive, of each year~~ or as designated by the Director, due to conditions of unusual fire danger ~~pursuant to,~~ when a permit is required to burn under Section 38-115, Idaho Code. (3-31-22)( )

04. **Department.** The Idaho Department of Lands. (3-31-22)

- ~~05.~~ **Director.** The ~~d~~Director of the Idaho Department of Lands ~~or his authorized representative or their designee.~~ (3-31-22)(    )
- ~~06.~~ **District.** A designated forest protective district under Section 38-110, Idaho Code. (3-31-22)(    )
- ~~07.~~ **Fire Warden.** A duly appointed fire warden or deputy. (3-31-22)
- ~~08.~~ **Forest Land.** Any land which has upon it sufficient brush or flammable forest growth of any kind or size, living or dead, standing or down, including debris or growth following a fire or removal of forest products, to constitute a fire menace to life (including animal) or property. (3-31-22)
- ~~09.~~ **Forest Operation.** An activity or service conducted on ~~f~~Forest ~~L~~ands involving any of the operations as described below where a Certificate of Compliance ~~is required pursuant to Section 38-122, Idaho Code. Fire Hazard Management Agreement and/or Forest Practice Notification are required under Sections 38-122, 38-404, and 38-1306, Idaho Code:~~ (3-31-22)(    )
- ~~a.~~ The harvesting of trees ~~using equipment that includes, but is not limited to,~~ including felling, bucking, yarding, delimiting, and decking ~~operations;~~ (3-31-22)(    )
- ~~b.~~ Thinning or mastication operations for stand improvement, stand density management or fuel reduction ~~purposes;~~ (3-31-22)(    )
- ~~c.~~ Road construction or reconstruction ~~of existing roads~~ including installation or improvement of bridges, culverts, or structures; ~~and or~~ (3-31-22)(    )
- ~~d.~~ Slash management including chipping, grinding, or other mechanized reduction activities. (3-31-22)
- ~~108.~~ **Metal-Tracked Harvester.** Any machine with metal tracks used to fall, bunch, or process trees ~~into forest products~~ at the stump. (3-31-22)(    )
- ~~109.~~ **Operator.** A ~~p~~Person who conducts a ~~f~~Forest ~~e~~Operation. (3-31-22)(    )
- ~~120.~~ **Operating Area.** ~~That~~ The area where a ~~f~~Forest ~~e~~Operation ~~is taking place~~ occurs. (3-31-22)(    )
- ~~13.~~ **Person.** Includes any person or persons, and any corporation, firm or other entity. (3-31-22)
- ~~14.~~ **Range Land.** Any land ~~that is not cultivated and that has upon it native grasses or other forage plants making it best suited for grazing of domestic and wild animals and which land is adjacent to or intermingled with forest land.~~ (3-31-22)
- ~~15.~~ **Slash.** Brush, severed limbs, poles, tops and/or other waste material incident to such cutting or to the clearing of land that are four (4) inches and under in diameter. (3-31-22)
- ~~16.~~ **State.** State of Idaho. (3-31-22)

**011. SPARK ARRESTER REQUIREMENTS AND EXEMPTIONS.**

- 01. Requirements.** The steam or internal combustion engines referred to in Section 38-121, Idaho Code, must be equipped with properly installed, maintained, and effectively working spark arresters that comply with the standards set forth in the San Dimas Technology and Development Center's "Spark Arrester Guide(s)." (    )
- 02. Exemptions.** The following are exempt from the requirements of the rule: (    )
- a.** Turbo-charged internal combustion engines in which one hundred percent (100%) of the

combustion gases exhaust through the turbo-charger: ( )

b. Engines of passenger-carrying vehicles and light trucks, kept in good repair, equipped with baffle-type muffler and tailpipe which exhaust all combustion gases: ( )

c. Engines of heavy-duty trucks equipped with a vertical exhaust stack and muffler extending above the cab of the vehicle: ( )

d. Engines of water pumping equipment used in firefighting; and ( )

e. Engines of helicopters and other aircraft. ( )

**012. -- 019. (RESERVED)**

**020. VARIANCE FROM RULE FOR ALTERNATE PRACTICES.**

~~If conditions or activities require the application of~~ To apply practices that differ from ~~those prescribed in~~ these rules, the Operator must first obtain a variance ~~prior to employing any of those differing practices.~~ (3-31-22)( )

**01. Obtaining a Variance.** ~~In order to obtain a variance, t~~ The Operator must submit a written request for a variance to the ~~local~~ District Fire Warden. ~~The request must include,~~ which includes the following: (3-31-22)( )

a. A description of the specific Operating Area where the variance is being requested applies; (3-31-22)( )

b. The particular conditions that necessitate a variance; (3-31-22)( )

c. A detailed description of the alternative practice; and (3-31-22)( )

d. A detailed description of how the alternate practice, if applied, will provide fire protection that is equal to or greater no less than the fire protection provided by the standards set forth in these rules. (3-31-22)( )

**02. Department Response to Request for Variance.** Within five (5) business days from receipt of the variance request, the Department will evaluate the request and notify the Operator in writing of ~~the Department's determination to allow or disallow the variance request~~ its decision. (3-31-22)( )

**021. -- 029. (RESERVED)**

**030. STANDARDS FOR FIRE PROTECTION BY INDIVIDUALS.**

The following rules and standards ~~for apply to~~ protection by owners of ~~f~~ Forest L and who have elected to provide their own protection ~~as provided by under~~ Section 38-111, Idaho Code, apply: (3-31-22)( )

**01. Fire Plans.** ~~Each owner Before April 1 of each year, Forest Land owners~~ must submit a written fire plan to the ~~d~~ Director ~~for approval, through the (through the district f~~ Fire w Warden in charge of the ~~d~~ District in which ~~the such f~~ Forest L and ~~lies, before April 1, of each year, a written fire plan that includes, but is not limited to~~ lies that includes: (3-31-22)( )

a. A map, with (on a scale of two (2) inches to the mile), revealing showing section, township, and range lines, ~~of the forest land involved and showing thereon~~ roads, streams, trails, and the location of protection facilities ~~for such land of the Forest Land involved;~~ (3-31-22)( )

b. A description of the system for discovering and reporting any and all fires originating on or spreading to the f Forest L and involved; (3-31-22)( )

c. A s Statements showing describing the following: ( )

i. -t The number of firefighters and their sources of additional firefighter manpower available for

immediate action to suppress any fire on the ~~fForest~~ Land; ~~and further, their sources of additional manpower available as firefighters.;~~ (3-31-22)(    )

~~dii.~~ A statement showing tThe type and amount of firefighting equipment in serviceable condition including, ~~but not limited to,~~ fire hose, fire engines, portable pumps, dozers, and mobile ~~equipment for the transportation of men and equipment~~ for firefighting equipment and manpower. (3-31-22)(    )

~~eiii.~~ A statement as to tThe location of fire-tool caches and the number and kind of serviceable hand tools in each cache ~~kept available for immediate use in firefighting;~~ (including shovels, hoes, axes, and fire-pump cans) kept available for immediate firefighting use.; (3-31-22)(    )

iv. For protection facilities, the name, address, and telephone number of the person in charge and obligated to carry out the provisions of the fire plan; (    )

f. The name, address, and telephone number of the person who is in charge of the protection facilities and obligated to carry out the provisions of the fire plan. (3-31-22)

02. Approval of Fire Plan Required. No Only plans approved by the Director will become are effective ~~unless approved by the director.~~ (3-31-22)(    )

031. -- 039. (RESERVED)

**040. COSTS OF FIRE SUPPRESSION ~~AND PROTECTION~~ FOR WILLFULL OR NEGLIGENT FIRES.**

~~Whenever the state incurs costs in controlling or extinguishing a fire that any person willfully or is negligently responsible for, such costs include all actual costs to the state, including wages of full time personnel and use of equipment of the forest protective district or districts where the fire originated or burned~~Costs, which are incurred by the State or its authorized agencies to control or extinguish a fire that any Person is willfully or negligently responsible for, are all actual costs including wages of personnel and use of equipment. (3-31-22)(    )

041. -- 049. (RESERVED)

**050. ~~BURNERS~~REFUSE WOOD BURNING NEAR FOREST LAND.**

Any saw mill, planing mill, shingle mill, or other woodworking ~~plant,~~ or plant wood product manufacturing ~~wood products~~ plant, operating in or within five hundred (500) feet of ~~fForest~~ Land; and burning refuse wood material outside of and/or adjacent to ~~such~~ the mill or plant, ~~will~~ must meet the terms of Section 38-108, Idaho Code and other applicable state and local laws and regulations. (3-31-22)(    )

051. -- 059. (RESERVED)

**060. ~~BURNING~~ PERMITS DURING CLOSED FIRE SEASON.**

The burning permit ~~specified in~~ under Section 38-115, Idaho Code, ~~is used to~~ protects public health, safety, and welfare. ~~The permit and~~ is subject to the following conditions: (3-31-22)(    )

01. When ~~Permit~~ Required. Permits issued for open fires are required from May 10 ~~to~~ through October 20, ~~inclusive,~~ of each year and are limited to ~~that the~~ period of time needed to accomplish the permitted burning; provided, ~~however, in that~~ no event will such permit will be issued to cover a period of more than ten (10) days. (3-31-22)(    )

02. Permit-Conditions. Each permit contains ~~all~~ the terms and conditions deemed necessary by the ~~dDirector~~ for ~~such~~ burning; ~~which~~ Such terms and conditions remain effective for the entire period of the permit. (3-31-22)(    )

061. -- 069. (RESERVED)

**070. PERMIT TO ENTER AREAS CLOSED-AREA DUE TO FIRE HAZARD.**

~~Pursuant to~~ Under Section 38-115, Idaho Code, the ~~dDirector,~~ because of critical fire hazard, may close specified

areas to entry by any ~~p~~Person or party, because of critical fire hazard. (3-31-22)(\_\_\_\_)

01. **Notice of Closure.** Notice of closure to specified areas ~~will be is~~ by Director proclamation ~~of the director and will be published at least once in a newspaper of general circulation and is communicated to the Fire Wardens of the affected Districts and the public~~ throughout the county or counties affected in the most effective way available. ~~Such proclamation will immediately be mailed to the fire wardens of the affected districts.~~(3-31-22)(\_\_\_\_)

02. **Fire Warden Permits.** The ~~f~~Fire ~~w~~Warden ~~in charge~~ of the forest protective ~~d~~ District ~~in which such areas are located~~ with a closed area may, ~~in his~~ at their discretion, issue permits to ~~individuals~~ a Person to enter ~~such~~ closed areas. The permittee ~~is required to~~ must carry a copy of the permit ~~at all times~~ while in the closed area. (3-31-22)(\_\_\_\_)

071. -- 079. (RESERVED)

080. **SPARK ARRESTERS****SMOKING PROHIBITIONS IN THE WOODS.**

01. **Requirements****Smoking.** ~~The steam or internal combustion engines referred to in Section 38-121, Idaho Code, must be equipped with properly installed, maintained, and effectively working spark arresters that comply with the standards set forth in the San Dimas Technology and Development Center's "Spark Arrester Guide(s)." Smoking is prohibited on Forest or Range Land during periods of critical fire danger as proclaimed by the Director. Logging Operators must post conspicuous "NO SMOKING" signs in their camps and Operating Areas during these periods.~~ (3-31-22)(\_\_\_\_)

02. **Exemptions****Designating Smoking Areas.** ~~The following are exempt from the requirements of the rule:~~ Fire Wardens may designate areas where the Director may allow smoking. (3-31-22)(\_\_\_\_)

**a.** Turbo-charged internal combustion engines in which one hundred percent (100%) of the exhaust gases pass through the turbo-charger. (3-31-22)

**b.** Engines of passenger-carrying vehicles and light trucks, equipped with baffle-type muffler and tailpipe through which all exhaust gasses pass, that are kept in good repair. (3-31-22)

**c.** Engines of heavy-duty trucks equipped with a vertical exhaust stack and muffler extending above the cab of the vehicle. (3-31-22)

**d.** Engines of water pumping equipment used in firefighting. (3-31-22)

**e.** Engines of helicopters and other aircraft. (3-31-22)

081. -- 089. (RESERVED)

090. **SMOKING IN THE WOODS****RESTRICTED ACTIVITIES DURING PROCLAIMED CRITICAL FIRE DANGER.**

01. **Smoking Prohibited****Critical Fire Danger.** ~~Smoking is prohibited on forest or range lands of the state during periods of critical fire danger as designated by the director. Logging operators must post "NO SMOKING" signs conspicuously in their camps and operating areas when such periods of critical fire danger have been declared~~ During periods and in areas of critical fire danger as proclaimed by the Director, any Person engaged in any activities in forest areas of the State may have those activities restricted to the least dangerous periods of the day. (3-31-22)(\_\_\_\_)

02. **Designated Smoking Areas****Notice.** ~~Fire wardens may designate those areas where smoking may be permitted upon approval of the director~~ Notice of restricted activities is by Director proclamation and is communicated to the Fire Wardens of the affected Districts and the public throughout the county or counties affected in the most effective way available. (3-31-22)(\_\_\_\_)

091. **FIRE WATCH SERVICE IN STAGE TWO (2) PROCLAMATION AREAS.**

Every Operator engaged in a Forest Operation within a Stage Two (2) proclamation area must provide fire watch service in the Operating Area. ( )

- 01. Duties and Requirements.** Fire watch service consists of at least one (1) person who: ( )
- a.** Is constantly on duty for three (3) hours after all power-operated equipment has been shut down for the day; ( )
  - b.** Visually observes the Operating Area where activity occurred during the day; ( )
  - c.** Has adequate equipment for transportation and communication to summon timely fire-fighting assistance; and ( )
  - d.** Immediately responds to any fire in the Operating Area by initiating fire suppression actions within the scope of their knowledge, skills, and abilities. ( )

**02. Fire Watch Service Exemption.** A Forest Operation conducted under an Option 1 Certificate of Compliance is exempt from Section 091.01. ( )

~~091.2.~~ -- 099. (RESERVED)

**100. FIRE TOOLS AND FIRE EXTINGUISHERS REQUIREMENTS DURING CLOSED FIRE SEASON.**

During ~~e~~Closed ~~f~~Fire ~~s~~Season the following fire tool requirements apply: (3-31-22)( )

**01. Basic Fire Cache.** Every Operator engaged in any Forest Operation on Forest Lands must have available for firefighting ~~purposes~~ the number of tools and tool boxes ~~set forth listed~~ in Table 1. A Forest Operation having more than ten (10) people must use multiples of ~~any of the values in a column in the table~~ to arrive at a tool distribution ~~equal to or in excess of no less than~~ the number of people in the Forest Operation.

TABLE 1			
People in Operation	2 - 5	6 - 8	9 - 10
Tool <del>B</del> ox	1	1	1
Shovels	2	4	5
Pulaskis	2	4	4
5 gallon <del>p</del> Pump <del>e</del> Cans or <del>b</del> Bladder <del>b</del> Bags	1	1	2

(3-31-22)( )

- a.** The tool boxes ~~required by this rule~~ must be clearly marked “FOR FIRE USE ONLY”; ~~and~~ (3-31-22)( )
- b.** The tools ~~required by Subsection 100.01~~ must be in a location immediately accessible for firefighting ~~purposes~~, maintained in a serviceable condition, ~~and be~~ fully functional at the time of deployment. (3-31-22)( )

**02. Warming Fires or Campfires.** Except when in designated, developed campgrounds, or when traveling as a pedestrian, ~~all p~~Persons ~~or parties~~ igniting warming fires or campfires must be equipped with the following: (3-31-22)( )

- a.** One (1) serviceable shovel at least twenty-four (24) inches in ~~overall~~ length with ~~at least a~~ six (6) inch ~~or wider~~ blade. (3-31-22)( )



- b. One (1) water container, capacity one (1) gallon or more. (3-31-22)

**03. Power Equipment.** Each unit of mobile or stationary power equipment operating on Forest Land, other than portable power saws, trail bikes, motorcycles, all-terrain ~~vehicles~~ and similar type vehicles, ~~operating on forest lands of the state~~ must be equipped with a minimum of one (1) chemical fire extinguisher rated by the Underwriters Laboratory as not less than 4-BC. (3-31-22)( )

**04. Portable Power Saw.** Any ~~p~~Person using a portable power saw on ~~f~~Forest ~~L~~and ~~in the state~~ must have the following immediately available for ~~the fire~~ prevention and suppression ~~of fire~~: (3-31-22)( )

- a. A fully charged operable fire extinguisher of at least eight (8) ounce ~~minimum~~ capacity. (3-31-22)( )
- b. A serviceable round-pointed size zero (0) or larger shovel. (3-31-22)

101. -- 109. (RESERVED)

**110. FIRE CREWS DURING CLOSED FIRE SEASON.**

When engaged in a Forest Operation on Forest Lands during ~~e~~Closed ~~f~~Fire ~~s~~Season, the ~~p~~Person responsible for the Forest Operation must designate a fire crew and a fire foreman; ~~(with powers to act for their employer);~~ ~~to~~ Without compromising the safety of the crew, the firefighters must take immediate, ~~initial~~ reasonable action within the scope of their knowledge, skills, and abilities ~~and make a reasonable effort~~ to suppress any fire starting on the Operating Area ~~without compromising the safety of the crew.~~ (3-31-22)( )

~~111. -- 119. (RESERVED)~~

~~120. RESTRICTED ACTIVITIES.~~

~~01. Critical Fire Danger.~~ During periods of critical fire danger, as determined by the director, all persons engaged in any activities in forest areas of the state, determined to be critical, may have those activities restricted to the least dangerous periods of the day. (3-31-22)

~~02. Notice.~~ Notification of such restriction will be by proclamation of the director and will be published at least once in a newspaper of general circulation throughout the county or counties affected. (3-31-22)

~~121. -- 129. (RESERVED)~~

~~130~~**20. WATER SUPPLY AND EQUIPMENT OPERATING AREA SEASONAL FIRE PREVENTION REQUIREMENTS.**

~~Every Operator conducting a Forest Operation using a cable logging system or a metal tracked harvester during the period of July 1st through September 30th annually must provide the following water supply and fire suppression equipment in the Operating Area.~~ To prevent the spread of fire in or from an Operating Area, every Operator conducting a Forest Operation using a Cable Logging System or a Metal-Tracked Harvester during the calendar period of July 1st through September 30th must comply with the following precautions: (3-31-22)( )

- 01. Water Supply, Water Delivery, and Readiness.** (3-31-22)( )

a. The water supply ~~must~~ will consist of a self-propelled motor vehicle or trailer equipped with a water tank containing not less than two hundred (200) gallons of water. (3-31-22)

~~b.~~ Trailers used for this purpose water tanks must be equipped with will have a functional hitch attachment and have a serviceable tow vehicle immediately available ~~to provide~~ for timely ~~fire suppression~~ response. (3-31-22)( )

- b.** For water delivery, there will be a water pump, hose, and a nozzle. ( )

~~02. Water Delivery. (3-31-22)~~

~~a.i. Water pump. The size and capacity of the water pump must be of sufficient capacity to provide a discharge of not less than at least twenty (20) gallons per minute when pumping discharged at pump level through fifty (50) feet of hose of not less than at least three quarter (¾) inch inside diameter hose with an adjustable nozzle at pump level. (3-31-22)( )~~

~~b.ii. Hose and nozzle. The Operator There must have be at least five hundred (500) feet of serviceable hose of not less than at least three quarter (¾) inch inside diameter and a nozzle. (3-31-22)( )~~

~~03. Readiness. (3-31-22)~~

~~a.c. To ensure readiness: ( )~~

~~i. All hose, motor vehicles, trailers, tanks, nozzles, and pumps must will be kept ready for immediate use during active operations, including the fire watch service as set forth described in Section 140.091 of these rules. (3-31-22)( )~~

~~b.ii. The water supply, pump, a minimum of at least two hundred (200) feet of immediately deployable hose packaged in a suitable manner for immediate deployment, and the nozzle must will be maintained as a connected, operating unit ready for immediate use. (3-31-22)( )~~

~~02. Additional Seasonal Requirements for Cable or Cable-Assisted Logging. When conducting a Cable or Cable Assisted Logging operation on Forest Land the Operator must: ( )~~

~~a. Clear the ground of all flammable debris for at least ten (10) feet slope distance from the point directly below any Block; ( )~~

~~b. Prevent moving lines from rubbing on rock or woody material that could create sparks or sufficient heat that may ignite fuel; and ( )~~

~~c. Provide at each Block: ( )~~

~~i. One (1) pump equipped can or bladder containing no less than five (5) gallons of water; and ( )~~

~~ii. One (1) round pointed size zero (0) or larger shovel in a serviceable condition. ( )~~

~~043. Water Supply and Equipment Exemption. A Forest Operation conducted under an Option 1 Certificate of Compliance is exempt from the water supply and equipment requirements of Subsection 130.120.01. (3-31-22)( )~~

~~131. — 139. (RESERVED)~~

~~140. FIRE WATCH SERVICE.~~

~~Every Operator engaged in a Forest Operation within a Stage 2 proclamation area must provide Fire Watch Service in the Operating Area. (3-31-22)~~

~~01. Duties and Requirements. Fire Watch Service must consist of at least one (1) person who: (3-31-22)~~

~~a. Is constantly on duty for three (3) hours after all power operated equipment has been shut down for the day. (3-31-22)~~

~~b. Visually observes the Operating Area where activity occurred during the day. (3-31-22)~~

~~c. Has adequate equipment for transportation and communications to summon fire fighting assistance~~

~~in a timely manner; and (3-31-22)~~

~~d. Immediately responds to any fire in the Operating Area to initiate such fire suppression actions to suppress the fire within the scope of their knowledge, skills and abilities. (3-31-22)~~

~~02. **Fire Watch Service Exemption.** A Forest Operation conducted under an Option 1 Certificate of Compliance is exempt from the fire watch service requirements of Section 140. (3-31-22)~~

~~141. — 149. (RESERVED)~~

**150. OPERATION AREA FIRE PREVENTION:**

To prevent the spread of fire on or from an Operating Area, every Operator conducting a Forest Operation during the period of July 1st through September 30th, annually, must comply with the following precautions: (3-31-22)

~~01. **Cable or Cable Assisted Logging.** The following practices and equipment are required by the operator when conducting a cable logging operation on forest land. (3-31-22)~~

~~a. Clear the ground of all flammable debris for not less than ten (10) feet slope distance from the point directly below any block. (3-31-22)~~

~~b. Prevent moving lines from rubbing on rock or woody material in such a way to cause sparks or sufficient heat that may cause fuel ignition. (3-31-22)~~

~~e. Provide a water supply that complies with the capacity, pump, hose, nozzle and readiness requirements set forth in Section 130 of these rules. (3-31-22)~~

~~d. Provide at each Block: (3-31-22)~~

~~i. One (1) pump equipped can or bladder containing not less than five (5) gallons of water; and (3-31-22)~~

~~ii. One (1) round pointed size zero (0) or larger shovel in a serviceable condition. (3-31-22)~~

~~151. — 199. (RESERVED)~~

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**  
**20.04.02 – RULES PERTAINING TO THE IDAHO FORESTRY ACT**  
**AND FIRE HAZARD REDUCTION LAWS**  
**DOCKET NO. 20-0402-2301 (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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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:

The amendment in Section 110 was incorporated to address a concern expressed by PotlatchDeltic Corporation that the original verbiage in IDAPA 20.04.02.110.01 was vague. Specifically the phrase, “air quality standards are met,” is open to interpretation. The Idaho Department of Lands consulted with the Idaho Department of Environmental Quality and determined that PotlatchDeltic’s concern was valid. The text was modified to imply that individual burners must comply with air quality requirements when performing a prescribed burn.

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 July 3, 2024, Idaho Administrative Bulletin [Vol. 24-7, pages 172-186](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: 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: No fiscal Impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Brooke Heasty at [bheasty@idl.idaho.gov](mailto:bheasty@idl.idaho.gov).

DATED this 6th day of November, 2024.

Joshua J. Harvey  
Fire Management Chief  
Forestry and Fire Division  
Idaho Department of Lands  
3284 W Industrial Loop  
Coeur d’Alene, Idaho, 83815  
Phone: (208) 666-8650  
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 July 17, 2024.

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 2024 and legislative review in 2025 with the goal of simplifying and streamlining the rules for increased clarity and ease of use. The rule provides for Hazard Management Agreements and Contracts and provides for burning requirements and Slash Hazard Reduction standards associated with cutting timber or other Forest Products. The rule also provides for release or continuation of Contractor liability for wildfire suppression costs.

**FEE SUMMARY:** N/A

**FISCAL IMPACT:** None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted and concluded April 17, 2024. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the October 4, 2023 Idaho Administrative Bulletin, [Vol. 23-10, page 514](#).

**INCORPORATION BY REFERENCE:** None.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Brooke Heasty at [bheasty@idl.idaho.gov](mailto:bheasty@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 July 24, 2024.

DATED this 1st day of June, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 20-0402-2301**

**Italicized red text that is double underscored indicates amendments to the proposed text as adopted in the pending rule.**

20.04.02 – RULES PERTAINING TO THE IDAHO FORESTRY ACT  
AND FIRE HAZARD REDUCTION LAWS

000. LEGAL AUTHORITY.

~~These rules are~~ This chapter is adopted ~~pursuant to~~ under the ~~rulemaking legal~~ authority ~~granted in~~ of Sections 38-132, ~~and 38-402, 58-105, and 67-5201 et seq.,~~ Idaho Code. (3-18-22)( )

001. TITLE AND SCOPE.

~~01. Title.~~ These rules are titled IDAPA 20.04.02, “Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws.” and implement the provisions of Title 38, Chapters 1 and 4, Idaho Code. They provide for Hazard Management Agreements and Contracts and provide for burning requirements and Slash Hazard Reduction standards associated with cutting timber or other Forest Products. They also provide for release or continuation of Contractor liability for wildfire suppression costs. (3-18-22)( )

~~02. Scope.~~ These rules implement the provisions of the Idaho Forestry Act and Fire Hazard Reduction Laws. (3-18-22)

002. -- 009. (RESERVED)

010. DEFINITIONS.

~~Unless otherwise required by context, as used in these rules~~ The terms Fire Warden, Forest Land, Forest Products, Person, and State are defined in Section 38-101, Idaho Code. In addition to the definitions set forth in the Idaho Forestry Act and IDAPA 20.04.01, the following definitions apply to these rules: (3-18-22)( )

~~01. Agreement.~~ The Certificate of Compliance-Fire Hazard Management Agreement ~~(Department of Lands Form 715) required by~~ under Section 38-122, Idaho Code (Fire Management Handbook 715 Att. 1). (3-18-22)( )

~~02. Clearance.~~ The Certificate of Clearance (Fire Management Handbook 760 Att. 1), required by law, which states the Contractor has met the terms of Section 38-122, Idaho Code. ( )

~~03. Contract.~~ An optional Hazard Management Contract entered into with the Director by any landowner or Operator, under Section 38-404, Idaho Code, where the Department assumes the responsibility for management of the fire hazard in exchange for a fee. ( )

~~04. Contract Area.~~ The legal description of the land given on the ~~a~~ Agreement or Contract. (3-18-22)( )

~~05. Contractor.~~ The ~~p~~ Person who enters into the ~~Certificate of Compliance Fire Hazard Management Agreement.~~ (3-18-22)( )

~~06. Department.~~ The Idaho Department of Lands. (3-18-22)

~~07. Director.~~ The Director of the Idaho Department of Lands or ~~his authorized representative~~ their designee. (3-18-22)( )

~~08. District.~~ A designated forest protective district under Section 38-110 Idaho Code. (3-18-22)( )

~~09. Fire Line.~~ A ~~line~~ break in fuel scraped or dug to mineral soil ~~which is intended~~ to control a fire. (3-18-22)( )

~~10. Fire Warden Management Handbook.~~ A ~~duly appointed fire warden or deputy~~ policy document which describes procedures and forms the Department uses to administer these rules. (3-18-22)( )

- ~~09~~**11.** **Fuel.** Any ~~s~~Slash or woody debris that ~~will~~ contribute~~s~~ to the spread or intensity of a wildfire. (3-18-22)(    )
- 102.** **Fuel Break.** An area in which all ~~slash and dead woody debris have been~~ Fuel is removed or piled and burned. (3-18-22)(    )
- 13.** **Hazard Points.** A metric used by the Department to compute the fire hazard rating for Slashing Areas based on Hazard Reduction, site characteristics, and other protective measures that may reduce the spread or intensity of a wildfire. (    )
- 144.** **Hazard Reduction.** The burning or physical reduction of fire hazards by treatment ~~in a manner that will to~~ reduce the spread or the intensity ~~and/or spread~~ of a wildfire ~~after treatment is completed.~~ (3-18-22)(    )
- 125.** **Initial Purchaser or Purchaser.** The first ~~p~~Person, ~~company, partnership, corporation or association of whatever nature who~~ to purchases a ~~f~~Forest ~~p~~Product after it is harvested. (3-18-22)(    )
- 136.** **Operational Period.** A standard twelve (12) hour fire control shift. (3-18-22)
- 17.** **Prescribed Fire.** The controlled application of fire to wildland fuels, in either their natural or modified state, under conditions of weather, fuel moisture, and soil moisture, that allow the fire to be confined to a predetermined area while producing the intensity of heat and rate of spread required to meet planned objectives. (    )
- 148.** **Slash or Slashing.** Brush, severed limbs, poles, tops and/or other waste material incident to such cutting ~~or to the~~ clearing of land, which are four (4) inches and under in diameter. However, ~~for the purpose of these rules and~~ to correspond with standard fire classifications, for these rules, sSlash ~~will~~ only includes ~~material less than or equal to~~ three (3) inches or less in diameter. (3-18-22)(    )
- 19.** **Slashing Areas.** Areas where sufficient flammable material to constitute a menace to life or property remains on the ground after cutting trees or brush preparatory to clearing, or after cutting Forest Products. (    )
- ~~15~~**20.** **Slash Load.** Slash resulting from timber harvesting ~~that has occurred~~ under a current ~~a~~Agreement, exclusive of natural mortality. (3-18-22)(    )
- ~~16.~~ **State.** ~~The state of Idaho.~~ (3-18-22)
- 011.** **ABBREVIATIONS.**
- 01.** **FMH.** Fire Management Handbook. (    )
- ~~014~~**2.** -- 029. (RESERVED)
- 030.** **CERTIFICATE OF COMPLIANCE-FIRE HAZARD MANAGEMENT AGREEMENT.**
- 01.** **Contents.** A Certificate of Compliance-Fire Hazard Management Agreement must be obtained ~~by anyone who conducts an operation involving the~~ before any Person may harvesting of ~~f~~Forest ~~p~~Products or potential ~~f~~Forest ~~p~~Products. ~~Such The~~ Agreement provides ~~the options of entering into to enter into a e~~Contract ~~as provided in Section 38-404, Idaho Code or for~~ posting of a cash or surety bond to the State. The ~~Certificate of Compliance~~ required by Section 38-122, Idaho Code, must be in substantially the same form as Department of Lands Form No. 715 ~~—“Certificate of Compliance-Fire Hazard Management Agreement.”~~ Agreement is described in FMH 715. (3-18-22)(    )
- 02.** **Period of Time.** The period ~~set forth within~~ defined by the Agreement is based ~~upon such considerations as~~ on the size of the ~~e~~Contract ~~a~~Area, the volume of the timber to be harvested, ~~or and~~ the silvicultural objectives of the landowner. ~~However, i~~ In no case may a single Agreement exceed a period of twenty~~four~~ (24)

months unless the eContractor submits, and the fFire wWarden ~~mutually agree upon~~ approves, a written hazard management plan for the timely abatement of the hazard during a longer period ~~that may exceed twenty four (24) months.~~ (3-18-22)(    )

**03. Extensions.** If ~~the a~~ eContractor cannot meet the standard required to obtain a eClearance within the period specified ~~above in the Agreement~~, they ~~contractor~~ may apply to the fFire wWarden for an extension. The application must be in writing, received at the Fire eDistrict office thirty (30) working days before the Agreement expires, and show good reason ~~other than financial hardship~~, as to why an extension should be given is necessary (other than financial hardship). Prior to the Agreement’s expiration date, ~~the fFire wWarden will acknowledge receipt of grant or deny the request prior to the expiration of the Agreement with a form from FMH 715.~~ (3-18-22)(    )

**04. Responsibility.** The eContractor named in the Agreement ~~will be~~ is responsible for managing the fire hazard created by the harvesting and will receive the eClearance if the ~~slash treatment meets standards, requirements of Section 120 are met~~ or will carry the liability for suppressing wildfire for five (5) full years following the expiration of the Agreement. (3-18-22)(    )

**031. -- 039. (RESERVED)**

**040. ADDENDUM TO ~~CERTIFICATE OF COMPLIANCE FIRE HAZARD MANAGEMENT AGREEMENT~~ FOR PARTIAL HAZARD REDUCTION.**

~~In those instances where~~ When a eContractor ~~indicates an intent~~ intends to ~~accomplish only the piling portion of the total only pile, but not dispose of or physically treat the s~~ slash hazard reduction job Load, an addendum to the Agreement must be executed that precisely specifying precisely specifies the portion of ~~slash withholding hazard reduction money that will be monies to be~~ refunded. The addendum ~~must be in substantially the same form as Department of Lands Form No. 715.1~~ “Addendum to Certificate of Compliance Fire Hazard Management Agreement.” is executed with a form in FMH 715. (3-18-22)(    )

**041. -- 049. (RESERVED)**

**050. BOND.**

**01. Amount of Bond.** The bond specified in Section 38-122 ~~and Section 38-404~~, Idaho Code, ~~must~~ will be in the amount of four dollars (\$4) per thousand board feet (MBF), or equivalent measure as shown in Table I below, of fForest pProducts harvested, and may ~~take the form of be:~~ cash; surety bond; or irrevocable letter of credit. Surety bonds must be ~~in substantially the same form as on forms provided by Department of Lands Form No. 707-“Bond.”~~ (3-18-22)(    )

**02. Rates.** Rates and amounts listed in Table I ~~will be~~ are used as a minimum in calculating hazard reduction bonds for Forest pProducts cut from all state and private lands in Idaho.

TABLE I	
PRODUCT	BOND RATE
(1) MBF Measurement	
All Products	\$4.00 MBF
<b>OR</b>	
(2) Other Measurement	
Green pulp, stud timber, etc.	\$2.00 Cord
Lineal Foot Measure	
Utility poles and pilings, all species	\$.014 LF



TABLE I	
PRODUCT	BOND RATE
Stulls, corral poles, cellar timbers, fence rails, round posts	\$.01 LF
Piece Measure	
100 inch bolt material	\$.08 ea.
Split posts	\$.02 ea.
Tree stakes	\$.02 ea.
Shake boards	\$.02 ea.
Ton Measurement	
Green or Dead Pulp, Chips, etc.	\$.70 Ton

(3-18-22)( )

03. **Exceeding Minimum Bond.** The minimum bond rate ~~will is~~ only ~~be~~ exceeded when the landowner or ~~e~~Operator requests that higher rate to accomplish additional ~~h~~Hazard ~~r~~Reduction. (3-18-22)( )

051. -- 059. (RESERVED)

**060. CONTRACTS WITH FOREST LANDOWNERS OR OPERATORS FOR ASSUMPTION OF HAZARD MANAGEMENT RESPONSIBILITY.**

Forest landowners and ~~e~~Operators who engage in ~~timber harvesting operations~~ commercial Forest Operations may enter into an optional ~~Agreement with the Director as provided in Section 38-404, Idaho Code~~ Contract. Under the terms of ~~such an optional Agreement~~ the Contract, the Director may assume all responsibility for the management and reduction of fire hazards ~~to be~~ created in return for a stipulated amount to be paid to the Director ~~by the landowner or operator. Such~~ Any optional Agreement Contract must be ~~in substantially the same form as on forms provided by the~~ Department of Lands Form No. 720 ~~“Contract for Management, Reduction and/or Removal of Fire Hazards Created by the Harvesting of Timber Within the State of Idaho,” or Department of Lands Form No 725 “Contract for Management of Fire Hazards Created By the Harvesting of Timber Within the State of Idaho.”~~

(3-18-22)( )

061. -- 069. (RESERVED)

**070. CONTRACTOR CASH BOND RELEASE TO THE DIRECTOR.**

Contractors ~~who that~~ elect, under Section 38-122, Idaho Code, to have hazard reduction money withheld; but ~~who~~ do not intend to dispose of the hazard themselves, must release the withheld monies to the Director ~~of the Department of Lands. Such~~ The release ~~must be in substantially the same form as Department of Lands Form No. 761 “Release of Cash Bond Withheld to Assure Slash Disposal.”~~ is on a form in FMH 761.

(3-18-22)( )

071. -- 079. (RESERVED)

**080. ADDED PROTECTION IN LIEU OF HAZARD REDUCTION.**

~~As provided in Section 38-401, Idaho Code, f~~Fire hazard management methods may include ~~or be limited to the taking of~~ additional protective measures in lieu of actual disposal of the ~~s~~Slash hazard. Any funds coming into ~~d~~District hazard management accounts through ~~e~~Contract, cash bond release, or forfeiture; may be used for added protection provided that the expenditure meets specifications outlined in Section 38-401, Idaho Code.

(3-18-22)( )

081. -- 089. (RESERVED)

**090. DUTIES OF THE INITIAL PURCHASER REQUIREMENTS OF FOREST PRODUCTS.**

01. **Initial Purchaser.** Initial ~~p~~Purchasers of ~~f~~Forest ~~p~~Products, ~~in accordance with Section 38-122, Idaho Code,~~ must withhold, and remit to the State, ~~slash management hazard reduction~~ monies ~~as appropriate for according to the slash management hazard~~ option chosen by the ~~e~~Contractor ~~in the Agreement.~~ ~~Such~~ ~~The~~ option must be clearly identified on the ~~p~~Purchaser's copy of the Agreement. ~~Slash Hazard reduction~~ monies withheld in any one (1) calendar month must be remitted to the Director on or before the end of the next calendar month. ~~Such~~ ~~The~~ remittance ~~must may~~ be ~~in on~~ ~~substantially the same form as Department of Lands Form No. 740~~ "Hazard Reduction Payment Record (FMH 705) ~~or in a report with the same information~~". (3-18-22)( )

02. **Duty of Initial Purchaser.** Initial ~~p~~Purchasers of ~~f~~Forest ~~p~~Products must make certain that all ~~e~~Contractors from whom they purchase ~~f~~Forest ~~p~~Products have obtained a proper Agreement. (3-18-22)( )

091. -- 099. (RESERVED)

100. **INJUNCTION AGAINST FURTHER CUTTING WITHOUT AN AGREEMENT.**

Any ~~p~~Person who cuts timber or other ~~f~~Forest ~~p~~Products of any kind, without ~~having~~ first ~~secured~~ ~~obtaining~~ an Agreement, ~~in accordance with Section 38-122, Idaho Code,~~ may be enjoined from ~~continuing such further~~ cutting and will be required to immediately dispose of all ~~s~~Slash created. If the ~~p~~Person ~~responsible~~ fails to properly dispose of the ~~s~~Slash within thirty (30) days after ~~being notified to do so~~ ~~receiving notification~~, the State may dispose of the ~~s~~Slash and ~~such the~~ costs of disposal, plus twenty percent (20%) as a penalty, may be collected as a prior lien against the ~~Forest p~~Products harvested. (3-18-22)( )

101. -- 109. (RESERVED)

110. **BURNING OF SLASH REQUIREMENTS FOR PRESCRIBED FIRE IN FOREST LAND.**

01. **Permits.** Any burning operation conducted for the purpose of hazard reduction ~~must be in accordance with the law requiring burning permits during the closed fire season. Persons conducting burning operations must have sufficient men, tools and equipment on hand to immediately stop the uncontrolled spread of any fire. Burning operations must be planned, prepared and executed in such a manner that forest resources are not damaged and air quality standards are met.~~ (3-18-22)

02. **Burn Plan.** Burning of specifically designated blocks or areas of forest land for any purpose ~~must be conducted in accordance with a prescribed burn plan approved by the fire warden in whose area of responsibility the burn occurs.~~ (3-18-22)

01. **Burning.** Burning for Forest Operations ~~must be planned, prepared, and executed in a way that protects forest resources and maintains air quality (Title 38, Chapter 13 Idaho Code and IDAPA 20.02.01), controls smoke, and complies with air quality requirements (IDAPA 58.01.01).~~ ( )

02. **Burn Plans.** Burning within specifically designated blocks or areas of Forest Land at any time ~~must be conducted under a prescribed burn plan approved by the Fire Warden of the District's Fire Warden in which the burn occurs.~~ ( )

a. ~~For piled Slash burning, the District Fire Warden will provide a burn plan with the Agreement.~~ ( )

b. ~~For other burning, the Contractor must submit to the District Fire Warden a detailed prescription for executing the burn.~~ ( )

03. **Burn Crew.** A Person conducting burning operations must have a permit, when required, and sufficient people, tools, and equipment on hand to immediately stop the uncontrolled spread of any fire. ( )

111. -- 119. (RESERVED)

120. **STANDARDS ~~TREATMENT OF~~ FOR HAZARDS REDUCTION.**

**01. Purpose.** It is the policy of the State that the fire hazard created by commercial timber harvest be reduced by Slash disposal or physical treatment. This Section provides standards for Hazard Reduction and the release of liability for the contractor who is working under a valid Agreement with the State. (3-18-22)( )

**02. Reduction of Total Hazard Points.** The Contractor's Forest Operation must reduce the total hazard points charged against the contract area to achieve a Hazard Point total of five (5) points or less (see Table II) through disposal, treatment and other protective measures on or before the expiration date on the Agreement's expiration date to receive a release of liability against any fires that originate in or pass through any Slashing Area and in order to receive a refund of slash hazard reduction monies withheld (less three (3) percent for the fire suppression fund, ref. Rule 150) or; to clear any demands that might be made against the surety bond and to receive a release of liability against any fires that start on or pass through the contract area (as stipulated in Sections 130 and 150). The District's Fire Warden, where the Slashing Areas are located, will use Hazard Point values from the Hazard Reduction, site characteristics, and other protective measures tables shown below to compute the Hazard Rating. If the Operating Area has more than one Slashing Area and the Slashing Areas are topographically unique or separated by uncut timber, each Slashing Area may be audited independently. Detailed example Slash Loads and computations are provided in FMH 760. ( )

**a. Slash Load Technical Specifications.**

<b>TABLE II - SLASH LOAD TECHNICAL SPECIFICATIONS</b>	
<b>HAZARD RATING (POINTS)</b>	<b>SLASH LOAD</b>
<b>LOW (0-5)</b>	Slash Load does not exceed three (3) ton per acre.
<b>MODERATE (6-10)</b>	Slash Load is between three (3) ton per acre and six (6) ton per acre.
<b>HIGH (11-15)</b>	Slash Load is between six (6) ton per acre and twelve (12) ton per acre.
<b>EXTREME (16-20)</b>	Slash Load is greater than twelve (12) ton per acre.

Slash Loads can be determined by using any standard photo series appropriate for the habitat type represented by the Slashing Area or by using USDA Forest Service General Technical Report INT-16, 1974 (HANDBOOK FOR INVENTORYING DOWNED WOODY MATERIAL). If the Contractor insists upon the latter, sampling intensity will be one (1) sample per two (2) acres through the Slashing Areas in question. The inventory cost is paid by the Contractor. All Slash resulting from the current harvest is included in the inventory except Slash piled and burned by the Contractor before the expiration date of the Agreement or granted extension. ( )

**b. Contractor Hazard Reduction Methods.** Hazard Point deductions can be assigned proportionate to the acreage completed using the table below. Fire Lines are a minimum width of eighteen (18) inches for hand constructed and ten (10) feet for machine constructed. Machine constructed lines should not exceed twelve (12) feet width. Clear all Fuels for a minimum of eight (8) feet adjacent to handlines. Displace soil to one side and all vegetative debris to the other for machine lines. Place Fuel Breaks and Fire Lines to take advantage of terrain (ridgelines, swales, etc.), manmade or natural barriers (roads, skid trails, escarpments, etc.), and provide optimum fire control effect. Tie lines to an anchor point except through a riparian management zone.

<b>Method</b>	<b>DESCRIPTION</b>	<b>HAZARD POINT RANGE</b>
Disposal	Remove, pile and burn, or broadcast burn Slash.	0 to 42
Chipping	Chip Slash with a stationary or mobile chipper.	0 to 42
Crushing or Mastication	Crush Slash with repeated passes of heavy equipment or a mobile masticator. Residual Fuel must not exceed the height and diameter limits for lopping.	0 to 20

Method	DESCRIPTION	HAZARD POINT RANGE
Lopping	Cut all material less than three (3) inches in diameter so it does not extend more than twenty (20) inches of the mean height above the ground. Sever all boles greater than three (3) inches in diameter that intersect another bole.	0 to 10
Single Fuel Break	Remove, pile and burn or treat sufficiently all Slash and woody debris for a minimum width of one chain (66 feet).	1 to 5
Single Fire Line	Remove all vegetative material to expose mineral soil.	1
Isolation	Install Fuel Breaks and Fire Lines to divide or isolate Slashing Areas. (See Subsection 04.a.)	1 to 25

( )

**03. Site Characteristics.** The Fire Warden will audit the Forest Operation and assign Hazard Points for site characteristics that increase risk of forest damage or threats to life or property. ( )

**a. Slashing Area Size.** Large Slashing Areas will be assigned up to five (5) Hazard Points using the table below.

ACRES	<40	40-160	161-320	321-480	481-640	>640
PT VALUE	0	1	2	3	4	5

( )

TABLE II – HAZARD CHARACTERISTICS AND OFFSET SLASH LOAD MAXIMUM 20 POINTS	
RATING (POINTS)	ADJECTIVE DESCRIPTION
LOW (0-5)	Associated with low harvest volumes per acre such as; selection cutting, light-commercial-thinning, sanitation/salvage operations, tree length skidding with tops and limbs and little or no breakage. Slash is broken up; slash is in many islands over the operating area.
MODERATE (6-10)	Operation types similar to those listed above except that harvest volume per acre is higher or utilization standards are lower, or timber has higher proportion of unusable top and crown (commonly associated with partial cutting in second growth stands of mixed timber). Most diameter limit cutting falls in this category. Slash is distributed with some clear or very light areas intermingled with heavy islands of slash over the operating area, slash is not continuous.
HIGH (11-15)	Usually associated with regeneration harvest methods such as shelterwood, seed tree and most clearcuts, or any partial cut with a high harvest volume per acre. Slash is nearly continuous through the operating area frequently with heavier islands intermingled with light continuous slash.
EXTREME (16-20)	Any operation with very high cut volume, and/or low utilization standards, and/or many slashed or broken stems. Slash is continuous over the operating area with few light areas.

TABLE II – HAZARD CHARACTERISTICS AND OFFSET SLASH LOAD MAXIMUM 20 POINTS	
RATING (POINTS)	ADJECTIVE DESCRIPTION
TECHNICAL SPECIFICATIONS	
LOW (0-5)	Slash load less than or equal to 3 inch diameter materials not to exceed 3.0 tons/acre.
MODERATE (6-10)	Slash load less than or equal to 3 inch diameter materials greater than 3.0 tons/acre but less than 6.0 tons/acre.
HIGH (11-15)	Slash load less than or equal to 3 inch diameter materials greater than 6.0 tons/acre but less than 12.0 tons/acre.
EXTREME (16-20)	Slash load less than or equal to 3 inch diameter materials exceeds 12.0 tons/acre.

**b.** Slashing Area Aspect and Slope. The Fire Warden will determine the predominant aspect and slope of each Slashing Area and assign up to ten (10) Hazard Points using the table below.

ASPECT	PERCENT SLOPE					
	0-10	11-20	21-30	31-40	41-50	>50
N to NE	0	0	1	2	4	5
E or NW	0	0	1	3	6	7
W or SE	0	1	2	5	8	9
S to SW	1	2	4	7	9	10

( )

**c.** Pre-existing Slash. Any Slashing Area that has Slash from a previous operation, which has occurred within in the last five (5) years, will be assigned up to two (2) Hazard Points.

( )

**d.** Location. A Slashing Area’s proximity to structures, highways, and recreational areas will be assigned up to five (5) Hazard Points using the table below.

PROXIMITY	
330 feet	5
660 feet	4
990 feet	3
1320 feet	2
2640 feet	1

( )

**04.** Other Protective Measures. The Fire Warden can consider other protective measures associated with a Forest Operation by reducing Hazard Points for division or isolation of Slashing Areas, access control, and availability of water for firefighting as follows:

( )

a. Isolation. The Fire Warden can reduce Hazard Points using the table below if Fuel Breaks or Fire Lines are used to subdivide Slashing Areas into smaller areas and/or isolate Slashing Areas from other forest stands; the maximum deduction is twenty-five (25) Hazard Points.

<b>ACTIVITY</b>	<b>FUEL BREAK ONLY</b>	<b>FIRE LINE ONLY</b>	<b>BOTH</b>
<u>Slashing Areas are subdivided:</u>			
<u>A. Partial division of Slashing Area</u>	<u>1-5</u>	<u>1</u>	<u>1-6</u>
<u>B. Slashing Area divided into 2 areas</u>	<u>6-10</u>	<u>2</u>	<u>6-12</u>
<u>C. Slashing Area divided into 3 to 5 areas</u>	<u>11-15</u>	<u>3</u>	<u>11-18</u>
<u>D. Slashing Area divided into 6 or more areas</u>	<u>16-20</u>	<u>4</u>	<u>16-25</u>
<u>OR</u>			
<u>Slashing Areas are isolated from adjacent stands:</u>			
<u>A. One third of Slashing Area boundaries isolated</u>	<u>1-5</u>	<u>1</u>	<u>1-6</u>
<u>B. Two thirds of Slashing Area boundaries isolated</u>	<u>6-10</u>	<u>2</u>	<u>6-12</u>
<u>C. All Slashing Area boundaries isolated</u>	<u>11-15</u>	<u>3</u>	<u>11-18</u>

( )

b. Access Control. The Fire Warden can deduct from the Hazard Point sum for each Slashing Area One (1) Hazard Point if a locked gate system controls road access on all secondary roads to the Operating Area and the Slash on the main road is disposed of or treated. Two (2) Hazard Points can be deducted if the system controls all roads into the Operating Area.

( )

c. Water Supply. The Fire Warden can deduct Hazard Points from the Hazard Point sum for each Slashing Area for water availability. The supply must provide at least ten thousand (10,000) gallons in any one (1) Operational Period during the fire season. Water supplies accessible to fire engines within one (1) road mile or to helicopter buckets within three (3) air miles are eligible.

( )

i. One (1) Hazard Point can be deducted for availability to engines only or to helicopters only.

( )

ii. Two (2) Hazard Points can be deducted for availability to engines and helicopters.

( )

iii. Two (2) Hazard Points can be deducted for availability to engines or helicopters and the supply self-replenishes every Operational Period.

( )

iv. Three (3) Hazard Points can be deducted for availability to engines and helicopters and the supply self-replenishes every Operational Period.

( )

~~Slash loads can be determined by using any standard photo series appropriate for the habitat type represented by the contract area, or by using USDA Forest Service General Technical Report INT 16, 1974 (HANDBOOK FOR INVENTORYING DOWNED WOODY MATERIAL). If the contractor insists upon the latter, sampling intensity will be one (1) point per two (2) acres through the area in question. The inventory cost is paid by the contractor. All slash made available as a result of the current harvest will be included in the inventory except that slash that has been piled and will be burned by the contractor before the expiration date on the Agreement or such extensions granted by the fire warden.~~

SITE FACTORS— MAXIMUM 10 POINTS						
ASPECT	PERCENT-SLOPE					
	0-10	11-20	21-30	31-40	41-50	>50
N-NE	0	0	1	2	4	5
E-NW	0	0	1	3	6	7
W-SE	0	1	2	5	8	9
S-SW	1	2	4	7	9	10

UNIT SIZE— MAXIMUM 5 POINTS						
ACRES	<40	40-160	161-320	321-480	481-640	>640
PT VALUE	0	1	2	3	4	5

OTHER FACTORS — MAXIMUM 7 POINTS	
Pre-existing slash from operations in the past five years	0-2
Proximity to structures, highways and recreational areas (e.g., parks, established campgrounds, etc).	Add Points
330 feet	5
660 feet	4
990 feet	3
1320 feet	2
2640 feet	1

In applying offset points to large, complex contract areas, or contract areas with highly variable hazard characteristics, hazard offset techniques must first be applied toward that portion of the contract area which will do the most to reduce the hazard by optimizing fire control effects.

HAZARD OFFSETS		
ALL POINTS ARE DEDUCTIONS		
DISPOSAL	Piling and Burning, Broadcast Burning, etc.	0-42
<p>If disposal reduces slash load in the contract area to &lt;3 tons, deduct hazard points to five (5) or less. If disposal does not reduce slash load to that level, points should be assigned as a proportion of the area treated. For example, if twenty five percent (25%) of the area is dozer piled and the piles burned, but the slash load in the contract area still exceeds three (3) tons, twenty five percent (25%) of the total points charged against the job should be deducted. However, if the disposal effectively isolates the untreated portion of the slash, or is otherwise placed to optimize fire control effects the proportion of points deducted may be increased to an amount to be determined by the district fire warden.</p>		

<b>HAZARD OFFSETS</b>		
<b>ALL POINTS ARE DEDUCTIONS</b>		
MODIFICATION:	Chipping	0-42
	Crushing	0-20
	Lopping	0-10
<p>Lopping standards: All material less than three (3) inches in diameter will be cut so that it does not extend more than twenty (20) inches of the mean height above the ground. In addition, all boles greater than three (3) inches in diameter intersecting another bole will be completely severed.</p> <p>Assign points as a proportion of the contract area treated.</p>		
ISOLATION	Fuel Breaks	0-20
<p>To qualify as a fuel break, all slash and available fuels (Ref. Subsection 010.10) must be removed, or piled and burned, or treated sufficiently to prevent a fire from carrying through the area, for a minimum width of one chain (66 feet). In addition, the breaks must be placed to take advantage of terrain, manmade or natural barriers and to provide for optimum fire control effect.</p>		
	Fire Lines	0-5
<p>All vegetative material must be removed to expose mineral soil. Minimum width of dozer line must be the width of the dozer blade with all dirt pushed in one direction and all vegetative debris to the other. Handlines must be eighteen (18) inches wide; additionally all fuels must be cleared for eight (8) feet. Lines must be tied to an anchor point except that they are not required to be built through a riparian management zone. In addition, the lines must be placed to take advantage of terrain, manmade or natural barriers, and to provide for optimum fire control effect. Maximum points allowed only if combined with an approved fuel break.</p>		

<b>ASSIGNING POINTS FOR ISOLATION</b>			
<p><del>Isolation techniques will usually be used to break the area into subunits or isolate the area from adjacent stands. Hazard offsets can be deducted for both if, in the opinion of the fire warden, both objectives are met and the total isolation points do not exceed 25 offset points.</del></p>			
ACTIVITY	FUEL BREAK ONLY	FIRE LINE ONLY	BOTH
Isolates contract area into subunits:			
A. Partial isolation or incomplete units	1-5	1	1-6
B. Complete isolation of area into 1 to 2 subunits	6-10	2	6-12
C. Complete isolation of area into 3 to 5 subunits	11-15	3	11-18
D. Complete isolation of area into 6 or more subunits	16-20	4	16-25
OR			
Isolates contract area from adjacent stands:			
A. One third of the contract area boundary isolated	1-5	1	1-6
B. Two thirds of the contract area boundary isolated	6-10	2	6-12
C. Entire contract area boundary isolated	11-15	3	11-18



ASSIGNING POINTS FOR ISOLATION			
Isolation techniques will usually be used to break the area into subunits or isolate the area from adjacent stands. Hazard offsets can be deducted for both if, in the opinion of the fire warden, both objectives are met and the total isolation points do not exceed 25 offset points.			
ACTIVITY	FUEL BREAK ONLY	FIRE LINE ONLY	BOTH
ACCESS CONTROL	-0-2		
Locked gate system controls access on all secondary roads with slash treated on main road			4
Locked gate system controls all road access into unit			2
AVAILABILITY OF WATER			0-3
The water supply must provide water availability for engines within one road mile of operating area or within three air miles for helicopter bucket use. The water supply must be sufficient to supply 10,000 gallons in an operational period during the fire season.			
Water supply for engine only or helicopter only (capacity 10,000 gallons during fire season).			4
Water supply for engine and helicopter (capacity 10,000 gallons) or, for engine or helicopter and which replenishes itself every operational period.			2
Water supply for engine and helicopter which replenishes itself every operational period.			3

(3-18-22)

121. -- 129. (RESERVED)

130. **LIABILITY FOR THE COST OF FIRE SUPPRESSION.**

01. **State Liability.** ~~With the exception of~~ Except for cases of negligence on the part of the landowner, eOperator, or their agents, liability for the cost of suppressing fires that originate ~~on in~~ or pass through a sSlashing aArea remains with the State if the Contractor executes one of the following alternatives ~~is executed by the contractor:~~ (3-18-22)( )

a. The ~~contract~~ Slashing aAreas ~~is are~~ covered by a Certificate of Compliance-Fire Hazard Management Agreement and all hazard reduction money payments are current or a proper bond is in place. (3-18-22)( )

b. The eContractor treats the sSlash in accordance with the standards outlined in ~~the~~ Section 120; Table II within the ~~time~~ period specified ~~on in~~ the Agreement or approved extensions. (3-18-22)( )

c. The landowner or eOperator elects to enter into a eContract with the State for management of the sSlash and release from liability ~~of for~~ fire suppression costs ~~in accordance with Section 38-404, Idaho Code as described in Section 060.~~ (3-18-22)( )

02. **Contractor Liability.** Should the eContractor choose ~~not to~~ not treat the sSlash or not enter into a eContract with the State in accordance with ~~Subsection 130.01~~ Section 060, the ~~contractor, in addition to forfeiting any applicable bond,~~ Contractor is liable for fire suppression costs for all fires that originate ~~on in~~ or pass through the eContractor's sSlashing aAreas and must forfeit any applicable bond. The eContractor retains the full liability for five (5) years from the time the Agreement or any extension ~~thereof~~ expires, unless a eClearance ~~has been~~ is issued. (3-18-22)( )

03. **Failure to Treat.** Any eContractor who ~~fails to treat the fire hazard as outlined in~~ is liable under Subsection 130.02; is liable for the actual costs of suppressing any wildfire that ~~may occur on~~ originates in or passes

through the ~~Slashing~~ ~~a~~Areas covered by their ~~individual or separate~~ Agreements for an amount up to two hundred fifty thousand dollars (\$250,000) ~~per Agreement, but no more than one million dollars (\$1,000,000); for separate Agreements with different liable Contractors, the actual costs of suppression up to one million dollars (\$1,000,000) will be shared by the Contractors prorated on the Contract Area acreage of those Agreements.~~ ~~If the same wildfire occurs on or passes through several areas covered by separate agreements or if several Agreements cover the same area, the contractor is liable for the actual cost of suppression up to one million dollars (\$1,000,000).~~ ~~If a wildfire occurs on or passes through an area covered by separate Agreements with different contractors, the actual cost of suppression up to one million dollars (\$1,000,000) will be shared by the contractors prorated on acreage included in their Agreements.~~ (3-18-22)(\_\_\_\_)

**04. Fees.** Upon payment of the fees ~~set forth listed~~ in Table III, the State will assume liability for the cost of suppressing fires that originate ~~on in~~ or pass through the ~~e~~Contract ~~a~~Area.

TABLE III - ADDITIONAL FEE TO TRANSFER LIABILITY BY HAZARD POINTS	
POINTS	RATE
6-10	\$1.00/MBF
11-20	\$2.00/MBF
21-30	\$3.00/MBF
>30	\$4.00/MBF

~~Additional~~ Fee rates for measurement ~~units~~ other than ~~the~~ board foot ~~measurement unit~~ are available upon request from any Department ~~of Lands~~ office. (3-18-22)(\_\_\_\_)

**05. Additional Fee.** If the ~~e~~Contractor is unable to reduce the ~~h~~Hazard ~~p~~Points on a ~~e~~Contract ~~a~~Area to the standards required for a ~~e~~Clearance, but has completed some ~~h~~Hazard ~~r~~Reduction work, ~~that the e~~Contractor can discharge the remainder of ~~his the~~ hazard obligation by returning a portion of ~~his the~~ bond to the ~~Fire d~~District and paying an additional fee to transfer liability. Use the following formula: [One (1) minus (the ~~acceptable low~~ hazard ~~point rating or of five (5);~~ divided by the residual, or untreated ~~h~~Hazard ~~p~~Points)] ~~times the bond rate multiply that ratio times the slash rate.~~ This dollar amount ~~should be is~~ multiplied by the total volume removed from the ~~e~~Contract ~~a~~Area. ~~Add and added to that the total volume times~~ the additional fee to transfer liability ~~(from Table III (for the untreated hazard) points, from Table III) times the total volume.~~ When this amount is paid to the State the ~~contract area Agreement~~ can be cleared. ~~Which can also be This computation is~~ expressed as:

Table 1

$$(1-(5/U)) * B * V + (A*V) = \text{Formula to transfer liability for a partially completed job.}$$

Where:

- U = Untreated or residual hazard points
- B = Bond rate (usually \$4.00 MBF) Ref. Section 050, Table I
- A = Additional fee to transfer liability, Table III
- V = Total volume removed from the ~~e~~Contract ~~a~~Areas

(3-18-22)(\_\_\_\_)

131. -- 139. (RESERVED)

140. CERTIFICATE OF CLEARANCE.

~~The Certificate of Clearance is the instrument used to certify that hazard reduction has been accomplished, a contract entered into with the Director to ensure hazard management, or an additional fee has been paid. Anyone who has been issued an Agreement for the cutting of any forest product or potential forest product and who has met standards outlined in Section 120, or has made payment for hazard reduction under a contract with the Director, as provided in Section 38-404, Idaho Code, or has paid an additional fee in accordance with Section 38-122, Idaho Code, must apply in writing to the Director for a Certificate of Clearance. Within thirty (30) days after receipt of such written request for a Certificate of Clearance, the Director will cause the area covered by the request to be inspected. If it is found that the fire hazard has been properly disposed of, the Director will issue a Certificate of Clearance. The Certificate of Clearance must be substantially the same form as Department of Lands Form No. 760 — “Certificate of Clearance.”~~  
Anyone who has entered into an Agreement must apply in writing to the Director for a Clearance. The Clearance certifies that one (1) of the following situations exists: Hazard Reduction was accomplished to the standards in Section 120; an additional fee was paid per Subsection 130.05; or the Contractor entered into a Contract with the Director per Section 060 to ensure hazard management. Within thirty (30) days of receipt of the request for Clearance, the Director will inspect the requested area and issue the Clearance, if the applicable requirements were met. (3-18-22)(\_\_\_\_)

141. -- 149. (RESERVED)

150. FIRE SUPPRESSION AND FOREST PRACTICES ASSESSMENT.

01. ~~Withholding~~Withheld Hazard Reduction Money. An amount of three percent (3%) of the ~~slash management bond~~ rate (twelve cents (\$.12)/MBF) ~~will be withheld from~~ is assessed against all ~~slash management monies~~ hazard reduction money received and dedicated to suppression of wildfires on ~~Forest~~ Lands. For harvest from private land, an additional amount not to exceed three percent (3%) of the ~~slash management bond~~ rate (twelve cents (\$.12)/MBF) ~~can be withheld from slash management monies~~ is assessed against hazard reduction money received and ~~will be~~ is dedicated to Forest Practices support on ~~Forest~~ Lands. (3-18-22)(\_\_\_\_)

02. ~~Assessment Costs~~Surety Bond or Credit. ~~Fire suppression a~~Assessment costs on ~~Forest~~ operations covered by surety bond or irrevocable letter of credit or other form of bond is paid at the rate specified in Subsection 150.01. (3-18-22)(\_\_\_\_)

151. -- 159. (RESERVED)

160. PRELOGGING CONFERENCE AND ~~AGREEMENT~~ HAZARD MANAGEMENT CONTRACT.

~~Pre-logging conferences and hazard reduction agreements are encouraged, however, the~~ hazard ~~reduction agreement~~ Management Contract will be canceled or modified if significant operational changes occur during the ~~Forest Operation~~ harvesting of forest products or potential forest products. (3-18-22)(\_\_\_\_)

161. -- 999. (RESERVED)

## IDAPA 20 – IDAHO DEPARTMENT OF LANDS

### 20.07.02 – RULES GOVERNING CONSERVATION OF OIL AND NATURAL GAS IN THE STATE OF IDAHO

DOCKET NO. 20-0702-2401 (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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Title 47, Chapter 3, and Title 67, Chapter 52, 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:

These rules are required for the Oil and Gas Conservation Commission to fulfill their duty to prevent waste, protect correlative rights, and prevent pollution of fresh water supplies during the exploration and production of oil and gas resources. The rules define and clarify the procedures for regulating oil and gas exploration and development activities on public and private lands in the state. Following [Executive Order 2020-01: Zero-Based Regulation](#), this rule chapter is scheduled for a comprehensive review in 2024 with the goal of simplifying the rules for increased clarity and ease of use. Revisions are also needed to better align the rules with statute revisions that occurred in 2017 and 2023. The IDL aims to right-size its rule chapter and achieve several objectives, including, but not limited to:

1. Eliminating duplicative statutory language or any rule language that conflicts with governing statutes;
2. Removing rule language that is not absolutely necessary, is outdated, or is overly restrictive; and
3. Removing any language that merely relates to the internal processes of the Department.

There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 7, 2024 Idaho Administrative Bulletin, [Vol. 24-8, pages 47-87](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: No change in fees.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year: No Fiscal Impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact James Thum, Oil & Gas Program Manager at (208) 334-0243 or via email at [jthum@idl.idaho.gov](mailto:jthum@idl.idaho.gov). Materials pertaining to this rulemaking can be found on the Idaho Oil & Gas Conservation Commission web page at: <https://ogcc.idaho.gov/rulemaking/docket-20-0702-2401-oil-gas/>.

DATED this 6th day of November, 2024.

James Thum  
Oil & Gas Program Manager  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
P.O. Box 83720  
Boise, Idaho 83720-0050

Phone: (208) 334-0243  
Fax: (208) 334-3698  
[rulemaking@idl.idaho.gov](mailto:rulemaking@idl.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 Title 47, Chapter 3, Idaho Code and Title 67, Chapter 52, Idaho Code.

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

<p><b>Thursday, August 15, 2024</b> <b>1:00 p.m. (MT)</b></p>
<p><b>Idaho Department of Lands</b> <b>Boise Staff Office, Garnet Conference Room</b> <b>300 N. 6th St., Suite 103</b> <b>Boise, ID 83702</b></p>
<p><b>To attend by Zoom:</b> <a href="https://idl.zoom.us/j/86152132781?pwd=WDrRduOB9bGyrdIUkLK4heYzXAI5Ad.1">https://idl.zoom.us/j/86152132781?pwd=WDrRduOB9bGyrdIUkLK4heYzXAI5Ad.1</a></p>
<p><b>To attend by telephone call: +1 (669) 219-2599</b> <b>Meeting ID: 861 5213 2781 Passcode: 158510</b></p>

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:

These rules are required for the Oil and Gas Conservation Commission to fulfill their duty to prevent waste, protect correlative rights, and prevent pollution of fresh water supplies during the exploration and production of oil and gas resources. The rules define and clarify the procedures for regulating oil and gas exploration and development activities on public and private lands in the state. Following [Executive Order 2020-01: Zero-Based Regulation](#), this rule chapter is scheduled for a comprehensive review in 2024 with the goal of simplifying the rules for increased clarity and ease of use. Revisions are also needed to better align the rules with statute revisions that occurred in 2017 and 2023. The Department aims to right-size its rule chapter and achieve several objectives, including, but not limited to:

1. Eliminating duplicative statutory language or any rule language that conflicts with governing statutes;
2. Removing rule language that is not absolutely necessary, is outdated, or is overly restrictive; and
3. Removing any language that merely relates to the internal processes of the Department.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: No change in fees.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: No fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 3, 2024 Idaho Administrative Bulletin, [Volume 24-4, pages 32-34](#).

**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:

Documents incorporated by reference are industry standards adopted by most oil and gas producing states for consistency in operational procedures and the manufacture of materials. Using widely-adopted standards allows for better efficiencies by companies operating in multiple states and helps to reduce word counts in this rule chapter.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact James Thum, Oil & Gas Program Manager at (208) 334-0243 or via email at [jthum@idl.idaho.gov](mailto:jthum@idl.idaho.gov). Materials pertaining to the negotiated rulemaking can be found on the Idaho Oil & Gas Conservation Commission web page at: <https://ogcc.idaho.gov/rulemaking/docket-20-0702-2401-oil-gas/>.

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 August 28, 2024.

DATED this 2nd day of July, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 20-0702-2401**

**20.07.02 – RULES GOVERNING CONSERVATION OF OIL AND NATURAL GAS  
IN THE STATE OF IDAHO**

**SUBCHAPTER A – GENERAL PROVISIONS**

**000. LEGAL AUTHORITY.**

~~This Chapter is adopted under the legal authorities of Title 47, Chapter 3, Idaho Code, and Title 67, Chapter 52, Idaho Code.~~ (3-18-22)(    )

**001. ~~TITLE AND SCOPE.~~**

~~01. Title. These rules are titled IDAPA 20.07.02, “Rules Governing Conservation of Oil and Natural Gas in the State of Idaho.”~~ (3-18-22)

~~02. Scope. These rules apply to the exploration and extraction of any and all crude oil and natural gas resources in the state of Idaho, not including biogas, manufactured gas, or landfill gas, regardless of ownership.~~ (3-18-22)(    )

~~03. Other Laws. Owners or operators engaged in the exploration and extraction of crude oil and natural gas resources will comply with all applicable laws and rules of the state of Idaho including, but not limited to the following: rules administered by the Idaho Department of Environmental Quality (IDEQ) and rules administered by the Idaho Department of Water Resources (IDWR).~~ (3-18-22)(    )

~~a. Idaho water quality standards and waste water treatment requirements established in Title 39, Chapter 1, Idaho Code; IDAPA 58.01.02, “Water Quality Standards”; IDAPA 58.01.16, “Wastewater Rules”; and IDAPA 58.01.11, “Ground Water Quality Rule,” administered by the IDEQ.~~ (3-18-22)

~~b. Idaho air quality standards established in Title 39, Chapter 1, Idaho Code and IDAPA 58.01.01 “Rules for the Control of Air Pollution in Idaho,” administered by the IDEQ. (3-18-22)~~

~~c. Requirements and procedures for hazardous and solid waste management, as established in Title 39, Chapter 44, Idaho Code, and rules promulgated thereunder including IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”; IDAPA 58.01.06, “Solid Waste Management Rules”; and IDAPA 58.01.10, “Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended,” administered by the IDEQ. (3-18-22)~~

~~d. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and rules promulgated thereunder including IDAPA 37.03.07, “Stream Channel Alteration Rules,” administered by the IDWR. (3-18-22)~~

~~e. Injection Well Act, Title 42, Chapter 39, Idaho Code and rules promulgated thereunder including IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells,” administered by the IDWR. (3-18-22)~~

~~f. Department of Water Resources—Water Resource Board Act, Title 42, Chapter 17, Idaho Code and rules promulgated thereunder including IDAPA 37.03.06, “Safety of Dams Rules,” administered by the IDWR. (3-18-22)~~

**002. ADMINISTRATIVE APPEALS.**

~~Any person aggrieved by any final decision or order of the Commission shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, Title 47, Chapter 3, Idaho Code, and IDAPA 20.07.01, “Rules of Practice and Procedure before the Idaho Oil and Gas Conservation Commission.” (3-18-22)~~

**002. (RESERVED)**

**003. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference into these rules: (3-18-22)

01. ~~American Petroleum Institute (API) Bulletin E3, Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations, Environmental Guidance Document Wellbore Plugging and Abandonment Practices. 1st<sup>2nd</sup> Edition, January 1993, updated April 2018, and Reaffirmed June 2000~~ Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. (3-18-22)(\_\_\_\_)

02. ~~API SPEC 5CT, Specifications for Casing and Tubing. The 8<sup>11</sup>th edition, updated July<sup>December</sup>, 1, 2005<sup>2023</sup>, and the amendments dated March, 31, 2006 and April, 7, 2006 are a~~ Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. (3-18-22)(\_\_\_\_)

03. ~~API SPEC 10a, Specification for Cements and Materials for Well Cementing. The 24<sup>25</sup>th Edition dated ~~December, 2010~~ February, 2019, updated through Addendum 2, August 2022, is a~~ Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. (3-18-22)(\_\_\_\_)

04. ~~American Society for Testing and Materials (ASTM) D698-07e1~~ 12(2021), Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Standard Effort (12,400 ft-lbf/ft<sup>3</sup> (600 kN-m/m<sup>3</sup>)). ~~2007~~ June 25, 2012 revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. (3-18-22)(\_\_\_\_)

05. ~~ASTM D1250-08, Standard Guide for Use of the Petroleum Measurement Tables. 2008 revision.~~ 1250-19e1, Standard Guide for the Use of the Joint API and ASTM Adjunct for Temperature and Pressure Volume Correction Factors for Generalized Crude Oils, Refined Products, and Lubricating Oils: API MPMS Chapter 11.1 May 15, 2020 revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. (3-18-22)(\_\_\_\_)

06. ~~ASTM D1557-09~~ 12(2021), Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft<sup>3</sup> (2,700 kN-m/m<sup>3</sup>)). ~~2009~~ July 5, 2021 revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. (3-18-22)(\_\_\_\_)

07. **Environmental Protection Agency (EPA) SW-846 Method 9090A, Compatibility Test for Wastes and Membrane Liners.** Revision 1, July 1992. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103 and this website: <http://www.epa.gov/osw/hazard/testmethods/sw846/pdfs/9090a.pdf>. <https://www.epa.gov/hw-sw846/sw-846-test-method-9090a-compatibility-test-wastes-and-membrane-liners>. (3-18-22)( )

08. **Occupational Safety and Health Administration (OSHA) Standard 1910.1200 (Hazard Communication).** Last revised ~~1996~~ 2013. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103 and this website: [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=standards&p\\_id=10099](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=10099) <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1200>. (3-18-22)( )

004. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions found in Section 47-310, Idaho Code, the following apply: ( )

01. **Act.** The Idaho Oil and Gas Conservation Act, Title 47, Chapter 3, Idaho Code. (3-18-22)

02. **Active Well.** A permitted well used for production, disposal, or injection that is not idled for more than twenty-four (24) continuous months. (3-18-22)

03. **Barrel.** Forty-two (42) U. S. gallons at sixty (60) Degrees F at atmospheric pressure. (3-18-22)

04. **Blowout.** An unplanned sudden or violent escape of fluids from a well. (3-18-22)

05. **Blowout Preventer.** A casinghead control equipped with special gates or rams that can be closed and sealed around the drill pipe, or that otherwise completely closes the top of the casing. (3-18-22)

~~06. **Bonus Payment.** Monetary consideration that is paid by the lessee to the lessor for the execution of an oil and gas lease. (3-18-22)~~

~~07. **Casing Pressure.** The pressure within the casing or between the casing, tubing, or drill pipe. (3-18-22)~~

08. **Casinghead.** A metal flange attached to the top of the conductor pipe that is the primary interface for the diverter system during drilling out for surface casing. (3-18-22)

~~09. **Casinghead Gas.** Any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil. (3-18-22)~~

10. **Common Source of Supply.** The geographical area or horizon definitely separated from any other such area or horizon, and ~~which~~ contains, or from competent evidence appears to contain, a common accumulation of oil or gas or both. Any oil or gas field or part thereof which comprises and includes any area which is underlaid, or which from geological or other scientific data or experiments or from drilling operations or other evidence appears to be underlaid by a common pool or accumulation of oil or gas or both oil and gas. (3-18-22)( )

11. **Completion.** An oil well is considered completed when the first new oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after the production casing has been run. A gas well is considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production casing has been run. (3-18-22)

12. **Conductor Pipe.** The first and largest diameter string of casing to be installed in a well. This casing extends from land surface to a depth great enough to keep surface waters from entering and loose earth from falling in the hole and to provide anchorage for the diverter system prior to setting surface casing. (3-18-22)



~~13~~**10. Cubic Foot of Gas.** The volume of gas contained in one (1) cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be fourteen and seventy-three hundredths (14.73) pounds per square inch absolute and the standard temperature base shall be sixty (60) Degrees F. (3-18-22)

~~14.~~ **Day.** A period of twenty-four (24) consecutive hours from 8 a.m. one day to 8 a.m. the following day. (3-18-22)

~~15~~**11. Development.** Any work that actively promotes bringing in production. (3-18-22)

~~16.~~ **Director.** The head of the Idaho Department of Lands and secretary to the Oil and Gas Conservation Commission, or his designee. (3-18-22)

~~17~~**12. Drilling Logs.** The recorded description of the lithologic sequence encountered in drilling a well, and any electric, gamma ray, geophysical, or other logging done in the hole. (3-18-22)

~~18~~**13. Fresh Water, Fresh-water, or Freshwater.** All surface waters and those ground waters that are used, or may be used in the future, for drinking water, agriculture, aquaculture, or industrial purposes other than oil and gas development. The possibility of future use is based on hydrogeologic conditions, water quality, future land use activities, and social/economic considerations. (3-18-22)( )

~~19~~**14. Gas-Oil Ratio.** The volume of gas produced in standard cubic feet to each barrel of oil or condensate produced concurrently during any stated period. (3-18-22)

~~20.~~ **Gas Processing Facility.** A facility that conditions liquids or gas by compression, dehydration, refrigeration, or by other means. (3-18-22)

~~21~~**15. Gas Well.** (3-18-22)

a. A well that produces primarily natural gas; (3-18-22)

b. Any well capable of producing gas in commercial quantities and also producing oil from the same common source of supply but not in commercial quantities; or (3-18-22)

c. Any well classed as a gas well by the Commission for any reason. (3-18-22)

~~22~~**16. Geophysical or Seismic Operations.** Any geophysical method performed on the surface of the land utilizing certain instruments operating under the laws of physics respecting vibration or sound to determine conditions below the surface of the earth that may contain oil or gas and is inclusive of, but not limited to, the preliminary line survey, the acquisition of necessary permits, the selection and marking of shot-hole locations, necessary clearing of vegetation, shot-hole drilling, implantation of charge, placement of geophones, detonation and backfill of shot-holes, and vibroseis. (3-18-22)( )

~~23~~**17. Hydraulic Fracturing, or Frac'ing, or Fracking.** A method of stimulating or increasing the recovery of hydrocarbons by perforating the production casing and injecting fluids or gels into the potential target reservoir at pressures greater than the existing fracture gradient in the target reservoir. (3-18-22)( )

~~24~~**18. Inactive Well.** An unplugged well that has no reported production, disposal, injection, or other permitted activity for a period of greater than twenty-four (24) continuous months, and for which no extension has been granted. (3-18-22)

~~25~~**19. Intermediate Casing.** The casing installed within the well to seal intermediate zones above the anticipated bottom hole depth. The casing is generally set in place after the surface casing and before the production casing. (3-18-22)

~~26~~**20. Junk.** Debris in a hole that impedes drilling or completion. (3-18-22)

~~27~~**21.** **Lease.** A tract(s) of land that by virtue of an oil and gas lease, fee or mineral ownership, a drilling, pooling or other agreement, a rule, regulation or order of a governmental authority, or otherwise constitutes a single tract or leasehold estate for the purpose of the development or operation thereof for oil or gas or both. (3-18-22)

~~28~~**22.** **Mechanical Integrity Test (MIT).** A test designed to determine if there is a significant leak in the casing, tubing, or packer of a well. (~~3-18-22~~)(    )

~~29~~**23.** **Oil Well.** Any well capable of primarily producing oil in paying quantities, but not a gas well. (3-18-22)

~~30~~**24.** **Pit.** Any excavated or constructed depression or reservoir used to contain reserve, drilling, well treatment, produced water, or other fluids at the drill site. This does not include enclosed, mobile, or portable tanks used to contain fluids. (3-18-22)

~~31~~**25.** **Pollution.** Constituents of oil, gas, salt water, or other materials used in oil and gas extraction, occurring in fresh water supplies at levels that exceed the standards in IDAPA 58.01.02, "Water Quality Standards," and IDAPA 58.01.11, "Ground Water Quality Rules," as the result of the drilling, casing, treating, operation or plugging of wells. (3-18-22)

~~32.~~ ~~**Pressure Maintenance.** The injection of gas, water, or other fluids into oil or gas reservoirs to maintain pressure or retard pressure decline in the reservoir for the purpose of increasing the recovery of oil or other hydrocarbons therefrom.~~ (~~3-18-22~~)

~~33~~**26.** **Produced Water.** Water that is produced along with oil or gas. (3-18-22)

~~34~~**27** **Production Casing.** The casing set across the reservoir interval and within which the primary completion components are installed. (3-18-22)

~~35~~**28.** **Proppant.** Sand or other materials used in hydraulic fracturing to prop open fractures. (3-18-22)

~~36~~**29.** **Release.** Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (3-18-22)

~~37~~**30.** **Spud.** To start the drilling process by removing rock, dirt, and other sedimentary material with the drill bit ~~by the drilling rig that is capable of drilling the well to the permitted total depth.~~ (~~3-18-22~~)(    )

~~38~~**31.** **Surface Casing.** The first casing that is run ~~and cemented in place~~ after the conductor pipe to anchor blow out prevention equipment and seals out fresh-water zones. (~~3-18-22~~)(    )

~~39~~**32.** **Surface Water.** Rivers, streams, lakes, and springs when flowing in their natural channels. (3-18-22)

~~40~~**33.** **Systems Approach.** The disclosure of chemical information by ~~e~~C~~h~~emical ~~a~~A~~b~~stracts ~~s~~S~~e~~rvice (~~CAS~~) name only, without disclosing component percentages or chemical relationships. (~~3-18-22~~)(    )

~~41~~**34.** **Tank.** A concrete, metal, or plastic stationary vessel used to contain fluids. (3-18-22)

~~42~~**35.** **Tank Battery.** One (1) or more tanks that are connected to receive crude oil, condensate, or produced waters from a well(s) and that serves as the point of collection and disbursement of oil or gas from a well(s). (3-18-22)

~~43~~**36.** **Tank Dike.** An impermeable man-made structure constructed around a tank to contain leakage from the tank. (3-18-22)

~~44~~**37.** **Tubing.** Pipe used inside the production casing to convey oil or gas from the producing interval to the surface. (3-18-22)

~~4538.~~ **Volatile Organic Compound (VOC).** Organic chemical compounds whose composition makes it possible for them to evaporate under normal indoor atmospheric conditions of sixty-eight (68) degrees F and an absolute pressure of fourteen point seven (14.7) pounds per square inch (psi) atmospheric. (3-18-22)(    )

~~46.~~ **Waterflooding.** The injection into a reservoir through one (1) or more wells with volumes of water for the purpose of increasing the recovery of oil therefrom. (3-18-22)

~~4739.~~ **Well Report.** The written record progressively describing the strata, water, oil, or gas encountered in drilling a well with such additional information as to give volumes, pressures, rate of fill-up, water depths, casing strata, casing record, etc., as is usually recorded in normal procedure of drilling; also, it includes electrical radioactivity, or other similar logs run, lithologic description of all cores, and all drill-stem tests, including depth-tested, cushion-used, time tool open, flowing and shut-in pressures and recoveries. (3-18-22)(    )

~~4840.~~ **Well Site.** The areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well, or injection well, and its associated well pad. (3-18-22)

~~4941.~~ **Well Treatment.** Actions performed on a well to acidize, fracture, or stimulate the target reservoir. (3-18-22)

~~5042.~~ **Wildcat Well.** An exploratory well drilled in an area of unknown subsurface conditions. (3-18-22)

**011. ABBREVIATIONS:**

- ~~01.~~ **API.** American Petroleum Institute. (3-18-22)
- ~~02.~~ **ASTM.** American Society for Testing and Materials. (3-18-22)
- ~~03.~~ **BBL.** Oilfield Barrel. (3-18-22)
- ~~04.~~ **BOP.** Blowout Preventer. (3-18-22)
- ~~05.~~ **CAS.** Chemical Abstracts Service. (3-18-22)
- ~~06.~~ **EPA.** United States Environmental Protection Agency. (3-18-22)
- ~~07.~~ **F.** Fahrenheit. (3-18-22)
- ~~08.~~ **GPS.** Global Positioning System. (3-18-22)
- ~~09.~~ **HDPE.** High Density Polyethylene. (3-18-22)
- ~~10.~~ **IDAPA.** Idaho Administrative Procedure Act. (3-18-22)
- ~~11.~~ **IDEQ.** Idaho Department of Environmental Quality. (3-18-22)
- ~~12.~~ **IDWR.** Idaho Department of Water Resources. (3-18-22)
- ~~13.~~ **MCF.** One thousand cubic foot. (3-18-22)
- ~~14.~~ **MSDS.** Material Safety Data Sheet. (3-18-22)
- ~~15.~~ **OSHA.** Occupational Safety & Health Administration. (3-18-22)
- ~~16.~~ **PSI.** Pounds per Square Inch. (3-18-22)
- ~~17.~~ **PVC.** Polyvinyl Chloride. (3-18-22)

~~012~~11. -- ~~014~~29. (RESERVED)

~~015~~. ~~PROTECTION OF CORRELATIVE RIGHTS.~~

The Commission and the Department should afford a reasonable opportunity to each person entitled thereto to recover or receive the oil or gas in such person's tract(s) or the equivalent thereof, without being required to drill unnecessary wells or to incur other unnecessary expense to recover or receive such oil or gas or its equivalent. (3-18-22)

~~016~~—~~019~~. (RESERVED)

~~020~~. ~~APPLICABILITY.~~

~~01. Oil and Gas Development.~~ These rules apply to oil and gas development and carry out the Commission's duty to prevent waste, protect correlative rights, and prevent pollution of fresh water supplies through activities authorized by these rules. (3-18-22)

~~02. Exclusions.~~ These rules do not apply to the exploration and development of other mineral resources covered by Title 47, Chapter 13, Idaho Code; Title 47, Chapter 15, Idaho Code; or Title 42, Chapter 40, Idaho Code. (3-18-22)

~~021~~. ~~CLASS II INJECTION WELLS.~~

Class II injection wells, as described in IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells," are currently not authorized under this rule. Permits for Class II injection wells must be obtained through IDAPA 37.03.03. (3-18-22)

~~022~~—~~029~~. (RESERVED)

030. NOTICES - GENERAL.

01. **Written Authorization Required.** Any ~~written~~ notice, ~~of intention~~ request to do work, or request to change ~~plans~~ previously approved plans, must be filed with the Department in writing, unless otherwise directed, and must be approved before ~~the work is begun~~ begins. Such approval may be given orally and, ~~if so given~~, shall thereafter ~~be~~ confirmed by the Department in writing. ~~Written notices may be submitted to the Department by e-mail or facsimile.~~ (3-18-22)(    )

02. **Emergency Authorization.** In case of emergency, or a situation where operations might be unduly delayed, ~~any~~ written notice required by these rules and regulations ~~to be given the Department~~ may be given orally or ~~by wire~~ electronically and if approval is obtained, ~~the transaction shall be~~ confirmed in writing, ~~as a matter of record.~~ (3-18-22)(    )

03. **Publication of Legal Notices.** Whenever these rules require publication of a legal notice ~~to be published~~ in a newspaper, the notice must be published once a week for two (2) consecutive weeks. (3-18-22)(    )

031. FORMS.

The Department will adopt such forms of notices, requests, permits, and reports as it may deem advisable or necessary in carrying out the provisions of law and its rules. (3-18-22)

032. ORGANIZATION REPORTS.

01. **Required Content.** Before any person engages in any activity covered by the ~~statutes Act~~ and ~~these rules of the Commission~~, that person must file an organization report with the Department. The organization report must include the following information: (3-18-22)(    )

- a. The person's name and the type of the business being operated or conducted; (3-18-22)
- b. The mailing address to which all correspondence from the Department is to be sent; (3-18-22)

c. The telephone number(s), facsimile number(s), and e-mail address(es) for which contact by the Department may be made; (3-18-22)( )

d. The names of persons authorized to submit required forms, reports, and other documents to the Department; and (3-18-22)

e. If a legal entity, proof the person is authorized to transact business within the state. (3-18-22)

**02. Updates.** A supplementary report must be filed with the Department within thirty (30) days of any change to facts stated in a previously-filed organization report. (3-18-22)

**033. DESIGNATION OF AGENT.**

A "Designation of Agent" must be submitted to the Department in a manner and form approved by the Department ~~prior to the commencement of~~ before commencing operations. A Designation of Agent(s) will be accepted as authority of the agent to fulfill ~~the all legal~~ obligations or powers of the owner and to sign any papers or reports required under these ~~oil and gas operating regulations rules, and a~~ All authorized orders or notices given to the designated agent by the Department, when given in the manner hereinafter provided, will be deemed service of such orders or notices upon the owner and the lessee. All changes of address and any termination of the agent's authority must be immediately reported in writing to the Department, and, in the latter case, the designation of a new agent(s) ~~must be~~ immediately made. If ~~the designated any~~ agent(s) is ~~at any time~~ incapacitated for duty or absent from the address provided, the owner must designate in writing a substitute to serve in ~~his or their stead~~ their place, ~~and i~~ In the absence of such owner or of notice of appointment of a substitute, ~~then, in such case,~~ notices may be given mailed by the Department ~~by delivering a registered letter to the United States Post Office at Boise, Idaho, directed to the agent(s) at the address shown on the current Designation of Agent on file in the Department's office, and s~~ Such notice will be deemed service upon the owner and lessee. (3-18-22)( )

**034. -- 039. (RESERVED)**

**040. PUBLIC COMMENT.**

Applications submitted under Sections 100, 200, 210, 230 and 330 of these rules will be posted on the Department's website for a ~~fifteen~~ ten-day ~~(1510)~~ written public comment period. The Department will also send an electronic copy of the application to the respective county, and city if applicable, where the proposed operation is located. ~~The purpose of the comment period is to receive written comments on whether a proposed application complies with these rules. These comments will be considered by the Department prior to permit approval or denial. Relevant comments will be posted on the Department's website following the comment period.~~ (3-18-22)( )

**041. -- 0499. (RESERVED)**

**050. ENFORCEMENT.**

The Department enforces these rules pursuant to Section 47-325, Idaho Code. (3-18-22)

**051. -- 099. (RESERVED)**

**SUBCHAPTER B – EXPLORATION AND DEVELOPMENT**

**100. GEOPHYSICAL OPERATIONS.**

**01. Permit Required.** Before beginning seismic operations ~~in the state of Idaho~~, a representative of the client company and the seismic contractor will meet with ~~the staff of the~~ Department staff, file an application for a permit to conduct seismic operations, and pay an application fee. No seismic operation may be conducted without such a permit. ~~The Department has discretion to waive the requirement of the pre-permit meeting for the client company.~~ The permit for seismic operations may be revoked or suspended or the application for the permit denied by the Department for failure to comply with these ~~Commission's~~ rules, statutes the Act, and orders of the Commission or the Department. The Department may revoke, suspend, or deny the application for a seismic permit without a hearing; provided that the seismic contractor will be given an opportunity for a hearing at the next regularly scheduled Commission meeting. ~~The fact that~~ Revocation or suspension of a permit ~~is revoked or suspended~~ does not

excuse the seismic contractor or client company from properly plugging existing seismic holes but does prohibit ~~the person(s) from~~ drilling any more. The application for a permit for seismic operations must include: (3-18-22)( )

a. The proposed route of the seismic line on a topographic or recent air photo base map at a sufficient scale to show roads, buildings, surface waters, and ~~S~~ection, ~~T~~ownship, and ~~R~~ange lines. The map must also show additional area as needed for any alternative routing. The alternative routing must be within at least one-half (1/2) mile of the proposed route. Reapplication must be made if the final route strays from the proposed route and outside the designated alternative routing areas; ~~and~~. (3-18-22)( )

b. The ~~proposed~~ energy sources ~~proposed to be used~~ for the seismic operation, such as vibroseis, shot holes, surface shot, or others. (3-18-22)( )

c. The approximate number, depth, and location of ~~the~~ seismic holes and the size of the explosive charges. The application must be accompanied by a map with a scale of one inch equaling two (2) miles that shows the depth and location of the shotholes. (3-18-22)( )

d. The name and permanent address of the client company the Department may contact about the seismic operation. (3-18-22)

e. The name, permanent address, and phone number of the seismic contractor and ~~his~~ ~~their~~ local representative whom the Department may contact about the seismic activity. (3-18-22)( )

f. The name, phone number, and permanent address of the hole plugging contractor, if different from the seismic contractor. (3-18-22)

g. A detailed description of the hole plugging procedures, and a description of the surface reclamation procedures, if such reclamation is needed. (3-18-22)

h. The anticipated starting date of seismic operations. (3-18-22)

i. The anticipated completion date of seismic operations, and the anticipated date of any required reclamation or hole plugging. (3-18-22)

j. A description of the identifying mark that will be on the hat or nonmetallic plug ~~to be~~ used in the plugging of the seismic hole. (3-18-22)( )

**02. Operating Requirements.** All geophysical operations must comply with the following requirements: (3-18-22)( )

a. ~~All~~ Vehicles utilized by the permit holder, ~~or~~ its agents, or contractors, shall be clearly identified by signs or markings utilizing letters or numbers, or a combination thereof, a minimum of three (3) inches in height and one-half (1/2) inch wide, indicating the name of ~~such~~ ~~the permit holder, its agent, or contractor~~. (3-18-22)( )

b. No seismic source generation from vibroseis, shot holes, surface shot, or other method ~~shall~~ ~~may~~ be conducted within two hundred (200) feet of any residence, water well, oil well, gas well, injection well, or other structure without having first secured the express written authority of the owner(s) thereof and the permit holder shall be responsible for any resulting damages. (3-18-22)( )

c. Written authority from the owner of a residence, water well, oil well, gas well, injection well or other structure must also be obtained ~~from the owner(s)~~ if any explosive charge exceeds the maximum allowable charge within the scaled distance below:

DISTANCE TO STRUCTURE (Feet)*	MAXIMUM ALLOWABLE CHARGE WEIGHTS (Pounds)*
50	0.5

<b>DISTANCE TO STRUCTURE (Feet)*</b>	<b>MAXIMUM ALLOWABLE CHARGE WEIGHTS (Pounds)*</b>
100	2.0
150	4.5
200	8.0
250	12.0
300	18.0
350	25.0
* Based upon a charge weight of seventy (70) Foot/Pound <sup>1/2</sup>	

(3-18-22)( )

**d.** The maximum allowable charge weight is twenty-five (25) pounds, unless the permit holder requests and secures the Department's prior written authorization ~~from the Department.~~ (3-18-22)( )

**e.** All seismic sources placed for detonation shall contain additives to accelerate the biodegradation thereof and ~~shall~~ be handled with due care in accordance with industry standards. ~~The e~~Cap leads for any seismic sources that fail to detonate shall be buried at least three (3) feet deep. (3-18-22)( )

**f.** All vegetation cleared to the ground shall be cleared in a competent and workmanlike manner in the exercise of due care. (3-18-22)

**g.** Unless otherwise consented to by the surface owner in writing, permit holder ~~shall~~ may not cut down any tree measuring six (6) inches or more in diameter, as measured at a height of three (3) feet from the ground surface, unless there are no reasonable alternatives to the removal of such tree(s) available to permit holder. Permit holder shall compensate surface owner the value of all such trees removed. (3-18-22)( )

**h.** All excessive rutting or soil disturbances shall be repaired or restored to the original condition and contour to the extent reasonable, unless otherwise agreed to by the permit holder and the surface owner in writing. (3-18-22)

**i.** All fences removed shall be replaced, unless otherwise agreed to by the permit holder and the surface owner in writing. (3-18-22)

**j.** All debris associated with the seismic activity shall be removed and properly disposed. (3-18-22)

**03. Bond Required.** (3-18-22)

**a.** Before beginning geophysical operations, the geophysical contractor must file and have approved by the Department a bond ~~in the amount~~ of at least ten thousand dollars (\$10,000). The Department may increase this bonding requirement for geophysical contractors based on the amount of potential damage from the contemplated operation. The condition of such bond shall comply with the Act, the se rules, and orders of the Commission ~~or and orders of~~ the Department. The obligation of the bond shall not be discharged until one (1) year from completion of the survey or until the geophysical contractor has complied with the ~~Oil and Gas Conservation Law Act,~~ these Commission's rules, and ~~the~~ orders of the Commission ~~and or~~ the Department. (3-18-22)( )

**b.** Persons or other entities who engage in ~~the~~ plugging ~~of~~ seismic holes and are not a regular full-time employee of the seismic company, owner, or operator shall have posted with the ~~director~~ Administrator a surety bond in favor of the Department. Said bond shall be on a form prescribed by the Department and in the amount of five thousand dollars (\$5,000). The condition of the bond shall comply with the ~~Oil and Gas Conservation Law Act,~~ these rules, and the regulations and orders of the Commission ~~and or~~ the Department. (3-18-22)( )

**04. Newspaper Notice.** Before ~~a geophysical contractor conducts the~~ beginning geophysical

operations, the geophysical contractor shall publish a legal notice in a newspaper of general circulation in the county where the survey will be conducted. ~~The notice shall state~~ing the nature and approximate time period of the seismic operations. These requirements do not apply to operations conducted within a well or ~~conducted~~ by aerial surveys.

(3-18-22)( )

**05. Owner and Occupant Notification.** ~~No entry shall be made by any person to~~ person may conduct seismic operations, ~~upon the lands where such seismic operations are to be conducted,~~ without the permit holder having first given notice at least thirty (30) calendar days prior to commencement of field seismic operations, or at the time permission is granted if less than thirty (30) days.

(3-18-22)( )

**a.** The notice shall be in writing and given either personally or by certified United States mail to the following persons: (3-18-22)

**i.** Surface owners reflected in the tax records of the counties where the lands are located, at the mailing addresses identified for such surface owners in such records; (3-18-22)

**ii.** Occupants residing on the lands who are not the surface owners, if it can be reasonably ascertained that there are such occupants; and (3-18-22)

**iii.** Owners or operators of oil and gas wells within the seismic survey area, as reflected in Department records. (3-18-22)

**b.** The notice shall contain the following: (3-18-22)

**i.** Name of the person or entity that is conducting the seismic operations; (3-18-22)

**ii.** Proposed location of the seismic operations; and (3-18-22)

**iii.** Approximate date the person or entity proposes to commence seismic operations. (3-18-22)

**06. Department Notifications.** (3-18-22)

**a.** The permit holder shall also notify the Department within five (5) business days of the commencement and completion of each seismic operation. (3-18-22)

**b.** Before beginning geophysical operations other than seismic operations, the geophysical contractor shall file a notice of intention to do so with the Department. Said notice shall describe the geophysical method to be used and be accompanied by a map of a scale of one (1) inch equals two (2) miles showing the location of the project. (3-18-22)

**07. Reports and Notices Required.** (3-18-22)

**a.** Activity Report. Upon completion of the seismic activity or at thirty (30) day intervals after the work has commenced, whichever occurs first, the seismic contractor shall file with the Department a report of the completion or progress of the seismic project. The final completion report shall be in affidavit form and ~~shall~~ include a seven and one-half (7.5) - or fifteen (15) minute United States Geological Survey topographic quadrangle map (at a scale of one (1) inch equals two thousand (2,000) feet or one (1) inch equals four thousand (4,000) feet that shows section, township, and range) and the location of each survey so that the shot\_holes and other potential impacts can be easily located. The final completion report ~~shall must~~ also include a statement that all work has been performed in compliance with the application for a permit to perform seismic activity, Section 100 of these rules, and permit provisions. Said maps, applications, and reports ~~shall will~~ be kept confidential by the Department for a period of one (1) year from the date of receipt, subject to the needs of the Department to use them to enforce these regulations rules, the Act, and the orders of the Commission or the Department. Also, ~~the owner of the surface of the land surface owners~~ may be advised of the location of seismic lines or seismic holes on ~~his~~ their land and of the exploration method used. (3-18-22)( )

**b.** Plugging Notice. Seismic contractors shall give the Department at least twenty-four (24) hours



advance notice of shothole plugging operations, provided that notice of plugging operations planned for Sunday or Monday may be given on the previous Friday. (3-18-22)

**08. Client-Contractor Responsibility.** The client company may be held responsible along with the seismic contractor ~~for conducting the operation in compliance with the Commission's rules and orders, the Department's orders, and the Act~~ for the seismic contractor's failure to comply with ~~such these~~ rules, ~~statutes the Act,~~ and orders ~~of the Commission or the Department~~. The hats used in the plugging of seismic holes ~~shall must~~ be imprinted with the name of the contractor responsible for the plugging of the hole. (3-18-22)(    )

**09. Plugging.** Unless the seismic contractor can prove to the satisfaction of the Department that another method will provide better protection to ground water and long-term land stability, seismic shothole operations ~~shall must~~ be conducted ~~in the following manner as follows:~~ (3-18-22)(    )

**a.** When water is used in conjunction with the drilling of seismic shotholes and artesian flow is not encountered at the surface, seismic holes are to be filled with a high grade bentonite/water slurry mixture. ~~Said The~~ slurry ~~shall must~~ have a density that is at least four percent (4%) greater than the density of fresh water ~~and, said slurry shall also have~~ a Marsh funnel viscosity of at least sixty (60) seconds per quart. Density and viscosity are to be measured prior to adding cuttings to the slurry. Cuttings not added to the slurry are to be disposed of ~~in accordance with per~~ Paragraph 100.09.f. of this rule. Any other suitable plugging material commonly used in the industry may be substituted for the bentonite/water slurry ~~as long as if~~ the physical characteristics of said substitute are ~~at least~~ comparable to those of the bentonite/water slurry. Between November 1 and May 1, coarse ground bentonite approved by the Department ~~shall must~~ be used as a plugging material. (3-18-22)(    )

**b.** The hole will be filled with the slurry from the bottom up to a depth of three (3) feet ~~(three (3) feet below ground level)~~. A nonmetallic plug will be set at this depth ~~of three (3) feet,~~ and the remaining hole will be filled and tamped to the surface with cuttings and native soil. (3-18-22)(    )

**c.** When drilling with air and nonartesian water is encountered, the hole shall be plugged with the slurry mixture, or coarse ground bentonite, as specified in Paragraph 100.09.a., ~~supra.~~ (3-18-22)(    )

**d.** When drilling with air only and in completely dry holes, plugging may be accomplished by returning the cuttings to the hole, tamping the returned cuttings to the above-referenced depth of three (3) feet ~~below ground level,~~ and setting the ~~p~~Permaplug topped with more cuttings and soil as per Paragraph 100.09.b. ~~above.~~ A small mound will be left over the hole for settling allowance. Auger holes twenty (20) feet or less in depth may be plugged in this same manner. (3-18-22)(    )

**e.** ~~The foregoing s~~Seismic holes shall be properly plugged and abandoned as soon as practical after the shot has been fired; ~~however, a shot hole shall~~ ~~and may~~ not be left unplugged for more than thirty (30) days without ~~written~~ approval of the Department. (3-18-22)(    )

**f.** Any slurry, drilling fluid, or cuttings ~~which are~~ deposited on the surface around the seismic hole will be raked or otherwise spread out to at least within one (1) inch of the surface, so that the growth of the natural grasses or foliage will not be impaired. (3-18-22)(    )

**g.** The requirements of Paragraphs 100.09.a. through 100.09.f. of this rule may be modified by any reasonable written agreement between the seismic company and the surface owner. (3-18-22)

**h.** If artesian flow (water flowing at the surface) is encountered in the drilling of any seismic hole, cement will be used to seal off the water flow thereby preventing cross-flow, erosion, and/or contamination of freshwater supplies. Said holes shall be cemented immediately. (3-18-22)

**i.** After completing the plugging of seismic shot holes and spreading the cuttings as required by this rule, the seismic contractor shall record the ~~Global Positioning System (GPS)~~ location of the seismic hole, and the contractor shall provide the location data to the Department. (3-18-22)(    )

**10. Forfeiture of Geophysical Exploration Bond.** The Department may forfeit the bond submitted under Subsection 100.03 of this rule upon failure of the owner or operator to conduct the seismic survey and complete

reclamation in conformance with Section 100 of this rule. The owner or operator will be given an opportunity to address compliance issues prior to the Department ~~taking action~~ acting against the bond. (3-18-22)(    )

101. -- 199. (RESERVED)

**SUBCHAPTER C – DRILLING, WELL TREATMENT, AND PIT PERMITS**

**200. PERMIT TO DRILL, DEEPEN, OR PLUG BACK.**

**01. Permits Required.** Prior to the commencement of operations to drill, deepen, or plug back to any source of supply other than the existing producing horizon, an application shall be delivered to must be filed with the Department ~~of intention to drill, deepen, or plug back any well for oil or gas,~~ and approval obtained. Any permit issued under Subchapter C of this rule may be revoked or suspended or the application for permit denied by the Department for failure to comply with these rules, the Act, and orders of the Commission or the Department. (3-18-22)(    )

**02. Fees.** An application fee must accompany each application for permit to drill, deepen, or plug back. No service fee is required for a permit to deepen or plug back ~~in a well for which the fee has been paid for permit to drill unless the drilling permit has expired.~~ if completed within one (1) year from issuance of permit to drill a well. (3-18-22)(    )

**03. Time Required to Commence Operations; Term of Permit.** ~~On the first anniversary of the date of issuance of a p~~ Permits to drill, deepen, or plug back, ~~said permit will expire and be of no further force or effect, one (1) year after being issued by the Department,~~ unless the work for which the permit was issued has been started. Prior to the ~~anniversary date~~ expiration of the permit, the owner or operator may apply to the Department for a one-time, six-month extension if work has not started. If conditions have not changed and no changes to the permit are requested, the extension may be approved by the Department. If a permit expires due to the failure to commence operations, then reapplication is required prior to commencing operations. (3-18-22)(    )

**04. Application.** The Application for Permit to Drill shall include a Department approved form and the following: (3-18-22)

**a.** An accurate plat showing the location of the proposed well with reference to the nearest lines of an established public survey. (3-18-22)

**b.** The location of the nearest structure with a water supply, or the nearest water well as shown on the IDWR registry of water rights or well log database. (3-18-22)

**c.** Information on the type of tools to be used and the proposed logging program. (3-18-22)

**d.** Proposed total depth ~~to which of~~ the well ~~will be drilled,~~ estimated depth to the top of the important geologic markers, and the estimated depth to the top of the target formations. (3-18-22)(    )

**e.** The proposed casing program, including size and weight thereof, the depth at which each casing type is to be set. (3-18-22)

**f.** The type and amount of cement to be used, and the intervals cemented. (3-18-22)

**g.** Information on the drilling plan. (3-18-22)

**h.** Best management practices to be used for erosion and sediment control. (3-18-22)

**i.** Plan for interim reclamation of the drill site after the well is completed, and a plan for final reclamation of the drill site following plugging and abandonment of the well. These plans must contain the information needed to implement reclamation as described in Subsection 310.16 and Section 510 of these rules. (3-18-22)

- j. Applications that include the following actions must also provide the information from the respective Section of these rules: (3-18-22)
- i. Well treatments require the submittal of the information in Section 210. (3-18-22)
  - ii. Pit construction and use requires the submittal of the information in Section 230. (3-18-22)
  - iii. Directional or horizontal drilling requires the submittal of the information in Section 330. (3-18-22)
- k. Any other information which may be required by the Department based on site-specific reasons. (3-18-22)( )
- ~~05. Permit Denial. Applications may be denied for the following reasons: (3-18-22)~~
- ~~a. Application fee was not submitted. (3-18-22)~~
  - ~~b. Application is incomplete. (3-18-22)~~
  - ~~c. Failure to post required bonds. (3-18-22)~~
  - ~~d. Proposed well will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. (3-18-22)~~

## 201. MULTIPLE ZONE COMPLETIONS.

**01. Requirements of the Owner or Operator; Request for Approval.** A multiple zone completion may be approved by the Department upon application by the owner or operator and payment of an application fee, ~~as herein provided.~~ The application ~~shall be accompanied by~~ must include an exhibit showing the location of wells on applicant's lease and all offset wells on leases, and shall set forth all material facts involved, and the manner and method of completion proposed, including a diagrammatic sketch of the mechanical installation of the proposed well. ~~The application fee may not exceed that required by Subsection 200.02 of these rules. N~~ The applicant must mail notice of the filing of such application ~~shall be given by the applicant by mailing~~ to each offset operator. ~~a~~ The notice must containing a full description of the proposed completion for which approval is requested, ~~and p~~ Proof of mailing ~~such notice shall must~~ be made by an affidavit, ~~which shall be~~ attached to the application showing names and addresses of those to whom notice was mailed. (3-18-22)( )

**02. Conditions for Approval; Cause for Hearing.** ~~In the event~~ If the Department ~~is in agreement~~ agrees with the application and ~~that~~ no offset operator files a written objection to the application with the Department within ~~fifteen~~ ten (15/10) days of the date of the offset operator's receipt of application, the application shall be approved as an amendment to the drilling permit. If any offset operator ~~shall files said objection, file in writing with the Department an objection to such multiple completion,~~ or if the Department is not in agreement with the application, the matter shall be immediately set for hearing and Notice of Hearing duly given by the Department. (3-18-22)( )

**03. Zone Effectiveness; Requirement for Production Testing.** The Department may require such tests as necessary to determine the effectiveness of the segregation of the different productive zones. (3-18-22)

**04. Commingling Production.** The Department may require that oil or gas from multiple zones be produced through different sets of tubing, if needed to protect correlative rights or to prevent waste. (3-18-22)

## 202. -- 209. (RESERVED)

## 210. WELL TREATMENTS.

**01. Application Required.** An Application for Permit to Drill required by Section 200 must include any plans for well treatment if they are known before the well is drilled. If well treatments are not covered in the

original drilling permit, then an application to amend the permit must be made to the Department with an application fee. Approval by the Department is required ~~prior to~~ before the well treatments ~~being~~ are implemented. Actions to clean the casing or perforations not in excess of pressures sufficient to overcome the fracture gradient in the surrounding formation are not considered to be well treatments, but operators must notify the Department when such actions occur. Applications for well treatments must include the permit number, well name, well location, as-built description if drilling has been completed, and the following: (3-18-22)(    )

- a. Depth to perforations or the openhole interval; (3-18-22)
- b. The source of water or type of base fluid; (3-18-22)
- c. Additives, meaning any substance or any combination of substances including proppant, having a specified purpose that is combined with base treatment fluid by trade name, if available, and a Safety Data Sheet (MSDS) for each additive; (3-18-22)(    )
- d. Type of proppant(s); (3-18-22)
- e. Anticipated percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s); (3-18-22)
- f. Estimated pump pressures; (3-18-22)
- g. Method and timeline for the management, storage, and disposal of well treatment fluids, including anticipated disposal site of treatment fluids or plans for reuse; (3-18-22)
- h. Size and design of storage pits, if proposed, in conformance with Section 230 of these rules; (3-18-22)
- i. Information specific to hydraulic fracturing as described in Section 211 of these rules; (3-18-22)
- j. Summary identifying all water bearing zones from the surface down to the bottom of the well; (3-18-22)
- k. Fresh water protection plan that describes the proposed site-specific measures to protect water quality from activities associated with well treatments. The Department will review this plan in consultation with the IDEQ. The Fresh ~~W~~water Protection Plan shall include the following information: (3-18-22)(    )
  - i. Ground water and storm water best management practices; (3-18-22)
  - ii. Statement certifying that the owner or operator is complying with Spill Prevention, Control, and Countermeasures (SPCC) requirements administered by the EPA; (3-18-22)
  - iii. A preconstruction topographic site map or aerial photos identifying all habitable structures, wells, perennial and intermittent springs, surface waters, and irrigation ditches within one-quarter (1/4) mile of the oil or gas well. The distance or location may be changed based on site-specific factors such as horizontal drilling, the expected length of fractures, or lack of suitable water sample locations within one-quarter (1/4) mile; (3-18-22)(    )
  - iv. A brief description of the structural geology that may influence ground water flow and direction; and (3-18-22)
  - v. The general hydrogeological characteristics of the treatment area and surrounding land. (3-18-22)
- l. Certification by the owner or operator that all aspects of the well construction, including the suitability and integrity of the cement used to seal the well, are designed to meet the requirements of proposed well treatments; (3-18-22)
- m. Affidavit signed by the owner or operator stating that all home-owners and water well owners

within one-quarter (1/4) mile of the oil or gas well, and all owners of a public drinking water system that have an IDEQ recognized source water assessment or protection area within one-quarter (1/4) mile of the oil or gas well, have been notified of the proposed treatment. If a well deviates from the vertical, these surface distances will be from the entire length of the wellbore from the surface to total depth. The notification will also offer an opportunity to have the owner or operator sample and test the water, at the owner or operator's cost, ~~prior to~~ before and after the ~~oil or gas well being treated~~ well treatment. Notification shall be by certified mail to the surface owner as identified by the county assessor's records, or to the well owner as identified on the IDWR registry of water rights or well log database; (3-18-22)(    )

**n.** Proof of publication in a newspaper of general circulation in the county where the well is located of a legal notice briefly describing the well treatment to be performed. Notice shall also advise all water well or public drinking water system owners, as described in Paragraph 210.01.m. of these rules, of the opportunity to have their water tested at the owner's or operator's cost before and after the well treatment; and (3-18-22)

**o.** Additional information as required by the Department. (3-18-22)

**02. Master Drilling/Treatment Plans.** Where multiple stimulation activities will be undertaken for several wells proposed to be drilled in the same field within an area of geologic similarity, approval may be sought from the Department for a comprehensive master drilling/treatment plan containing the information required. The approved master drilling/treatment plan must then be referenced on each individual well's Application for Permit to Drill. (3-18-22)

~~**03. Application Denial.** The Department may deny well treatment applications for one (1) or more of the following reasons: (3-18-22)~~

~~**a.** Application does not contain the information in Subsection 210.01 of these rules; (3-18-22)~~

~~**b.** Application fee was not submitted. (3-18-22)~~

~~**e.** Proposed treatment will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. (3-18-22)~~

**043. Time Limit.** If a treatment approved in a drilling permit or amended drilling permit is not started within one (1) year of ~~the approval of the well treatment~~, the well treatment permit will expire, and reapplication will be required ~~prior to~~ before conducting the well treatment. Prior to the ~~anniversary expiration~~ date, the owner or operator may apply for a six-month (6) extension. If conditions have not changed, and no changes to the permit are requested, the extension may be approved by the Department. (3-18-22)(    )

**054. Inspections.** The Department may conduct inspections ~~prior~~ before, during, and after well treatments. (3-18-22)(    )

**065. Reporting Requirements.** A report on the well treatment must be submitted within thirty (30) days of the treatment. The report shall present a detailed account of the work done and the manner in which such work was performed, including: (3-18-22)

**a.** The daily production of oil, gas, and water both ~~prior to~~ before and after the operation. (3-18-22)(    )

**b.** The size and depth of perforations. (3-18-22)

**c.** Percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s). This requirement can be met by the submittal of well completion field tickets if they contain this information. (3-18-22)

**d.** Documentation demonstrating the chemicals used in the well treatment have been reported to the website ~~www.fracfocus.org~~ https://fracfocus.org, its successor website, or another publicly accessible database approved by the Department. The chemical information must be reported in a systems approach. (3-18-22)(    )

- e. Information specific to hydraulic fracturing, as described in Section 211 of these rules. (3-18-22)
- f. Static pressure testing results before and after the well treatment. (3-18-22)
- g. The amounts, handling, and if necessary, disposal at an identified appropriate disposal facility, or reuse of the well stimulation fluid load recovered during flow back, swabbing, ~~and/or~~ recovery, or all from production facility vessels. Reporting of recovered fluids ~~shall~~ must be included with other monthly production reports required by the Department. Storage of such fluid ~~shall~~ must be protective of ground-water ~~as demonstrated by the use of~~ using either tanks or authorized lined pits as described in Section 230 of these rules. (3-18-22)( )
- h. Any other information related to operations which alter the performance or characteristics of the well. (3-18-22)

**076. Fresh ~~W~~water Protections for Well Treatments.** (3-18-22)( )

- a. The Department will not authorize pits, lagoons, ponds, or other methods of subsurface storage for treatment fluids within IDEQ recognized source water assessment or protection areas for public drinking water systems. Owners or operators must store and transport treatment fluids using above ground storage facilities and tanker trucks for well treatments in these locations. (3-18-22)
- b. The Department will not authorize well treatments to create fractures within five hundred (500) vertical feet above or below fresh-water aquifers. (3-18-22)( )

c. The ~~Department shall require the~~ owner or operator ~~to~~ must complete fresh-water monitoring at the owner's or operator's cost before and after a well treatment unless the Department, in consultation with ~~the~~ IDEQ, determines that the proposed treatment does not pose a threat of pollution to fresh waters. The Department will review and approve all monitoring proposals with ~~the~~ IDEQ. The monitoring will be done using representative existing water wells or surface waters within one-quarter (1/4) horizontal mile of the treated well. For wells that deviate from the vertical, sampling may be required within one-quarter (1/4) horizontal mile of the wellbore's projected location on the surface. If no water wells or surface waters are present in this area, the sampling area may be enlarged as needed with approval by the Department. If the Department determines that existing water wells are not representative of the ground waters that could be impacted, then the Department may require the owner or operator to install one (1) or more ground water monitoring wells at the owner's or operator's cost. The owner or operator must obtain consent from appropriate property owners to gain access prior to any sampling or well construction. When monitoring is required by the Department, the operator will prepare a monitoring plan that includes the following: (3-18-22)( )

- i. Location of proposed monitoring sites; (3-18-22)
  - ii. Construction details of any sampled or constructed wells including total well depth, depth of screened interval(s), screen size, and drilling log. For existing wells, the operator must make every reasonable attempt to locate this information; (3-18-22)
  - iii. When possible, data from the existing wells collected within the last five (5) years and analyzed in a state or EPA certified drinking water lab; (3-18-22)
  - iv. List of proposed analytes, testing methods, and their detection limits; (3-18-22)
  - v. Additional tests such as stable isotopic analysis; and (3-18-22)
  - vi. Pre-treatment sampling and analysis when no relevant data exists, and a schedule for post-treatment sampling and analysis. (3-18-22)
- d. The owner or operator will provide the Department with copies of any analysis or reports within thirty (30) days of samples being taken. All samples must be analyzed in a state or EPA certified drinking water lab. (3-18-22)

e. Pollution of fresh-water supplies due to a well treatment is a violation of these rules and Title 47, Chapter 3, Idaho Code. (3-18-22)( )

## 211. HYDRAULIC FRACTURING.

**01. Application Requirements.** In addition to the information required by Subsection 210.01 of this rule, the owner or operator shall provide the following application information regarding hydraulic fracturing: (3-18-22)

a. The geological names and descriptions of the formation into which well stimulation fluids are to be injected; (3-18-22)

b. Detailed information on the base stimulation fluid source. For each stage of the well stimulation program, provide the chemical additives and proppants and concentrations or rates proposed to be mixed and injected, including: (3-18-22)

i. Stimulation fluid identified by additive type (such as but not limited to acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, surfactant); (3-18-22)

ii. The chemical compound name and ~~Chemical Abstracts Service (CAS)~~ number as found on the previously submitted ~~MSDS shall be identified~~ (such as the additive biocide is glutaraldehyde, or the additive breaker is ammonium persulfate, or the proppant is silica or quartz sand, and so on for each additive used); (3-18-22)( )

iii. The proposed rate or concentration for each additive and the total volume of each ~~shall be provided~~ (such as gel as pounds per thousand gallons, or biocide at gallons per thousand gallons, or proppant at pounds per gallon, or expressed as percent by weight or percent by volume, or parts per million, or parts per billion); and (3-18-22)( )

iv. The formulary disclosure of the chemical compounds used in the well stimulation(s) for the purpose of protecting public health and safety. (3-18-22)

c. A detailed description of the proposed well stimulation design that shall include: (3-18-22)

i. The anticipated surface treating pressure range; (3-18-22)

ii. The maximum injection treating pressure, which shall be within accepted safety limits. Accepted safety limits are generally eighty percent (80%) of the maximum pressure rating of the pressurized system; (3-18-22)

iii. The estimated or calculated fracture height in both the horizontal and vertical directions. (3-18-22)

**02. ~~Volatile Organic Compound~~VOCs and Petroleum Distillates.** The injection of ~~volatile organic compounds~~ VOCs, such as benzene, toluene, ethyl benzene, and xylene, also known as BTEX compounds, or any petroleum distillates into ground water in excess of ~~the~~ applicable ground water quality standards is prohibited. ~~Volatile organic compounds~~ VOCs or petroleum distillates may be appropriate as additives, but they are not appropriate for use as the base fluids. The proposed use of ~~volatile organic compounds~~ VOCs or any petroleum distillates for well stimulation into hydrocarbon bearing zones may be authorized with prior approval of the ~~director~~ Administrator. ~~Water that is produced with oil and gas, and~~ Produced water, which may contain small amounts of naturally occurring ~~volatile organic compounds~~ VOCs or petroleum distillates, may be used as well stimulation fluid in hydrocarbon bearing zones. (3-18-22)( )

**03. Well Integrity.** Prior to the well stimulation, the owner or operator will perform a suitable ~~mechanical integrity test~~ MIT of the casing, or of the casing-tubing annulus or other ~~mechanical integrity test~~ MIT methods and submit an affidavit ~~to the Department~~ certifying that the well was tested in anticipation of proposed treatment pressures. The owner or operator will notify the Department of this test twelve (12) to twenty-four (24) hours in advance. (3-18-22)( )

**04. Pressure Monitoring.** During the well stimulation operation, the owner or operator shall monitor and record the annulus pressure at the casinghead. If intermediate casing has been set on the well being stimulated, the pressure in the annulus between the intermediate casing and the production casing shall also be monitored and recorded. If the annulus pressure increases by more than five hundred (500) psi gauge as compared to the pressure immediately preceding the stimulation, the owner or operator shall verbally notify the Department as soon as practicable but no later than twenty-four (24) hours following the incident. (3-18-22)( )

**05. Post-Treatment Report.** In addition to the information required by Subsection 210.065 of this rule, the owner or operator shall provide the following post-treatment reporting: (3-18-22)( )

- a. The actual total well stimulation treatment volume pumped; (3-18-22)
- b. The actual surface pressure and rate at the end of each fluid stage and the actual flush volume, rate and final pump pressure; (3-18-22)
- c. The instantaneous shut-in pressure, and the actual fifteen (15) minute and thirty (30) minute shut-in pressures when these pressure measurements are available; (3-18-22)
- d. A continuous record of the annulus pressure during the well stimulation; (3-18-22)
- e. A copy of the well stimulation service contractor's job log, without any cost/pricing data from the field ticket, in lieu of paragraphs (a) through (d) above. If the job log does not contain all the needed information, it must be supplemented with additional information needed to satisfy Paragraphs 211.05.a. through 211.05.d. of this rule. (3-18-22)
- f. A report containing all details pertaining to any annulus pressure increases of more than five hundred (500) psi gauge as described in Subsection 211.04 of this rule. The report shall include corrective actions taken, if necessary. (3-18-22)
- g. Results of post-treatment fluid analysis used to help determine where the fluid can be disposed. (3-18-22)( )

**212. -- 219. (RESERVED)**

**220. BONDING.**

**01. Individual Bond.** The Department shall, except as hereinafter provided, require from the owner or operator a good and sufficient bond in the sum of not less than ten thousand dollars (\$10,000) plus one dollar (\$1) for each foot of planned well length in favor of the Department. The bond shall be conditioned upon the performance of the owner's or operator's duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas and the reclamation of surface disturbance associated with these activities. Said bond shall remain in force and effect until the plugging of said well is approved by the Department and the well site is reclaimed as described in Section 510 of these rules, or the bond is released by the Department. (3-18-22)

**02. Blanket Bond.** In lieu of the bond in Subsection 220.01 of this rule, any owner or operator may file with the Department a good and sufficient blanket bond covering all active wells drilled or to be drilled in the state of Idaho. The amount of the blanket bond will be as follows according to the number of active wells covered by the bond: (3-18-22)

- a. Up to ten (10) wells, fifty thousand dollars (\$50,000); (3-18-22)
- b. Eleven (11) to thirty (30) wells, one hundred thousand dollars (\$100,000); or (3-18-22)
- c. More than thirty (30) wells, one hundred fifty thousand dollars (\$150,000). (3-18-22)



**03. Inactive Well Bond.** An owner or operator must provide the Department with a bond of at least ten thousand dollars (\$10,000) plus eight dollars (\$8) for each foot of planned well length for each inactive well ~~that is~~ conditioned upon the performance of the duty to comply with the requirements of the Act, ~~and these~~ rules, ~~of the Commission, and orders issued by the Commission or the Department;~~ with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas. Said bond shall remain in force and effect until the plugging of said well is approved by the Department, or the bond is released by the Department. Inactive wells may not be covered by a blanket bond as provided in Subsection 220.02 of this rule. (3-18-22)(    )

**04. Additional Bonding.** The Department may impose additional bonding on an owner or operator given sufficient reason, such as non-compliance, unusual conditions, horizontal drilling, or other circumstances that suggest a particular well or group of wells has potential risk or liability in excess of that normally expected. The owner or operator may request a hearing to appeal either the decision to impose an additional bond or the proposed amount of the bond. (3-18-22)

**05. Authorized Bonds.** The bond(s) referred to in Section 220 must be by a corporate surety authorized to do business in the state of Idaho or in cash. If cash is used to satisfy the bonding requirements in these rules, interest on the cash will be allocated to the ~~g~~General ~~f~~Fund. (3-18-22)(    )

**221. TRANSFER OF DRILLING PERMITS.**

No person ~~to whom a permit has been issued shall~~ with a permit may transfer the permit to any other location or to any other person ~~until unless~~ the following requirements ~~have been complied with~~ are met: (3-18-22)(    )

**01. Prior to Drilling Well.** If, prior to the drilling of a well, the person to whom the permit was originally issued desires to change the location, he shall submit a letter so stating and another application properly filled out showing the new location. Drilling ~~shall not be~~ may not started until the transfer has been approved and the new permit posted at the new location. (3-18-22)(    )

**02. During Drilling or After Completion.** If, while a well is being drilled or after it has been completed, the person to whom the permit was originally issued disposes of his interest in the well, he shall submit a written statement to the Department setting forth the facts and requesting that the permit be transferred to the person who has acquired the well. (3-18-22)

**03. Terms for Acceptance of Transfer.** Before the transfer of a drilling permit shall be recognized, the person who has acquired the well must submit a written statement setting forth that he has acquired such well and assumes full responsibility for its operation and abandonment in conformity with the law Act, ~~these~~ rules, ~~regulations,~~ and orders issued by the Commission ~~or the Department.~~ If bond is required to guarantee compliance with ~~these~~ rules and regulations of the Commission, the person acquiring such well shall furnish bond. (3-18-22)(    )

**222. -- 229. (RESERVED)**

**230. PIT REQUIREMENTS.**

**01. Plans Required.** If pits are proposed to be constructed in connection with another permit application required by these rules, then the owner or operator must include plans for pit construction in the application. If a pit is needed after the other permits have been approved, then an application to amend the permit must be made to the Department with an application fee. Approval by the Department is required prior to the pit being constructed unless the pit is necessary for an emergency action. Pit applications must include the permit number, well name, well location, as-built description if drilling has been completed, proposed pit location, and plans for pit construction, operation, and reclamation. (3-18-22)

**02. Location.** (3-18-22)

**a.** Pits must be located where they are structurally sound and the liner systems can be adequately protected against factors such as wild-fires, floods, landslides, surface and ground water systems, equipment operation, and public access. (3-18-22)(    )

**b.** Pits located in a one-hundred-year floodplain must be in conformance with any applicable

floodplain ordinances pertaining to activities within the one-hundred-year floodplain. (3-18-22)( )

c. Pits ~~shall~~ may not be located within ~~an~~ IDEQ recognized source water assessment or protection areas for public drinking water systems. (3-18-22)( )

**03. Site Preparation.** All sites must be properly prepared prior to pit construction. Vegetation, roots, brush, large woody debris and other deleterious materials, topsoil, historic foundations and plumbing, or other materials that may adversely affect appropriate construction, must be removed from the footprint of the pit unless approved by the Department. (3-18-22)

**04. Pit Sizing Criteria.** (3-18-22)

a. Pits that have constructed berms ten (10) or more feet in height or hold fifty (50) acre-feet or more of fluid must also comply with the dam safety requirements of IDAPA 37.03.06, "Safety of Dams Rules." (3-18-22)

b. Pits must be designed to hold the maximum volume of fluids being used for drilling or well treatment and the volume of water associated with a one hundred-year, twenty-four-hour precipitation event. (3-18-22)

c. Snowmelt events shall be considered in determining the containment capacity. (3-18-22)

d. Pits that are left over winter must be able to contain one hundred twenty-five percent (125%) of the average annual precipitation that falls from October through May. (3-18-22)

e. Pits must be designed to maintain a minimum two (2) foot freeboard at all times. Contingency plans for managing excesses of fluids shall be described in the application. At no time ~~shall~~ may fluids in a pit be allowed to escape from the impoundment. (3-18-22)( )

**05. Minimum Plans and Specifications for Reserve, Well Treatment, and Other Short-Term Pits.** Pits used for one (1) year or less, not including extensions, are short-term pits. Construction plans and specifications for short term pits must include the requirements under Subsections 230.02 through 230.04 of this rule and the following: (3-18-22)( )

a. A prepared subbase, which shall be free of plus three (3) inch rocks, roots, brush, trash, debris or other deleterious materials, and compacted to ninety-five percent (95%) of Standard Proctor Test ASTM D698-07e1 or ninety-five percent (95%) of Modified Proctor Test ASTM D1557-09; (3-18-22)

b. Slopes of two (2) feet horizontal to one (1) foot vertical (2H:1V) or flatter for all interior and exterior pit walls. The top of a bermed pit wall must be a minimum of two (2) feet wide; (3-18-22)

c. A primary liner system consisting of a synthetic liner of at least twenty (20) millimeters thickness ~~and~~ constructed according to manufacturers' standards with at least four (4) inches of welded seam overlap and complete coverage on the floor and inside walls of the pit. Seams must run parallel to the line of maximum slope so they do not traverse across the slope. The liner edges ~~shall~~ must be anchored in a compacted earth filled trench at least eighteen (18) inches ~~in depth~~ deep. The liner must be protected against cracking, sun damage, ice, frost penetration or heaving, wildlife and wildfires, and damage that may be caused by personnel or equipment operating in or around these facilities. Liner compatibility ~~shall~~ must comply with EPA SW-846 method 9090A. Alternative liner systems with similar standards may be proposed by the owner or operator and approved at the Department's discretion; (3-18-22)( )

d. Minimum factors of safety, and the logic behind their selection, for the stability of the earthworks and the pit lining system ~~of the pit~~; (3-18-22)( )

e. Site-specific methods for excluding people, terrestrial animals, and avian wildlife from the pits; (3-18-22)( )

f. Segregation and stockpiling of topsoil in a manner that will support reestablishment of the pre-

disturbance land use after pit closure; and (3-18-22)

g. A closure plan including the following: (3-18-22)

i. Testing of residual fluids and any accumulated solids, if anything other than water-based drilling fluid was placed in the pit; (3-18-22)( )

ii. Plans for removal and disposal of residual fluids and accumulated solids, with the liner material, at an appropriate facility; (3-18-22)

iii. Regrading plan, replacement of topsoil, and erosion control measures; and (3-18-22)

iv. Reseeding and Revegetation. (3-18-22)

**06. Minimum Plans and Specifications for Long Term Pits.** Pits used for more than one (1) year, not including extensions, are long term pits. Construction plans and specifications for long term pits must include the requirements under Subsections 230.02 through 230.05 of this rule and the following: (3-18-22)

a. A quality control/quality assurance construction and installation plan; (3-18-22)

b. Type of fluids to be contained in the pit; (3-18-22)

c. Secondary containment synthetic liners, which ~~shall~~ **must** have a minimum thickness of sixty (60) millimeters consisting of High Density Polyethylene (HDPE) and a maximum coefficient of permeability of  $10^{-9}$  cm/sec, or comparable liners approved by the Department; (3-18-22)( )

d. Leak detection and collection systems. The plans and specifications shall: (3-18-22)

i. Provide a material between primary and secondary containment synthetic liners to collect, transport, and remove all fluids that pass through the primary containment synthetic liner at such a rate as to prevent hydraulic head from developing on the secondary containment synthetic liner to the level at which it may be reasonably expected to result in discharges through the secondary containment synthetic liner; (3-18-22)( )

ii. Provide routines and schedules for ~~the evaluation of~~ **the** efficiency and effectiveness of ~~the removal of fluids~~ **removal** from the layer placed between primary and secondary containment synthetic liners. The properly working system shall continually relieve head pressures on the secondary containment synthetic liner; (3-18-22)( )

iii. Provide specific triggers for maintenance routines, which ~~shall~~ **will** be initiated in response to inadequate performance of primary or secondary containment synthetic liners; and (3-18-22)( )

iv. Specify operation and maintenance procedures, which ~~shall~~ **will** be initiated in response to inadequate performance of primary and secondary containment or leak detection and collection systems. (3-18-22)( )

e. All piping, including that contained in the leak detection and collection system, shall have a minimum wall thickness of polyvinyl chloride (PVC) Schedule 80 and be designed to: (3-18-22)( )

i. Withstand chemical attack from oil field waste or leachate; (3-18-22)

ii. Withstand structural loading from stresses and disturbances from cover materials or equipment operation; and (3-18-22)

iii. Facilitate clean-out and maintenance. (3-18-22)

f. Protections for the liner from excessive hydrostatic force or mechanical damage at the point of discharge into, or suction from, the pit. External discharge or suction lines ~~shall~~ **may** not penetrate the liner;

(3-18-22)( )

g. Plans for erosion control during and immediately following construction; and (3-18-22)

h. Operating and maintenance plans. (3-18-22)

**07. Time Limits for Short-Term Pits.** Reserve, well treatment, and other short-term pits must be closed out and reclaimed within one (1) year of being constructed. The owner or operator may request a one-time extension for up to six (6) months. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for ensuring that the pit is adequately monitored and maintained. (3-18-22)( )

a. Fluids may be left in a pit for up to six (6) months after the associated well activities are conducted. The owner or operator may request a one-time extension for up to one (1) year. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for keeping the fluids in a usable state. (3-18-22)

b. Notwithstanding the above time limits, the owner or operator may request additional time based upon conditions wholly outside of the owner's or operator's control including, but not limited to, governmental lease requirements and delays related to difficult drilling conditions. The Department may impose additional construction or monitoring requirements prior to granting additional time. (3-18-22)

**08. Emergency Pits.** Pits constructed during an emergency situation may be approved by an after-the-fact application submitted to the Department. The requirements in Subsections 230.02 through 230.05 of this rule shall apply, and the pit must be closed out and reclaimed within six (6) months of being constructed. The Department must be notified within twenty-four (24) hours of an emergency situation requiring an emergency pit. (3-18-22)

**09. Operating Requirements.** (3-18-22)

a. Waste oil, hydraulic fluid, transmission fluids, trash, or any other miscellaneous waste products must not be disposed of in a pit. ~~Placement of these materials into a pit may result in the creation of a mixed waste that requires handling and disposal as a hazardous waste.~~ (3-18-22)( )

b. If a pit liner's integrity is compromised, or if any penetration of the liner occurs above the liquid's surface, then the owner or operator shall notify the appropriate Department area office within forty-eight (48) hours of the discovery and repair the damage or replace the liner. (3-18-22)

c. If a pit or closed-loop system develops a leak, or if any penetration of the pit liner occurs below the liquid's surface, then the owner or operator shall remove all liquid above the damage or leak line within forty-eight (48) hours, notify the appropriate Department area office within forty-eight (48) hours of the discovery, and repair the damage or replace the pit liner. (3-18-22)

d. The owner or operator shall install, or maintain on site, an oil absorbent boom or other device to contain and remove oil from a pit's surface. Visible oil must be removed from short-term pits immediately following the cessation of activity for which the pit was constructed. Visible oil must be removed from long-term pits as soon as it is discovered. (3-18-22)( )

**10. Closure of Pits.** (3-18-22)

a. The owner or operator shall remove all liquids from the pit ~~prior to~~ before closure and dispose of them at an appropriate facility or reuse them at a different location. If the nature of the fluids has substantially altered during their use, then the fluids must be sampled and tested to determine which disposal facility can accept them. (3-18-22)( )

b. Any solids that have been accumulated in the bottom of the pit will be tested to determine which disposal facility can accept the material. The solid material and liner will then be removed and disposed of at an appropriate facility. (3-18-22)( )

c. The owner or operator must notify the Department at least forty-eight (48) hours prior to removal

of the pit liner so an inspection may be conducted.

(3-18-22)

d. The pit foundation will be inspected for signs of leakage. If evidence of leakage is observed, the owner or operator must contact the Department and ~~the~~ IDEQ within twenty-four (24) hours and report the type of fluids released and the estimated extent of release. The owner or operator must then remediate the site in conformance with the applicable standards administered by IDEQ in IDAPA 58.01.02, "Water Quality Standards," Sections 850 through 852. (3-18-22)(\_\_\_\_)

e. After addressing any pit leakage concerns, the owner or operator shall ~~perform the activities described in Subsections 510.04 through 510.08 of these rules~~ undertake surface reclamation activities as provided for in Section 510 of these rules. (3-18-22)(\_\_\_\_)

11. ~~Condemnation Due to Improper Impoundment.~~ The Department ~~shall have authority to condemn any~~ may order the owner or operator of a pit that does not properly impound fluids ~~and order the~~ under this rule to dispose of such fluids in conformance with IDAPA 58.01.16, "Wastewater Rules," and other applicable rules. (3-18-22)(\_\_\_\_)

231. -- 299. (RESERVED)

#### SUBCHAPTER D – WELL SITES AND DRILLING

### 300. IDENTIFICATION OF WELLS.

01. **Signs; Lease Access Roads.** ~~To identify all producing leases t~~ The owner or operator ~~thereof shall cause a sign to be~~ of a producing lease must place a sign where the principal lease road enters the lease, ~~and s~~ Such sign ~~shall show~~ will identify the name of the lease, ~~and~~ the owner or operator thereof, and the section, township, and range. (3-18-22)(\_\_\_\_)

02. **Signs; Well Sites.** Prior to spud activity, a legible sign must be placed near the well to identify the operator, permit number, well name, and emergency telephone number. If a multiple completion, each well-head connection shall be identified. (3-18-22)(\_\_\_\_)

### 301. WELL SITE OPERATIONS.

The owner or operator must conduct all operations and maintain the well site at all times in a safe and workmanlike manner. Best management practices and good housekeeping practices must be used at well sites. (3-18-22)

01. **Fencing.** Within sixty (60) days after completion of the well, the owner or operator must install a fence around the well site to maintain safe working conditions, secure the well site, and prevent access by wildlife and livestock. The fence design must be acceptable to both the landowner and owner or operator. (3-18-22)

02. **Storage.** All chemicals must be stored and maintained in accordance with ~~the~~ applicable MSDS requirements. Materials related to operations must be palletized where applicable. Vehicles and materials not in use must be removed from the well site. (3-18-22)(\_\_\_\_)

03. **Vegetation.** All well sites must be kept free of excessive vegetation. (3-18-22)

04. **Trash.** All trash, debris, and scrap metal must be removed from the well site. ~~Pending Before~~ removal, any trash or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred (100) feet from the well location, tanks, and separator. (3-18-22)(\_\_\_\_)

### 302. ACCIDENTS AND FIRES.

The owner or operator ~~shall~~ must take all reasonable precautions to prevent accidents and fires, including preparation of ~~A~~ an emergency response plan, will be prepared and Such plan must be available at the well for use or inspection. Coordination with local emergency responders and the Idaho Bureau of Homeland Security is recommended prior to rig set up. The following actions must be taken in event of a release, industrial accident, or fire of major consequence: (3-18-22)(\_\_\_\_)

**01. Provide Information to Emergency Response.** Emergency workers will be given information on all fluids or chemicals involved in a spill or accident as needed according to OSHA Standard 1910.1200 (Hazard Communication). ~~Nothing in this rule shall authorize any person to withhold information that is required by state or federal law to be provided to a health care professional, a doctor, or a nurse.~~ All information required by a health care professional, a doctor, or a nurse shall be supplied, immediately upon request, by the owner or operator, or their contractors, directly to the requesting health care professional, doctor, or nurse, including the percent by volume of the chemical constituents (and associated CAS numbers) in the fluids and the additives; (3-18-22)(    )

**02. Initiate Spill Response and Corrective Actions.** Owner or operator must comply with the requirements of IDAPA 58.01.02, "Water Quality Standards," Sections 850 through 852; and (3-18-22)

**03. Notify the Department.** Notify the Department within twenty-four (24) hours and submit a full report thereon within fifteen (15) days. (3-18-22)

303. -- 309. (RESERVED)

### 310. GENERAL DRILLING RULES.

**01. General Design Requirements for Casing and Cementing.** Casing and cementing programs adopted for wells must be ~~so~~ planned ~~as~~ to protect any potential oil- or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to another. Owners and operators shall follow the standards for casing and tubing in API SPEC 5CT and the standards for cementing in API SPEC 10A. (3-18-22)(    )

**02. Wildcat and High-Pressure Conditions.** When drilling wildcat territory or in any field where high pressures are likely to exist, the owner or operator shall take all necessary precautions to keep the well under control at all times and ~~shall~~ use proper high-pressure fittings and equipment at the time the well is started. Under such conditions all strings of casings must be securely anchored. (3-18-22)(    )

**03. High Temperature Conditions.** Due to high geothermal gradients in Idaho, the temperature of the return drilling mud shall be monitored daily during the drilling of the surface casing hole and all deeper holes. The owner or operator must use cements appropriate for the temperatures expected or encountered. (3-18-22)

**04. Conductor Pipe or Casing Requirements.** A minimum of forty (40) feet of conductor pipe shall be installed. If geologic conditions are such that forty (40) feet is not feasible, the owner or operator may request a variance from the Department. The annular space ~~is to~~ must be cemented solid to the surface. A twenty-four (24) hour cure period for the grout must be allowed prior to drilling out the shoe unless sufficient additives, as determined by the Department, are used to obtain early strength. (3-18-22)(    )

**05. Surface Casing Requirements.** (3-18-22)

a. The owner or operator will notify the Department ~~must be notified~~ in writing seventy-two (72) hours in advance of planned spud activity for surface casing. The Department will post the spud activity notice on its website and send an electronic copy ~~of the notice~~ to the county where the well is located. (3-18-22)(    )

b. Surface casing must be set at a minimum depth equal to ten percent (10%) of the proposed total ~~depth of the~~ well depth. In areas where pressures and formations are unknown, a minimum of two hundred (200) feet of surface casing shall be set. (3-18-22)(    )

c. Surface casing shall provide for control of formation fluids, protection of fresh water, and for adequate anchorage of blow out prevention equipment. The casing must be seated through a sufficient series of low permeability, competent lithologic units such as claystone, siltstone, basalt, etc., to ~~insure~~ a solid anchor for blow out prevention equipment and to protect usable ground water from contamination. Additional surface casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent lithologic units, or rapidly increasing thermal gradients or formation pressures are encountered. (3-18-22)(    )

d. All surface casing shall be cemented solid to the surface by pump and plug, displacement, or other

approved method. When surface samples are cured, additional drilling activities may commence. (3-18-22)

e. The Department must be notified in writing twenty-four (24) hours ~~in advance of~~ before planned cementing activity for surface casing. The Department will witness and document all surface casing cementing activities. (3-18-22)(    )

**06. Requirements for BOP Equipment.** Unless altered, modified, or changed for a particular pool(s) upon hearing before the Commission, blowout preventer (BOP) and related equipment shall be installed and maintained during the drilling of all wells ~~in accordance with the~~ as following ~~rules~~: (3-18-22)(    )

a. BOP equipment installed on wells in which formation pressures to be encountered are abnormal or unknown shall consist of a double-gate, hydraulically operated preventer with pipe and blind rams or two (2) single-ram-type preventers; one (1) equipped with pipe rams, the other with blind rams and an annular type preventer. In addition, upper and lower kelly cocks, pit level indicators with alarms, ~~and/or~~ or both, flow sensors, with alarms, and surface facilities to handle pressure kicks shall be installed ~~prior to~~ before drilling any formation with known abnormal pressure. (3-18-22)(    )

i. Accumulators shall maintain a pressure capacity reserve at all times to provide for operation of the hydraulic preventers and valves with no outside source. (3-18-22)

ii. In all other drilling operations, BOP equipment shall consist of at least one (1) double-gate preventer with pipe and blind rams or two (2) single-ram-type preventers, one (1) equipped with pipe rams, the other with blind rams, and sufficient valving to permit fluid circulation at the surface. (3-18-22)

b. All BOP equipment, choke lines, and manifolds shall be installed above ground level. Casing heads and optional spools may be installed below ground level provided they are visible and accessible. (3-18-22)

c. BOP equipment and related casing heads and spools shall have a vertical bore no smaller than the inside diameter of the casing to which they are attached. (3-18-22)

d. The working pressure rating of all BOP and related equipment shall equal or exceed the maximum anticipated pressure to be contained at the surface. (3-18-22)

e. All ram-type BOP and related equipment, including casing, shall be tested to the full working pressure rating of said equipment upon installation, provided that components need not be tested to levels higher than the lowest working pressure rated component. Annular type BOP and related equipment must be tested in conformance with the manufacturer's published recommendations. If, for any reason, a pressure seal in the assembly is disassembled, a test to a full working pressure rating of that seal shall be conducted ~~prior to~~ before the resumption of any drilling operation. In addition to the initial pressure tests, ram-type BOP shall be checked for physical operation at least once per week and all components, ~~again~~ with exception of the annular-type BOP, tested at least once every twenty-one (21) days to at least fifty percent (50%) of the rated pressure of the BOP equipment ~~and/~~ or to the maximum anticipated pressure to be contained at the surface, whichever is greater. (3-18-22)(    )

f. The ~~Department will require~~ owner, operator, or contractor must submit an affidavit covering the initial pressure tests after installation ~~signed by the owner, operator, or contractor attesting to the satisfactory pressure tests~~. The Department must be advised at least twenty-four (24) hours in advance of all tests. The Department may inspect and witness all BOP operations and testing. (3-18-22)(    )

g. A schematic diagram of the BOP and well-head assembly shall be submitted to the Department upon application for a permit to drill. The schematic diagram should indicate the minimum size and pressure rating of all components of the well-head and BOP assembly. (3-18-22)(    )

h. Studs on all well-head and BOP flanges shall be checked for tightness each week. Hand wheels for locking screws shall be installed and operational, and the entire BOP and well-head assembly shall be kept clean of mud and ice. (3-18-22)(    )

i. A drillstem safety valve shall be available on the rig floor at all times with correct thread for the

- pipe in use. (3-18-22)
- j. A drillstem float valve shall be installed in bit sub or as close to bit as reasonably possible. (3-18-22)
- 07. Intermediate Casing.** (3-18-22)
- a. Intermediate casing, if installed, shall be cemented solidly to the surface or to the top of the casing. (3-18-22)
- b. Intermediate casing not run to surface will be lapped into at least one hundred (100) feet of the surface casing, or at least one hundred (100) feet of the next larger casing to provide overlap and secure a seal. (3-18-22)
- c. Such casing shall be cemented and pressure tested before cement plugs are drilled. (3-18-22)
- d. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for intermediate casing. The Department may witness and document all intermediate casing cementing activities. (3-18-22)
- 08. Production Casing; Cementing and Testing Requirements.** (3-18-22)
- a. ~~If and when it becomes necessary to run a p~~Production casing, ~~such casing if needed,~~ shall be cemented and pressure tested before cement plugs are drilled. (3-18-22)( )
- b. The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for production casing. The Department may witness and document all production casing cementing activities. (3-18-22)
- c. When not run to the surface, production casing will be lapped into and cemented from the bottom of the hole up into at least one hundred (100) feet of the next larger casing to provide overlap and secure a seal. (3-18-22)( )
- d. If the bottom plug will be drilled out, the open hole interval must be completed to protect any potential oil-bearing or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to another. (3-18-22)
- 09. Step-off.** An owner or operator may submit to the Department a step-off request to complete a new borehole from surface if a borehole without production casing deviates from vertical plumb by more than five (5) degrees. A step-off borehole must be drilled within the existing pad of the permitted well. The incomplete borehole must be plugged and abandoned ~~in accordance with~~ under Section 502 of these rules. (3-18-22)( )
- 10. Well Control (Rotary Tools); Reserve Mud Tanks.** When drilling with rotary tools, the owner or operator shall provide, as required by the Department, a reserve mud pit or tank of suitable capacity for the anticipated depth of the well and maintain an on-site supply of mud additives that can raise the mud weight by one (1) pound per gallon in case of loss of well control. (3-18-22)
- 11. Mud Pits.** Before ~~commencing to drilling,~~ proper and adequate mud pits shall be constructed for the reception and confinement of mud and cuttings and to facilitate the drilling operation. Special precautions shall be taken, if necessary, to prevent contamination of fresh waters. These pits must ~~conform to the standards in comply with~~ Section 230 of these rules. If tanks will be used, then mud pits may not be required. (3-18-22)( )
- 12. Well Control (Cable Tools); Fluid Containment.** Natural gas or oil which may be encountered in a substantial quantity in any section of a cable tool drilled hole above the ultimate objective shall be shut off with reasonable diligence either by mudding, ~~or by~~ casing, or other approved method, and confined to its original source to the ~~satisfaction of the~~ Department's satisfaction. The use of cable tools for drilling activities requires written approval by the Department ~~prior to~~ before spud activities. A request to use cable tools must include the following:



(3-18-22)( )

- a. Proposed pressure control measures; (3-18-22)
- b. Diversion and disposal methods for stray gas; (3-18-22)
- c. Safety protocols for mud weights and well controls; and (3-18-22)
- d. Annual drill rig safety inspection information, including the date of last replacement of cables, draw works inspection report, and metallurgic report of safety compliance for structural integrity of the drill rig. (3-18-22)

**13. Drilling Mud Disposal.** Drilling mud will be disposed of at an appropriate facility in compliance with applicable state and federal requirements. (3-18-22)

**14. Report of Water Encountered; Owner's or Operator's Duties.** ~~It shall be the duty of any~~ ~~owner's~~ or operator's drilling an oil or gas well or drilling a seismic, core, or other exploratory hole ~~to~~ must report to the Department all potential water bearing zones encountered. ~~is~~ Such report shall be in writing and give the location of the well or hole, the depth at which the zones were encountered, the thickness of such zones, and the rate of flow of water if known. This requirement can be met by the submittal of the logs required in Section 3401 of this rule. (3-18-22)( )

**15. ~~Spill Prevention, Control, and Countermeasures~~ SPCC Plan.** The owner or operator must have ~~an~~ Spill Prevention, Control, and Countermeasures SPCC Plan in conformance with the requirements of the EPA. This plan must be updated as needed when facilities or activities change. (3-18-22)( )

**16. Interim Drill Site Clean Up.** If a well is completed for production or other purposes, interim reclamation must be completed within six (6) months of the rig being removed. Interim reclamation includes the following ~~activities~~: (3-18-22)( )

a. Debris and waste materials including, but not limited to, concrete, sack bentonite and other drilling mud additives, sand, plastic, pipe, and cable associated with the drilling, re-entry, or completion operations shall be removed and disposed of properly. (3-18-22)

b. All disturbed areas affected by drilling or subsequent operations, except areas reasonably needed for production operations or for subsequent drilling operations to be commenced within twelve (12) months, shall be reclaimed and revegetated to approximately the pre-drilling condition or to the condition specified in an agreement with the surface owner. The reclamation standards in Subsections 510.04 through 510.07 of these rules, shall apply. (3-18-22)

### 311. LOSS OF TOOL WITH RADIOACTIVE MATERIAL.

**01. Recovery or Cementing of Tool.** If a gamma ray tool, or some other tool containing radioactive material, becomes lost in a well, the owner or operator shall make every reasonable attempt to retrieve the tool from the well. If the tool cannot be recovered, the owner or operator must immediately cover the tool with cement sufficient to secure it in place and prevent it from contacting any fluids in the well. A whipstock or other approved deflection device shall be placed on top of the cement plug to prevent accidental or intentional mechanical disintegration of the radioactive source. (3-18-22)

**02. Sidetracking.** If the hole is later sidetracked above the radioactive material, the sidetracked hole must be at least fifteen (15) feet from the original hole with the lost radioactive material. (3-18-22)

**03. Reporting.** A report must be sent to the Department and IDEQ within thirty (30) days of cementing the tool. The report must describe the tool that was lost, the depth it was lost at, the specific type and amount of radioactive material in the tool, and an estimate of the length of cement covering the tool. This report may be included in a plugging report if the well will be plugged. (3-18-22)

**312. CHOKES.**

All flowing wells shall be equipped with adequate chokes or beans to properly control the flow thereof. (3-18-22)

**313. USE OF EARTHEN RESERVOIRS.**

Oil ~~shall~~ may not be produced, stored, or retained in earthen reservoirs or in open receptacles. (3-18-22)(    )

**314. VACUUM PUMPS PROHIBITED.**

The use of vacuum pumps or other devices for the purpose of placing a vacuum on any gas- or oil-bearing stratum is prohibited; however, the Department may upon application and hearing and for good cause shown permit the use of vacuum pumps. (3-18-22)

**315. PULLING OUTSIDE STRINGS OF CASING.**

Casing ~~shall~~ may not be recovered if its recovery will expose any abnormal pressure, lost circulation, oil, gas, or water zone. In pulling outside strings of casing from any oil or gas well, the space outside the casing left in the hole shall be kept and left full of mud-laden fluid of adequate specific gravity to seal off all fresh and saltwater strata and any strata bearing oil or gas which is not producing. Casing may not be pulled without first making application to the Department and receiving approval. The application must describe how fresh waters will be protected. (3-18-22)(    )

**316. -- 319. (RESERVED)**

**320. MECHANICAL INTEGRITY TESTING.**

**01. Mechanical Integrity Testing.**

(3-18-22)

a. The ~~mechanical integrity test~~ MIT shall include one (1) of the following ~~tests~~ to determine whether leaks are present in the casing, tubing, or packer: (3-18-22)(    )

i. A pressure test with liquid or gas at a pressure of not less than three hundred (300) psi or the minimum injection pressure, whichever is greater, and not more than the maximum injection pressure; ~~or~~ (3-18-22)(    )

ii. The monitoring and reporting to the Department, on a monthly basis for sixty (60) consecutive months, of the average casing-tubing annulus pressure, following an initial pressure test; or (3-18-22)

iii. ~~In lieu of Subparagraphs 320.01.a.i. and 320.01.a.ii. of this rule, a~~ Any equivalent test or combinations of tests approved by the Department. (3-18-22)(    )

b. The ~~mechanical integrity test~~ MIT shall include one (1) of the following ~~tests~~ to determine whether there are fluid movements in vertical channels adjacent to the well bore: (3-18-22)(    )

i. Tracer surveys; (3-18-22)

ii. Cement bond log or other acceptable cement evaluation log; (3-18-22)

iii. Temperature surveys; or (3-18-22)

iv. ~~In lieu of Subparagraphs 320.01.b.i. through 320.01.b.iii. of this rule, a~~ Any other equivalent test or combination of tests approved by the Department. (3-18-22)(    )

c. Mechanical integrity tests shall be performed at the rate of not less than one (1) test every five (5) years, regardless of well status. The first five-year period shall commence on the date of the initial ~~mechanical integrity test is performed~~ MIT. (3-18-22)(    )

**02. Inactive Wells.** If, at any time, surface equipment excluding the wellhead is removed or the well becomes incapable of production, ~~a mechanical integrity test an~~ MIT shall be performed within thirty (30) days. The ~~mechanical integrity test~~ MIT for an inactive well shall be isolation of the wellbore with a bridge plug or similar

approved isolating device set one hundred (100) feet or less above the highest perforations and a pressure test with liquid or gas at a pressure of not less than three hundred (300) psi surface pressure or any equivalent test or combination of tests approved by the Department. (3-18-22)( )

**03. Prior Notification.** ~~Not less than ten (10) days~~ At least twenty-four (24) hours prior to the performance of any ~~mechanical integrity test~~ MIT required by this rule, any person required to perform the test shall notify the Department, in writing, of the scheduled date on which the test will be performed. (3-18-22)( )

**04. Reporting Requirements.** ~~Mechanical integrity test~~ MIT results shall be submitted to the Department within thirty (30) days of testing. (3-18-22)( )

**05. Mechanical Integrity Required.** All wells shall maintain mechanical integrity. All wells that fail a ~~mechanical integrity test~~ an MIT, or that are determined through any other means to lack mechanical integrity, shall immediately be investigated by the owner or operator. The well shall be repaired or immediately shut down following the investigation. Repairs shall be completed within six (6) months, or the well shall be plugged and abandoned. If the repair cannot be completed within six (6) months, the owner or operator may request an extension from the Department and provide a plan for the repair to the Department's satisfaction. (3-18-22)( )

**321. -- 329. (RESERVED)**

**330. WELL DIRECTIONAL CONTROL.**

**01. General Restrictions; Allowable Deviation.** The maximum point at which a well penetrates the producing formation ~~shall~~ may not unreasonably vary from the vertical drawn from the center of the hole at the surface. Deviation is permitted without special permission to remedy blowouts and, for short distances, to straighten the hole, sidetrack junk, or correct other mechanical difficulties. (3-18-22)( )

**02. Controlled Directional Drilling.** Except for the purposes recited in Subsection 330.01, no well ~~hereafter~~ drilled may be intentionally directionally deviated from the vertical unless the owner or operator thereof ~~shall~~ first files an application and submits an application fee to amend the drilling permit and receive approval from the Department. Such application shall contain the following information: (3-18-22)( )

- a. Name and address of the owner or operator. (3-18-22)
- b. Lease name, well number, name of field and reservoir, and county. (3-18-22)
- c. Description of surface location and proposed location of the producing interval (footage from lease and section or block and survey lines). (3-18-22)
- d. Reason for intentional deviation. (3-18-22)
- e. List of offset operators and statement that each has been furnished a copy of the application by registered mail. (3-18-22)
- f. Signature of representative of owner or operator. (3-18-22)
- g. Notification to offset operators that any objection they may have to the proposed intentional deviation of the well must be filed with the Department within fifteen (15) days of receipt of a copy of the application. (3-18-22)
- h. The application shall be accompanied by a neat, accurate plat or sketch of the lease and all offset leases showing the names of all offset operators and the surface and proposed producing interval locations of the well. Plat shall be drawn to a scale which will permit facile observation of all pertinent data. (3-18-22)

**03. Copy of Application to Offset Operators.** At the time the application is filed with the Department, a copy of the application and the plat shall be forwarded by registered mail to all offset operators to the lease on which the well is to be drilled. (3-18-22)

**04. Department Action.** Upon receipt, the Department will hold the application for ~~fifteen (15)~~ ten (10) days. If ~~objection from~~ any offset operator objects to the proposed intentional deviation ~~is received~~ within ~~fifteen (15)~~ ten (10) days of receipt of the application by said operator, or if the Department is not in agreement with the proposed deviation, the application shall be set down for public hearing. If no objection from either an offset operator or the Department is ~~interposed~~ raised within the ~~fifteen (15)~~ ten (10) day period, the application shall be approved and permit issued by the Department. If written consent of the offset operator(s) is filed concurrently with the application to drill directionally, the Department may immediately approve the application without waiting ~~fifteen (15)~~ ten (10) days. (3-18-22)(    )

**05. Angular Deviation and Directional Survey.** Upon completion, a complete angular deviation and directional survey of the well obtained by an approved well surveying company shall be filed with the Department, together with other regularly required reports. (3-18-22)

**06. Application for Exceptions.** In the event the proposed, or final, location of the producing interval of the directionally deviated well is not in agreement with spacing or other rules of the Commission applicable to the reservoir, proper applications shall be made to obtain approval of exceptions to such rules. Such approval shall be granted or denied at the discretion of the Department, and shall be accorded with the same consideration and treatment as if the well had been drilled vertically to the producing interval. (3-18-22)

**331. -- 339. (RESERVED)**

**340. WELL COMPLETION/RECOMPLETION REPORT AND WELL REPORT.**

Within thirty (30) days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different source of supply, or where the producing interval is changed, a completion report shall be filed with the Department, on a form prescribed by the Department. Such report shall include name, number, and exact location of the well; lease name, date of completion and date of first production, if any; name and depth of hydrocarbon reservoir(s), if a multiple completion, from which well is producing; annulus pressure test; initial production test, including oil, gas, and water, if any; a well report as defined in Section 010; and such other relevant information as the Department may require. (3-18-22)

**341. DRILLING LOGS.**

**01. Minimum Required Logs.** All wells shall have a lithologic log from the bottom of the hole to the top, to the extent practicable. (3-18-22)

**02. Bottom Hole Survey.** All wells shall have a bottom hole location survey. (3-18-22)

**03. Cement Bond Log.** All wells that are cased and cemented shall have a cement bond log run across the casing. (3-18-22)

**04. Other Logs.** If other logs are run, including, but not limited to, resistivity, gamma-neutron log, sonic log, etc., then the owner or operator shall retain a copy regardless of results. (3-18-22)

**05. Log Submittal.** The above logs shall be submitted to the Department in ~~paper~~ pdf and final processed digital formats within thirty (30) days of the log being run. If logs were run in color, then the submitted copies shall also be in color. Digital formats must be Tiff and LAS 2.0 or higher. Logs submitted to the Department must have a scale of one (1) inch or two (2) inch for correlation logs and five (5) inches for detail logs. (3-18-22)(    )

**342. -- 399. (RESERVED)**

**SUBCHAPTER E – PRODUCTION**

**400. PRODUCTION REPORTS.**

**01. Required Content.** An owner or operator must report production on a form created by the

Department. Production reports submitted to the Department must include gas quantities sold in thousand cubic feet (mcf), condensate sold in barrel quantities (bbl), oil sold in barrel quantities (bbl), and formational waters produced in barrel quantities (bbl). (3-18-22)

**02. Annual Production Report.** By January 31 of each year, an owner or operator must submit to the Department an aggregated report of all hydrocarbons and formational waters produced and sold or disposed of for each well during the previous calendar year. (3-18-22)

**401. MEASUREMENT OF OIL.**

The volume of production of oil shall be computed in terms of barrels of clean oil on the basis of meter measurements or tank measurements of oil-level difference made and recorded to the nearest quarter-inch (1/4") of one hundred percent (100%) capacity tables, subject to the following corrections: (3-18-22)

**01. Correction for Impurities.** The percentage of impurities (water, sand, and other foreign substances, not constituting a natural component part of the oil) shall be determined to the satisfaction of the Department, and the observed gross volume of oil ~~shall will~~ be corrected to exclude the entire volume of such impurities. (3-18-22)( )

**02. Temperature Correction.** The observed volume of oil corrected for impurities ~~shall will~~ be further corrected to the standard volume at sixty (60) Degrees F in accordance with ASTM D-1250-08, Table 7, or any revisions thereof and any supplements thereto, or any close approximation thereof approved by the Department. (3-18-22)( )

**03. Gravity Determination.** The gravity of oil at sixty (60) degrees F ~~shall will~~ be determined in accordance with ASTM D-1250-08, Table 5, or any revisions thereof and any supplements thereto approved by the Department. (3-18-22)( )

**402. MEASUREMENT OF GAS.**

**Gas Measurement.** For computing volume of gas to be reported to the Department, the standard of pressure shall be fourteen point seventy-three (14.73) psi atmospheric, and the standard of temperature shall be sixty (60) Degrees F. All volumes of gas to be reported to the Department ~~shall will~~ be adjusted by computation to these standards, unless otherwise authorized by the Department. (3-18-22)( )

**403. GAS-OIL RATIO FOR WELL CLASSIFICATIONS.**

In the absence of an order by the Commission setting a field-specific oil-gas ratio, a well that produces gas of five thousand (5,000) cubic feet or greater to one (1) bbl of oil at standard temperature and pressure will be classified as a gas well. (3-18-22)

**404. GAS-OIL RATIO LIMITATION.**

**01. Waste Prevention; Conditions for Emergency Order.** To further prevent waste resulting from the production of wells with inefficient gas-oil ratios, the Department may enter an emergency order temporarily prohibiting the production of oil or gas from all wells in a pool producing both oil and gas when the Department believes that waste may be occurring or is imminent in said pool by reason of the operation of wells with inefficient gas-oil ratios. The order shall specify a date for the hearing described in Subsection 404.02 of these rules. The Department may use information provided by an offset operator or an owner or operator in a common source of supply to determine if waste is occurring. (3-18-22)

**02. Notice and Cause for Hearing.** The Department will notify all offset operators and owners or operators in the common source of supply of the hearing date. A hearing regarding waste due to inefficient gas-oil ratios ~~will held~~ may be held for any of the following reasons: (3-18-22)( )

i. If ~~an emergency order is~~ the Department ~~issues~~ as an order described in Subsection 404.01 of these rules. The hearing will be scheduled between five (5) and fifteen (15) days after the effective date of the order. (3-18-22)( )

ii. Upon application to the Department from any person with an ownership interest in the common

source of supply who believes that waste is occurring due to inefficient oil and gas ratios. The application must include credible evidence of such waste. The hearing shall be held within thirty (30) days of the Department receiving the application. (3-18-22)

iii. Prior to an emergency situation and upon its own motion with reasonable cause, the Department may schedule a hearing regarding potential waste due to inefficient gas-oil ratios. (3-18-22)

**03. Determination of Inefficient Ratios; Power to Limit Production.** If the Department after ~~notice and hearing, whether held upon its own motion, upon the application of an interested party, or pursuant to an emergency order entered as hereinafter provided for~~ conducting a hearing for any of the reasons specified in Section 404.02 of these rules, shall find that a well(s) in the pool are operating with inefficient gas-oil ratios, and that waste is occurring or is imminent as a result thereof, it shall enter an order limiting the production of oil and gas from said pool to that amount which the pool can produce without waste and in accordance with sound engineering practice. The order shall also limit the amount of oil or gas, or both, that may be produced from any well in the pool, so that each owner or operator is given an opportunity to produce his just and equitable share in the pool in accordance with sound engineering practice. (3-18-22)(    )

**405. GAS-OIL RATIO SURVEYS AND REPORTS.**

Within thirty (30) days following the completion or recompletion of each well producing oil and gas, and thereafter as the Department may require, the owner or operator of such well shall make a gas-oil ratio test of such well and report the results of such test shall be reported to the Department within twenty (20) days ~~after the test is made~~. Certain wells may be excepted from this rule by the Department upon written request. Entire fields may be excepted from this rule after notice and hearing. (3-18-22)(    )

**406. -- 409. (RESERVED)**

**410. METERS.**

**01. General Requirements.** Meter fittings of adequate size to measure the gas efficiently for the purpose of obtaining gas-oil ratios shall be installed on the gas vent line of every separator or proper connections made for orifice well tester. Well-head equipment shall be installed and maintained in excellent condition. Valves shall be installed so that pressures can be readily obtained on both casing and tubing. (3-18-22)(    )

**02. Visibility.** All required meters shall be accessible and viewable by the Department for the purpose of monitoring daily, monthly, and ~~for~~ cumulative production volumes from individual wells. (3-18-22)(    )

**411. SEPARATORS.**

All flowing oil wells must be produced through an adequate oil and gas separator or emulsion treater, provided, however, the ~~director~~ Administrator may approve producing wells without a separator or emulsion treater. (3-18-22)(    )

**412. PRODUCING FROM DIFFERENT POOLS THROUGH THE SAME CASING STRING.**

No well ~~shall be permitted to~~ may produce either oil or gas from different pools through the same string of casing without first receiving written permission from the Department. (3-18-22)(    )

**413. GAS UTILIZATION.**

After a well is completed and while it is being tested, the owner or operator may flare gas for no more than fourteen (14) days without paying royalties and severance taxes on the flared gas. Under no conditions may gas be flared for more than sixty (60) days after a well is completed or recompleted. Prior to flaring gas, owners or operators must notify the county in which the well is located and all owners of occupied structures within a one-quarter (1/4) mile radius of the well. After the owner or operator has tested a well, no gas from such well shall be permitted to escape into the air, and all gas produced therefrom shall be utilized without waste. (3-18-22)(    )

**414. -- 419. (RESERVED)**

**420. TANK BATTERIES.**

~~Tank batteries must meet the following requirements:~~ (3-18-22)

01. ~~Containment~~ Requirements. All tank batteries consisting of tanks containing produced fluids or crude oil storage tanks or containing tanks equipped to receive produced fluids must be surrounded by tank dikes that meet the following requirements: (3-18-22)( )

a. Tank dikes must ~~be designed to~~ have a capacity of at least one and one-half (1½) times the volume of the largest tank which the dike surrounds. (3-18-22)( )

b. The material used to construct a tank dike and the material used to line the bottom and sides of the containment reservoir must have a maximum coefficient of permeability of 10<sup>-9</sup> cm/sec so as to contain fluids and resist erosion. An operator must submit proof of compliance for tank dike liner construction to the Department in the form of a manufacturer's statement of design or a nuclear density test performed by a third party trained to perform the test. (3-18-22)( )

c. All piping and man-made improvements that perforate the tank dike wall or tank battery floor must be sealed to a minimum radius of twelve (12) inches from the outside edge of the piping or improvement. (3-18-22)( )

d. Valves and quick-connect couplers on tank batteries must be at least eighteen (18) inches from the inside wall of the tank dike. (3-18-22)

e. Vegetation on the top and outside surface of tank dike must be properly maintained ~~so as to not pose a~~ prevent fire hazards. (3-18-22)( )

f. A ladder or other permanent device must be installed over the tank dike to access the containment reservoir. (3-18-22)

g. The containment reservoir must be kept free of vegetation, stormwater, produced fluids, other oil and gas field related debris, general trash, or any flammable material. Drain lines installed through the tank dike for the purpose of draining storm water from the containment reservoir must have a valve installed ~~which must and~~ remain closed and capped when not in use. Any fluids collected, spilled or discharged within the containment reservoirs must be removed as soon as practical, characterized, treated if necessary, and disposed in conformance with IDAPA 58.01.16, "Wastewater Rules," and other applicable rules. (3-18-22)( )

421. -- 429. (RESERVED)

430. GAS PROCESSING FACILITIES.

~~Gas processing facilities must meet the following requirements.~~ (3-18-22)

01. Operations. Operators of gas processing facilities must notify the Department which wells, by API number, are served by a gas processing facility. All gas processing facilities not constructed on a well site must comply with ~~the requirements in~~ Sections 301 and 302 of these rules. (3-18-22)( )

02. Meters and Facility Plans. Gas processing facilities must account for all liquids and gas entering and leaving the facility with accurate meters. A supervisory control and data acquisition systems or other data recording system must be used to monitor the liquids and gas in the facility. Operators of gas processing facilities must submit an as-built facility design plan to the Department upon completion of the facility. ~~a~~ A facility design plan must contain ~~at the minimum~~: (3-18-22)( )

a. Site layout; (3-18-22)

b. Piping and instrumentation diagram; (3-18-22)

c. Process Flow schematics; (3-18-22)

d. Electronic controls and sensing schematic; (3-18-22)

- e. Equipment operations and maintenance manuals for, pumps, meters, heat exchangers, and any other operationally critical equipment that requires periodic maintenance and calibration; (3-18-22)(    )
- f. Periodic maintenance schedule for critical equipment; (3-18-22)
- g. Troubleshooting metric; and (3-18-22)
- h. Other information or documentation necessary for the safe and continued operation of a gas processing facility. (3-18-22)

**03. Flaring.** Flaring at gas processing facilities must be in conformance with IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, and any permit issued by ~~the~~ IDEQ. (3-18-22)(    )

**04. Inspections.** Gas processing facilities must have site-specific facility design plans and a log book of gas metered in and out of the facility available for review by Department staff ~~during the inspections of gas processing facilities~~. During inspections, gas processing facility staff must demonstrate knowledge of all operations and the location of all emergency shut off equipment, direction of flow lines, and heat exchangers. ~~The Department will conduct quarterly inspections of facilities.~~ (3-18-22)(    )

431. -- 499. (RESERVED)

#### SUBCHAPTER F – WELL ACTIVITY AND RECLAMATION

##### 500. ACTIVE WELLS.

**01. Gas Storage Wells.** Gas storage wells are to be considered active at all times unless physically plugged. (3-18-22)

**02. Extension of Active Status.** An owner or operator may request an extension of active well status for wells that are idled for more than twenty-four (24) continuous months. The owner or operator shall provide a written request to the Department stating the reason for the extension, the length of extension, the method used to close the well to the atmosphere, and the plans for future operation. The Department shall review the request for approval, modification, or denial, and ~~shall~~ may set the duration of the extension if approved. An extension ~~shall~~ may not exceed five (5) years and may be renewed upon request up to a maximum of ten (10) total years. (3-18-22)(    )

**03. Annual Reports for Active Wells.** The owner or operator shall submit an annual report to the Department describing the current status of the well and the plans for future well operation by January 31 of each year. ~~Failure to submit the annual report may result in the Department declaring the well inactive.~~ (3-18-22)(    )

##### 501. INACTIVE WELLS.

**01. Determination of Inactive Status.** The Department ~~shall~~ will declare a well inactive after twenty-four (24) continuous months of inactivity if the owner or operator has not received approval for an extension of active status under Section 500.02 of these rules, or ~~after~~ if an owner or operator fails to submit an annual report for an active well under Section 500.03 of these rules. The Department will immediately notify an owner or operator of this determination by certified mail, and the owner or operator may appeal this determination to the Commission. (3-18-22)(    )

**02. Owner's or Operator's Responsibility for Inactive Wells.** The owner or operator must plug and abandon an inactive well ~~in accordance with~~ under Section 502 of these rules within six (6) months of being notified by the Department unless the owner or operator supplies the following information ~~within the six-month time period~~: (3-18-22)(    )

- a. A written request to extend inactive status; (3-18-22)
- b. An individual bond, as provided for in Subsection 220.03 of these rules, if the well was covered by



a blanket bond; and (3-18-22)

c. A description of how the well is closed to the atmosphere with a swedge and valve, packer, or other approved method, and how the well is to be maintained. (3-18-22)

**03. Inactive Review and Decision.** The Department ~~shall~~ will review the request for approval, modification, or denial, and ~~shall~~ set the duration of the extension if approved. ~~An Extension shall may~~ not exceed three (3) years and may be renewed upon request up to a maximum of six (6) total years. (3-18-22)(    )

**04. Testing of Inactive Wells.** In addition to the requirements of Section 320 of these rules, inactive wells ~~shall~~ must have an ~~mechanical integrity test MIT~~ performed within two (2) years after the date of last use in order to retain inactive status. (3-18-22)(    )

**05. Converting Inactive Wells to Active Wells.** The owner or operator must apply to the Department to change the status of a well from inactive to active. The Department ~~shall~~ will review the request for approval, modification, or denial. An ~~mechanical integrity test MIT~~ may be required by the Department if the well has been worked over or if a test has not been conducted for five (5) years or longer. If approved, the well may again be covered by a blanket bond. (3-18-22)(    )

## 502. WELL PLUGGING.

**01. Plugging Required.** The owner or operator ~~or owner shall may~~ not ~~permit allow~~ any well drilled for oil, gas, saltwater disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted. (3-18-22)(    )

**02. Notice of Intention to Abandon Well.** Before beginning abandonment work on an oil or gas well, a Notice of Intention to Abandon ~~shall must~~ be filed with the Department and approval obtained as to the method of abandonment ~~before the work is started.~~ The notice must show the reason for abandonment and must give a detailed statement of the proposed work, including such information as kind, location, and length of plugs (by depths), and plans for mudding, cementing, shooting, testing, and removing casing as well as any other pertinent information requested by the Department. (3-18-22)(    )

**03. Plugging Dry Holes.** If a nonproductive well, or dry hole, is drilled and not needed for any specific purpose, it must be plugged and abandoned prior to removal of the drill rig. A verbal notification and approval may be used for dry holes in lieu of the written notification referenced in Subsection 502.02 of these rules. The standards in Subsections 502.04 through 502.06 of these rules will still apply. (3-18-22)

**04. Plugging of Wells.** The owner or operator of any well drilled for oil or gas, or any seismic, core, or other exploratory holes, whether cased or uncased, and regardless of diameter ~~shall be responsible for the~~ must plugging of said hole in a manner sufficient to properly protect all freshwater-bearing and possible or probable oil- or gas-bearing formations. The material used in plugging, whether cement, mechanical plug, or some other equivalent method approved in writing by the ~~Director Administrator,~~ must be placed in the well in a manner to permanently prevent migration of oil, gas, water, or other substances from the formation or horizon in which it originally occurred. The preferred plugging cement slurry is that recommended in API Bulletin E3. Pozzolan, gel, and other approved extenders may be used if the owner or operator can document to the Department's satisfaction that the slurry design will achieve a minimum compressive strength of three hundred (300) psi after twenty-four (24) hours, and eight hundred (800) psi after seventy-two (72) hours measured at ninety-five (95) degrees F and at eight hundred (800) psi. No substances of any nature or description other than those normally used in plugging operations ~~shall may~~ be placed in any well at any time during plugging operations. (3-18-22)(    )

**05. Plugged Intervals.** The following plugging standards shall be followed for all wells: (3-18-22)

a. Cement must be placed for a length of at least one hundred (100) feet on either side of each casing shoe, or casing bottom if no shoe is present. If the bottom of the hole is less than one hundred (100) feet from the bottom of the lowest casing, then the entire length of the uncased hole below the casing ~~will must~~ be cemented. (3-18-22)(    )

b. In the uncased portions of a well, cement plugs must be placed to extend from one hundred (100) feet below the bottom up to one hundred (100) feet above the top of any oil, gas, and abnormally high pressure zones, so as to isolate fluids in the strata ~~in which they are found~~ and to prevent them ~~from escaping~~ into other strata. (3-18-22)(    )

c. A cement plug shall be placed a minimum of one hundred (100) feet above all producing zones in uncased portions of a well. (3-18-22)

d. A cement plug shall be placed a minimum of fifty (50) feet above and below the following intervals: (3-18-22)

i. Where the casing is perforated or ruptured. If no cement is present behind the casing, then cement must also be squeezed out the perforations or ruptures and into the annular space between the casing and the borehole. (3-18-22)

ii. Top and bottom of fresh-water zones. If fresh-water zone is less than one hundred (100) feet thick, then continuous cement must be placed from fifty (50) feet below the zone upward to fifty (50) feet above the zone. (3-18-22)(    )

e. The top of all cement plugs will be tagged to verify their depth. (3-18-22)

f. The owner or operator ~~shall have the option as to the method of placing~~ may choose to place cement in the hole by: (3-18-22)(    )

i. Dump bailer; (3-18-22)

ii. Pumping a balanced cement plug through tubing or drill pipe; (3-18-22)

iii. Pump and plug; or (3-18-22)

iv. Equivalent method approved by the ~~Director~~ Administrator prior to plugging. (3-18-22)(    )

g. Unless prior approval is given by the Department, all wellbores shall have water-based drilling muds, high viscosity pills, or other approved fluids between all plugs. (3-18-22)(    )

h. All abandoned wells shall have a plug or seal placed at the surface of the ground or the bottom of the cellar in the hole ~~in such manner so~~ as not to interfere with soil cultivation or other surface use. The top of the pipe must be sealed with either a cement plug and a screw cap, or cement plug and a steel plate welded in place or by other approved method, or in the alternative be marked with a permanent monument which shall consist of a piece of pipe not less than four (4) inches in diameter and not less than ten (10) feet in length, of which four (4) feet shall be above the general ground level, the remainder to be embedded in cement or to be welded to the surface casing. (3-18-22)(    )

**06. ~~Subsequent Report of Abandonment.~~** If a well is plugged or abandoned, a ~~subsequent~~ record of work done must be filed with the Department. ~~This report shall be filed separately~~ within thirty (30) days after the work ~~is done is completed~~. The report shall give a detailed account of the manner in which the abandonment of plugging work was carried out, including the weight of mud, the nature and quantities of materials used in plugging, the location and extent (by depths) of the plugs of different materials, and the records of any tests or measurements made and of the amount, size, and location (by depths) of casing left in the well. If an attempt was made to part any casing, a complete report of the method used and the results obtained must be included. (3-18-22)(    )

**07. Wells Used for Fresh Water (Cold Water < 85 degrees Fahrenheit), Low Temperature Geothermal (85 - 212 Degrees Fahrenheit), or Geothermal Wells (>212 Degrees Fahrenheit).** (3-18-22)(    )

a. Oil and gas wells, seismic, core, or other exploratory holes no longer being used for their original purpose may not be converted into fresh-water, low temperature geothermal, or geothermal wells unless ~~the following actions occur~~: (3-18-22)(    )

- i. ~~The~~ owner, operator, or surface owner files an application with the IDWR describing the conversion and the proposed use for the water or geothermal resource and any modifications necessary to meet the applicable well construction standards; (3-18-22)(    )
  - ii. The surface owner provides written documentation assuming responsibility for the converted well including, should it become necessary, decommissioning (plugging) of the converted well in accordance with applicable law; (3-18-22)
  - iii. IDWR issues a permit for a geothermal resource well, a water right, or recognizes a domestic exemption authorizing the withdrawal of water from the converted well; and (3-18-22)
  - iv. A licensed driller in Idaho inspects and certifies that the converted well meets all well construction standards for its intended purpose. (3-18-22)
- b. The Department's bond may not be released, and the oil and gas permit cancelled, until all requirements in Paragraph 502.07.a. of these rules are met. (3-18-22)

503. -- 509. (RESERVED)

510. SURFACE RECLAMATION.

- 01. Timing of Reclamation.** After the plugging and abandonment of a well or closure of other oil and gas facilities, all reclamation work described in this Section shall be completed within twelve (12) months. The ~~Director~~ Administrator may grant an extension where unusual circumstances are encountered, but every reasonable effort shall be made to complete reclamation before the next local growing season. (3-18-22)(    )
- 02. General Clean Up.** All debris, abandoned gathering line risers and flowline risers, surface equipment, supplies, rubbish, and other waste materials shall be removed within three (3) months of plugging a well. The burning or burial of such material on the premises shall be performed in accordance with applicable local, state, or federal solid waste disposal and air quality regulations. ~~In addition, m~~ Material may be burned or buried on the premises only with the prior written consent of the surface owner. (3-18-22)(    )
- 03. Road Removal.** All access roads to plugged and abandoned wells and associated production facilities shall be ripped, regraded, and recontoured unless otherwise specified in a surface use agreement. Culverts and any other obstructions that were part of the access road(s) shall be removed. Roads ~~to be left~~ not reclaimed will be graded to drain and prepared with rolling dips or other best management practices to minimize erosion. (3-18-22)(    )
- 04. Regrading.** Drill pads, pits, berms, cut and fill slopes, and other disturbed areas will be regraded to approximate the original contour. Where possible, slopes should be reduced to three (3) horizontal feet to one (1) vertical foot (3H:1V) or flatter. (3-18-22)
- 05. Compacted Areas.** All areas compacted by drilling and subsequent oil and gas operations that are no longer needed following completion of such operations ~~shall~~ must be cross-ripped. Ripping ~~shall~~ will be undertaken to a depth of eighteen (18) inches or bedrock, whichever is reached first. (3-18-22)(    )
- 06. Topsoiling.** Stockpiled topsoil shall be replaced in a manner that ~~will~~ supports reestablishment of the pre-disturbance land use and contoured to control erosion and provide long-term stability. If necessary, topsoiled areas ~~shall~~ will be tilled adequately in order to establish a proper seedbed. (3-18-22)(    )
- 07. Revegetation.** (3-18-22)
- a. The owner or operator ~~shall~~ will select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands prior to the oil and gas operations. Certified weed free seed should be used in revegetation. The owner or operator may use available technical data and results of field tests for selecting seeding practices and soil amendments that will result in viable revegetation. (3-18-22)(    )

b. The disturbed areas shall be reseeded in the first favorable season following rig demobilization, site regrading, and topsoil replacement. (3-18-22)

c. Unless otherwise specified in the approved permit, the success of revegetation efforts ~~shall~~ will be measured against the existing vegetation on-site prior to the oil and gas operations, or against an adjacent reference area supporting similar types of vegetation. Reseeding or replanting is required until the following cover standards are met: (3-18-22)(    )

i. The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on an adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation, if used; (3-18-22)

ii. Ground cover ~~shall~~ will be considered comparable if the planted area has at least seventy percent (70%) of the pre-disturbance, or adjacent reference area, ground cover; (3-18-22)(    )

iii. For locations with an average annual precipitation of more than twenty-six (26) inches, the Department, in approving a drilling permit or a pit, may set a minimum standard for success of revegetation as follows: Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species; (3-18-22)

iv. As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measured. Rock surface areas will be excluded from this calculation; and (3-18-22)

v. In all cases, vegetative cover shall be established to the extent necessary to control erosion. (3-18-22)

d. Introduced species may be planted if they are known to be comparable to previous vegetation, or if known to be of equal or superior use for the approved post-reclamation land use, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weed species ~~shall~~ may not be used in revegetation. (3-18-22)(    )

e. By mutual agreement of the Department, the surface owner, and the owner or operator, a site may be converted to a different, more desirable or more economically suitable habitat. (3-18-22)

f. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. (3-18-22)

g. The owner or operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to oil and gas operations. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the surface owner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical binders, or other acceptable means during establishment of the shrubs. (3-18-22)

h. Tree stocking of forestlands should meet the following criteria: (3-18-22)

i. Trees that are adapted to the site should be planted in a density which can be expected over time to yield a timber stand comparable to pre-disturbance timber stands; (3-18-22)

ii. Trees ~~shall~~ must be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered ~~to be~~ established; and (3-18-22)(    )

iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. (3-18-22)

i. Revegetation is not required on areas that the surface owner wishes to incorporate into an irrigated field and any roads which will be used for other oil and gas operations. (3-18-22)

j. Mulch should be used on severe sites and may be required by the permit where slopes are steeper than three (3) horizontal feet to one (1) vertical foot (3H:1V) or the mean annual rainfall is less than twelve (12) inches. ~~When used,~~ Straw, or hay mulch should be obtained from certified weed free sources. "Mulch" means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. (3-18-22)( )

**08. Reclamation Under a Surface Use Agreement.** Notwithstanding the requirements of Subsections 510.03 through 510.07 of this rule, reclamation may be superseded by the conditions of a surface use agreement as long as the site is left in a stable, non-eroding condition that will not impact ~~f~~resh waters. (3-18-22)( )

**511. -- 999. (RESERVED)**

# IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

## 24.35.01 – RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 24-3501-2401

### 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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, as well as Sections 36-2107, 67-9404, 67-9405, 67-9406, 67-9409, and 67-9413, 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:

Rule 257.09.b – Undesignated Tag Pool: Revises the language of allocated tag designation to prioritize outfitters with maximum usage of designated allocated tags.

Rule 257.09.d – Undesignated Tag Pool: Simplifies the language to give all outfitters, regardless of tag use, an opportunity to pull from the undesignated tag pool.

Rule 257.09.e – Undesignated Tag Pool: Strikes this proposed rule to collect further data on unused designated tags.

Rule 259.02 – (LS1) Little Salmon River: Additional language to clarify the bounds of the new opportunity and to comply with Idaho Fish and Game regulations.

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 August 7, 2024, Idaho Administrative Bulletin, [Vol. 24-8, pages 113-133](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: 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:

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 Krissy Veseth, Bureau Chief, at (208) 577-2491. Materials pertaining to the pending rulemaking, including any available preliminary rule drafts, can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking/>.

DATED this 4th day of October, 2024.

Krissy Veseth  
Bureau Chief  
11341 W. Chinden Blvd., Bldg. #4  
Boise, ID 83714  
Phone: (208) 577-2491  
Email: [krissy.veseth@dopl.idaho.gov](mailto:krissy.veseth@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. This rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, as well as Sections 36-2107, 67-9404, 67-9405, 67-9406, 67-9409, and 67-9413, Idaho Code.

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

**24.35.01 – Rules of the Idaho Outfitters and Guides Licensing Board**

**Tuesday, August 13, 2024 – 10:00 a.m. (MT)**  
**Division of Occupational and Professional Licenses**  
**Chinden Campus Building 4**  
**11341 W. Chinden Blvd.**  
**Boise, ID 83714**

**[Virtual Meeting Link](#)**

**Telephone and web conferencing information will be posted on <https://dopl.idaho.gov/calendar/> and <https://townhall.idaho.gov/>.**

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

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

The removal of Rule 002.08 Hazardous Desert or Mountain Excursions, as it is duplicative of Section 36-2102(r), Idaho Code, as well as the removal of Rule 100.03 Examinations due to Section 67-9409(4), Idaho Code which supersedes the rule.

Amendments to Rules 103.02(b) Float Boating on Classified Water, 103.05 Renewal, 257.09 Undesignated Tag Pool to add clarifying language.

Amendment to Rule 259.01 (CF2) Clark Fork River to update the dates from Memorial Day through December 31 to the correct dates of the Friday preceding Memorial Day through November 30.

Amendments to Rules 259.04 Other –Table to increase the maximum number of operators from one to two for Lake Coeur d’Alene, Priest Lake, and Lake Pend Orielle.

Amendment to Rule 259.02 Licensable Waters – River Sections (MF1) Middle Fork Salmon River through (SE2) Selway River – Table to add the Little Salmon River above the mouth of Rapid River to Licensable Waters.

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

N/A. The proposed amendments to the rules do not impose any new or increased fees.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year 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, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-3501-2401. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 5, 2024, Idaho Administrative Bulletin, Vol. 24-6, p.78-79.

**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. No materials have been incorporated by reference into the proposed rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this proposed rule, contact Krissy Veseth, Bureau Chief, at (208) 577-2491. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking>.

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 August 28, 2024.

DATED this 5th day of July, 2024.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-3501-2401**

**Italicized red text that is double underscored indicates amendments to the proposed text as adopted in the pending rule.**

## **24.35.01 – RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD**

### **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: (4-6-23)

**01. Act.** Title 36, Chapter 21, Idaho Code, commonly known as the Outfitters and Guides Act, as amended. (4-6-23)



**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. (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**08. ~~Hazardous Desert or Mountain Excursions~~ Hazards.** ~~Outfitted or guided activities conducted in a desert or mountainous environment that may constitute a p~~ Potential dangers to the health, safety, or welfare of participants involved and ~~the outfitted public which~~ are known to involve risks inherent risk to an outfitted or guided activity. ~~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.~~ (4-6-23)( )

**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. (4-6-23)

**10. IFGC.** The Idaho Department of Fish and Game or the Idaho Fish and Game Commission. (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**14. Operating Area.** The area assigned by the Board to an outfitter for the conduct of outfitting activities. (4-6-23)

**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. (4-6-23)

**16. Out-of-Pocket Expenses.** The direct expenses attributable to a recreational activity. Such direct expenses do not include: (4-6-23)

- a. Compensation for either sponsors or participants; (4-6-23)
- b. Amortization or depreciation of debt or equipment; or (4-6-23)
- c. Costs of non-expendable supplies. (4-6-23)

**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 steering. (4-6-23)

**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. (4-6-23)

**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: (4-6-23)

**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. (4-6-23)

**02. Other Signatures.** Signed landowner or land manager statement from: (4-6-23)

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 (4-6-23)

b. Private land owners, or their agents, where an outfitter applicant proposes to use such private lands in his operation. (4-6-23)

~~**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. (4-6-23)~~

**043. Operating Plan.** An operating plan required by the germane land management agency or on a Board approved form. (4-6-23)

**054. Insurance.** Current certificate or proof of insurance covering licensed activities. (4-6-23)

**065. 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. (4-6-23)

**076. 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. (4-6-23)

**087. Existing Operating Area.** A licensed outfitter may be given priority for any opportunities within the outfitter's existing operating area boundaries. (4-6-23)

**098. 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. (4-6-23)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. (4-6-23)

**01. General Qualifications.** The applicant must provide the following: (4-6-23)

**a.** Documentation of requisite training and experience sufficient to perform the services and activities provided on the license; and (4-6-23)

**b.** A current American Red Cross first aid certification or other comparable certification that is acceptable to the Board; (4-6-23)

**02. Activity-Specific Qualifications.** In addition to the general qualifications, the applicant must provide evidence of activity-specific training submitted with application or amendment. (4-6-23)

**a.** Hunting. (4-6-23)

**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. (4-6-23)

**ii.** Ability to read and understand a map and compass or operate a global positioning system (GPS) or other computerized map system. (4-6-23)

**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. (4-6-23)

**b.** Float Boating on Classified Water. (4-6-23)

**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.~~ (4-6-23)( )

**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.~~ Guides with six (6) or more documented float trips on any other classified river section, under the supervision of a licensed outfitter or guide for that river, shall be deemed qualified once they complete one additional float trip under the supervision of a licensed outfitter or guide on the classified river section for which licensure is sought. (4-6-23)( )

**iii.** One (1) documented float boat trip on a classified section of river, under the supervision of an outfitter or guide licensed for that river, for an applicant able to demonstrate a log of at least 500 miles operating as a commercial float boat operator on select whitewater rivers with characteristics similar to Idaho's classified rivers. To document this experience, a statement signed by the applicant under oath or affirmation should 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. (4-6-23)

- i. Fifty (50) hours on the total length of the river or section of water applied for. (4-6-23)
- d. Float or Power Boating on Unclassified Water. (4-6-23)
  - i. At least one (1) complete commercial float or power boat trip on each of the sections or lakes applied for. (4-6-23)
  - e. ATV-UTV-Snowmobiling. (4-6-23)
    - 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. (4-6-23)
      - 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. (4-6-23)
    - f. Snow-Based Non-Motorized Travel in Avalanche Terrain (backcountry skiing, Nordic skiing, or snow shoeing on non-groomed trails). (4-6-23)
      - 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. (4-6-23)
        - 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. (4-6-23)
      - g. Rock Climbing/Mountaineering. (4-6-23)
        - 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. (4-6-23)
          - 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. (4-6-23)
        - h. Equestrian Activities. (4-6-23)
          - 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. (4-6-23)
- 03. Validity.** A guide license is valid only while the guide is under the employment of an Idaho licensed outfitter. (4-6-23)
- 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. (4-6-23)
- 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 annually or biennially on the license holder's birth date in accordance with Section 36-2108, Idaho Code. A license not timely renewed on or before the license holder's birthdate will be immediately canceled in accordance with Section 67-2614(a), Idaho Code. No reinstatement fee will be charged. (4-6-23)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. (4-6-23)

**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." (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**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. (4-6-23) ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. (4-6-23)

**01. Notification.** All notices, orders, or other documents may be made to the email address on file with the Board. (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**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: (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**05. Remaining or Additional Allocated Tags.** Allocated tags not designated above will be designated proportionately as follows: (4-6-23)

**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 (4-6-23)

**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 (4-6-23)

**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. (4-6-23)

**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). (4-6-23)

**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: (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**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.

(4-6-23)

**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. (4-6-23)

**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: (4-6-23)

**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. (4-6-23)

**b.** Beginning April 20 preceding the hunt, or next business day thereafter, 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 until July 16, allocated tags 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, with a maximum of two (2) tags per operation per round until all tags are designated. (4-6-23) ( )

**c.** No tags designated from the pool will be considered for historical use calculations until all tag transfers are recorded and all hardship requests have been resolved. (7-1-24)

**d.** After July 16, tags will be designated on a first-come, first-served basis. Any remaining tags will be distributed among all requesting operations with a maximum of two (2) tags per operation per round until all requested tags have been allocated. ( )

**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. (4-6-23)

**a.** All outfitting operations in the hunt in question will be notified of the petition. (4-6-23)

**b.** The outfitting operation bears the burden of establishing that the calculation was incorrect. (4-6-23)

**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. (4-6-23)

**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. (4-6-23)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. (4-6-23)

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

River/Section	Maximum No. Power	Maximum No. Float
<p><b>(BL1) Blackfoot River</b> - 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 Campground                      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><b>(BO1) Boise River, South Fork</b> - 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><b>(BO1A) Boise River</b> - Eckert Road Bridge to Main Street Bridge.</p>	none	
<p><b>(BO1B) Boise River</b> - Main Street Bridge to West side of Garden City limits.</p>	none	
<p><b>(BO2) Boise River</b> - Downstream from the west side of the Garden City municipal limits to the east side of the Caldwell municipal limits. A maximum of two (2) outfitters may be licensed for fishing in addition to float boating. 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.</p>	none	4
<p><b>(CF1) Clark Fork River</b> - Entire river upstream of a straight line extending north of county boat dock (near mouth of Johnson Creek) to Bear Paw Point (southwest tip of Denton Slough). Each outfitter may use at any one time a maximum of two (2) boats prior to the Friday preceding Memorial Day of each year, there is no limit thereafter.</p>	2 outfitters for either power or float or combination thereof	



River/Section	Maximum No. Power	Maximum No. Float
<b>(CF2) Clark Fork River</b> - Entire river upstream of a straight line extending north of county boat dock (near mouth of Johnson Creek) to Bear Paw Point (southwest tip of Denton Slough) (boating limited to the Friday preceding Memorial Day through <del>December</del> <b>November 31<sup>st</sup></b> )	2 outfitters for either power or float or combination thereof	
<b>(CL1) Clearwater River</b> - 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
<b>(CL2) Clearwater River</b> - 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
<b>(CL3) Clearwater River</b> - 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
<b>* (NFCL) North Fork Clearwater River</b> - Kelly Forks Bridge downstream to backwaters of Dworshak Reservoir	none	4
<b>(CDNF) Headwaters of North Fork Coeur d'Alene</b> - 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
<b>(CD1) Coeur d'Alene River</b> - 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
<b>(CD2) Coeur d'Alene River</b> - 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
<b>(CD3) Lateral (Coeur d'Alene chain) Lakes</b> - 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
<b>* (JB1) Jarbidge/Bruneau Rivers</b>	none	4
<b>(KO1) Kootenai River</b> - Montana state line to Canada boundary	5	5

River/Section	Maximum No. Power	Maximum No. Float
<b>(LCL1) Little North Fork Clearwater River</b> - 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
<b>* (LO1) Lochsa River</b>	none	5
<b>(MO1) Moyie River</b> - Canada boundary to Bonners Ferry Municipal Dam (boating closing date July 20)	none	5
<b>* (OW1) Owyhee River</b> - 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
<b>(PN1) Payette River, North Fork</b> - 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
<b>(PN1A) Payette River, North Fork</b> - Cascade City Park, ¼ 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 ¼ mile above to ¼ 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
<b>(PN2) Payette River, North Fork</b> - Cabarton to Smiths Ferry Bridge	none	5
<b>(PS1) Payette River, South Fork</b> - Grandjean to Deadwood River	none	5
<b>* (PS2) Payette River, South Fork</b> - Deadwood River to Banks	none	5
<b>(PA1) Payette River</b> - Banks to Black Canyon Dam	none	5
<b>(PO1) Pend Oreille River</b>	5	5
<b>(PR1) Priest River</b> - Dickensheet Campground to Priest River City	none	2

(7-1-24)( )

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

River/Section	Maximum No. Power	Maximum No. Float
<b>(LS1) Little Salmon River</b> – From Highway 95 bridge at Hazard Creek to confluence of the Main Salmon River. <u>Annually, prior to May 15, portage of the amphitheater rapid on river right is required when anglers are present in the hole below the rapid. Closed for operating below mouth of the Rapid River in May through July. No fishing.</u>	none	2
<b>###(MF1) Salmon River, Middle Fork</b> - Boundary Creek to Cache Bar on the Salmon River	none	27
<b>(SA1) Salmon River</b> - First bridge across Salmon River above Redfish Lake Creek to Torrey's Bar	none	6

River/Section	Maximum No. Power	Maximum No. Float
<b>(SA2) Salmon River</b> - 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
<b>(SA3) Salmon River</b> - 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
<b>(SA4A) Salmon River</b> - 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
<b>(SA4B) Salmon River</b> - 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
<b>(SA5) Salmon River</b> - North Fork to Corn Creek	3	9
<b>###(SA6) Salmon River</b> - 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
<b>* (SA7A) Salmon River</b> - 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
<b>* (SA7B) Salmon River</b> - 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
<b>* (SA7C) Salmon River</b> - 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
<b>###(SA8) Salmon River</b> - Hammer Creek to Heller Bar or Lewiston on the Snake River	15	35

River/Section	Maximum No. Power	Maximum No. Float
* (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

~~(4-6-23)~~ ( )

**03. Licensable Waters – River Sections (SH1) Henry’s Fork Snake River through (TE3) Teton River – Table:**

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
(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.	none	8

River/Section	Maximum No. Power	Maximum No. Float
<p><b>(SH3) Snake River, Henry's Fork</b> - 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>	<p>none</p>	<p>4</p>

River/Section	Maximum No. Power	Maximum No. Float
<p><b>(SS1) Snake River - South Fork</b> - 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>	None*	8**

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><b>(SN1) Snake River</b> - 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/Section	Maximum No. Power	Maximum No. Float
<p><b>(SN2) Snake River</b> - 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>	3 outfitters either float or power or combination thereof	
<p><b>(SN3) Snake River</b> - 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>	3 outfitters either float or power or combination thereof	
<p><b>(SN4) Snake River</b> - Massacre Rocks State Park to Milner Dam</p>	3	3
<p>* <b>(SN5) Snake River</b> - Milner Dam to Star Falls</p>	none	3
<p>* <b>(SN6) Snake River</b> - Star Falls to Twin Falls</p>	none	5



<b>River/Section</b>	<b>Maximum No. Power</b>	<b>Maximum No. Float</b>
<b>(SN7) Snake River</b> - Twin Falls to Lower Salmon Falls Dam	3	3
<b>(SN8) Snake River</b> - Lower Salmon Falls Dam to Bliss Dam	3	5
<b>(SN9) Snake River</b> - Bliss Dam to headwaters of C.J. Strike Reservoir	5	5
<b>(SN10) Snake River</b> - C.J. Strike Dam to Walter's Ferry	5 outfitters for either power or float or combination thereof	
<b>(SN11) Snake River</b> - Walter's Ferry to headwaters of Brownlee Reservoir	5	none
* <b>(SN12) Snake River</b> - Hells Canyon Dam to Pittsburg Landing	18	15
* <b>(SN13) Snake River</b> - Hells Canyon Dam to Pittsburg Landing, two (2) one-day float trips only	none	2
<b>(SN14) Snake River</b> - Pittsburg Landing to Heller Bar or Lewiston	19	15
<b>(SN15) Snake River</b> - Washington/Oregon state line to Lewiston	Limitations pending. (This section is set aside for future rules of fishing only outfitters.)	
<b>(SJ1) St. Joe River</b> - St. Joe River Headwaters to Red Ives. No outfitted boating. One (1) walk and wade only fishing outfitter.	none 2	none
<b>(SJ2) St. Joe River</b> - 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
<b>(SJ3) St. Joe River</b> - Avery to St. Joe City Bridge	none	2
<b>(SJ4) St. Joe River</b> - St. Joe City Bridge to Lake Coeur d'Alene	2	none
<b>(SM1) St. Maries River</b>	5	5
<b>(TE1) Teton River</b> - Upper put-in to Cache Bridge, motors not to exceed 10 hp	5 outfitters for either power or float or combination thereof	
<b>(TE2) Teton River</b> - Cache Bridge to Harrop Bridge, motors not to exceed 10 hp	6 outfitters for either power or float or combination thereof	

River/Section	Maximum No. Power	Maximum No. Float
<p><b>(TE3) Teton River</b> - 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 Henry's Fork of the Snake River. Note: No boat access exists at the confluence with the Henry's 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. (4-6-23)

**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	<del>4</del> 2
Dworshak Reservoir	7	2
Henry's Lake	8	2
Island Park Reservoir	7	2
Magic Reservoir	3	2
Palisades Reservoir	10	2
Lake Pend Oreille	11	<del>4</del> 2

Lake or Reservoir	Maximum No. of Operators	Maximum No. Boats per Operator per Lake or Reservoir
Priest Lake	5	<del>4</del> 2
American Falls Reservoir	3	2
C.J. Strike Reservoir	4	2
Brownlee Reservoir	5	2
Oxbow Reservoir	3	2
Hells Canyon Reservoir	3	2

(7-1-24)( )

**05. Other Lakes and Reservoirs.** All other Idaho lakes and reservoirs are limited to two (2) **fishing** outfitters with a maximum of two (2) boats (float or power) per outfitter. (4-6-23)( )

**IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION**  
**26.01.37 – RULES GOVERNING TEST PROCEDURES AND INSTRUMENTS**  
**FOR NOISE ABATEMENT OF OFF HIGHWAY VEHICLES**  
**DOCKET NO. 26-0137-2401 (ZBR 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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 67-4223, 67-4249, and 67-7125, Idaho Code.

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

The Idaho Department of Parks and Recreation is proposing to repeal this chapter and place it in Idaho statute.

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 2, 2024, Idaho Administrative Bulletin, [Vol. 24-10, page 281](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: 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: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Seth Hobbs, (208) 514-2427, [seth.hobbs@idpr.idaho.gov](mailto:seth.hobbs@idpr.idaho.gov).

DATED this 6th day of December, 2024.

Seth Hobbs  
Idaho Department of Parks and Recreation  
5657 Warm Springs Ave.  
Boise, ID 83716  
Phone: (208) 514-2427

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-4223, 67-4249, and 67-7125 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 16, 2024.

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 Parks and Recreations is proposing to repeal this chapter and place it in Idaho statute.

**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: None.

**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 August 07, 2024, Idaho Administrative Bulletin, [Volume 24-8 page 183](#).

**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 Seth Hobbs, (208) 514-2427, [seth.hobbs@idpr.idaho.gov](mailto:seth.hobbs@idpr.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 October 23, 2024.

DATED this 19th day of September, 2024.

**IDAPA 26.01.37 IS PROPOSED TO BE REPEALED IN ITS ENTIRETY.**

# IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

## 37.03.01 – ADJUDICATION RULES

### DOCKET NO. 37-0301-2401 (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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 42-1805(8), 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 October 2, 2024, Idaho Administrative Bulletin, [Vol. 24-10, pages 305-316](#). Adoption of this pending rule removes unnecessary language, revises language for readability and sets the minimum requirements for completing a notice of claim to a water right acquired under state law. The rule establishes clear criteria for calculation of claim filing fees and sets clear criteria for rejecting incomplete claims.

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

IDAPA 37.03.01 establishing clear criteria for calculation of claim filing fees including flat fees, variable fees, and late fees, as authorized in Section 42-1414, Idaho Code.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Erik Boe at [Erik.Boe@idwr.idaho.gov](mailto:Erik.Boe@idwr.idaho.gov), (208) 287-4800.

DATED this 15th day of November, 2024.

Erik Boe,  
Water Compliance Bureau Chief, Rules Regulation Officer  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720 Boise, ID 83720-0098  
Phone: (208) 287-4800

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 42-1805(8), 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, no later than October 16, 2024.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no 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 Water Resources (IDWR) initiated this rulemaking in compliance with [Executive Order No. 2020-01, Zero-Based Regulation \(ZBR\)](#) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five-year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at <https://adminrules.idaho.gov>. This rule chapter was scheduled for review in 2024.

With this Notice, IDWR proposes a new chapter of adjudication rules. The new chapter is approximately 17% shorter than the existing adjudication rule chapter due to both internal agency analysis and external stakeholder negotiation, commentary, and editing. Changes to the rule (a) clarify the minimum requirements for completing a notice of claim to a water right acquired under state law, establishes clear criteria for calculation of claim filing fees, sets clear criteria for refunding fees, and establishes criteria for rejecting incomplete claims. IDWR believes the regulatory measures in the Rule are necessary for the orderly, consistent, and efficient processing of adjudication claims filed in connection with any of the active general stream adjudications within the state.

The development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2024-2025/adjudication-rules/>. On the same website, IDWR also developed and published rulemaking support documents, which provide IDWR's recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

After consideration of public comments received in response to this Proposed Rule, IDWR will present the final rule text during the 2025 Legislative Session.

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

IDAPA 37.03.01 sets the minimum requirements for completing a notice of claim to a water right acquired under state law which includes establishing clear criteria for calculation of claim filing fees including flat fees, variable fees, and late fees, as set forth in Idaho Code § 42-1414.

**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: 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 April 3, 2024 Idaho Administrative Bulletin, Vol. 24-4, pages 50-51.

**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 Erik Boe at [Erik.Boe@idwr.idaho.gov](mailto:Erik.Boe@idwr.idaho.gov), (208) 287-4800.

Anyone may submit written comments regarding this proposed rulemaking by mail to the address below or by email to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov). All written comments must be directed to the undersigned and must be delivered on or before October 23, 2024.

DATED this 30th day of August, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 37-0301-2401**

**37.03.01 – ADJUDICATION RULES**

**000. LEGAL AUTHORITY.**

These rules are adopted under the legal authorities of Section ~~42-1414~~, and 42-1805(8), Idaho Code.

(3-18-22)(    )

**001. ~~TITLE AND SCOPE.~~**

~~01. Title. These rules are titled IDAPA 37.03.01, “Adjudication Rules.”~~

(3-18-22)

~~02. Scope. These rules implement statutes governing the filing of notices of claims to water rights acquired under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications, as provided in pursuant to Sections 42-1409, 42-1409A, and 42-1414 and 42-1415, Idaho Code.~~

(3-18-22)(    )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

~~01. Amendment Fee. The additional fee payable required at the time of filing an amendment to a claim, as provided in Section 42-1414(2), Idaho Code.~~

(3-18-22)(    )

~~02. Aquaculture. The use of water for propagation of fish, shell-fish, and any other animal or plant product naturally occurring in an underwater environment.~~

(3-18-22)(    )

~~03. Aquaculture Fee. The variable fee payable for aquaculture use, as provided in Section 42-1414(1)(b)(iii), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar.~~

(3-18-22)

~~043. Claim. A notice of claim to a water right acquired under state law, as provided in filed pursuant to Section 42-1409(4), Idaho Code.~~

(3-18-22)(    )

~~054. Department. The Idaho Department of Water Resources.~~

(3-18-22)

~~065. Director. The Director of the Idaho Department of Water Resources. Per Section 42-1701(3), Idaho Code, the Director may delegate authority to perform duties imposed upon the Director by law, including duties~~



described herein, to a Department employee. (3-18-22)( )

**076. Domestic Use.** Domestic use as defined in Section 42-1401A(4), Idaho Code. (3-18-22)

**087. Flat Fee.** The per claim fee for filing a claims, ~~as provided in pursuant to~~ Section 42-1414(1)(a), Idaho Code. (3-18-22)( )

**098. Late Fee.** The additional fee payable required for the filing of a late claims, ~~as provided in pursuant to~~ Section 42-1414(3), Idaho Code. (3-18-22)( )

~~**10. Per Acre Fee.** The variable fee for irrigation use, as provided in Section 42-1414(1)(b)(i), Idaho Code, which shall be calculated for each acre and fraction thereof rounded to the next whole acre. (3-18-22)~~

~~**11. Per Cfs Fee.** The variable fee payable for other uses, as provided in Section 42-1414(1)(b)(iii), (iv) and (v), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar. (3-18-22)~~

~~**12. Per Kilowatt Fee.** The variable fee payable for power generation use, as provided in Section 42-1414(1)(b)(ii), Idaho Code, which shall be calculated for each kilowatt and fraction thereof. (3-18-22)~~

~~**13. State Law Claim Form.** The department's form entitled "Notice of Claim to a Water Right Acquired Under State Law as provided in Section 42-1409(4), Idaho Code. (3-18-22)~~

**09. Public Entity.** A state or local government, or any agency, office, or department run by a state or local government. ( )

**10. Public Purpose.** Use of water by a public entity for in-stream flows, lake level maintenance, wildlife, aesthetic, or recreation use. ( )

**141. Stock Watering Use.** Stock watering use as defined in Section 42-1401A(11), Idaho Code. (3-18-22)

**152. Total Fee.** The fee payable required for filing a claim, ~~which consists~~ consisting of the flat fee plus any applicable variable fee and late fee. (3-18-22)( )

**163. Variable Fee.** The fee payable required for filing claims in addition to the flat fee, ~~as provided in pursuant to~~ Section 42-1414(1)(b), Idaho Code. (3-18-22)( )

**174. Water Delivery System.** All structures and equipment used for diversion, storage, transportation, and use of water from the water source to and including each place of use. (3-18-22)

**185. Water Delivery Organization.** An irrigation district, ~~a~~ water utility, ~~a~~ municipality, or any similar claimant of a water right who diverts water pursuant to the water right claimed and delivers the water to others who make beneficial use of the water ~~diverted by the water delivery organization pursuant to the water right claimed by the water delivery organization.~~ (3-18-22)( )

**011. ABBREVIATIONS.**

**01. AF.** ~~An acre~~ Acre foot (feet). (3-18-22)( )

**02. CFS.** Cubic foot (feet) per second. (3-18-22)

~~**03. NA.** Not applicable. (3-18-22)~~

~~**04. PIN.** Parcel identification number. (3-18-22)~~

**012. -- 024. (RESERVED)**

025. GENERAL.

01. **Requirement to Pay.** All persons filing claims ~~to water rights acquired under state law~~ or amendments to claims ~~to water rights acquired under state law shall be~~ are required to pay filing fees as set forth by statute and these rules. (3-18-22)(    )

02. **Method of Payment.** Fees ~~shall~~ may be paid in ~~legal tender of the United States~~ cash; or by money order, certified check, cashier's check, personal check, debit or credit card, or by electronic payment on-line ~~payable to the department in legal tender of the United States. Two party checks will not be accepted.~~ (3-18-22)(    )

03. **Personal Check.** If a personal check ~~in payment of a flat fee, a variable fee, or a late fee,~~ is returned unpaid to the ~~d~~Department or the debit or credit card payment is rejected by the financial institution, the claims ~~s covered by the returned check or the rejected debit or credit card~~ will be rejected and returned to the claimant. If a personal check in payment of an amendment fee is returned unpaid to the ~~d~~Department or the debit or credit card payment is rejected by the financial institution, the amended claim will be rejected and returned to the claimant, but the original claim will still be in effect. (3-18-22)(    )

~~04. **Time of Payment.** Flat fees and variable fees shall be payable to the department at the time of filing a claim. Amendment fees shall be payable to the department at the time of filing the amended claim. Late fees shall be payable at the time of filing the late claim. (3-18-22)~~

~~05. **Government Voucher.** Fees payable by government agencies (other than agencies of foreign governments) may be paid when due by government voucher. If full payment of the voucher is not received within forty-five (45) days of the date the voucher is received, the unpaid voucher will be treated as a returned check ~~as provided in pursuant to~~ Subsection 025.03. (3-18-22)(    )~~

~~06. **Rejection of Claim.** Claims submitted without the correct filing fee ~~shall~~ will be rejected and returned to the claimant along with any fees paid. (3-18-22)(    )~~

~~07. **Fire-Fighting.** A claim is not required ~~to be filed~~ for water used solely to extinguish or prevent spreading of an existing fire on private or public lands, structures, or equipment, ~~or to prevent an existing fire from spreading to private or public lands, structures, or equipment endangered by an existing fire~~ pursuant to Section 42-201(3), Idaho Code. A claim is required for the use of water for ~~domestic purposes in regularly maintained~~ firefighting stations and for the storage of water for fighting future fires. (3-18-22)(    )~~

026. -- 029. (RESERVED)

030. FLAT FEES.

01. **Small Domestic and Stock Water.** A flat fee of twenty-five dollars (\$25) ~~shall be payable is~~ required for each claim for domestic use and/or stock watering use meeting the definition of domestic use and/or stock watering use in Rule Section 010. Filing fees for claims for stock water use only are assessed for the first four (4) claims filed by a claimant. (3-18-22)(    )

02. **Other Claims.** A flat fee of fifty dollars (\$50) ~~shall be payable is~~ required for each claim that does not meet the criteria of Subsection 030.01. (3-18-22)(    )

031. -- 034. (RESERVED)

035. VARIABLE FEES.

01. **General.** A variable fee in addition to the flat fee is required Ffor each claim not meeting the criteria of Subsection 030.01, ~~there may be a variable fee in addition to the flat fee unless otherwise stated in these rules.~~ (3-18-22)(    )

02. **Per Acre Fee.** The variable fee for irrigation use, pursuant to Section 42-1414(1)(b)(i), Idaho Code, is calculated for each acre and fraction thereof rounded to the next whole acre. (3-18-22)(    )

- a. A fee of one dollar (\$1.00) per acre ~~shall be~~ is required for ~~claims for an~~ irrigation use claim. (3-18-22)(    )
- b. The per acre fee ~~shall is~~ only ~~be~~ charged once against a particular acre, regardless of the number of claims filed for the irrigation of that acre or the number of claimants filing claims for the irrigation of that acre. (3-18-22)(    )
- c. The per acre fee ~~shall be~~ is payable by the first person to file a claim for the irrigation of a particular acre. (3-18-22)(    )
- d. The per acre fee for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres ~~shall will~~ be determined based upon the acreage claimed to be irrigated by the project or irrigation district within the boundaries of the project or irrigation district. (3-18-22)(    )
- 03. Per Kilowatt Fee.** The variable fee for power generation pursuant to Section 42-1414(1)(b)(ii), Idaho Code, calculated for each kilowatt and fraction thereof. (3-18-22)(    )
- a. A per kilowatt of capacity (manufacturer's nameplate rating) fee of three dollars and fifty cents (\$3.50) per kilowatt, or two hundred fifty thousand dollars (\$250,000.00), whichever is less, ~~shall be~~ is required for a power generation ~~claims for power use~~. (3-18-22)(    )
- b. The per kilowatt fee ~~shall be~~ is determined based upon the total generating capacity of all generators in which the water right claimed is used. (3-18-22)(    )
- c. The total per kilowatt fee for all claims filed for a single hydropower facility ~~shall will~~ not exceed the per kilowatt fee for the total generating capacity of all generators in the hydropower facility. (3-18-22)(    )
- 04. Per CFS Fee.** The variable fee for a use other than those identified in Subsections 035.01, 035.02, and 035.03, pursuant to Section 42-1414(1)(b)(iii), (iv), and (v), Idaho Code, calculated for each cfs and fraction thereof to the nearest dollar. (3-18-22)(    )
- a. A fee of ten dollars (\$10) per cfs ~~for aquaculture shall be~~ is required for an aquaculture use claim. A fee of one hundred dollars (\$100) per cfs is required for all other uses ~~shall be required~~ except for irrigation, power, and domestic and stock watering uses meeting the definition of domestic and stock watering use in Section 010. (3-18-22)(    )
- b. For a claim ~~to water~~ for more than one (1) public purpose, the per cfs fee ~~shall only will~~ be charged only once per cfs claimed. ~~Public purposes shall include public in stream flows, lake level maintenance, wildlife, aesthetic beauty, and recreation.~~ (3-18-22)(    )
- c. If there is a seasonal variation in the number of cfs claimed, the per cfs fee ~~shall be~~ is based upon the maximum number of cfs claimed for any period during a single calendar year. (3-18-22)(    )
- ~~d. The per cfs fee shall apply to claims for water quality improvement, recreation, aesthetic purposes, and any other purpose not expressly listed at Section 42-1414(1), Idaho Code, except as otherwise provided by these rules.~~ (3-18-22)
- 05. Claims Including Storage.** (3-18-22)
- a. The ~~variable fee for a claim that includes storage shall be based upon the ultimate use of the water stored~~ ultimate use of the water stored determines the variable fee for a claim that includes storage. If ~~the a~~ claim states a purposes other than diversion to storage, storage, and diversion from storage, the total variable fee will be determined ~~as provided in~~ pursuant Subsection 035.06. (3-18-22)(    )

- ~~b.~~ No variable fee shall be payable for water claimed for ground water recharge purposes. (3-18-22)
- ~~eb.~~ For purposes of determining the per cfs fee for the amounts of water claimed in af, one (1) cfs equals one and ninety-eight one-hundredths (1.98) af per day of diversion to storage. (3-18-22)(    )
- ~~d.~~ No variable fee shall be payable for minimum by-pass flows. (3-18-22)
- 06. Multiple Purpose Claims.** If a ~~claimant~~ claims includes more than one (1) purpose of use ~~on a single claim~~, the variable fee will be the total of the variable fees payable required for each purpose of use. (3-18-22)(    )
- 07. Exceptions.** No variable fee ~~shall be payable~~ is required for a claims or portions of a claims for ground water recharge purposes, fire-fighting purposes, ~~if a claim is required under Subsection 025.07 or for~~ domestic use and stock watering use meeting the definitions of domestic use and stock watering use in Section 010. (3-18-22)(    )
- 036. -- 044. (RESERVED)**
- 045. AMENDMENT FEES.**  
When a claimant files an amendment to a claim, ~~the total fee shall be recalculated as if the amended claim were the original claim. If~~ the total fee as recalculated is greater than the total fee paid at the time the claim was originally filed, the amendment fee ~~shall be~~ is the difference between the two (2) amounts. No refund ~~shall be made~~ is issued if the total fee as recalculated is less than the total fee paid at the time the claim was originally filed. (3-18-22)(    )
- 046. -- 049. (RESERVED)**
- 050. LATE FEES.**
- 01. Late Fee ~~Payable~~.** A late fee ~~shall be payable when~~ is required for a claim ~~is~~ filed after the date set forth in the first commencement notice mailed to the claimant or the claimant's predecessor in interest pursuant to Sections 42-1414(3), Idaho Code. (3-18-22)(    )
- 02. Waiver.** The late fee may be waived by the ~~d~~Director for good cause shown. (3-18-22)(    )
- 051. -- 054. (RESERVED)**
- 055. REFUNDS.**  
Fees ~~shall~~ will not be refunded or returned except where the fee was miscalculated at the time the claim was filed or as expressly provided in these rules. (3-18-22)(    )
- 056. -- 059. (RESERVED)**
- 060. SUFFICIENCY OF CLAIMS.**
- 01. Single Claim.** Except for claims based on both state law and federal law, a single claim may describe only one (1) water right. ~~A claim that describes more than one (1) water right will be rejected and returned along with any fees paid, and must be refiled as multiple claims.~~ (3-18-22)(    )
- 02. ~~State Law Claim Form—Minimum Requirements.~~** Claims filed on the state law A claim form shall contain the following information must be filed: (3-18-22)(    )
- a.** On the Department's form entitled "Notice of Claim to a Water Right Acquired Under State Law," or equivalent form approved by the Department, with any applicable attachments. (    )
- b.** In accordance with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources," Section 053, either on paper, digitally in PDF format, or through the Department's online filing process.

- c.** With required filing fees pursuant to Sections 030 and 035. ( )
- d.** In accordance with the minimum requirements pursuant to Subsection 060.03. ( )
- 03. Minimum Requirements.** Claims filed on the claim form must contain the following information: ( )
- a.** ~~Name, Address and Phone Number of Claimant. The name, and mailing~~ address, ~~and phone number~~ of the claimant and all co-claimants ~~claiming jointly filing~~ the notice of claim to a water right ~~jointly with the claimant shall be listed at item one (1) of the form.~~ (3-18-22)( )
- b.** ~~Date of Ppriority. The date of priority shall be listed at item two (2) of the form, and shall include~~ including month, day and year. ~~Only one (1) priority may be stated unless the claim is based upon both state and federal law as provided in Subsection 060.01. If more than one (1) priority date is stated, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims.~~ (3-18-22)( )
- i.** ~~Within thirty (30) days, unless an extension by the director or his designee is approved, the claimant shall provide evidence of the priority date to support the water right claimed. If the claimant fails to provide evidence of priority, the form may be rejected and returned with no refund of the fees paid.~~ List only one (1) date of priority, the date the water right was established, unless the claim is based upon both state and federal law pursuant to Subsection 060.01. (3-18-22)( )
- c.** ~~Source of Water Supply. The source of water supply shall be stated at item three (3) of the form.~~ (3-18-22)( )
- i.** ~~For a surface water sources, the source of water shall be identified by include~~ the official geographic name listed on the U.S. United States Geological Survey (USGS) Quadrangle map. ~~If no official name has been given, the name in local common usage should be listed. If there is no official or common name, the source should be described as "unnamed stream" or "spring." The first named downstream water source to which the source is tributary shall also be listed. For ground water sources, the source shall be listed as "ground water." the source of water is not named on the USGS Quadrangle map, describe it as an unnamed water body, such as "unnamed stream."~~ For surface water sources, also identify the first named stream or river to which the source is tributary. If the water source sinks into the ground before reaching a stream named on the USGS Quadrangle map, describe the "tributary to" stream as "sinks." If the water source flows into a stream named on the USGS Quadrangle map for part of the year and sinks into the ground for the other part of the year, identify the "tributary to" stream as the named stream on the USGS Quadrangle map. (3-18-22)( )
- ii.** ~~Only~~ Identify only one (1) water source ~~shall be listed~~ unless the claim is for a single interconnected water delivery system that has diverts water from more than one (1) source, ~~or the claim is for a single licensed or decreed right that covers more than one (1) water delivery system. If more than one (1) source is listed and the claim is not for a single water delivery system that has more than one (1) source, and the claim is not for a single licensed or decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims.~~ (3-18-22)( )
- iii.** For a water source under the ground surface, identify the source as "ground water." ( )
- d.** ~~Location of Point of Diversion. For claims other than in-stream flows, the location of the point(s) of diversion shall be listed at item four (4) part (a) of the form. For claims to in-stream flows, the beginning and ending points of the claimed in-stream flow shall be listed at item four (4) part (b) of the form.~~ Point of diversion. Describe the location of the point of diversion to the nearest forty (40) acre tract (quarter-quarter section) or government lot number, and include township number (including north or south designations), range number (including east or west designations), section number, and county. (3-18-22)( )
- i.** ~~The location of the point of diversion shall be described to nearest forty (40) acre tract (quarter-quarter section) or government lot number, and shall include township number (including north or south designations), range number (including east or west designations), section number, and county.~~ Describe the beginning and ending points of instream flow use, if claimed. (3-18-22)( )

ii. ~~The claimant shall also list the Parcel Number or~~ Parcel Identification Number (PIN) as assigned by the county assessor's office for the parcel where the water is diverted unless no ~~Parcel Number or~~ PIN is recorded for the property at the point of diversion. (3-18-22)(    )

iii. ~~List the subdivision name, block number, and lot number, if~~ the point of diversion is located in a platted subdivision, ~~a where the plat of which has been is~~ recorded in the county recorder's office ~~for the county in which the subdivision is located, the claimant shall also list the subdivision name, block number and lot number in item thirteen (13) of the form (remarks section).~~ (3-18-22)(    )

iv. A claim ~~to a water right~~ that includes storage ~~shall state~~ must include the point at which water is impounded (~~applicable only to for an~~ on-stream reservoirs) or the point at which water is diverted to storage (~~applicable only to for an~~ off-stream reservoirs), ~~the point at which water is released from storage into a natural stream channel (applicable only. For a claim~~ where a natural stream channel is used to convey stored water), and include the point at which water is diverted into a natural channel, and the point where water is rediverted (~~applicable only where a natural channel is used to convey stored water)~~ from the natural channel. (3-18-22)(    )

v. ~~Only~~ List only one (1) point of diversion ~~shall be listed~~ unless the claim is for a single water delivery system that has more than one (1) point of diversion, or the claim is for a single licensed or decreed water right that covers more than one (1) water delivery system. ~~If more than one (1) point of diversion is listed and the claim is not for a single water delivery system that has more than one (1) point of diversion, and the claim is not for a single licensed or decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims.~~ (3-18-22)(    )

e. Description of Diversion Works. ~~The diversion works shall be described at item five (5) of the form.~~ (3-18-22)(    )

i. ~~The description shall include~~ Describe all major components of the water delivery system, such as dams, reservoirs, ditches, pipelines, pumps, wells, headgates, etc. ~~The description shall also i~~ Include those dimensions of major components which affect the diversion capacity of the water delivery system. ~~The description shall also state whether the ditches are lined and/or covered. Include~~ the depth of wells, the horsepower ~~capacity of rating of installed~~ pumps, and whether headgates are automatic or equipped with locks ~~and/or~~ measuring devices. (3-18-22)(    )

ii. ~~The description shall~~ For a claim asserting an accomplished transfer pursuant to Section 42-1425, Idaho Code, include the dates and a description of any changes in use (including change in point of diversion, place of use, purpose of use, and period of use) ~~or enlargements in use (including an increase in the amount of water diverted, the number of acres irrigated, or additional uses of water), and as to those dimensions required to be described above, the dimensions as originally constructed and as enlarged.~~ Describe the diversion works before and after the accomplished transfer. (3-18-22)(    )

iii. For a claim describing an enlargement in use pursuant to Section 42-1426, Idaho Code, identify the water right enlarged (base right) and the date the enlargement occurred. Identify, the enlarged element of the base right including number of acres irrigated, extended season of use, or additional uses of water. Describe the diversion works as originally constructed and as enlarged. (    )

iv. For claim describing an expansion in use pursuant to Section 42-1416B, Idaho Code, identify the water right expanded (base right) and the date the expansion occurred. Identify the expanded element of the base right including number of acres irrigated or additional uses of water. Describe the diversion works as originally constructed and as expanded. (    )

~~iv~~v. Water delivery organizations ~~shall~~ must describe the water delivery system up to and including the point where responsibility for water distribution is assumed by entities other than the water delivery organization. (3-18-22)(    )

f. Purpose of Use ~~and Period of Use.~~ Each purpose for which water is claimed, the period of use for each purpose for which water is claimed, and the amount of water claimed for each purpose for which water is

~~claimed shall be listed at item six (6) of the form. Period of use shall include the month and day of the first and last day of use. For example, the period of use for domestic use is often January 1st through December 31st.~~

~~(3-18-22)( )~~

~~i. The purpose may be described. Describe each purpose of use in general terms such as irrigation, industrial, municipal, mining, power generation, fish propagation, domestic, stock watering, etc.~~

~~(3-18-22)( )~~

~~ii. A claim to a water right that includes storage shall use must be broken down separated into component purposes with the ultimate use(s) of the stored water indicated. The component purposes of a storage right are: diversion to storage (not applicable to an on-stream reservoirs), storage, and diversion from storage (not applicable where the ultimate use is an in-reservoir public purpose). Detention of water in a holding pond, where the pond is not the end use of the water, that can be filled in less than twenty-four (24) hours at the claimed diversion rate is not required to be claimed as storage. The amount of water claimed shall be limited to the active storage capacity of the reservoir unless a past practice of refilling the reservoir during the water year (October 1 to September 30) is shown or the claim is for a licensed or decreed right that includes refill. If a past practice of refilling the reservoir is shown or if the claim is for a licensed or decreed right that includes refill, the total amount of water claimed for the calendar year and the entire period during which diversion to storage or impoundment occurs shall be indicated.~~

~~(3-18-22)( )~~

~~iii. The amount of water claimed for each purpose for which water is claimed shall not exceed the amount of water beneficially used for the purpose claimed, and the period of use for each purpose claimed shall not exceed the period in which water is beneficially used for the purpose claimed.~~

~~(3-18-22)~~

~~iv. The amount of water diverted shall be listed in cfs, and the amount of water stored shall be listed in af per annum.~~

~~(3-18-22)~~

~~g. Quantity of Water. ( )~~

~~i. Include the flow rate in cfs or the volume of water to be stored in af per year for each purpose of use, using values with a maximum of three significant figures with no more precision than hundredths for rate and tenths for volume. ( )~~

~~( )~~

~~ii. For claims to store water, the maximum af per year may not exceed the storage facility capacity unless the claim includes a description explaining the past practice of filling the storage facility more than once per year, or the claim is for a licensed or decreed right that includes refill. The description of past refill practices may include refills to replace seepage, evaporation, or use from storage. ( )~~

~~( )~~

~~iii. The amount of water claimed for each purpose for which water is claimed must not exceed the amount of water beneficially used for the purpose claimed. ( )~~

~~( )~~

~~g.iv. Amount of Water Claimed. The total amount of water claimed shall be listed at item seven (7) of the form. The total amount of water claimed shall must not exceed the sum total of the amounts quantity listed at item six (6) of the form for each water use, or the total diversion capacity of the diversion system, whichever is less.~~

~~(3-18-22)( )~~

~~h. Period of Use. A period of use must be listed for each purpose of use and must include the month and day of the first and last day of use. ( )~~

~~( )~~

~~h.i. Description of Non-Irrigation Uses. Fully describe any Non-irrigation uses shall be fully described at item eight (8) of the form. For domestic uses, must describe the number of households served shall be described; for any irrigation associated with the domestic use. Stock watering uses, must describe the type of stock and number of each type of stock shall be described.~~

~~(3-18-22)( )~~

~~i. If the claimant's domestic use does not meet the definition of domestic use in Subsection 010-07, the form will be rejected and returned unless the appropriate variable fee is paid.~~

~~(3-18-22)~~

~~ii. The claimant shall also state whether Claims for stock watering use must identify if the stock~~

watering use is in-stream, or ~~whether if~~ water is diverted from the source ~~for stock watering~~. Both types of In-stream livestock use and diverted stock watering cannot be filed on the same claim form; ~~each type requires a separate claim unless the claim is for in-stream livestock use for which a “Notice of Diversion as an Alternative to Instream Stockwater Use” has been filed pursuant to Section 42-113, Idaho Code.~~ (3-18-22)

iii. Describe ~~D~~domestic use for organization camps and public campgrounds ~~shall be fully described~~, including, but not limited to, the number of camp units, water faucets, flush toilets, showers, and sewer connections. Description of domestic use for organization camps and public campgrounds ~~shall must~~ also include the average and peak number of individuals using the facility, and the periods when peak or average rates of usage occur. (3-18-22)(    )

ij. Place of Use. Describe the location of the place of use to the nearest forty (40) acre tract or government lot and include township number (including north or south designations), range number (including east or west designations), section number, and county. The place of use for each purpose for which water is claimed shall be listed at item nine (9) of the form, except that the place of use for in-stream flows for public purposes need not be listed if the place of use is fully described as the stream between the beginning and ending points listed as the points of diversion. (3-18-22)(    )

i. Except claims for irrigation projects and irrigation districts meeting the criteria described in Subsection 060.03.j.ii. below describe, the number of acres irrigated ~~shall be described by entering the appropriate numbers in the appropriate boxes for~~ to the nearest whole acre in each forty (40) acre tract or government lot ~~on the form. For other uses, a symbol or letter corresponding to the purpose for which water is claimed shall be placed in the appropriate box for each forty (40) acre tract or government lot on the form. For irrigation of less than ten (10) acres, acreage must be shown to the nearest one-tenth (0.1) acre.~~ (3-18-22)(    )

ii. Claims for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres ~~shall must~~ be accompanied by a map showing the boundaries of the project or irrigation district, and ~~shall must~~ state the total number of acres irrigated within the boundaries of the project or irrigations district. ~~The project or district shall submit a map of the boundary of the place of use and, w~~ When available, claims should include a digital boundary defined in Section 42-202(B)(2), Idaho Code. (3-18-22)(    )

iii. ~~The claimant shall also list~~ Include the ~~Parcel Number or~~ Parcel Identification Number (PIN) as assigned by the county assessor’s office for the parcel where the water is used unless no ~~Parcel Number or~~ PIN is recorded for the property at the place of use ~~or the PIN is the same as the PIN shown in item four (4) for the point of diversion.~~ (3-18-22)(    )

jk. County of Place of Use. ~~The List the~~ county(ies) in which the place(s) of use is (are) located ~~shall be listed at item ten (10) of the form.~~ (3-18-22)(    )

kl. Authority to Assert Claim. ~~The claimant shall indicate at item eleven (11) of the form Indicate~~ whether the claimant is the owner of the place(s) of use. If ~~the claimant is~~ not the owner of the place(s) of use, ~~the claimant shall describe in the remarks section of the form the claimant’s authority to assert the claim.~~ Unless the claimant is a water delivery organization, ~~the claimant shall also state~~ include the name and address, ~~and phone number~~ of the owner(s) of the place of use ~~in item thirteen (13) (remarks section) of the form.~~ (3-18-22)(    )

lm. Other Water Rights. ~~The claimant shall d Describe at item twelve (12) of the form~~ any other water rights used at the same place and for the same purpose as the water right claimed. ~~If there are no other water rights used at the same place and for the same purpose as the right claimed, the claimant shall state “NA” or “none.” Include the existing water right number or claim number, if known.~~ (3-18-22)(    )

mn. Remarks. ~~At item thirteen (13) of the form, t~~ The claimant may submit any additional, relevant information not specifically requested. If the space provided on the claim form is not in sufficient, remarks ~~shall may~~ be set forth on a separate piece of paper and attached to the form. All separate attachments must be specifically referenced in the remarks section of the claim form. (3-18-22)(    )



**no.** Maps. ~~An~~ Include an aerial photograph, digital image, or USGS quadrangle map ~~shall be included~~ with the claim, unless the claim meets the definition of domestic use ~~and or~~ stock watering use as defined in Section 010, or unless the claim is submitted electronically through the ~~d~~Department's ~~online~~ claim filing website. Identify ~~The~~ point(s) of diversion, place(s) of use, and the water delivery system ~~shall be identified~~ on the aerial photograph, imagery, or USGS quadrangle map. (3-18-22)(    )

**op.** Basis of Claim. ~~The~~ Include the basis of the claim ~~shall be indicated at item fourteen (14) of the form. If a~~ Include any water right number ~~has been previously~~ assigned by the ~~d~~Department to the water right claimed, ~~the water right number shall also be indicated. If a water right number has not been assigned and the claimed~~ water right is based upon a decree, ~~the claimant shall~~ that does not have a previously assigned water right number, list the title and date of the decree, the case number, and the court that issued the decree. ~~If the basis of claim is a beneficial use (also known as the constitutional method of appropriation), the claimant shall provide a short description of events or history of the development of the water right.~~ (3-18-22)(    )

**pq.** Signature. Each claim must be signed by ~~the each~~ claimant, ~~at item fifteen (15) of the form, unless the claim is submitted electronically through the department's online claim filing website~~ submitted electronically by the claimant, or signed and submitted with evidence to show the signatory has authority to sign on behalf of the claimant. Each claimant, ~~through submission of a signed claim or through submission of a claim by means of the department's online claim filing website,~~ solemnly swears or affirms under penalty of perjury that the statements contained in the notice of claim are true and correct. (3-18-22)(    )

i. ~~For claims submitted through the department's online claim filing website, the form shall be submitted by a person listed as the claimant at item one (1) of the form unless the person submitting the form has authority to submit the form for the claimant or claimants. Claims~~ A claim by a corporations, municipalities y or other organizations ~~shall~~ must be submitted by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to submit the form. The signatory's title must be stated with the signature. (3-18-22)(    )

ii. ~~For claims that are not submitted by means of the internet, the form must be signed by each of the persons listed as claimants at item one (1) of the form unless the signatory has authority to sign for the claimant or claimants. Claims by corporations, municipalities or other organizations shall be signed by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to sign the form. The signatory's title shall be indicated with the signature.~~ (3-18-22)

**qr.** Notice of Appearance. ~~If An attorney submitting a claim on behalf of their client must include a notices to be sent by the director to the claimant are to be sent to the claimant's attorney, the claimant's attorney shall of appearance~~ list ing the attorney's name and address ~~and sign and date the form at item sixteen (16) of the form.~~ (3-18-22)(    )

**034. State Law Claim Form — Insufficient Claims, and Waivers.** (3-18-22)(    )

a. Claims A claim filed on the ~~state law~~ claim form that does not contain the information required by Subsection 060.023 ~~shall~~ may be rejected and returned along with any fees paid, unless otherwise provided by these rules. (3-18-22)(    )

b. The ~~d~~Director may waive the minimum information requirements of Subsection 060.023 and accept the claim for good cause shown. (3-18-22)(    )

**04. Further Information.** ~~This Rule~~ Section 060 sets forth minimum requirements for the filing of a claims. The ~~d~~Director may request further information in support of the assertions contained in a claim as part of the investigation of the water system and the claims pursuant to Section 42-1410, Idaho Code. (3-18-22)(    )

061. -- 064. (RESERVED)

**065. REJECTED AND RETURNED CLAIMS.**

**01. Rejected Claims.** ~~Rejected claims shall be returned~~ The Department may return a rejected claim.

or a copy of a generated claim record for claims filed electronically, to the claimant by ordinary mail at the most recent address shown by dDepartment records. ~~The rejected claim shall be accompanied by~~ with a notice of rejection that states generally the reason~~(s)~~ for rejection. (3-18-22)(    )

**02. Refiled Claims.** ~~Claims that have been rejected and returned to the e~~ Claimants may ~~be~~ refiled rejected claims with the appropriate fees and appropriate information at any time prior to the deadline for filing the original claim. Claims refiled after the deadline for filing the original claim will be subject to the late fee, unless the claim is refiled within thirty (30) days from the date of mailing the rejected claim by the dDepartment. (3-18-22)(    )

**066. -- 999. (RESERVED)**

## IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

### 37.03.02 – BENEFICIAL USE EXAMINATION RULES

#### DOCKET NO. 37-0302-2401 (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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 42-1805(8), Idaho Code.

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

This rule governs the examination requirements necessary to consider and determine the extent of application of water to beneficial use accomplished under a water right permit, establishes the procedures and requirements for qualification to become a certified water right examiner, and governs licensing examination fees which are used to offset costs incurred by IDWR in reviewing and determining the extent of beneficial use.

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 2, 2024 Idaho Administrative Bulletin, [Vol. 24-10, pages 317-329](#). Adoption of the pending rule simplifies and clarifies substantive language while reducing the overall length of the rule.

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

The rule governs the certification of water right examiners, the filing of proof of beneficial use, and beneficial use examination reports as well as the collection of fees for the same pursuant to Sections §§ 42-217, 42-217a, 42-218a, and 42-221K, Idaho Code.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Erik Boe at [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov), 208-287-4935.

DATED this 19th day of November, 2024.

Erik Boe,  
Water Compliance Bureau Chief, Rules Regulation Officer  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720 Boise, ID 83720-0098  
Phone: (208) 287-4800

**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 § 1805(8), 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 16, 2024.

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 Water Resources (IDWR) proposes a new chapter of the “Beneficial Use Examination Rules of the Idaho Department of Water Resources,” IDAPA 37.03.02, consistent with [Executive Order 2020-01](#). The new chapter reduces the length of the rule by 17% due to the removal of unnecessary or obsolete language and modifications that simplify and clarify language. Changes to the rule come through a combination of IDWR analysis and stakeholder negotiation and comments.

The development of the proposed rule text including public participation in meetings and comments can be viewed at: <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2024-2025/beneficial-use-exam-rules/>. On the same website, IDWR also developed and published rulemaking support documents, which provide IDWR’s recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

Citizens of the state of Idaho, water users, governmental agencies, and environmental groups may be interested in commenting on the proposed rule text. After consideration of public comments received in response to this Proposed Rule, IDWR will present the final rule text to the Idaho Legislature in 2025.

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

The rule governs the certification of water right examiners, the filing of proof of beneficial use, and beneficial use examination reports as well as the collection of fee for the same pursuant to Sections §§ 42-217, 42-217a, 42-218a, and 42-221K, Idaho Code.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state General Fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 April 3, 2024 Idaho [Administrative Bulletin, Vol. 24-4, pages 52-53](#).

**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 Erik Boe at [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov), or 208-287-4800. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the address below or by email to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov) and must be delivered on or before October 23, 2024.

DATED this 30th day of August, 2024.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 37-0302-2401

37.03.02 – BENEFICIAL USE EXAMINATION RULES

000. LEGAL AUTHORITY ~~(RULE 0)~~.

The ~~d~~Director of the Department of Water Resources adopts these rules under the authority provided by Sections ~~42-217a and~~ 42-1805(8), Idaho Code. (3-18-22)(    )

001. TITLE AND SCOPE ~~(RULE 1)~~.

Sections 42-217 and 42-221, Idaho Code, requires a license examination fee be submitted together with the written proof of beneficial use or that a field examination report prepared by a certified water right examiner be submitted together with the written proof of beneficial use. The statutes also provided that field examinations could be conducted by certified water right examiners appointed by the director. These rules set the procedures for appointing certified water right examiners and govern beneficial use examinations and the filing of beneficial use examination reports. (3-18-22)(    )

01. Examination Requirements. The ~~examination~~ requirements listed are intended ~~as a guide~~ to establish acceptable standards to determine the extent of application of water to beneficial use. The requirements are not intended to restrict the application of other sound examination principles by water right examiners. The ~~d~~Director will evaluate any deviation from the standards hereinafter stated as they pertain to the review of any given examination. ~~W~~ Certified water right examiners are encouraged to submit new ~~ideas~~ techniques which will advance the ~~art~~ practice of examination and provide for the public benefit. (3-18-22)(    )

02. Rules. These rules shall not be construed to deprive or limit the ~~d~~Director of the Department of Water Resources of any exercise of powers, duties, and jurisdiction conferred by law, nor to limit or restrict the amount or character of data, or information which may be required by the ~~d~~Director from any owner of a water right permit or authorized representative for the proper administration of the law. (3-18-22)(    )

002. -- 008. (RESERVED)

009. APPLICABILITY ~~(RULE 9)~~.

01. Proof of Beneficial Use. These rules apply to all permits for which proof of beneficial use is not yet due and has not been submitted to the ~~d~~Department. (3-18-22)(    )

02. Examination. These rules apply to all permits for which an examination has not been conducted. (3-18-22)

03. Re-Examination. These rules apply to all permits that have been examined but the license has not been issued due to a request for a re-examination by the permit holder. (3-18-22)

04. Examination Fee. The examination fee requirements of these rules do not apply to a permit for ground water use for single family domestic use, stockwatering, or any other ~~small~~ uses for which ~~the use does not exceed four one-hundredths (0.04) cfs or four (4) AF/year~~ a permit is not required by statute. The examination fee is required for multiple use permits which exceed four one-hundredths (0.04) cfs or four (4) ~~AF~~ af/year even though single family domestic use or stockwater use is included as one (1) of the uses on the permit. (3-18-22)(    )

010. DEFINITIONS ~~(RULE 10)~~.

~~Unless the context otherwise requires, the following definitions govern these rules.~~ (3-18-22)

**01. Acre-Foot (A~~F~~af).** A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to ~~forty three thousand, five hundred sixty (43,560) cubic feet~~ three hundred twenty-five thousand, eight hundred fifty (325,850) gallons. (3-18-22)(    )

**02. Acre Foot/Annum.** An annual volume of water that may be diverted under a given use or right. (3-18-22)

**03. Amendment.** A change ~~in~~ to the point of diversion, place, period, ~~or~~ nature of use, or other substantial change in the method of diversion or use of a permitted water right. (3-18-22)(    )

**03. Beneficial Use Examination (Examination).** An on-site inspection or other investigation to determine the extent of application of water to beneficial use and to determine compliance with terms and conditions of the water right permit. (    )

**04. Beneficial Use Examination Report (Examination Report).** The form provided by the Department or other acceptable document upon which the CWRE or Department employee records the data required by Section 035 gathered during the examination. (    )

**04.5. Capacity Measurement.** The maximum volume of water impounded in the case of ~~reservoirs a storage facility~~ or the maximum rate of diversion from the source as determined by actual measurement of the system during normal operation. (3-18-22)(    )

**05. Certified Water Right Examiner (CWRE).** ~~A professional engineer or professional geologist, qualified and registered in the state of Idaho who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the Director, and who has been appointed by the Director, Idaho Department of Water Resources as a certified water right examiner. A certified water right examiner is commonly termed a field examiner, water right examiner or examiner. A certified water right examiner is a~~ An impartial investigator ~~and reporter of the information required~~ appointed by the Director in accordance with Section 030 to determine the extent of beneficial use established in compliance with a permit. Department employees are authorized to conduct water right examinations at the discretion of the Director. (3-18-22)(    )

**06. Conveyance Works.** The ditches, pipes, conduits, or other means by which water is carried or moved from the point of diversion to the place of use. ~~Storage works, if any~~ Any storage structure, such as a dam, ~~can be is~~ considered part of the conveyance works. (3-18-22)(    )

**07. Cubic Foot Per Second (CFS~~c~~fs).** A rate of flow approximately equal to four hundred forty-eight and eight tenths (448.8) gallons per minute and also equals fifty (50) Idaho miner's inches. (3-18-22)(    )

**08. Department.** The Idaho Department of Water Resources. (3-18-22)

**09.10. Director.** The Director of the Idaho Department of Water Resources. Per Section 42-1701(3), Idaho Code, the Director may delegate authority to perform duties imposed upon the Director by law, including duties described herein, to a Department employee. (3-18-22)(    )

**11. Diversion Works.** The constructed barriers or devices on the source of water by which water can be diverted from the natural watercourse. (    )

**10. Duty of Water.** The quantity of water necessary for the successful growing of crops when economically ~~conducted~~ conveyed and applied to land without unnecessary loss ~~as will result in the successful growing of crops.~~ (3-18-22)(    )

**11. Examination or Field Examination.** ~~An on-site inspection or investigation to determine the extent of application of water to beneficial use and to determine compliance with terms and conditions of the water right permit.~~ (3-18-22)

**12. Field Report.** The form provided by the Department upon which the examiner records the data gathered and describes the extent of diversion of water and application to beneficial use. The report is fully termed

~~beneficial use field report and is also termed a field examination report.~~ (3-18-22)

~~13. **Headworks or Diversion Works.** The constructed barriers or devices on the source of water (surface water or ground water) by which water can be diverted from its natural course of flow and/or measured.~~ (3-18-22)

13. **Irrigation.** The application of water to cultivated land in sufficient quantity or manner to cause plant growth for a useful purpose. ( )

14. **License.** The certificate issued by the Director in accordance with Section 42-219, Idaho Code confirming the extent of diversion and beneficial use of the water ~~that has been~~ made in conformance with the permit conditions. (3-18-22)( )

15. **License Examination Fee.** The fee ~~required~~ prescribed in Section 42-221(K), Idaho Code, ~~and is also termed an examination fee.~~ (3-18-22)( )

16. **Legal Subdivision.** A tract of land described by ~~the~~ a government land survey and usually ~~is~~ described by government lot or quarter-quarter, section, township, and range. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the government ~~lot, quarter-quarter, section, township and range~~ land survey description. (3-18-22)( )

17. **Measuring Device.** A generally accepted structure or apparatus used to determine a rate of flow or volume of water. ~~Examples are weirs, meters, and flumes. Less typical devices may be accepted by the Director on a case-by-case basis.~~ (3-18-22)( )

18. **Nature of Use.** The ~~characteristic~~ purpose of use for which water is applied. ~~Examples are domestic, irrigation, mining, industrial, fish propagation, power generation, municipal, etc.~~ (3-18-22)( )

19. **Period of Use.** The ~~time~~ period during which water under a given water right can be beneficially used. (3-18-22)( )

20. **Permit Holder or Owner.** The person, association, or corporation to whom a permit has been issued or ~~assigned~~ conveyed as shown by the records of the Department. (3-18-22)( )

~~21. **Permit or Water Right Permit.** The water right document issued by the Director authorizing the diversion and use of unappropriated public water of the state or water held in trust by the state.~~ (3-18-22)

~~221. **Place of Use (P.U. or POU).** The location where ~~the~~ beneficial use of appropriated water is made of the diverted water.~~ (3-18-22)( )

~~232. **Point of Diversion (P.D. or POD).** The location on the public source of water from which water is diverted. ~~Examples are pump intake, headgate, well locations, and dam locations.~~~~ (3-18-22)( )

~~243. **Project Works.** A general term ~~which that~~ includes diversion works, conveyance works, and any devices ~~which may be~~ used to measure ~~the~~ water or to apply ~~the~~ water to the intended use. ~~Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works.~~ (3-18-22)( )~~

~~254. **Proof of Beneficial Use (Proof).** The submittal required in Section 42-217, Idaho Code. ~~This submittal is commonly termed proof.~~~~ (3-18-22)( )

~~265. **Source.** The name of the natural water body at the point of diversion. ~~Examples are Snake River, Smith Creek, ground water, spring, etc.~~~~ (3-18-22)( )

26. **Water Right Permit (Permit).** The water right document issued by the Director authorizing the diversion and use of unappropriated public water, reallocated trust water, or a low temperature geothermal resource. ( )

**011. ABBREVIATIONS.**

- 01.** ~~AF. Acre-Foot or Acre-Feet.~~ (3-18-22)
- 02.** ~~CFS. Cubic-Foot Per Second.~~ (3-18-22)
- 03.** ~~P.D. or POD. Point of Diversion.~~ (3-18-22)
- 04.** ~~P.U. or POU. Place of Use.~~ (3-18-22)
- 05.** ~~USGS. United States Geological Survey.~~ (3-18-22)

**0121. -- 024. (RESERVED)**

**025. AUTHORITY OF REPRESENTATIVE ~~(RULE 25).~~**

**01.** ~~Proof of Beneficial Use~~ **Evidence of Authority.** When the proof of beneficial use, ~~field examination~~ report, and drawings are filed by ~~the water right examiner~~ **a CWRE**, on behalf of an owner, written evidence of authority to represent the owner shall be filed with the proof, ~~field report, and drawings.~~ (3-18-22)(    )

**02.** **Responsibility.** It is the responsibility of the permit holder or authorized representative to submit proof ~~of beneficial use~~ and ~~provide for the timely~~ **ensure** submission of a completed ~~field examination~~ report **in acceptable form to the Director** by ~~before~~ the due date ~~in acceptable form to the director~~ by either paying the required examination fee to the ~~d~~Department or by employing a ~~certified water right examiner~~ **CWRE**. (3-18-22)(    )

**026. -- 029. (RESERVED)**

**030. QUALIFICATION, EXAMINATION AND APPOINTMENT OF CERTIFIED WATER RIGHT EXAMINER ~~(RULE 30).~~**

**01.** **Consideration.** Any professional engineer or geologist qualified and registered in the state of Idaho ~~who has with~~ the knowledge and experience necessary to satisfactorily complete ~~water right field examinations~~ **an examination** as determined by the Director shall be considered for appointment as a ~~water right examiner~~ **CWRE** upon application to the Director. The application shall be in the form prescribed by the Director and shall be accompanied by a non-refundable fee in the amount ~~provided by statute~~ **prescribed in Section 42-217a, Idaho Code.** (3-18-22)(    )

**02.** **Information.** The Director may require an applicant for appointment to the position of ~~water right examiner~~ **CWRE** to provide detailed **experience** information ~~of past experience, provide~~ **submit** references, and ~~to~~ satisfactorily complete a written or oral examination. (3-18-22)(    )

**03.** **Denial.** If the Director determines an applicant is not qualified, the application will be denied. If the Director determines an applicant is qualified, a certificate of appointment will be issued. (3-18-22)

**04.** **Expiration.** Every ~~water right examiner~~ **CWRE** certificate of appointment shall expire March 31 of each year unless renewed by application in the manner prescribed by the Director. A non-refundable fee in the amount ~~provided by statute~~ **prescribed in Section 42-217a, Idaho Code,** shall accompany an application for renewal. (3-18-22)(    )

**05.** **Refusal or Revocation.** An appointment or renewal may be refused or revoked by the Director at any time upon a showing of reasonable cause. A party aggrieved by an action of the Director may request an administrative hearing pursuant to Section 42-1701A (3), Idaho Code. (3-18-22)

**06.** **Reconsideration.** An application for appointment or renewal which has been refused or revoked by the Director may not be reconsidered for six (6) months. (3-18-22)



07. **Liability.** The state of Idaho shall not be liable for the compensation of any ~~water right examiner other than department employees.~~ CWRE. The permit holder shall be responsible for costs associated with proof submittal including examination and field examination report preparation. (3-18-22)(\_\_\_\_)

08. **Examinations.** The Director may authorize sufficiently knowledgeable and experienced ~~d~~Department employees to conduct ~~water right~~ examinations during the course and scope of their employment with the ~~d~~Department. Upon termination of employment with the ~~d~~Department, such examiners, unless ~~reappointed as a non department certified examiner~~ CWRE under provisions of these rules, are not authorized to conduct ~~field~~ examinations. ~~The fee provisions of these rules do not apply to department employees.~~ (3-18-22)(\_\_\_\_)

09. **Ingress or Egress Authority.** Appointment as a ~~water right examiner~~ CWRE does not grant ingress or egress authority ~~to non department examiners~~ and does not convey authority unless explicitly prescribed in these rules. (3-18-22)(\_\_\_\_)

10. **Reports.** The Director will not accept ~~a field an~~ examination report prepared by a ~~certified water right examiner~~ CWRE or a ~~d~~Department ~~employee examiner~~ who has any past or present interest, direct or indirect, in either the water right permit, the land, or any enterprise benefiting, or likely to benefit, from the water right. ~~Among those that~~ The Director will presume ~~to have~~ an actual or potential conflict of interest exists and ~~from whom he will not accept a field an~~ examination report are from the following: (3-18-22)(\_\_\_\_)

a. The person ~~or persons~~ owning the water right permit or the land or enterprise benefiting from the water right permit, members of their ~~families~~ family (spouse, parents, grandparents, lineal descendants including those that are adopted, lineal descendants of parents; and spouse of lineal descendants), and their employees. (3-18-22)(\_\_\_\_)

b. The person ~~or persons~~, who sold or installed the diversion project works ~~or distribution system~~. (3-18-22)(\_\_\_\_)

11. **Money Received.** All moneys received by the ~~d~~Department under the provisions of these rules shall be deposited in the water administration fund account created under Section 42-238a, Idaho Code. (3-18-22)(\_\_\_\_)

031. -- 034. (RESERVED)

035. EXAMINATION FOR BENEFICIAL USE ~~(RULE 35)~~.

01. **Field Examination Report.** An examination report must include the following information in sufficient detail for the Director to determine the extent of water use developed consistent with the permit: (3-18-22)(\_\_\_\_)

~~a.~~ All items of the field report must be completed and must provide sufficient information for the Director to determine the extent of the water right developed in order for the report to be acceptable to the Director. (3-18-22)

~~ba.~~ Permitted uses Each permitted use developed or partially developed, by the permit holder shall be described in detail. Permitted uses which were not developed by the permit holder Note any undeveloped permitted use shall be noted. Uses determined to exist which are and describe any established use that is not authorized by the permit being examined shall also be described in detail. (3-18-22)(\_\_\_\_)

~~eb.~~ The location for the POD described by legal subdivision, including A a concise description of the diversion works and a general description of the distribution conveyance works, ~~shall be given. This~~ The description must trace the water from the point of diversion POD to the place of use POU, and the return to a public water source, if any. Any reservoir, diversion dam, headgate, well, canal, flume, pump and other related structure shall be included. If water is stored, describe the timing and of storage, method of storage, release, redirection, and conveyance to the place of use POU ~~shall be described. The~~ Describe the make, capacity, serial number, and model number of all pumps, boosters or measuring devices associated with the point of diversion POD at the source of the water supply. ~~shall be described on the field examination report. Schematic~~ Include any schematic diagrams, photographs, digital

~~images, and maps sufficient to locate and describe the diversion, conveyance, and usage systems shall also be provided in the examination report.~~ (3-18-22)(    )

~~dc.~~ Any interconnection of ~~the water use being examined~~ with ~~an~~ other water rights or ~~with other~~ conveyance systems ~~shall be described on the field report~~. Interconnection includes, but is not limited to, sharing the same ~~point of diversion POD~~, distribution system, ~~place of use POU~~, or beneficial use. The examination report shall ~~also~~ include an evaluation ~~of how that demonstrates~~ the water use ~~being examined~~ is distinct from ~~prior other~~ existing water rights, ~~and provides is~~ an alternate source of water ~~for a beneficial use served by an existing water right, or is an~~ increment of beneficial use not authorized by ~~prior another~~ existing water rights. (3-18-22)(    )

~~ed.~~ If water is returned ~~directly~~ to a public water source after use, a ~~description of the conveyance system and the~~ legal description of the point where the water is returned, ~~and source to which discharge is made shall be provided. Examples of uses which generally have an effluent discharge include fish propagation and power facilities.~~ (3-18-22)(    )

~~fe.~~ The method of compliance with each ~~permit~~ condition of approval, ~~of a permit shall be shown on the field report by the examiner.~~ (3-18-22)(    )

~~gf.~~ The POU location for each use described by legal subdivision. (    )

~~i.~~ For irrigation, describe the irrigated acreage to the nearest whole acre in each forty (40) acre legal subdivision. For irrigation of less than ten (10) acres, describe the acreage to the nearest one-tenth (0.10) acre. (    )

~~ii.~~ For irrigation, submit a map depicting the boundaries of the irrigated areas and the project works location of the project works providing that conveys water to each area shall be platted on the maps submitted with the report and the Show the full or partial acreage in each legal subdivision of forty (40) acres or government lot ~~shall be shown.~~ (3-18-22)(    )

~~h.~~ Irrigated acreage shall be shown on the field report to the nearest whole acre in a legal subdivision except the acreage shall be shown to the nearest one-tenth (0.10) acre for permits covering land of less than ten (10) acres. (3-18-22)

~~ig.~~ Where a permit has been developed as separate distribution systems from more than one point of diversion, the separate areas irrigated from each point of diversion shall be shown on the maps submitted with the report and the legal subdivisions embracing the irrigated areas for each such respective point of diversion together with the total irrigated area shall be described. If more than one (1) POD is developed with separate diversion works and conveyance works, a description of each separate system. For irrigation, submit a map depicting the boundary of irrigated acres and the number of acres per legal subdivision for each separate system. (3-18-22)(    )

~~jl.~~ The annual diversion volume based on actual beneficial use during the development period for each permitted use. Describe the method of used for determining the annual diversion volume ~~shall be shown~~. The annual diversion volume shall account for seasonal variations in factors affecting water use, including seasonal variations in water availability. For irrigation, the volume shall be based on the field headgate requirements in the map titled Irrigation Field Headgate Requirement appended to these rules (see Appendix A located at the end of this chapter). Annual diversion volumes for heating and cooling uses may be adjusted to account for documented weather conditions during any single heating or cooling season from among the fifty (50) years immediately prior to submitting proof of beneficial use for the permit. For storage uses that include filling the reservoir and periodically replenishing evaporation and seepage losses throughout the year, the annual diversion volume shall be the sum of the amounts used for filling and for replenishment. Volumes may include reasonable conveyance losses actually incurred by the water user. The following water uses are exempt from the volume reporting requirement: (3-18-22)(    )

~~i.~~ For irrigation, the volume shall be based on the standard field headgate requirement as determined by the Director. The Department established irrigation standard field headgate requirement is available on the Department's website or from the Department upon request. (    )

~~ii. For heating, cooling, or commercial snowmaking, the volume may be adjusted to account for documented weather conditions during any single season from among the fifty (50) years immediately prior to submitting proof for the permit. ( )~~

~~iii. For storage use that includes refill, a use from storage, or both, the volume shall be the sum of the amount used for fill and in priority refill. If the volume exceeds the capacity of the storage facility, describe the amount, method, and timing of refill. ( )~~

~~i. The following water uses are exempt from the volume reporting requirement: ( )~~

~~i. Diversion to storage. (Volume should be reported for the storage use, such as irrigation storage.) (3-18-22)( )~~

~~ii. Domestic uses from ground water as defined in Section 42-111, Idaho Code. (3-18-22)( )~~

~~iii. In-stream watering of livestock. (3-18-22)~~

~~iv. Fire protection. (Volume is required for fire protection storage.) (3-18-22)~~

~~v. On stream, run of the river, nNon-consumptive on-stream power generation uses. (3-18-22)( )~~

~~vi. Minimum stream flows established pursuant to Chapter 15, Title 42, Idaho Code. (3-18-22)~~

~~vii. Municipal use by an incorporated city or other entity serving users throughout an incorporated city; a municipal provider as defined in Section 42-202B(5), Idaho Code that is serving users within a municipality's service area as defined in Section 42-202B(9), Idaho Code, except the following situations that do require a volume to be reported: (3-18-22)( )~~

~~(1) The permit or amended permit was approved with a volume limitation; or (3-18-22)~~

~~(2) The permit was not approved for municipal use but can be amended and licensed for a municipal use established during the authorized development period for the permit. (3-18-22)~~

~~viii. Irrigation using natural stream flow diverted from a stream or spring. (Volumes must be reported for irrigation uses from ponds, lakes and ground water and for irrigation storage and irrigation from storage.) (3-18-22)~~

~~ki. For fish propagation, the total number of holding/rearing ponds and the dimensions and volume of the ponds shall be shown on the field report for fish rearing or fish propagation use each pond. The annual volume shall be calculated based on the changes of water per hour. (3-18-22)( )~~

~~kk. Information shall be submitted concerning Description of the beneficial use that has been made of the water unless the purpose of use is for irrigation for all non-irrigation use. For example, for stockwater use, the number and type of stock watered shall be provided. Similar indications of the extent of beneficial use shall be provided for all other non-irrigation uses. (3-18-22)( )~~

~~ml. The period during each year that the water is used shall be described for each permitted use. (3-18-22)( )~~

~~nm. For permits having more than one (1) use, tThe diversion rate measured for each use, the annual diversion volume determined for each use (unless specifically exempted by rule or statute), and the place of use for each use shall be described. (3-18-22)( )~~

~~on. The amount (rate and/or volume) of water shall will be limited by the smaller of the permitted amount, the amount upon which the license examination fee is paid, the capacity of the diversion works or the amount beneficially used prior to submitting proof of beneficial use, including any statutory limitation of the duty of water. (3-18-22)( )~~

~~p.~~ Suggested amendments Amendment recommendations based on actual use shall be noted on the field report when if the place of use POU, point of diversion POD, period of use, or nature of use is different from the permit. Suggested amendments shall be based on actual use, not on potential use. (3-18-22)(    )

~~q.~~ An aerial photo marked to depict the point(s) of diversion and place(s) of use for each use must accompany each field report A map consistent with Subsection 045.03 unless waived by the Director. If existing photos are not available, the Director will accept a USGS Quadrangle map at the largest scale available. (3-18-22)(    )

~~r.~~ Unless required as a condition of permit approval, an on-site examination and direct measurement of the diversion rate are is not required for the following water uses if the extent of beneficial use, place of use, season of use, and point of diversion can be confirmed by documentary means such as well driller reports, property tax records, receipts and other records of the permit holder, or photographs, including aerial photographs imagery, or other records: (3-18-22)(    )

i. Irrigation up to five (5) acres. (3-18-22)

ii. Storage of up to fourteen point six (14.6) acre-feet af of water solely for stock watering purposes stockwater, aesthetic, recreation, or wildlife. (3-18-22)(    )

iii. Any uses other than irrigation or storage if the total combined diversion rate for all the uses established in connection with the permit does not exceed twenty-four one hundredths (0.24) cubic feet per second cfs. (3-18-22)(    )

**02. Field Examination Report Acceptability.** (3-18-22)(    )

a. All field examination reports shall be prepared by or under the supervision of certified water right examiners a CWRE or authorized dDepartment employees. Reports An examination report submitted by certified water right examiners a CWRE must be properly endorsed with an the CWRE's engineer or geologist seal and signature. Field reports An examination report received from certified water right examiners a CWRE will be accepted if the report includes all the information required to complete the report and provides including the information required by Rule Subsection 035.01. (3-18-22)(    )

b. Field reports An examination report not completed as required by these rules will be returned to the certified water right examiner for completion. If the date for submitting proof of beneficial use has passed, t The penalty provisions of Rule Section 055 shall will apply. (3-18-22)(    )

c. If the Director determines that a field an examination report prepared by a certified water right examiner CWRE is acceptable but that additional information is needed to clarify the field examination report, the Director will notify the examiner CWRE in writing of the information required. If the additional information is not submitted within thirty (30) days or within the time specified in the written notice, the Director will return the examination report and proof to the permit holder, priority date of the permit will be advanced one (1) day for each day the information submittal is late. Failure to submit the required information within one (1) year of the date of the dDepartment's request is cause for the Director to take action to cancel the permit apply the provisions of Section 055. (3-18-22)(    )

d. Field reports which indicate that An examination report that indicates a measuring device or lockable controlling works, required as a condition of approval of the permit, has is not been installed, are or is not acceptable and will be returned to the examiner unless the Director has formally waived the measuring device requirement or lockable controlling works requirement has been formally waived or modified by the Director. (3-18-22)(    )

**03. General.** (3-18-22)

a. For irrigation purposes, the duty of water shall not exceed five (5) acre-feet af of stored water for each acre of land to be irrigated or more than one (1) cubic foot per second cfs for each fifty (50) acres of land to be

irrigated unless it can be shown to the satisfaction of the Director that a greater amount is necessary. (3-18-22)(\_\_\_\_)

b. For irrigated acreage of five (5) acres or less, a diversion rate up to three one-hundredths (0.03) cfs per acre may be allowed on the license to be issued by the Director. (3-18-22)

c. Conveyance losses ~~of water~~ from the ~~point of diversion~~ POD to the ~~place of use~~ POU which are determined by actual measurement may be allowed ~~by the Director~~ if the diversion rate does not exceed the permitted rate and the loss is determined by the Director to be reasonable. (3-18-22)(\_\_\_\_)

d. The duty of water described in ~~Subsections Paragraph~~ 035.03.a. or 035.03.b. may be exceeded if the ~~department has authorized~~ permit or amended permit was approved with a greater diversion rate per acre ~~when the permit was issued~~ and good cause acceptable to the Director has been demonstrated. (3-18-22)(\_\_\_\_)

e. For irrigation, ~~systems which~~ the irrigated areas may be generally described if the project works cover twenty-five thousand (25,000) acres or more, are within irrigation districts organized and existing under the laws of the state of Idaho, ~~and for irrigation projects or were~~ developed under a permit held by an association, company, corporation, or the United States authorized to deliver surface water to more than five (5) water users under an annual charge or rental, ~~the field report does not need to describe the irrigated land by legal subdivision, but may describe generally the lands under the project works if and~~ the total irrigated acres ~~has been~~ are accurately determined and ~~is shown on in the field examination~~ report. The amount of water beneficially used under such projects must be shown ~~on in the field examination~~ report. (3-18-22)(\_\_\_\_)

036. -- 039. (RESERVED)

040. WATER MEASUREMENT (~~RULE 40~~).

01. ~~Measurement Terminology.~~ A rate of flow measurement shall be shown in units of cfs with three (3) significant figures and no more precision than hundredths. A volume measurement shall be shown in units of af with three (3) significant figures and no more precision than tenths. (3-18-22)(\_\_\_\_)

~~a. Rate of flow measurements shall be shown in units of cubic feet per second (cfs) with three (3) significant figures and no more precision than hundredths.~~ (3-18-22)

~~b. Volume measurements shall be shown in units of acre-feet (AF) with three (3) significant figures, and no more precision than tenths.~~ (3-18-22)

02. Diversion Rate of Diversion. The ~~rate of~~ diversion rate measurement ~~shall must~~ be conducted as close as reasonably possible to the source of supply and ~~shall must~~ be measured with the project works fully in place operating at normal capacity. ~~For example, if a sprinkler system is used for irrigation purposes, discharge from the pump must be measured with the sprinkler system connected.~~ (3-18-22)(\_\_\_\_)

03. Measurements. Water measurements may be made by vessel, weir, meter, rated flume, reservoir capacity table or other standard method of measurement acceptable to the Director. The field examination report ~~shall must~~ describe the method used in making the measurement, the date when made, the name of the person making the measurement, ~~the legal a~~ description of the location where the measurement was taken, and ~~shall~~ include sufficient information, including current meter notes, rating tables, ~~and/~~ or calibration information to enable the Director to check the quantity of water measured ~~in each case.~~ (3-18-22)(\_\_\_\_)

04. Unacceptable Measurements. Theoretical diversion rates or theoretical carrying capacities are not acceptable as a measure of the ~~rate of~~ diversion rate except as indicated in these rules and for ~~some~~ diversion systems works where the flow rate cannot be measured accurately due to the physical characteristics of the diversion and distribution system. (3-18-22)(\_\_\_\_)

05. Method. ~~R~~Flow rate of flow measurements shall be determined using equipment and methods capable of obtaining an accuracy of plus or minus ten percent (10%). (3-18-22)(\_\_\_\_)

041. -- 044. (RESERVED)

045. DRAWINGS, MAP, AND SCHEMATIC DIAGRAM (~~RULE 45~~).

The following provisions shall apply to the submittal of drawings, maps, photos and the schematic diagrams:

(3-18-22)

01. ~~Submittal of Drawings, Maps, Photos and Schematic Diagrams~~. Drawings, maps, photos and schematic diagrams used as an attachment to the ~~field examination~~ report shall ~~should~~ be on eight and one-half by eleven (8 1/2 x 11) inch paper whenever possible. (3-18-22)(    )

02. Attachment Sheets. ~~Attachment sheets shall d~~Depict information on one (1) side ~~only of attached documents~~. (3-18-22)(    )

03. ~~Scale of Map~~. ~~The map~~ An aerial image or United States Geological Survey Quadrangle map depicting the ~~point of diversion~~ POD and ~~place of use~~ POU shall ~~must~~ be of a reasonable scale ~~but not less than two (2) inches equals one (1) mile~~. The map shall ~~and~~ show the location of the ~~point(s) of diversion~~ POU and POD to the nearest forty (40) acre tract ~~or to a ten (10) acre tract for springs~~. The location of ~~ditches, canals, mainlines, distribution systems and the place of use by forty (40) acre tract must~~ any ditch, canal, mainline, or other conveyance work must be shown. (3-18-22)(    )

04. Drawings. Drawings ~~need to~~ must include a scale and generally depict the size and type of diversion works, measuring device, conveyance system, water application method, and the location of any measurements taken. (3-18-22)(    )

05. Photographs. Photographs of the diversion works, ~~the typical distribution~~ conveyance works, and other prominent features of the ~~system shall~~ project works must be ~~provided with the field~~ clearly labeled and attached to the examination report. (3-18-22)(    )

046. -- 049. (RESERVED)

050. LICENSE EXAMINATION FEE (~~RULE 50~~).

01. Examinations Conducted by Department Staff. (3-18-22)

a. The examination fee shall be payable to the Department ~~of Water Resources~~ unless the ~~field~~ examination is conducted by a ~~certified water right examiner~~ CWRE. (3-18-22)(    )

b. The ~~d~~Department will not conduct an examination for which the fee has not been paid to the ~~d~~Department unless exempted in ~~Rule~~ Subsection 009.04, except that for any prior examination, whether conducted by a ~~certified water right examiner~~ CWRE or by a ~~d~~Department ~~staff~~ employee, the department may conduct a supplemental examination on its own initiative at any time. No examination fee ~~shall will~~ be charged for a supplemental examination conducted by the ~~d~~Department on its own initiative. (3-18-22)(    )

c. ~~A license shall~~ The Department will not ~~be issued~~ issue a license for an amount of water in excess of the amount covered by the examination fee. Subsequent to the examination and prior to issuing a license ~~being issued~~, the Director will notify the permit holder that the licensed amount will be limited because an insufficient examination fee was paid. The permit holder will be allowed thirty (30) days after the notice is mailed to pay the additional examination fee, ~~along with a late payment penalty of twenty five dollars (\$25) or twenty percent (20%) of the amount of the additional required fee whichever is more~~. If payment is received within the thirty (30) day period, the Department will not reduce the rate or volume licensed ~~shall not be reduced by reason of~~ based on the examination fee. If payment is not received within the thirty (30) day period, the Department will limit the rate or volume licensed ~~shall be limited by~~ based on the original examination fee paid. For the purpose of determining advancement of priority for late fees ~~as provided in accordance with in~~ Section 42-217, Idaho Code, fees ~~shall will~~ not be considered as having been paid until paid in full, including any subsequent fee. (3-18-22)(    )

d. Excess examination fees are non-refundable. (3-18-22)

e. An examination fee equal to the initial examination fee paid to the ~~d~~Department shall be paid for a

re-examination made at the request ~~for~~ of the permit holder except upon a showing of error by the ~~e~~Department on the initial examination. (3-18-22)(    )

**02. Examinations Conducted by ~~Non-Department~~ Certified Water Right Examiners.** (3-18-22)(    )

**a.** The examination fee required by Section 42-217, Idaho Code is not applicable for an examination conducted by or under the supervision of ~~certified water right examiners~~ a CWRE. (3-18-22)(    )

**b.** A permit holder may not choose to have the examination conducted by the ~~e~~Department after selecting a ~~certified water right examiner~~ a CWRE. (3-18-22)(    )

**c.** After submitting proof of beneficial use and paying an examination fee to the ~~e~~Department, but before the ~~department's actual~~ examination, a permit holder may submit an examination report completed by a ~~certified water right examiner~~ CWRE. Because the examination fee is an essential component of timely proof submittal, the ~~e~~Department will not refund the examination fee. (3-18-22)(    )

**051. -- 054. (RESERVED)**

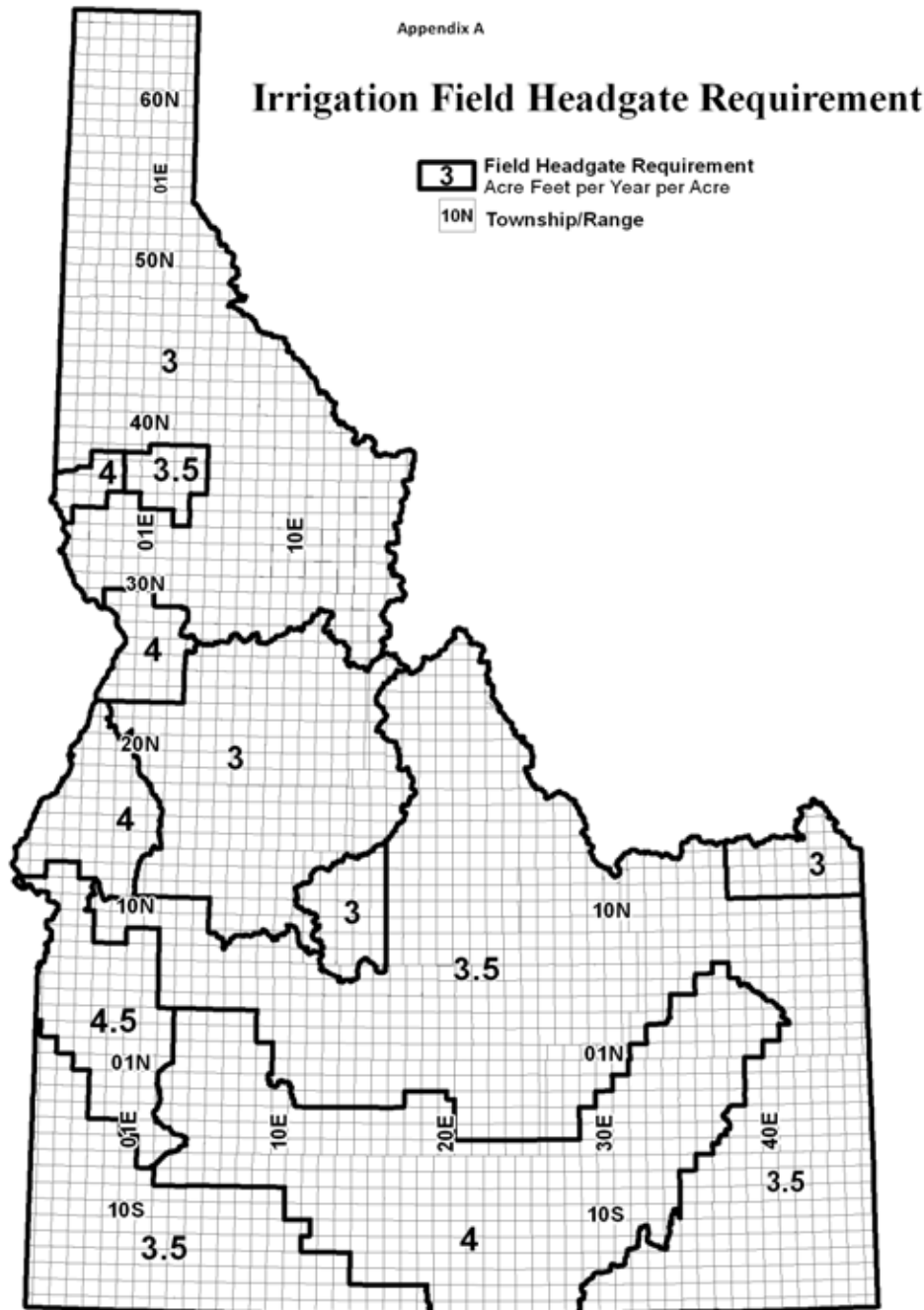
**055. PENALTY (~~RULE 55~~).**

**01. Permits for Which Proof Has Not Been Submitted.** The submittal required is the proof and the examination fee or the proof and ~~a completed field~~ an examination report completed by a CWRE. (3-18-22)(    )

**02. Failure to Submit.** Failure to submit either the license examination fee or an acceptable ~~field~~ examination report prepared by or under the supervision of a ~~certified water right examiner~~ CWRE by the proof due date is cause to lapse the permit pursuant to Section 42-218a, Idaho Code, unless the Department approved an extension of time pursuant to Section 42-204, Idaho Code, extending the proof of beneficial use due date ~~has been approved~~. (3-18-22)(    )

**056. -- 999. (RESERVED)**

**Appendix A**





**IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES**  
**37.03.03 – RULES AND MINIMUM STANDARDS FOR THE CONSTRUCTION**  
**AND USE OF INJECTION WELLS**

**DOCKET NO. 37-0303-2301 (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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 42-1805(8), Idaho Code.

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

The pending rule offers a clear set of procedures and minimum standards for the construction and use of waste disposal and injection wells that protect groundwater resources and promotes public health. Adoption of the pending rule removes unnecessary provisions and language, reorganizes the rules to improve ease of use, and modifies rules to improve clarity.

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 2, 2024 Idaho Administrative Bulletin, [Vol. 24-10, pages 330-365](#).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

As authorized in Section 42-3905(1) and 42-3905(2), Idaho Code, the fee(s) in this rulemaking consist of a one-hundred-dollar (\$100) fee for each deep injection well requiring a permit and a seventy-five-dollar (\$75) fee for each submittal of a notice of construction form for a new shallow injection well.

**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 Erik Boe at [Erik.Boe@idwr.idaho.gov](mailto:Erik.Boe@idwr.idaho.gov), (208) 287-4800.

DATED this 15th day of November, 2024.

Erik Boe  
Water Compliance Bureau Chief, Rules Regulation Officer  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720 Boise, ID 83720-0098  
Phone: (208) 287-4800

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 42-1805(8), 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, no later than October 16, 2024.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no 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 Water Resources (IDWR) initiated this rulemaking in compliance with [Executive Order No. 2020-01, Zero-Based Regulation \(ZBR\)](#) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five-year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at <https://adminrules.idaho.gov>. This rule chapter was scheduled for review in 2023 and continued into 2024.

With this Notice, IDWR proposes a new chapter of Rules and Minimum Standards for the Construction and Use of Injection Wells (Injection Well Rules). The new chapter is approximately 14.5% shorter than the existing Injection Well Rule chapter following internal agency analysis and external stakeholder negotiation, commentary, and editing. The proposed rule offers a clear set of procedures and minimum standards for the construction and use of waste disposal and injection wells that protect ground water resources and promote public health. Changes include (a) a reorganization of rules to improve ease of use, (b) removal of unnecessary provisions, and (c) the modification of rules to improve clarity such as the addition of Injectate Standards for the Quality of Recycled Water Derived from Municipal or Industrial Wastewater Source. IDWR believes the regulatory measures in the Rule are necessary to protect ground water resources against unreasonable contamination or deterioration of quality to preserve such resources for existing and future diversion to beneficial uses.

The development of the proposed rule text through five publicly-released preliminary rule draft iterations may be viewed at: <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2023-2024/uic-rules/>. On the same website, IDWR also developed and published rulemaking support documents, which provide IDWR's recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

After consideration of public comments received in response to this Proposed Rule, IDWR will present the final rule text during the 2025 Legislative Session.

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

IDAPA 37.03.03 establishes minimum standards and criteria for construction and abandonment of Class V deep and shallow injection wells in the state of Idaho and the injection of fluids to such wells. The rule also establishes the collection of fee(s) to file a notice of application set forth in Idaho Code §§ 42-3905(1) and 42-3905(2).

**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: 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 April 5, 2023 Idaho Administrative Bulletin, [Vol. 23-4, pages 68-69](#).

**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 Erik Boe at [Erik.Boe@idwr.idaho.gov](mailto:Erik.Boe@idwr.idaho.gov), (208) 287-4800.

Anyone may submit written comments regarding this proposed rulemaking by mail to the address below or by email to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov). All written comments must be directed to the undersigned and must be delivered on or before October 23, 2024.

DATED this 30th day of August, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 37-0303-2301**

**37.03.03 – RULES AND MINIMUM STANDARDS FOR THE CONSTRUCTION AND USE OF INJECTION WELLS**

**000. LEGAL AUTHORITY.**

~~This Chapter is adopted under the legal authority of Sections [42-3903A](#), and 42-3913, [42-3914](#), and [through](#) 42-3915, Idaho Code.~~ (3-18-22)(    )

**001. ~~TITLE AND SCOPE.~~**

~~**01. Title.** These rules are titled IDAPA 37.03.03 “Rules and Minimum Standards for the Construction and Use of Injection Wells.”~~ (3-18-22)

~~**02. Scope.** These rules ~~and establish~~ minimum standards ~~are and criteria~~ for construction and ~~use of abandonment of Class V deep and shallow~~ injection wells in the state of Idaho, ~~except Indian lands, and the injection of fluids to such wells~~. Upon promulgation, these rules apply to all injection wells (see Rule Subsection 035.01). The construction and use of Class I, III, IV, or VI injection wells are prohibited by these rules. ~~Class IV wells are also prohibited by federal law. These rules and minimum standards for construction and use of injection wells apply to all injection wells in the state of Idaho, except in Indian lands. All injection wells shall be permitted and constructed in accordance with the “Well Construction Standards Rules” found in IDAPA 37.03.09 which are authorized under Section 42-238, Idaho Code.~~ (3-18-22)(    )~~

~~**03. Rule Coverage.** In the event that a portion of these rules is less stringent than the minimum requirements for injection wells as established by Federal regulations ([40 CFR Parts 141, 142, 144, 145, and 146](#)), the correlative Federal requirement will be used to regulate the injection well.~~ (3-18-22)(    )

~~**04. Variance of Methods.** The Director may approve the use of a different testing method or technology if it is no less protective of human health and the environment, will not allow the migration of injected fluids into a USDW, meets the intent of the rule, and yields information or data consistent with the original method or technology required. A request for review by the Director must be submitted in writing by the applicant, permit holder, or operator and be included with all pertinent information necessary for the Director to evaluate the proposed testing method or technology.~~ (3-18-22)

**002. ~~INCORPORATION BY REFERENCE.~~**

~~01. Incorporated Document.~~ IDAPA 37.03.03 adopts and incorporates by reference those ground water quality standards found in Section 200 of IDAPA 58.01.11, "Ground Water Quality Rule," of the Department of Environmental Quality. (3-18-22)

~~02. Document Availability.~~ Copies of the incorporated document may be found at the central office of the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, 83720-0098 or online through the department or state websites. (3-18-22)

0032. -- 009. (RESERVED)

## 010. DEFINITIONS.

~~01. Abandonment.~~ See "permanent decommission." (3-18-22)

~~02. Abandoned Well.~~ See "permanent decommission". (3-18-22)

~~031. Agricultural Runoff Waste.~~ Excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tail water, as well as natural drainage resulting from precipitation, snowmelt, and floodwaters, ~~and is identical to the statutory phrase "irrigation waste water" found in Idaho Code 42-3902.~~ (3-18-22)( )

~~042. Applicant.~~ Any owner or operator submitting an application for permit to construct, modify or maintain an injection well to the Director ~~of the Department of Water Resources.~~ (3-18-22)( )

~~053. Application.~~ The standard Department forms for applying for a permit, including any additions, revisions or modifications to the forms. (3-18-22)

~~064. Aquifer.~~ Any formation that will yield water to a well in sufficient quantities to make production of water from the formation reasonable for a beneficial use, except when the water in such formation results solely from fluids deposited through an injection well Any geologic formation(s) that yields water to a well in sufficient quantities to make the production of water from the formation feasible for beneficial use. (3-18-22)( )

~~075. Beneficial Use.~~ One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, aquifer recharge and storage, stockwatering and fish propagation ~~uses, as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water.~~ (3-18-22)( )

~~086. Best Management Practice (BMP).~~ A practice or combination of practices that are more effective than other techniques at preventing or reducing contamination of ground water and surface water by injection well operation. (3-18-22)

~~07. Board.~~ The Idaho Water Resource Board. ( )

~~098. Casing.~~ A pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling fluid into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole The permanent conduit installed in a well to provide physical stabilization, prevent caving or collapse of the borehole, maintain the well opening and serve as a solid inner barrier to allow for the installation of an annular seal. (3-18-22)( )

~~10. Cementing.~~ The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing. (3-18-22)

~~1109. Cesspool.~~ An injection well that receives sanitary waste without benefit of a treatment system or treatment device such as a septic tank. Cesspools sometimes have open bottom and/or perforated sides An injection

well that receives untreated sanitary waste containing human excreta, and that sometimes has an open bottom and/or perforated sides. (3-18-22)( )

**120. Coliform Bacteria.** All of the aerobic and facultative anaerobic, gram-negative, non-spore forming, rod-shaped bacteria that either ferment lactose broth with gas formation within forty-eight (48) hours at thirty-five degrees Celsius (35C), or produce a dark colony with a metallic sheen within twenty-four (24) hours on an Endo-type medium containing lactose. (3-18-22)

**131. Confining Bed.** A body of impermeable or distinctly less permeable material stratigraphically adjacent to one (1) or more aquifers. (3-18-22)

**142. Construct.** To create a new injection well or to convert any structure into an injection well. (3-18-22)

**153. Contaminant.** Any physical, chemical, biological, or radiological substance or matter. (3-18-22)

**164. Contamination.** The introduction into the natural ground water of any physical, chemical, biological, or radioactive material that may: (3-18-22)

a. Cause a violation of Idaho Ground Water Quality Standards found in IDAPA 58.01.11 “Ground Water Quality Rule” or the federal drinking water quality standards, whichever is more stringent standards found in IDAPA 58.01.11, “Ground Water Quality Rule,” or IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems” Section 050, whichever is more stringent; or (3-18-22)( )

b. Adversely affect the health of the public; or (3-18-22)

c. Adversely affect a designated or beneficial use of the State’s ground water. Contamination includes the introduction of heated or cooled water into the subsurface that will alter the ground water temperature and render the local ground water less suitable for beneficial use. (3-18-22)

**175. Conventional Mine.** An open pit or underground excavation for the production of minerals. (3-18-22)

**186. Decommission (Abandon).** ~~To remove a well from operation such that injection through the well is not possible. See “permanent decommission” and “unauthorized decommission”.~~ Any well that has been permanently removed from service and filled or plugged in accordance with these rules so as to meet the intent of these rules. A properly decommissioned well will not: (3-18-22)( )

a. Produce or accept fluids; ( )

b. Serve as a conduit for the movement of contaminants inside or outside the well casing; or ( )

c. Allow the movement of surface or ground water into unsaturated zones, into another aquifer, or between aquifers. ( )

**197. DEQ.** The Idaho Department of Environmental Quality. (3-18-22)

**2018. Deep Injection Well.** An injection well ~~which~~ that is more than eighteen (18) feet in vertical depth below land surface. (3-18-22)( )

**219. Department.** The Idaho Department of Water Resources. (3-18-22)

**220. Director.** The Director of the Idaho Department of Water Resources. (3-18-22)

**231. Disposal Well.** A well used for the disposal of waste into a subsurface stratum. (3-18-22)

**242. Draft Permit.** A prepared document indicating the Director's tentative decision to issue or deny,

modify, revoke and reissue, terminate, or reissue a “permit.” Permit conditions, compliance schedules, and monitoring requirements are typically included in a “draft permit”. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of “draft permits.” A denial of a request for modification, revocation and reissuance, or termination is not a “draft permit.” (3-18-22)

~~253.~~ **Drilling Fluid.** ~~Any number of liquid or gaseous fluids and mixtures of fluids and solids (such as solid suspensions, mixtures and emulsions of liquids, gases, and solids) used in operations to drill boreholes into the earth.~~ A heavy suspension used in drilling an “injection well,” introduced down the drill pipe and through the drill bit. (3-18-22)(    )

~~26.~~ **Drywell.** ~~An injection well completed above the water table so that its bottom and sides are typically dry except when receiving fluids.~~ (3-18-22)

~~274.~~ **Endangerment.** ~~Injection of any fluid which exceeds Idaho ground water quality standards, or federal drinking water quality standards, whichever is more stringent, that may result in the presence of any contaminant in ground water which supplies or can reasonably be expected to supply any public or non-public water system, and if the presence of such contaminant may result in such a system not complying with any ground water quality standard or may otherwise adversely affect the health of persons or result in a violation of ground water quality standards that would adversely affect beneficial uses.~~ An act that threatens contamination of a USDW aquifer which supplies or can reasonably be expected to supply drinking water to any domestic or public water system where the contamination may result in not complying with Ground Water Quality Standards or otherwise adversely affect human health. (3-18-22)(    )

~~285.~~ **Exempted Aquifer.** An “aquifer” or its portion that meets the criteria in the definition of USDW but which has been recategorized as “other” according to the procedures in IDAPA 58.01.11 “Ground Water Quality Rule”. (3-18-22)

~~29.~~ **Existing Injection Well.** ~~An “injection well” other than a “new injection well.”~~ (3-18-22)

~~3026.~~ **Experimental Technology.** A technology which has not been proven feasible under the conditions in which it is being tested. (3-18-22)

~~31.~~ **Facility or Activity.** ~~Any UIC “injection well,” or another facility or activity that is subject to regulation under the UIC program.~~ (3-18-22)

~~32.~~ **Fault.** ~~A surface or zone of rock fracture along which there has been displacement.~~ (3-18-22)

~~33.~~ **Flow Rate.** ~~The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.~~ (3-18-22)

~~3427.~~ **Fluid.** Any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gaseous or any other form or state. (3-18-22)

~~35.~~ **Formation.** ~~A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth’s surface or traceable in the subsurface.~~ (3-18-22)

~~36.~~ **Generator.** ~~Any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR part 261.~~ (3-18-22)

~~3728.~~ **Ground Water.** ~~Any water that occurs beneath the surface of the earth in a saturated formation of rock or soil.~~ Water below the land surface in a zone of saturation. (3-18-22)(    )

~~3829.~~ **Ground Water Quality Standards.** Standards found in IDAPA 58.01.11, “Ground Water Quality Rule,” Section 200 or IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems” Section 050, whichever is more stringent. (3-18-22)(    )

~~390.~~ **Hazardous Waste.** Any substance defined by IDAPA 58.01.05, “Rules and Standards for Hazardous Waste.” (3-18-22)

~~4031.~~ **Indian Lands.** “Indian Country” as defined in 18 U.S.C. 1151. That section defines Indian Country as: (3-18-22)

a. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (3-18-22)

b. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3-18-22)

c. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (3-18-22)

~~4432.~~ **Individual Subsurface Sewage Disposal System.** For the purpose of these rules, any standard or alternative disposal system ~~which that~~ injects sanitary waste from single family ~~residential domestic~~ septic systems, or non-~~residential domestic~~ septic systems which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than twenty (20) people a day. (3-18-22)(    )

~~33.~~ **Industrial Wastewater.** All wastewater, treated or untreated, that is not defined as municipal wastewater. (    )

~~4234.~~ **Improved Sinkhole.** A naturally occurring ~~karst depression or other natural~~ crevice found in ~~volcanic terrain and other~~ geologic settings ~~which that~~ have been modified by man for the purpose of directing and emplacing fluids into the subsurface. (3-18-22)(    )

~~4335.~~ **Injection.** The subsurface emplacement of fluids through an injection well. (3-18-22)

~~4436.~~ **Injection Well.** Any feature that is operated to allow injection ~~which that~~ also meets at least one (1) of the following criteria: (3-18-22)(    )

a. A bored, or driven shaft whose depth is greater than the largest surface dimension; (3-18-22)

b. A dug hole whose depth is greater than the largest surface dimension; (3-18-22)

c. An improved sinkhole; or (3-18-22)

d. A subsurface fluid distribution system. (3-18-22)

~~45.~~ **Injection Zone.** ~~A geological “formation”, or those sections of a formation receiving fluids through an “injection well.”~~ (3-18-22)

~~46.~~ **IWRB.** Idaho Water Resource Board. (3-18-22)

~~4737.~~ **Large Capacity Cesspools.** Any cesspool used by a multiple dwelling, community, or regional system for the disposal of sanitary wastes (for example: a duplex or an apartment building) or any cesspool used by or intended to be used by twenty (20) or more people per day (for example: a rest stop, campground, restaurant or church). (3-18-22)(    )

~~48.~~ **Large Capacity Septic System.** ~~Class V wells that are used to inject sanitary waste through a septic tank and do not meet the criteria of an individual subsurface sewage disposal system.~~ (3-18-22)

~~49.~~ **Maintain.** ~~To allow, either expressly or by implication, an injection well to exist in such condition as to accept or be able to accept fluids. Unless a well has been permanently decommissioned pursuant to the criteria contained in these rules it is considered to be capable of accepting fluids.~~ (3-18-22)

**5038.** **Modify.** To alter the construction of an injection well, but does not include cleaning or redrilling operations which neither deepen nor increase the dimensions of the well. (3-18-22)

**5139.** **Motor Vehicle Waste Disposal Wells.** Injection wells that receive or have received fluids from vehicle repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (transmission and muffler repair shop), or any facility that does any vehicular repair work. (3-18-22)

**40.** **Municipal Wastewater.** ~~Wastewater containing sewage and associated solids, whether treated or untreated. Municipal wastewater, also known as domestic wastewater, may contain industrial wastewater.~~ ( )

**52.** **New Injection Well.** ~~An "injection well" which began to be used for injection after a UIC program for the State applicable to the well is approved or prescribed.~~ (3-18-22)

**5341.** **Open-Loop Heat Pump Return Wells.** Injection wells that receive surface water or ground water that has been passed through a heat exchange system for cooling or heating purposes. (3-18-22)

**54.** **Operate.** ~~To allow fluids to enter an injection well by action or inaction of the operator.~~ (3-18-22)

**55.** **Operator.** ~~Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity that operates or proposes to operate any injection well.~~ (3-18-22)

**5642.** **Owner or Operator.** ~~Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity owning land on which any injection well exists or is proposed to be constructed.~~ The owner or operator of any facility or activity subject to regulation under these Rules. (3-18-22)( )

**57.** **Paacker.** ~~A device lowered into a well to produce a fluid-tight seal.~~ (3-18-22)

**58.** **Perched Aquifer.** ~~Ground water separated from an underlying main body of ground water by an unsaturated zone.~~ (3-18-22)

**59.** **Permanent Decommission.** ~~The discontinuance of use of an injection well in a method approved by the Director such that the injection well no longer has the capacity to inject fluids and the upward or downward migration of fluid is prevented. This also includes the disposal and proper management of any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the injection well in accordance with all applicable Federal, State, and local regulations and requirements.~~ (3-18-22)

**6043.** **Permit.** An authorization, license, or equivalent control document issued by the Department. (3-18-22)

**61.** **Person.** ~~Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law.~~ (3-18-22)

**6244.** **Point of Beneficial Use.** The top or surface of a USDW, directly below an injection well, where water is available for a beneficial use. (3-18-22)

**6345.** **Point of Diversion for Beneficial Use.** ~~A location such as~~ Location of a producing well or spring where ground water is taken under control and diverted for a beneficial use. (3-18-22)( )

**6446.** **Point of Injection.** The last accessible sampling point prior to waste being released into the subsurface environment through an injection well. For example, the point of injection for a Class V septic system might be the distribution box. For a drywell, it is likely to be the well bore itself. (3-18-22)



- ~~65. **Pressure.** The total load or force per unit area acting on a surface. (3-18-22)~~
- ~~6647. **Radioactive Material.** Any material, solid, liquid or gas ~~which that~~ emits radiation spontaneously. Radioactive geologic materials occurring in their natural state are not included. (3-18-22)(    )~~
- ~~6748. **Radioactive Waste.** Any fluid ~~which that~~ contains radioactive material in concentrations ~~which that~~ exceed those established for discharges to water in an unrestricted area by 10 CFR 20.1302.(b)(2)(i) and Table 2 in Appendix B of 10 CFR 20, listed in 10 CFR part 20, appendix B, table II, column 2. (3-18-22)(    )~~
- ~~68. **RCRA.** The Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976. (3-18-22)~~
- ~~69. **Remediation Project.** Use of an injection well for the removal, treatment or isolation of a contaminant from ground water through actions or the removal or treatment of a contaminant in ground water as approved by the Director. (3-18-22)~~
- ~~70. **Residential (Domestic) Activities.** Human activities that generate liquid or solid waste in any public, private, industrial, commercial, municipal, or other facility. (3-18-22)~~
- ~~71. **Sanitary Waste.** Any fluid generated through residential (domestic) activities, such as food preparation, cleaning and personal hygiene. This term does not include industrial, municipal, commercial, or other non-residential process fluids. (3-18-22)~~
- ~~72. **Schedule of Compliance.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the standards. (3-18-22)~~
- ~~49. **Recycled Water.** Water treated by a wastewater treatment system and used according to these rules and IDAPA 58.01.17, "Recycled Water Rules." (    )~~
- ~~7350. **Septic System.** An injection well that is used to inject sanitary waste below the surface. A septic system is typically comprised of a septic tank and subsurface fluid distribution system or disposal system. (3-18-22)~~
- ~~7451. **Shallow Injection Well.** An injection well ~~which that~~ is less than or equal to eighteen (18) feet in vertical depth below land surface. (3-18-22)(    )~~
- ~~75. **Site.** The land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity. (3-18-22)~~
- ~~76. **State.** The state of Idaho. (3-18-22)~~
- ~~77. **Stratum (plural strata).** A single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material. (3-18-22)~~
- ~~7852. **Subsidence.** The lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (~~Hydrocompaction~~); oxidation of organic matter in soils; or added load on the land surface. (3-18-22)(    )~~
- ~~7953. **Subsurface Fluid Distribution System.** An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. (3-18-22)~~
- ~~8054. **UIC.** The Underground Injection Control program under Part C of the Safe Drinking Water Act, including an "approved State program." (3-18-22)~~
- ~~81. **Unauthorized Decommission.** The decommissioning of any injection well that has not received the approval of the Department prior to decommissioning, or was not decommissioned in a method approved by the Director. These wells may have to be properly decommissioned when discovered by the Director to ensure that the~~

~~well prevents commingling of aquifers or is no longer capable of injection. (3-18-22)~~

~~82. Underground Injection. See “injection.” (3-18-22)~~

~~8355. Underground Source of Drinking Water (USDW). An aquifer or its portion that: (3-18-22)( )~~

~~a. Which: Either supplies any public water system, contains a sufficient quantity of ground water to supply a public water system, or currently supplies drinking water for human consumption; and (3-18-22)( )~~

~~i. Supplies any public water system; or (3-18-22)~~

~~ii. Contains a sufficient quantity of ground water to supply a public water system; or (3-18-22)~~

~~(1) Currently supplies drinking water for human consumption; or (3-18-22)~~

~~(2)b. Contains fewer than ten thousand (10,000) mg/l total dissolved solids; and is not an exempted aquifer. (3-18-22)( )~~

~~b. Which is not an exempted aquifer. (3-18-22)~~

~~8456. Unreasonable Contamination. Endangerment of a USDW or the health of persons or other beneficial uses by injection. See “endangerment.” (3-18-22)~~

~~57. 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. ( )~~

~~85. Water Quality Standards. Refers to those standards found in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards” and IDAPA 58.01.11, “Ground Water Quality Rule.” (3-18-22)~~

~~86. Well. For the purposes of these rules, “well” means “injection well.” (3-18-22)~~

~~011.—014. (RESERVED)~~

~~015. VIOLATIONS, FORMAL NOTIFICATION AND ENFORCEMENT.~~

~~01. Violations. It shall be a violation of these rules for any owner or operator to: (3-18-22)~~

~~a. Fail to comply with a permit or authorization, or terms or conditions thereof; (3-18-22)~~

~~b. Fail to comply with applicable standards for water quality; (3-18-22)~~

~~c. Fail to comply with any permit application notification or filing requirement; (3-18-22)~~

~~d. Knowingly make any false statement, representation or certification in any application, report, document or record filed pursuant to these rules, or terms and conditions of an issued permit; (3-18-22)~~

~~e. Falsify, tamper with or knowingly render inaccurate any monitoring device or method required to be maintained or utilized by the terms and conditions of an issued permit; (3-18-22)~~

~~f. Fail to respond to any formal notification of a violation when a response is required; or (3-18-22)~~

~~g. Decommission a well in an unauthorized manner. (3-18-22)~~

~~02. **Additional.** It shall be a violation of these rules for any person to construct, operate, maintain, convert, plug, decommission or conduct any other activity in a manner which results or may result in the unauthorized injection of a hazardous waste or of a radioactive waste by an injection well. (3-18-22)~~

~~03. **Formal Notification.** Formal notification of violations may be communicated to the owner or operator with a letter, a notice of violation, a compliance or enforcement order or other appropriate means. (3-18-22)~~

~~04. **Enforcement.** Violation of any of the provisions of the Injection Well Act (Chapter 39, Title 42, Idaho Code) or of any rule, regulation, standard or criteria pertaining to the Injection Well Act may result in the Director initiating an enforcement action as provided under Chapters 17 and 39, Title 42, Idaho Code. (3-18-22)~~

~~016.—019. (RESERVED)~~

~~020. **HEARING BEFORE THE WATER RESOURCE BOARD.**~~

~~01. **General.** All hearings before the IWRB will be conducted in accordance with Chapter 52, Title 67, Idaho Code, at a place convenient to the owner and/or operator. For purposes of such hearings, the IWRB or its designated hearing officer shall have power to administer oaths, examine witnesses, and issue in the name of the said Board subpoenas requiring testimony of witnesses and the production of evidence relevant to any matter in the hearing. Judicial review of the final determination by the IWRB may be secured by the owner by filing a petition for review as prescribed by Chapter 52, Title 67, Idaho Code, in the District Court of the county where the injection well is situated or proposed to be located. The petition for review shall be served upon the Chairman of the IWRB and upon the Attorney General. (3-18-22)~~

~~02. **Hearings on Conditional Permits, Disapproved Applications, or Petitions for Exemption.** Any owner or operator aggrieved by the approval or disapproval of an application, or by conditions imposed upon a permit, or any person aggrieved by the Director's decision on a petition for exemption under Section 025 of these rules, shall be afforded an opportunity for a hearing before the IWRB or its designated hearing officer. Written notice of such grievance shall be transmitted to the Director within thirty (30) days after receipt of notice of such approval, disapproval or conditional approval. Such hearing shall be held for the purpose of determining whether the permit shall be issued, whether the conditions imposed in a permit are reasonable, whether a change in circumstances warrants a change in conditions imposed in a valid permit, or whether the Director's decision on a petition for exemption should not be changed. (3-18-22)~~

~~03. **Hearings on Permit Cancellations.** When the Director has reason to believe the operation of an injection well for which a permit has been issued is interfering with the right of the public to withdraw water for beneficial uses, or is causing unreasonable contamination of a drinking or other ground water source as provided for in Title 42, Chapter 39, Idaho Code, the permit may be canceled by the Director. Prior to the cancellation of such permit there shall be a hearing before the IWRB for the purpose of determining whether or not the permit should be canceled. At such hearing, the Director shall be the complaining party. At least thirty (30) days prior to the hearing, a notice, which shall be in accordance with Chapter 52, Title 67, Idaho Code, shall be sent by certified mail to the owner or operator whose permit is proposed to be canceled. The Board shall affirm, modify, or reject the Director's decision and make its decision in the form of an order to the Director. (3-18-22)~~

~~02411. -- 03419. (RESERVED)~~

~~03520. **CLASSIFICATION OF INJECTION WELLS.**~~

~~01. **Classification of Injection Wells.** For the purposes of these rules, injection wells are classified as follows: (3-18-22)~~

~~a. Class I: (3-18-22)~~

~~i. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water. (3-18-22)~~

- ii. Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water. (3-18-22)
- iii. Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within one-quarter (1/4) mile of the well bore. (3-18-22)
- b.** Class II. Wells used to inject fluids: (3-18-22)
  - i. Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants, dehydration stations, or compressor stations which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection. (3-18-22)
  - ii. For enhanced recovery of oil or natural gas; and (3-18-22)
  - iii. For storage of hydrocarbons which are liquid at standard temperature and pressure. (3-18-22)
- c.** Class III. Wells used to inject fluids for extraction of minerals including: (3-18-22)
  - i. Mining of sulfur by the Frasch process; (3-18-22)
  - ii. In situ production of uranium or other metals; this category includes only in-situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V. (3-18-22)
  - iii. Solution mining of salts or potash. (3-18-22)
- d.** Class IV: (3-18-22)
  - i. Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into or above a formation which within one-quarter (1/4) mile of the well contains an underground source of drinking water. (3-18-22)(    )
  - ~~ii. Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one-quarter (1/4) mile of the well contains an underground source of drinking water. (3-18-22)~~
  - iii. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under Subparagraphs ~~035.01.a.i~~ 020.01.a.i or ~~035.01.d.i~~ 020.01.d.i or ~~035.01.d.ii~~ of this rule (e.g., wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to Section 025 of these rules). (3-18-22)(    )
- e.** Class V -- All injection wells not included in Classes I, II, III, IV, or VI. (3-18-22)
- f.** Class VI. (3-18-22)
  - i. Wells that are not experimental in nature that are used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW; or (3-18-22)
  - ii. Wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to requirements at 40 CFR Section 146.95; or (3-18-22)
  - iii. Wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal

extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to Section 025 of these rules. (3-18-22)

- 02. Subclassification.** Class V wells are subclassified as follows: (3-18-22)
  - a. 5A5-Electric Power Generation. (3-18-22)
  - b. 5A6-Geothermal Heat. (3-18-22)
  - c. 5A7-Heat Pump Return. (3-18-22)
  - d. 5A8-Aquaculture Return Flow. (3-18-22)
  - e. 5A19-Cooling Water Return. (3-18-22)
  - f. 5B22-Saline Water Intrusion Barrier. (3-18-22)
  - g. 5D2-Storm Runoff. (3-18-22)
  - h. 5D3-Improved Sinkholes. (3-18-22)
  - i. 5D4-Industrial Storm Runoff. (3-18-22)
  - j. 5F1-Agricultural Runoff Waste<sup>1</sup>. (~~3-18-22~~)( )
  - k. 5G30-Special Drainage Water. (3-18-22)
  - l. 5N24<sup>1</sup>-Radioactive Waste Disposal<sup>1</sup>. (~~3-18-22~~)( )
  - m. 5R21-Aquifer Recharge. (3-18-22)
  - n. 5S23-Subsidence Control. (3-18-22)
  - o. 5W9-Untreated Sewage<sup>1</sup>. (~~3-18-22~~)( )
  - p. 5W10- Large Capacity Cesspools<sup>2</sup>. (~~3-18-22~~)( )
  - q. 5W11-Septic Systems (General). (3-18-22)
  - r. 5W12-Waste Water Treatment Plant Effluent. (3-18-22)
  - s. 5W20-Industrial Process Water. (3-18-22)
  - t. 5W31-Septic Systems (Well Disposal). (3-18-22)
  - u. 5W32-Septic System (Drainfield). (3-18-22)
  - v. 5X13-Mine Tailings Backfill. (3-18-22)
  - w. 5X14-Solution Mining. (3-18-22)
  - x. 5X15-In-Situ Fossil Fuel Recovery. (3-18-22)
  - y. 5X16-Spent Brine Return Flow. (3-18-22)
  - z. 5X25-Experimental Technology. (3-18-22)

- aa. 5X26-Aquifer Remediation. (3-18-22)
- bb. 5X27-Other Wells. (3-18-22)
- cc. 5X28<sup>1</sup>-Motor Vehicle Waste Disposal Wells<sup>2</sup>. (3-18-22)( )
- dd. 5X29-Abandoned Water Wells. (3-18-22)

<sup>1</sup>The construction of wells in this subclass is currently prohibited in Idaho.

<sup>2</sup>The construction and operation of wells in these subclasses is currently ~~illegal~~ prohibited in Idaho.

~~036~~21. -- ~~039~~24. (RESERVED)

~~040~~25. AUTHORIZATIONS, PROHIBITIONS AND EXEMPTIONS.

**01. Authorizations.** Construction and use of Class V deep injection wells may be authorized by permit as approved by the Director in accordance with these rules and the "Well Construction Standards Rules" found in IDAPA 37.03.09 which are authorized under Section 42-238, Idaho Code. (3-18-22)( )

**02. Prohibitions.** (3-18-22)

a. These rules prohibit the permitting, construction, or use of any Class I, III, IV, or VI injection well. (3-18-22)( )

b. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows or causes the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary or secondary drinking water regulation, under IDAPA 58.01.11, "Ground Water Quality Rule," Section 200 or may otherwise adversely affect the health of persons. The applicant for a permit ~~shall have~~ has the burden of showing that ~~the requirements of Paragraph 040.02.e. are met~~ injection of any fluid does not present an imminent and substantial endangerment to the health of persons. (3-18-22)( )

c. Notwithstanding any other provision of this section, the Director may take emergency action upon receipt of information that a contaminant which is present in or likely to enter a public water system or ~~underground source of drinking~~ a USDW water may present an imminent and substantial endangerment to the health of persons. (3-18-22)( )

d. ~~Construction of~~ Large capacity cesspools, motor vehicle waste disposal wells, radioactive waste disposal wells, and untreated sewage disposal wells is ~~is~~ are prohibited. ~~Construction and use of other Class V shallow injection wells are authorized by these rules without permit provided that:~~ All prohibited wells described in this section must be decommissioned in accordance with these rules. (3-18-22)( )

~~i. Required inventory information is submitted to the Director pursuant to Subsection 070.01 of this rule.~~ (3-18-22)

~~ii. Use of the shallow injection well shall not result in unreasonable contamination of a USDW or cause a violation of surface or ground water quality standards that would affect a beneficial use.~~ (3-18-22)

e. Construction of new Subclass 5F1 - Agricultural Runoff Waste injection wells is prohibited. ( )

~~ef. Class IV injection wells used to inject~~ These rules do not prohibit the injection of contaminated ground water ~~that has been treated and is being re-injected~~ into the same formation from which it was drawn ~~are not prohibited by these rules~~ provided the contaminated ground water is treated and if such injection is approved by EPA, or Idaho, pursuant to provisions for cleanup of releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ~~(CERCLA)~~, 42 U.S.C. 9601-9657, or pursuant to requirements and provisions under the Resource Conservation and Recovery Act ~~(RCRA)~~, 42 U.S.C. 6901 through 6987. (3-18-22)( )

~~f.~~ All large capacity cesspools must be properly decommissioned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a large capacity cesspool is found to be a threat to the ground water resources as described in Paragraph 070.01.e. (3-18-22)

~~g.~~ All motor vehicle waste disposal wells must be properly decommissioned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a motor vehicle waste disposal well is found to be a threat to the ground water resources as described in Paragraph 070.01.e. (3-18-22)

~~h.~~ The Construction, operation or maintenance of any non-experimental Class V geologic sequestration well is prohibited. (3-18-22)

~~i.~~ Owners or operators of shallow injection wells are prohibited from injecting into the well upon failure to submit inventory information in a timely manner pursuant to Paragraph 070.01.a. of these rules. (3-18-22)

**03. Exemptions.** (3-18-22)

~~a.~~ Construction and use of Class V shallow injection wells are authorized by these rules without permit provided that: ( )

~~i.~~ Required inventory information is submitted to the Director in accordance with these rules. ( )

~~ii.~~ Use of a shallow injection well shall not result in injection of recycled water derived from municipal or industrial sources. ( )

~~iii.~~ Use of a shallow injection well shall not result in unreasonable contamination of a USDW or cause a violation of Ground Water Quality Standards that would affect a beneficial use. ( )

~~ab.~~ The UIC inventory and fee requirements of these rules do not apply to individual subsurface sewage disposal system wells. These systems are, however, are exempt from these Rules but subject to the permitting and fee requirements of IDAPA 58.01.03 "Individual/Subsurface Sewage Disposal Rules," Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code. (3-18-22)( )

~~b.~~ State or local government entities are exempt from the permit requirements of these rules for wells associated with highway and street construction and maintenance projects, but shall submit shallow injection well inventory information for said wells and shall comply with all other requirements of these rules. (3-18-22)

~~ec.~~ Mine tailings backfill (5X13) wells are authorized by rule as part of mining operations. They are therefore exempt from the ground water quality standards and permitting requirements of these rules provided that their use is limited to the injection of mine tailings only. The use of any 5X13 well(s) shall not result in ground water quality standards at points of diversion for beneficial use being exceeded that exceed or otherwise affect a beneficial use. Should ground water quality standards be exceeded or beneficial uses be affected, the Director may order the wells to be put under the permit requirements of these rules, or the wells may be required to be remediated or closed. As a condition of their use, the Director may require the construction and sampling of monitoring wells by the owner/operator. 5X13 wells are subject to the inventory requirements of Subsection 070.01 described in these Rules. (3-18-22)( )

**04. Variance of Methods.** The Director may approve the use of a different testing method or technology if it is no less protective of human health and the environment, will not allow the migration of injected fluids into a USDW, meets the intent of the rule, and yields information or data consistent with the original method or technology required. A request for review by the Director must be submitted in writing by the applicant, permit holder, or operator and be included with all pertinent information necessary for the Director to evaluate the proposed testing method or technology. ( )

~~04126.~~ -- ~~06929.~~ (RESERVED)

**030. CLASS V SHALLOW INJECTION WELL REQUIREMENTS.**

**01. Authorization.** All owners or operators of shallow Class V injection wells, including improved sinkholes used for aquifer recharge, that dispose of nonhazardous and nonradioactive wastes are required to submit a Shallow Injection Well Inventory Form to the Department no later than thirty (30) days prior to commencement of construction for each new well or no later than thirty (30) days after the discovery of an existing injection well that has not previously been inventoried with the Department. ( )

**02. Inventory Fees.** For shallow injection wells constructed after July 1, 1997, the Shallow Injection Well Inventory Form shall be accompanied by a fee as specified in Section 42-3905(2), Idaho Code, payable to the Department of Water Resources. State or local government entities are exempt from filing fees for shallow injection wells associated with highway and street construction and maintenance. ( )

**03. Decommission.** Owners or operators of shallow injection wells must notify the Director not less than thirty (30) days prior to permanent decommissioning of any shallow injection well. Decommissioning must be accomplished in accordance with procedures approved by the Director. ( )

**04. Inter-Agency Cooperation.** The Department may seek the assistance of other state or local government agencies or entities, including cities, counties, health districts, and highway districts to inventory, monitor, and inspect shallow injection wells. Assistance is to be negotiated through a memorandum of understanding between the Department and the state or local entity subject to the Director's approval. ( )

**05. Cessation of Injection Well Activity.** The Director will require immediate cessation of any Class V shallow injection well activity that causes or may cause unreasonable contamination of a USDW or a violation of ground water quality standards. ( )

**031. -- 034. (RESERVED)**

**035. CLASS V INJECTION WELL REQUIREMENTS.**

**01. Permit Required for Class V Deep Injection Wells.** No person shall construct, modify, maintain, or use a Class V deep injection well unless a permit has been issued by the Director. An application for permit must be completed and filed with the director on a form approved by the department accompanied by a filing fee as specified in Section 42-3905(1), Idaho Code. Applications proposing to inject recycled water derived from municipal or industrial wastewater sources must also adhere to all applicable IDEQ rules and permitting requirements. ( )

**02. Permit Requirements for Class V Shallow Injection Wells.** No person shall construct, modify, maintain, or use a Class V shallow injection well to inject recycled water derived from municipal or industrial wastewater sources unless a permit has been issued by the Director. An application for permit must be completed and filed with the director on a form approved by the department accompanied by a filing fee as specified in Section 42-3905(1), Idaho Code. An application for permit may be required for the construction, modification, or use of all other shallow injection wells if the Director determines that the injection could result in unreasonable contamination of a USDW or cause a violation of Ground Water Quality Standards that would affect a beneficial use. Applications proposing to inject recycled water derived from municipal or industrial wastewater sources must also adhere to all applicable IDEQ rules and permitting requirements. ( )

**03. Application Information Required.** An applicant must submit the following information to the Director for all injection wells to be authorized by permit, unless the Director determines that it is not needed in whole or in part, and issues a written waiver to the applicant: ( )

- a.** Facility name and location; ( )
- b.** Name, address and phone number of the well operator; ( )
- c.** Class, subclass and function of the injection well (see Section 020); ( )
- d.** Latitude/longitude or legal description of the well location to the nearest ten (10) acre tract; ( )



- e. Ownership of the well; ( )
- f. County in which the injection well is located; ( )
- g. Construction information for the well; ( )
- h. Describe the quality, composition, and quantity of the injected fluids; ( )
- i. Status of the well; ( )
- j. A topographic map or aerial photograph extending one (1) mile beyond property boundaries, depicting: ( )
  - i. Location of the injection well and associated facilities described in the application; ( )
  - ii. Locations of other injection wells; ( )
  - iii. Approximate drainage area, if applicable; ( )
  - iv. Hazardous waste facilities, if applicable; ( )
  - v. All wells used to withdraw drinking water; ( )
  - vi. All other wells, springs and surface waters. ( )
- k. Distance and direction to nearest domestic well; ( )
- l. Depth to ground water; and ( )
- m. Alternative methods of waste disposal. ( )

**04. Additional Information.** The Director may require an applicant to submit additional information to demonstrate that the proposed or existing injection well will not endanger a USDW. The Director will not complete the processing of an application for which additional information has been requested until such time as the additional information is supplied. The Director may return any incomplete application and will not process such application until such time as the application is received in complete form. Additional information may include, but is not limited to the following items: ( )

- well:
- a. A topographic map showing locations of the following within a two (2) mile radius of the injection well: ( )
    - i. All wells producing water; ( )
    - ii. All exploratory and test wells; ( )
    - iii. All other injection wells; ( )
    - iv. Surface waters (including man-made impoundments, canals and ditches); ( )
    - v. Mines and quarries; ( )
    - vi. Residences; ( )
    - vii. Roads; ( )
    - viii. Bedrock outcrops; and ( )

- ix. Faults and fractures. ( )
- b. Additional maps or aerial photographs of suitable scale to accurately depict the following: ( )
  - i. Location and surface elevation of the injection well described in this permit; ( )
  - ii. Location and identification of all facilities within the property boundaries; ( )
  - iii. Locations of all wells penetrating the proposed injection zone or within a one-quarter (1/4) mile radius of the injection well; ( )
  - iv. Maps and cross sections depicting all underground sources of drinking water to include vertical and lateral limits within a one-quarter (1/4) mile radius of the injection well, their position relative to the injection zone and the direction of water movement: local geologic structures; regional geologic setting. ( )
- c. A comprehensive report of the following information: ( )
  - i. A tabulation of all wells penetrating the proposed injection zone, listing owner, lease holder and operator; well identification (permit) number; size, weight, depth and cementing data for all strings of casing; ( )
  - ii. Description of the quality, composition, and quantity of fluids to be injected; ( )
  - iii. Description of geologic, hydrogeologic, and geochemical conditions present in the injection zone and confining beds; methods for determining geochemical conditions must be approved by the Director; ( )
  - iv. Engineering data for the proposed injection well; ( )
  - v. Proposed operating pressure; ( )
  - vi. A detailed evaluation of alternative disposal practices; ( )
  - vii. A plan of corrective action for wells penetrating the zone of injection, but not properly sealed or decommissioned; and ( )
  - viii. Contingency plans to cope with all shut-ins or well failures to prevent the migration of unacceptable fluids into underground sources of drinking waters. ( )
- d. Name, address and phone number of person(s) or firm(s) supplying the technical information and/ or designing the injection well; ( )
- e. Proof that the applicant is financially responsible, through a performance bond or other appropriate means, to decommission the injection well in a manner approved by the Director. ( )

**036. -- 049. (RESERVED)**

**050. CLASS V INJECTION WELL REQUIREMENTS – APPLICATION PROCESSING.**

**01. Draft Permit Preparation.** After all application information is received and evaluated, the Director will prepare a draft permit or denial, which will include the application for permit, permit conditions or reasons for denial, and any compliance schedules or monitoring requirements. In preparing the draft permit or denial, the Director must consider the following factors: ( )

- a. The availability of economic and practical alternative means of disposal; ( )
- b. The application of best management practices to the facilities and/or area draining into the well;

- ( )
- c. The availability of economical, practical means of treating or otherwise reducing the amount of contaminants in the injected fluids; ( )
- d. The quality of the receiving ground water, its category, its present and future beneficial uses or interconnected surface water; ( )
- e. The location of the injection well with respect to drinking water supply wells; and ( )
- f. Compliance with Ground Water Quality Standards. ( )
- g. The benefit to the State of Idaho. ( )
- 02. Public Notice.** The Director will provide public notice of any draft permit to construct, maintain or modify a Class V injection well by means of a legal notice in a newspaper of general circulation in the county in which the well is located. The Director may give additional notice as necessary to adequately inform the interested public and governmental agencies. There shall be a period of at least thirty (30) days following publication for any interested person to submit written comments. ( )
- 03. Review by the Directors of Other State Agencies.** The Directors of other state agencies, as determined by the Director, shall be given an opportunity to review and comment on draft permits. Comments must be submitted to the Director within thirty (30) days of public notice. ( )
- 04. Open-Loop Heat Pump Return Wells (Subclass 5A7).** The Director may waive the draft permit and recurring permit cycle requirements of these rules for any application proposing use of an open-loop heat pump return well greater than eighteen (18) feet in depth solely for disposal of heat pump water at a rate not exceeding fifty (50) gpm. ( )
- 05. Fact-Finding Hearings.** At the Director's discretion, or upon motion of any interested individual, the Director may elect to hold a fact-finding hearing. Said hearing will be held at a location in the geographical area of the injection well. Notice of said hearing will be provided at least thirty (30) days in advance of the hearing by regular mail to the applicant and to the person or persons requesting the hearing. Public notice of the fact-finding hearing shall be made in a newspaper of general circulation in the county where the injection well is located. ( )
- 06. Draft Permit Final Review and Consideration.** The Director will consider the following factors when taking final action on draft permits: ( )
- a. The potential for unreasonable contamination or deterioration of ground water quality; ( )
- b. The likelihood and consequences of the injection well system failing; ( )
- c. The long-term effects of such disposal or storage; ( )
- d. The recommendations and related justifications of the Directors of other state agencies and the public; ( )
- e. The potential for violation of Ground Water Quality Standards at the point of injection or the point of beneficial use; and ( )
- f. Compliance with the Idaho Ground Water Quality Plan. ( )
- 07. Issuance of Permit.** After considering the draft permit for construction, modification, or maintenance, and all matters relating thereto, the Director shall issue a permit if the standards and criteria be met and USDW's will not be unreasonably affected. If the Director finds that the standards and criteria cannot be met or that ground water sources cannot be protected from unreasonable contamination at all times, the draft permit may be denied or a permit may be issued with conditions designed to protect ground water sources. The Director's decision

will be in writing and a copy mailed by regular mail to the applicant and to all persons who commented in writing on the draft permit or appeared at a hearing held to consider the draft permit. ( )

**08. Permit Conditions and Requirements.** Any permit issued by the Director shall contain conditions to protect ground water sources from waste, contamination, or deterioration of Ground Water Quality Standards. In addition to specific construction, operation, maintenance, monitoring, and reporting requirements that the Director finds necessary, each permit shall be subject to the standard conditions and requirements of this rule. ( )

**09. Permit Decision Notice.** The Director's decision shall be in writing and a copy shall be mailed by regular mail to the applicant and all persons who commented in writing on the draft permit or appeared at a hearing held to consider the draft permit. ( )

**051. (RESERVED)**

**052. CLASS V INJECTION WELL CONSTRUCTION AND OPERATION REQUIREMENTS.**

**01. Construction Requirements.** The following requirements apply to all Class V injection wells authorized by permit unless noted differently: ( )

**a.** Deep injection wells shall be constructed by an Idaho licensed well driller to conform with the current Well Construction Standards (IDAPA 37.03.09), the conditions of the well construction permit, and the conditions of the injection well permit issued pursuant to these rules, except that a driller's license is not required for the construction of a driven mine shaft or a dug hole. ( )

**b.** Well drillers or other persons involved with the construction of any injection well shall not commence construction of the injection well until a certified copy of the approved injection well permit is obtained from the Director. ( )

**c.** Injection wells shall be constructed in accordance with the conditions of the permit. Rule-authorized shallow injection wells shall be constructed as shown or described in the inventory submittal. ( )

**d.** Injection wells shall be constructed to prevent the entrance of any fluids other than specified in the permit. ( )

**e.** Deep injection wells shall be constructed to prevent waste of artesian fluids or movement of fluids from one aquifer into another. ( )

**f.** When construction or modification of an injection well has been completed, the owner or operator shall inform the Director of completion on a form provided by the Department. ( )

**g.** A sampling port shall be provided for deep injection well systems if the system is enclosed. ( )

**h.** All new injection wells constructed into alluvial formations shall have a minimum ten (10) foot separation from the bottom of the well and seasonal high ground water. ( )

**02. Operational Conditions and Requirements.** The following requirements apply to all Class V injection wells authorized by permit unless noted differently: ( )

**a.** The injection well shall not be used until the construction, operation and maintenance requirements of the permit are met and provisions are made for any required inspection, monitoring and record keeping. ( )

**b.** For both permitted injection wells and rule-authorized shallow injection wells, injection of any contaminant at concentrations exceeding the standards described in Section 055 of this rule into a present or future drinking or other ground water source that may cause a health hazard or adversely affect a designated and protected use is prohibited. ( )

**c.** The injection well owner or operator shall develop approved procedures to detect constructional or

operational failure in a timely fashion and shall have contingency plans to cope with the well failure. ( )

**d.** Authorized representatives of the Department shall be allowed to enter, inspect and/or sample: ( )

**i.** The injection well and related facilities; ( )

**ii.** The owner or operator's records of the injection operation; ( )

**iii.** Monitoring instrumentation associated with the injection operation; and ( )

**iv.** The injected fluids. ( )

**e.** The injection facilities shall be operated and maintained to achieve compliance with all terms and conditions of this permit. ( )

**f.** Proper operation and maintenance includes effective performance, adequate funding, operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures; ( )

**g.** If compliance cannot be met, the owner shall take corrective action as determined by the Director or terminate injection. ( )

**h.** The owner shall mitigate any adverse effects resulting from non-compliance with the terms and conditions of the permit. ( )

**i.** If the injection well was constructed prior to issuance of the permit, the well shall be brought into compliance with the terms and conditions of the permit in accordance with the schedule of compliance issued by the Director. ( )

**j.** The permit shall not convey any property rights. ( )

**03.** Conditions of Permanent Decommissioning. The following requirements apply to all Class V injection wells authorized by permit and rule authorized shallow injection wells, unless noted differently: ( )

**a.** Notice of intent to permanently decommission a well shall be submitted to the Director not less than thirty (30) days prior to commencement of the decommissioning activity. ( )

**b.** The method of permanent decommissioning for all injection wells shall be approved by the Director prior to commencement of the decommissioning activity. ( )

**c.** Notice of completion of permanent decommission shall be submitted to the Director within thirty (30) days of completion. ( )

**d.** All deep injection wells that are to be permanently decommissioned shall be plugged in accordance with current Well Construction Standards. ( )

**e.** Following permanent cessation of use, or where an injection well is not completed, the Director shall be notified. Decommissioning procedures or other action, as prescribed by the Director, shall be conducted. ( )

**f.** The injection well owner or operator has the responsibility to ensure that the injection operation is decommissioned as prescribed. ( )

**04.** Duration of Approved Permits. The length of time that a permit may be in effect for Class V wells authorized by permit shall not exceed ten (10) years. ( )

**053 - 054. (RESERVED)**

**055. STANDARDS FOR THE QUALITY OF FLUIDS INJECTED INTO CLASS V WELLS.**

**01. General.** Injected fluids shall meet Ground Water Quality Standards for physical, biological, chemical, and radiological contaminants, and if ground water produced from adjacent points of diversion for beneficial use meets the Ground Water Quality Standards as defined in these rules, then that aquifer will be protected from unreasonable contamination and will be preserved for diversion to beneficial uses. The Director may, however, when it is deemed necessary, require specific injection wells to be constructed and operated in compliance with additional requirements, such as best management practices (BMPs), so as to protect the ground water resource from deterioration and preserve it for diversion to beneficial use. ( )

**02. Waivers.** A waiver of one (1) or more standards may be granted by the Director if it can be demonstrated by the applicant that the contaminants in injected fluid will not endanger a ground water source for any present or future beneficial use. ( )

**03. Chemical and Radiological Contaminants in Injected Fluids.** The following limits shall not be exceeded in injected fluids from a well when such fluids will or are likely to reach a USDW: ( )

**a.** The concentration of each chemical contaminant in the injected fluids shall not exceed the concentration of each applicable contaminant in the receiving water or the ground water quality standard, whichever is less stringent; and ( )

**b.** Radiological levels of the injected fluids shall not exceed those levels specified by the Ground Water Quality Standards. ( )

**04. Biological contaminants.** The following restrictions apply to injected fluids with biological contaminants included in the ground water quality standard. ( )

**a.** Contamination of ground water produced at any point of diversion for beneficial use by injected fluids containing coliform bacteria in concentrations greater than the current ground water quality standard is prohibited; ( )

**b.** Construction of shallow and deep injection wells, as specified by the Director, that are likely to exceed the current ground water quality standard for coliform bacteria at the point of diversion for beneficial use is prohibited; and ( )

**c.** The Director may require the use of best management practices (BMPs) to reduce the potential concentration of coliform bacteria in the injected fluids; ( )

**d.** The Director may require the use of water treatment technology, including ozonation and chlorination devices, sand filters, and settling pond specifications to reduce the potential concentration of coliform bacteria in injected fluids; ( )

**e.** Ground water produced from points of diversion for beneficial use within the distances identified in Table 1, that inject fluids containing coliform bacteria in concentrations greater than the current ground water quality standard shall be subject to monitoring for bacteria by the owner/operator of the injection well. A waiver of the monitoring requirement may be granted by the Director when it can be demonstrated that injection will not result in unreasonable contamination of ground water produced from these adjacent points; ( )

**f.** At no time shall any untreated fluid containing fecal contaminants of human origin be injected into any Class V injection well authorized under these rules. Subsurface fluid distribution systems that apply or distribute recycled water to the root-zone and regulated by IDEQ are exempt from this rule. ( )

**05. Physical, Visual, and Olfactory Characteristics.** The following restrictions apply to physical, visual, and olfactory characteristics of injected fluids. The temperature, color, odor, conductivity, turbidity, pH, or other characteristics of the injected fluid may not result in the receiving ground water becoming less suitable for

diversion to beneficial uses, as determined by the Director. ( )

**06. Injectate Standards for the Quality of Recycled Water Derived from a Municipal or Industrial Wastewater Source.** ( )

**a.** Shallow Injection Wells. The concentration of contaminants in recycled water derived from municipal or industrial wastewater sources must prevent contamination and comply with established Ground Water Quality Standards and all other applicable IDEQ rules and permitting requirements prior to injecting into a shallow injection well. ( )

**b.** Deep Injection Wells. The concentration of contaminants in recycled water derived from municipal or industrial wastewater sources must prevent contamination and comply with established Ground Water Quality Standards and all other applicable IDEQ rules and permitting requirements prior to injecting into a deep injection well. Additionally, injected fluids must not result in the endangerment of a USDW. Recycled water quality requirements shall be determined by the Department in coordination with IDEQ during the permitting process. The background concentration of any applicable contaminant shall be determined by a statistical analysis consisting of a type and method approved by the Department. ( )

**07. Standards for the Quality of Fluids Injected to Subclass 5A7 Wells (Open-Loop Heat Pump Return).** ( )

**a.** The quality of fluids injected to a Subclass 5A7 injection well shall comply with Ground Water Quality Standards or shall be equal to the quality of the ground water source passed through a heat exchange system, whichever is less stringent. ( )

**b.** If the quality of the ground water source does not meet Ground Water Quality Standards, the injected fluids must be returned to the formation from which they were drawn. ( )

**c.** The temperature of the injected fluids shall not impair the designated beneficial uses of the receiving ground water. ( )

**056. (RESERVED)**

**057. CRITERIA FOR LOCATION AND USE OF CLASS V WELLS REQUIRING PERMITS.**

**01. General:** A Class V injection well requiring a permit may be required to be located a minimum distance, as determined from Table 1, from any point of diversion for beneficial use that could be harmed by bacterial contaminants. The minimum distance shown in Table 1 is also referred to as the zone of influence. This requirement is not applicable to wells injecting fluids of quality that meet adopted Ground Water Quality Standards. In addition, the Director may require a Class V injection well to be located a distance from a point of diversion for beneficial use to minimize or prevent ground water contamination resulting from unauthorized or accidental injection, as determined by the Director. ( )

**a.** The location requirements in Table 1 may be waived when the applicant can demonstrate that any springs or wells within the minimum distance as determined from Table 1 will not be contaminated by the applicant's injection well. The applicant may be required to monitor production wells or springs within the minimum distance as determined in Table 1 to demonstrate that they are not being contaminated. ( )

<b>Determined Radii of the Zone of Influence Based on Maximum Average Weekly Injection Rates (cfs) of Class V Injection Wells *</b>	
<b>Injection (cfs)</b>	<b>Radius (ft)</b>
0 - 0.20	800
0.21 - 0.60	1,400

<b>Determined Radii of the Zone of Influence Based on Maximum Average Weekly Injection Rates (cfs) of Class V Injection Wells *</b>	
<b>Injection (cfs)</b>	<b>Radius (ft)</b>
0.61 - 1.00	1,800
1.01 - 2.00	2,500
2.01 - 3.00	3,000
3.01 - 4.00	3,500
4.01 - 5.00	4,000
Greater than 5.00	As determined by the Director

\* Injection rates shall be based on the average volume of fluids injected into the well during the week of greatest injection in an average water year. ( )

**b.** The Director may reduce separation distance requirements if the quality of injected fluids are improved through additional treatment or BMPs. ( )

**c.** Heat pump return wells (sub-class 5A7) are exempt from the separation distance requirement of this section. ( )

**058. MONITORING, RECORD KEEPING, AND REPORTING REQUIREMENTS.**

The Director may require monitoring, record keeping, and reporting by any owner or operator if the Director finds that the well may adversely affect a ground water source or is injecting a contaminant that could have an unacceptable effect upon the quality of the ground waters of the state. ( )

**01. Monitoring.** The Director may require, as conditions of the permit, the installation, use, and maintenance of monitoring equipment or methods including, but not limited to, the following: ( )

**a.** Monitoring of injection pressures and pressures in the annular space between casings; ( )

**b.** Flow rate and volumes; ( )

**c.** Analysis of quality of the injected fluids for contaminants that are subject to limitation or reduction under the conditions of the permit; or other contaminants which the Director has reason to believe are in the injected fluids; ( )

**d.** Monitoring of ground water through special monitoring wells or existing points of diversion for beneficial use in the zone of influence as determined by the Director; ( )

**e.** A demonstration of the integrity of the casing, tubing, or seal of the injection well. ( )

**f.** The frequency of required monitoring shall be specified in the permit when issued, except that the Director at any time may, in writing, require additional monitoring and reporting. ( )

**g.** All monitoring tests and analysis required by permit conditions shall be performed in a state certified laboratory or other laboratory approved by the Director. ( )

**h.** Any field instrumentation used to gather data, when specified as a condition of the permit, shall be required by the Director to be tested and maintained in such a manner as to ensure the accuracy of the data. ( )

**i.** All samples and measurements taken for the purpose of monitoring shall be representative of the



monitoring activity and fluids injected. ( )

**02. Record Keeping.** The permittee shall maintain records of all monitoring activities to include: ( )

**a.** Date, time, and exact place of sampling; ( )

**b.** Person or firm performing analysis; ( )

**c.** Date of analysis, analytical methods used and results of analysis; ( )

**d.** Calibration and maintenance of all monitoring instruments; and ( )

**e.** All original tapes, strip charts or other data from continuous or automated monitoring instruments. ( )

**03. Reporting.** Monitoring results obtained by the permittee pursuant to the monitoring requirements prescribed by the Director shall be reported to the Director as required by permit conditions. ( )

**a.** The Director shall be notified in writing by the permittee within five (5) days after the discovery of a violation of the terms and conditions of the permit. If the injection activity endangers human health or a public or domestic water supply, use of the injection well shall be immediately discontinued, and the owner or operator shall immediately notify the Director. Notification shall contain the following information: ( )

**i.** A description of the violation and its cause; ( )

**ii.** The duration of the violation, including dates and times; if not corrected or use of the well discontinued, the anticipated time of correction; and ( )

**iii.** Steps being taken to reduce, eliminate and prevent recurrence of the injection. ( )

**b.** Where the owner or operator becomes aware of failure to submit any relevant facts in any permit application or report to the Director, that person shall promptly submit such facts or information. ( )

**c.** The permittee shall furnish the Director, within a time specified by the Director, any information which the Director may request to determine compliance with the permit. ( )

**d.** The Director shall be notified in writing of planned physical alterations or additions to any facility related to the permitted injection well operation. ( )

**e.** Additional information to be reported to the Director in writing shall include: ( )

**i.** Transfer of ownership; ( )

**ii.** Any change in operational status not previously reported; ( )

**iii.** Any anticipated noncompliance; and ( )

**iv.** Reports of progress toward meeting the requirements of any compliance schedule attached or assigned to an approved permit. ( )

**f.** All notices and reports submitted to the Director shall be signed and certified. ( )

**05. Permit Assignable.** Permits may be assigned to a new owner or operator of an injection well if the new owner or operator, within thirty (30) days of the change, notifies the Director of such change. The new owner or operator shall be responsible for complying with the terms and conditions of the permit from the time that such change takes place. ( )

**058. -- 059. (RESERVED)**

**060. HEARING BEFORE THE IDAHO WATER RESOURCE BOARD.**

**01. Hearings on Conditional Permits, Disapproved Applications, or Petitions for Exemption.** Any owner or operator aggrieved by the approval or disapproval of an application, or by conditions imposed upon a permit, or any person aggrieved by the Director's decision on a petition for exemption under these rules, shall be afforded an opportunity for a hearing before the Board or its designated hearing officer in accordance with Idaho Code § 42-3909. ( )

**02. Hearings on Permit Cancellations.** The Board shall provide notice and an opportunity for a hearing to the holder of any permit proposed to be cancelled by the Director in accordance with Idaho Code § 42-3910. ( )

**061. -- 069. (RESERVED)**

**070. VIOLATIONS, FORMAL NOTIFICATION AND ENFORCEMENT.**

**01. Violations.** It shall be a violation of these rules for any owner or operator to: ( )

**a. Fail to comply with a permit or authorization, or terms or conditions thereof;** ( )

**b. Fail to comply with applicable standards for water quality;** ( )

**c. Fail to comply with any permit application notification or filing requirement;** ( )

**d. Knowingly make any false statement, representation or certification in any application, report, document or record filed pursuant to these rules, or terms and conditions of an issued permit;** ( )

**e. Falsify, tamper with or knowingly render inaccurate any monitoring device or method required to be maintained or utilized by the terms and conditions of an issued permit;** ( )

**f. Fail to respond to any formal notification of a violation when a response is required; or** ( )

**g. Decommission a well in an unauthorized manner.** ( )

**02. Additional.** It shall be a violation of these rules for any person to construct, operate, maintain, convert, plug, decommission or conduct any other activity in a manner which results or may result in the unauthorized injection of a hazardous or radioactive waste by an injection well. ( )

**03. Enforcement.** Violation of any of the provisions of the Injection Well Act (Chapter 39, Title 42, Idaho Code) or of any rule, regulation, standard or criteria pertaining to the Injection Well Act may result in the Director initiating an enforcement action as provided under Chapters 17 and 39, Title 42, Idaho Code. ( )

**070. CLASS V: CRITERIA AND STANDARDS.**

**01. Class V Shallow Injection Well Requirements.** (3-18-22)

**a. Authorization.** As a condition of authorization, all owners or operators of shallow Class V injection wells, including improved sinkholes used for aquifer recharge, that dispose of nonhazardous and nonradioactive wastes are required to submit a Shallow Injection Well Inventory Form to the Department no later than thirty (30) days prior to commencement of construction for each new well or no later than thirty (30) days after the discovery of an existing injection well that has not previously been inventoried with the Department. Forms are available from any Department office or at the Department website at <http://www.idwr.idaho.gov>. State or local government entities shall submit the following inventory information for wells associated with highway and street construction and maintenance projects. (3-18-22)

- i. Facility name and location; and (3-18-22)
- ii. County in which the injection well(s) is (are) located; and (3-18-22)
- iii. Ownership of the well(s); and (3-18-22)
- iv. Name, address and phone number of legal contact; and (3-18-22)
- v. Type or function of the well(s); and (3-18-22)
- vi. Number of wells of each type; and (3-18-22)
- vii. Operational status of the well(s). (3-18-22)

~~**b.** Inventory Fees. For shallow injection wells constructed after July 1, 1997, the Shallow Injection Well Inventory Form shall be accompanied by a fee as specified in Section 42-3905, Idaho Code, payable to the Department of Water Resources. State or local government entities are exempt from Shallow Injection Well Inventory Form filing fees for wells associated with highway and street construction and maintenance, but shall comply with all other requirements of these rules. (3-18-22)~~

~~**c.** Permit Requirements. If operation of a shallow Class V injection well is causing or may cause unreasonable contamination of a USDW, or cause a violation of the ground water quality standards at a place of beneficial use, the Director shall require immediate cessation of the injection activity. Where a Class V injection well is owned or operated by an entity other than a state or local entity involved in highway and street construction and maintenance, the Director may authorize continued operation of the well through a permit that specifies the terms and conditions of acceptable operation. (3-18-22)~~

~~**d.** Permanent Decommission. Owners or operators of shallow injection wells shall notify the Director not less than thirty (30) days prior to permanent decommissioning of any shallow injection well. Permanent decommissioning shall be accomplished in accordance with procedures approved by the Director. (3-18-22)~~

~~**e.** Inter-Agency Cooperation. The Department may seek the assistance of other government agencies, including cities and counties, health districts, highway districts, and other departments of state government to inventory, monitor and inspect shallow injection wells, where local assistance is needed to prevent deterioration of ground water quality, and where injection well operation overlaps with water quality concerns of other agencies or local governing entities. Assistance is to be negotiated through a memorandum of understanding between the Department and the local entity, agency, or department, and is subject to the approval of the Director. (3-18-22)~~

~~**02. Class V Deep Injection Well Requirements. (3-18-22)**~~

~~**a.** Application Requirements. (3-18-22)~~

~~i. No person shall continue to maintain or use an unauthorized injection well after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit under Subsection 070.02 shall be constructed, modified or maintained after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit shall continue to be used after the expiration of the permit issued for such well unless another application for permit therefor has been received by the Director. All applications for permit shall be on forms furnished by the Director. (3-18-22)~~

~~ii. Each application for permit to construct, modify or maintain an injection well, as required by these rules, shall be accompanied by a filing fee as specified in Section 42-3905, Idaho Code, payable to the Department of Water Resources. For the purposes of these rules, all wells or groups of wells associated with a "Remediation Project" may be administered as one (1) "well" at the discretion of the Director. (3-18-22)~~

~~**b.** Application Information Required. An applicant shall submit the following information to the~~

~~Director for all injection wells to be authorized by permit, unless the Director determines that it is not needed in whole or in part, and issues a written waiver to the applicant:~~ (3-18-22)

- ~~i. Facility name and location;~~ (3-18-22)
- ~~ii. Name, address and phone number of the well operator;~~ (3-18-22)
- ~~iii. Class, subclass and function of the injection well (see Section 035);~~ (3-18-22)
- ~~iv. Latitude/longitude or legal description of the well location to the nearest ten (10) acre tract;~~ (3-18-22)
- ~~v. Ownership of the well;~~ (3-18-22)
- ~~vi. County in which the injection well is located;~~ (3-18-22)
- ~~vii. Construction information for the well;~~ (3-18-22)
- ~~viii. Quantity and general character of the injected fluids;~~ (3-18-22)
- ~~ix. Status of the well;~~ (3-18-22)
- ~~x. A topographic map or aerial photograph extending one (1) mile beyond property boundaries, depicting:~~ (3-18-22)
  - ~~(1) Location of the injection well and associated facilities described in the application;~~ (3-18-22)
  - ~~(2) Locations of other injection wells;~~ (3-18-22)
  - ~~(3) Approximate drainage area, if applicable;~~ (3-18-22)
  - ~~(4) Hazardous waste facilities, if applicable;~~ (3-18-22)
  - ~~(5) All wells used to withdraw drinking water;~~ (3-18-22)
  - ~~(6) All other wells, springs and surface waters.~~ (3-18-22)
- ~~xi. Distance and direction to nearest domestic well;~~ (3-18-22)
- ~~xii. Depth to ground water; and~~ (3-18-22)
- ~~xiii. Alternative methods of waste disposal.~~ (3-18-22)
- ~~e. Additional Information. The Director may require the following additional information for Class V injection wells to assess potential effects of injection:~~ (3-18-22)
  - ~~i. A topographic map showing locations of the following within a two (2) mile radius of the injection well:~~ (3-18-22)
    - ~~(1) All wells producing water;~~ (3-18-22)
    - ~~(2) All exploratory and test wells;~~ (3-18-22)
    - ~~(3) All other injection wells;~~ (3-18-22)
    - ~~(4) Surface waters (including man-made impoundments, canals and ditches);~~ (3-18-22)

- ~~(5) Mines and quarries; (3-18-22)~~
- ~~(6) Residences; (3-18-22)~~
- ~~(7) Roads; (3-18-22)~~
- ~~(8) Bedrock outcrops; and (3-18-22)~~
- ~~(9) Faults and fractures; (3-18-22)~~
- ~~ii. Additional maps or aerial photographs of suitable scale to accurately depict the following: (3-18-22)~~
  - ~~(1) Location and surface elevation of the injection well described in this permit; (3-18-22)~~
  - ~~(2) Location and identification of all facilities within the property boundaries; (3-18-22)~~
  - ~~(3) Locations of all wells penetrating the proposed injection zone or within a one-quarter (1/4) mile radius of the injection well; (3-18-22)~~
  - ~~(4) Maps and cross sections depicting all underground sources of drinking water to include vertical and lateral limits within a one-quarter (1/4) mile radius of the injection well, their position relative to the injection zone and the direction of water movement; local geologic structures; regional geologic setting. (3-18-22)~~
- ~~iii. A comprehensive report of the following information: (3-18-22)~~
  - ~~(1) A tabulation of all wells penetrating the proposed injection zone, listing owner, lease holder and operator; well identification (permit) number; size, weight, depth and cementing data for all strings of casing; (3-18-22)~~
  - ~~(2) Description of the quality and quantity of fluids to be injected; (3-18-22)~~
  - ~~(3) Geologic, hydrogeologic, and physical characteristics of the injection zone and confining beds; (3-18-22)~~
  - ~~(4) Engineering data for the proposed injection well; (3-18-22)~~
  - ~~(5) Proposed operating pressure; (3-18-22)~~
  - ~~(6) A detailed evaluation of alternative disposal practices; (3-18-22)~~
  - ~~(7) A plan of corrective action for wells penetrating the zone of injection, but not properly sealed or decommissioned; and (3-18-22)~~
  - ~~(8) Contingency plans to cope with all shut-ins or well failures to prevent the migration of unacceptable fluids into underground sources of drinking waters. (3-18-22)~~
- ~~iv. Name, address and phone number of person(s) or firm(s) supplying the technical information and/or designing the injection well; (3-18-22)~~
- ~~v. Proof that the applicant is financially responsible, through a performance bond or other appropriate means, to decommission the injection well in a manner approved by the Director. (3-18-22)~~
- ~~d. Other Information. The Director may require of any applicant such additional information as may be necessary to demonstrate that the proposed or existing injection well will not endanger a USDW. The Director will not complete the processing of an application for which additional information has been requested until such time as the additional information is supplied. The Director may return any incomplete application and will not process such~~

~~application until such time as the application is received in complete form. (3-18-22)~~

~~**03. Application Processing. (3-18-22)**~~

~~**a. Draft Permit.** After all application information is received and evaluated, the Director will prepare a draft permit or denial, which will include the application for permit, permit conditions or reasons for denial, and any compliance schedules or monitoring requirements. In preparing the draft permit or denial, the Director shall consider the following factors: (3-18-22)~~

~~i. The availability of economic and practical alternative means of disposal; (3-18-22)~~

~~ii. The application of best management practices to the facilities and/or area draining into the well; (3-18-22)~~

~~iii. The availability of economical, practical means of treating or otherwise reducing the amount of contaminants in the injected fluids; (3-18-22)~~

~~iv. The quality of the receiving ground water, its category, its present and future beneficial uses or interconnected surface water; (3-18-22)~~

~~v. The location of the injection well with respect to drinking water supply wells; and (3-18-22)~~

~~vi. Compliance with the IDAPA 58.01.11, "Ground Water Quality Rule." (3-18-22)~~

~~**b. Public Notice.** The Director will provide public notice of any draft permit to construct, maintain or modify a Class V injection well by means of a legal notice in a newspaper of general circulation in the county in which the well is located. The Director may give additional notice as necessary to adequately inform the interested public and governmental agencies. There shall be a period of at least thirty (30) days following publication for any interested person to submit written comments and to request a fact finding hearing. The hearing will be held by the Director if deemed necessary. (3-18-22)~~

~~**e. Review by the Directors of Other State Agencies.** The Directors of other state agencies, as determined by the Director, shall be provided the opportunity to review and comment on draft permits. Comments shall be submitted to the Director within thirty (30) days of the public or legal notice. (3-18-22)~~

~~**d. Open Loop Heat Pump Return Wells (Subclass 5A7). (3-18-22)**~~

~~i. An open loop heat pump return well greater than eighteen (18) feet in depth to be used solely for disposal of heat pump water at a rate not exceeding fifty (50) gpm does not require a draft permit and is not subject to a recurring permit cycle, however, registration of the well with the Department and submittal of a filing fee as specified in Section 42-3905, Idaho Code is required. The Director reserves the right to override the exemptions from the draft permit and permit cycle requirements. (3-18-22)~~

~~ii. An open loop heat pump return well greater than eighteen (18) feet in depth to be used solely for disposal of heat pump return water at a rate exceeding fifty (50) gpm is subject to the requirements of Subsections 070.02 and 070.03 of these rules. (3-18-22)~~

~~**e. Fact Finding Hearings.** At the Director's discretion, or upon motion of any interested individual, the Director may elect to hold a fact finding hearing. Said hearing will be held at a location in the geographical area of the injection well. Notice of said hearing will be provided at least thirty (30) days in advance of the hearing by regular mail to the applicant and to the person or persons requesting the hearing. Public notice of the fact finding hearing will be made by means of press release to a newspaper of general circulation in the county of the application. (3-18-22)~~

~~**04. The Director's Action On Draft Permits and Duration Of Approved Permits.** The role of the Director is to determine whether or not the injection wells and their respective owners or operators are in compliance with the intent of these rules, thus protecting the ground waters of the state against unreasonable contamination or~~

- deterioration of quality and preserving them for diversion to beneficial uses. (3-18-22)
- ~~a.~~ Consideration. The Director will consider the following factors in taking final action on draft permits: (3-18-22)
- ~~i.~~ The likelihood and consequences of the injection well system failing; (3-18-22)
  - ~~ii.~~ The long term effects of such disposal or storage; (3-18-22)
  - ~~iii.~~ The recommendations and related justifications of the Directors of other state agencies and the public; (3-18-22)
  - ~~iv.~~ The potential for violation of ground water quality standards at the point of injection or the point of beneficial use; and (3-18-22)
  - ~~v.~~ Compliance with the Idaho Ground Water Quality Plan. (3-18-22)
- ~~b.~~ Issuance of Permit. After considering the draft permit for construction, modification, or maintenance, and all matters relating thereto, the Director shall issue a permit if the standards and criteria of Subsection 070.05 will be met and USDW's will not otherwise be unreasonably affected. If the Director finds that the standards and criteria cannot be met or that ground water sources cannot otherwise be protected from unreasonable contamination at all times, the draft permit may be denied or a permit may be issued with conditions designed to protect ground water sources. The Director's decision shall be in writing and a copy shall be mailed by regular mail to the applicant and to all persons who commented in writing on the draft permit or appeared at a hearing held to consider the draft permit. (3-18-22)
- ~~e.~~ Permit Conditions and Requirements. Any permit issued by the Director shall contain conditions to insure that ground water sources will be protected from waste, unreasonable contamination, or deterioration of ground water quality that could result in violations of the ground water quality standards. In addition to specific construction, operation, maintenance and monitoring requirements that the Director finds necessary, each permit shall be subject to the standard conditions and requirements of this rule. (3-18-22)
- ~~d.~~ Construction Requirements: (3-18-22)
- ~~i.~~ Well drillers or other persons involved with the construction of any injection well requiring a permit shall not commence construction on the facility until a certified copy of the approved permit is obtained from the Director. (3-18-22)
  - ~~ii.~~ Deep injection wells shall be constructed by a licensed water well driller to conform with the current Minimum Well Construction Standards and the conditions of the permit, except that a driller's license is not required for the construction of a driven mine shaft or a dug hole. (3-18-22)
  - ~~iii.~~ Shallow injection wells authorized by permit shall be constructed in accordance with the conditions of the permit. Rule authorized shallow injection wells shall be constructed as shown or described in the inventory submittal. (3-18-22)
  - ~~iv.~~ Injection wells shall be constructed to prevent the entrance of any fluids other than specified in the permit. (3-18-22)
  - ~~v.~~ Injection wells shall be constructed to prevent waste of artesian fluids or movement of fluids from one aquifer into another. (3-18-22)
  - ~~vi.~~ When construction or modification of an injection well has been completed, the owner or operator shall inform the Director of completion on a form provided by the Department. (3-18-22)
  - ~~vii.~~ A sampling port shall be provided if the injection well system is enclosed. (3-18-22)

- ~~viii. All new injection wells constructed into alluvial formations shall have a minimum ten (10) foot separation from the bottom of the well and seasonal high ground water. (3-18-22)~~
- ~~(1) Injection wells installed into fractured basalt are exempt from separation distances. (3-18-22)~~
- ~~(2) The Director may reduce separation distance requirements if the quality of injected fluids are improved through additional treatment or BMPs. (3-18-22)~~
- ~~(3) Heat pump return wells (sub-class 5A7) are exempt from the separation distance requirement of this section. (3-18-22)~~
- ~~e. Operational Conditions. (3-18-22)~~
- ~~i. The injection well shall not be used until the construction, operation and maintenance requirements of the permit are met and provisions are made for any required inspection, monitoring and record keeping. (3-18-22)~~
- ~~ii. Injection of any contaminant at concentrations exceeding the standards set in Paragraph 070.05.e. into a present or future drinking or other ground water source that may cause a health hazard or adversely affect a designated and protected use is prohibited. (3-18-22)~~
- ~~iii. The injection well owner or operator shall develop approved procedures to detect constructional or operational failure in a timely fashion, and shall have contingency plans to cope with the well failure. (3-18-22)~~
- ~~iv. Authorized representatives of the Department shall be allowed to enter, inspect and/or sample: (3-18-22)~~
- ~~(1) The injection well and related facilities; (3-18-22)~~
- ~~(2) The owner or operator's records of the injection operation; (3-18-22)~~
- ~~(3) Monitoring instrumentation associated with the injection operation; and (3-18-22)~~
- ~~(4) The injected fluids. (3-18-22)~~
- ~~v. The injection facilities shall be operated and maintained to achieve compliance with all terms and conditions of this permit. (3-18-22)~~
- ~~(1) Proper operation and maintenance includes effective performance, adequate funding, operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures; (3-18-22)~~
- ~~(2) If compliance cannot be met, the owner shall take corrective action as determined by the Director or terminate injection. (3-18-22)~~
- ~~vi. The owner shall mitigate any adverse effects resulting from non-compliance with the terms and conditions of the permit. (3-18-22)~~
- ~~vii. If the injection well was constructed prior to issuance of the permit, the well shall be brought into compliance with the terms and conditions of the permit in accordance with the schedule of compliance issued by the Director. (3-18-22)~~
- ~~viii. The permit shall not convey any property rights. (3-18-22)~~
- ~~f. Conditions of Permanent Decommissioning. (3-18-22)~~
- ~~i. Notice of intent to permanently decommission a well shall be submitted to the Director not less than thirty (30) days prior to commencement of the decommissioning activity. (3-18-22)~~



~~ii. The method of permanent decommissioning for all injection wells shall be approved by the Director prior to commencement of the decommissioning activity. (3-18-22)~~

~~iii. Notice of completion of permanent decommission shall be submitted to the Director within thirty (30) days of completion. (3-18-22)~~

~~iv. All deep injection wells that are to be permanently decommissioned shall be plugged in accordance with current Well Construction Standards. (3-18-22)~~

~~v. Following permanent cessation of use, or where an injection well is not completed, the Director shall be notified. Decommissioning procedures or other action, as prescribed by the Director, shall be conducted. (3-18-22)~~

~~vi. The injection well owner or operator has the responsibility to insure that the injection operation is decommissioned as prescribed. (3-18-22)~~

~~g. Duration of Approved Permits. The length of time that a permit may be in effect for Class V wells requiring permits shall not exceed ten (10) years. (3-18-22)~~

~~**05. Standards For The Quality of Injected Fluids and Criteria For Location and Use. (3-18-22)**~~

~~a. General. These standards, which are minimum standards that are to be adhered to for all deep injection wells and shallow injection wells requiring permits and rule authorized wells not requiring permits, are based on the premise that if the injected fluids meet ground water quality standards for physical, chemical and radiological contaminants, and if ground water produced from adjacent points of diversion for beneficial use meets the water quality standards as defined in Section 010 of these rules, then that aquifer will be protected from unreasonable contamination and will be preserved for diversion to beneficial uses. The Director may, however, when it is deemed necessary, require specific injection wells to be constructed and operated in compliance with additional requirements, such as best management practices (BMPs), so as to protect the ground water resource from deterioration and preserve it for diversion to beneficial use. (3-18-22)~~

~~b. Waivers. A waiver of one (1) or more standards may be granted by the Director if it can be demonstrated by the applicant that the contaminants in injected fluid will not endanger a ground water source for any present or future beneficial use. (3-18-22)~~

~~e. Standards for Quality of Fluids Injected into Class V Wells. (3-18-22)~~

~~i. Ground water quality standards for chemical and radiological contaminants in injected fluids. After the effective date of these standards, the following limits shall not be exceeded in injected fluids from a well when such fluids will or are likely to reach a USDW: (3-18-22)~~

~~(1) Chemical contaminants. The concentration of each chemical contaminant in the injected fluids shall not exceed the ground water quality standard for that chemical contaminant, or the concentration of each contaminant in the receiving water, whichever requirement is less stringent; and (3-18-22)~~

~~(2) Radiological contaminants. Radiological levels of the injected fluids shall not exceed those levels specified by the ground water quality standards. (3-18-22)~~

~~ii. Restrictions on injection of fluids containing biological contaminants. The following restrictions apply to biological contaminants included in the ground water quality standard in injected fluids. Coliform bacteria: injected fluids containing coliform bacteria are subject to the following restrictions: (3-18-22)~~

~~(1) Contamination of ground water produced at any existing point of diversion for beneficial use, or any point of diversion for beneficial use developed in the future, by injected fluids is prohibited; (3-18-22)~~

~~(2) The Director may require the use of best management practices (BMPs) to reduce the concentration~~

of coliform bacteria in the injected fluids; (3-18-22)

(3) ~~The Director may require the use of water treatment technology, including ozonation and chlorination devices, sand filters, and settling pond specifications to reduce the concentration of coliform bacteria in injected fluids;~~ (3-18-22)

(4) ~~Ground water produced from points of diversion for beneficial use adjacent to injection wells that dispose of fluids containing coliform bacteria in concentrations greater than the current ground water quality standard shall be subject to monitoring for bacteria by the owner/operator of the injection well. A waiver of the monitoring requirement may be granted by the Director when it can be demonstrated that injection will not result in unreasonable contamination of ground water produced from these adjacent points;~~ (3-18-22)

(5) ~~Construction of new Subclass 5F1 injection wells, and other shallow and deep injection wells, as specified by the Director, that are likely to exceed the current ground water quality standard for coliform bacteria at the point of beneficial use is prohibited; and~~ (3-18-22)

(6) ~~At no time shall any fluid containing or suspected of containing fecal contaminants of human origin be injected into any Class V injection well authorized under these rules.~~ (3-18-22)

iii. ~~Physical, visual and olfactory characteristics. The following restrictions apply to physical, visual and olfactory characteristics of injected fluids. Temperature, color, odor, turbidity, conductivity and pH: the temperature, color, odor, conductivity, turbidity, pH or other characteristics of the injected fluid may not result in the receiving ground water becoming less suitable for diversion to beneficial uses, as determined by the Director.~~ (3-18-22)

iv. ~~Contamination by an injection well of ground water produced at an existing point of diversion for beneficial use, or a point of diversion for beneficial use developed in the future, shall not exceed water quality standards defined in Section 010 of these rules.~~ (3-18-22)

~~d. Criteria for Location and Use of Class V Wells Requiring Permits.~~ (3-18-22)

i. ~~A Class V well requiring a permit may be required to be located a minimum distance, as determined from Table 1, from any point of diversion for beneficial use that could be harmed by bacterial contaminants. This requirement is not applicable to injection wells injecting wastes of quality equal to or better than adopted ground water quality standards in all respects. In addition, Class V wells may be required to be located at such a distance from a point of diversion for beneficial use as to minimize or prevent ground water contamination resulting from unauthorized or accidental injection, as determined by the Director.~~ (3-18-22)

ii. ~~These location requirements in Table 1 may be waived, as per Paragraph 070.05.b., when the applicant can demonstrate that any springs or wells within the calculated perimeter of the generated perched water zone will not be contaminated by the applicant's waste disposal or injection well. Monitoring by the applicant of the production wells or springs in question may be required to demonstrate that they are not being contaminated.~~

<b>Determined Radii of Perched Water Zones Based on Maximum Average Weekly Injection Rates (cfs) of Class V Injection Wells *</b>	
<b>Injection (cfs)</b>	<b>Radius of Generated Perched Water Zone (ft)</b>
0-0.20	800
0.20-0.60	1,400
0.61-1.00	1,800
1.01-2.00	2,500
2.01-3.00	3,000

<b>Determined Radii of Perched Water Zones Based on Maximum Average Weekly Injection Rates (cfs) of Class V Injection Wells *</b>	
<b>Injection (cfs)</b>	<b>Radius of Generated Perched Water Zone (ft)</b>
3.01—4.00	3,500
4.01—5.00	4,000
Greater than 5.00	As determined by the Director

\* Injection rates shall be based on the average volume of wastes injected by the well during the week of greatest injection in an average water year. (3-18-22)

~~e. Standards for the Quality of Fluids Injected by Subclass 5A7 Wells (Open Loop Heat Pump Return). (3-18-22)~~

~~i. The quality of fluids injected by a Subclass 5A7 injection well shall comply with ground water quality standards or shall be equal to the quality of the ground water source to the heat pump, whichever is less stringent. (3-18-22)~~

~~ii. If the quality of the ground water source does not meet ground water quality standards, the injected fluids must be returned to the formation containing the ground water source. (3-18-22)~~

~~iii. The temperature of the injected fluids shall not impair the designated beneficial uses of the receiving ground water. (3-18-22)~~

~~iv. All Rule authorized Injection Wells shall conform to the ground water quality standards at the point of injection and not cause any water quality standards to be violated at any point of beneficial use. (3-18-22)~~

~~**06. Monitoring, Record Keeping and Reporting Requirements.** The Director may require monitoring, record keeping and reporting by any owner or operator if the Director finds that the well may adversely affect a ground water source or is injecting a contaminant that could have an unacceptable effect upon the quality of the ground waters of the state. (3-18-22)~~

~~a. Monitoring. (3-18-22)~~

~~i. Any injection authorized by the Director shall be subject to monitoring and record keeping requirements as conditions of the permit. Such conditions may require the installation, use and maintenance of monitoring equipment or methods. The Director may require where appropriate, but is not limited to, the following: (3-18-22)~~

~~(1) Monitoring of injection pressures and pressures in the annular space between casings; (3-18-22)~~

~~(2) Flow rate and volumes; (3-18-22)~~

~~(3) Analysis of quality of the injected fluids for contaminants that are subject to limitation or reduction under the conditions of the permit; or contaminants which the Director determines could have an unacceptable effect on the quality of the ground waters of the state, and which the Director has reason to believe are in the injected fluids; (3-18-22)~~

~~(4) Monitoring of ground water through special monitoring wells or existing points of diversion for beneficial use in the zone of influence as determined by the Director; (3-18-22)~~

~~(5) A demonstration of the integrity of the casing, tubing or seal of the injection well. (3-18-22)~~

~~ii. The frequency of required monitoring shall be specified in the permit when issued, except that the~~

- ~~Director at any time may, in writing, require additional monitoring and reporting. (3-18-22)~~
- ~~iii. All monitoring tests and analysis required by permit conditions shall be performed in a state certified laboratory or other laboratory approved by the Director. (3-18-22)~~
  - ~~iv. Any field instrumentation used to gather data, when specified as a condition of the permit, shall be required by the Director to be tested and maintained in such a manner as to ensure the accuracy of the data. (3-18-22)~~
  - ~~v. All samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity and fluids injected. (3-18-22)~~
  - ~~b. Record Keeping. The permittee shall maintain records of all monitoring activities to include: (3-18-22)~~
    - ~~i. Date, time and exact place of sampling; (3-18-22)~~
    - ~~ii. Person or firm performing analysis; (3-18-22)~~
    - ~~iii. Date of analysis, analytical methods used and results of analysis; (3-18-22)~~
    - ~~iv. Calibration and maintenance of all monitoring instruments; and (3-18-22)~~
    - ~~v. All original tapes, strip charts or other data from continuous or automated monitoring instruments. (3-18-22)~~
  - ~~e. Reporting. (3-18-22)~~
    - ~~i. Monitoring results obtained by the permittee pursuant to the monitoring requirements prescribed by the Director shall be reported to the Director as required by permit conditions. (3-18-22)~~
    - ~~ii. The Director shall be notified in writing by the permittee within five (5) days after the discovery of violation of the terms and conditions of the permit. If the injection activity endangers human health or a public or domestic water supply, use of the injection well shall be immediately discontinued and the owner or operator shall immediately notify the Director. Notification shall contain the following information: (3-18-22)~~
      - ~~(1) A description of the violation and its cause; (3-18-22)~~
      - ~~(2) The duration of the violation, including dates and times; if not corrected or use of the well discontinued, the anticipated time of correction; and (3-18-22)~~
      - ~~(3) Steps being taken to reduce, eliminate and prevent recurrence of the injection. (3-18-22)~~
    - ~~iii. Where the owner or operator becomes aware of failure to submit any relevant facts in any permit application or report to the Director, that person shall promptly submit such facts or information. (3-18-22)~~
    - ~~iv. The permittee shall furnish the Director, within a time specified by the Director, any information which the Director may request to determine compliance with the permit. (3-18-22)~~
    - ~~v. All applications for permits, notices and reports submitted to the Director shall be signed and certified. (3-18-22)~~
    - ~~vi. The Director shall be notified in writing of planned physical alterations or additions to any facility related to the permitted injection well operation. (3-18-22)~~
    - ~~vii. Additional information to be reported to the Director in writing: (3-18-22)~~
      - ~~(1) Transfer of ownership; (3-18-22)~~

- (2) ~~Any change in operational status not previously reported;~~ (3-18-22)
- (3) ~~Any anticipated noncompliance; and~~ (3-18-22)
- (4) ~~Reports of progress toward meeting the requirements of any compliance schedule attached or assigned to this permit.~~ (3-18-22)

~~**07. Permit Assignable.** Permits may be assignable to a new owner or operator of an injection well if the new owner or operator, within thirty (30) days of the change, notifies the Director of such change. The new owner or operator shall be responsible for complying with the terms and conditions of the permit from the time that such change takes place.~~ (3-18-22)

071. -- 999. (RESERVED)

## IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

### 37.03.09 – WELL CONSTRUCTION STANDARDS RULES

#### DOCKET NO. 37-0309-2401 (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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 42-1805(8), 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 October 2, 2024, Idaho Administrative Bulletin, [Vol. 24-10, pages 366-406](#). Adoption of the pending rule removes unnecessary language, revises language for readability, removes unnecessary provisions, and sets the procedures for drilling and constructing wells to prevent waste and contamination of Idaho's ground water resources.

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

As authorized in Section 42-235, Idaho Code, the fee(s) in this rulemaking consist of a seventy-five-dollar (\$75) fee for each domestic or monitoring well permit and two-hundred-dollars (\$200) for wells other than domestic or monitoring wells.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Erik Boe at [Erik.Boe@idwr.idaho.gov](mailto:Erik.Boe@idwr.idaho.gov), (208) 287-4800.

DATED this 15th day of November, 2024.

Erik Boe  
Water Compliance Bureau Chief, Rules Regulation Officer  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720 Boise, ID 83720-0098  
Phone: (208) 287-4800

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 42-1805(8), 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 16, 2024.

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 Water Resources (IDWR) initiated this rulemaking in compliance with [Executive Order No. 2020-01, Zero-Based Regulation \(ZBR\)](#) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five-year period. This review is being 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](https://adminrules.idaho.gov/forms_menu.html). This rule chapter was scheduled for review in 2023.

With this Notice, IDWR proposes a new chapter of well construction standards rules. The new chapter is approximately 5.8% shorter than the existing well construction standards rule chapter due to both internal agency analysis and external stakeholder negotiation, commentary, and editing. Changes to the rule come through a combination of (a) removal of obsolete, (b) removal of unnecessary provisions (such as the prescriptive casing and sealing requirements for low temperature geothermal (LTG) resource wells), and (c) modifications to existing rules regulating improving its effectiveness.

The development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2024-2025/well-construction-rules/>. On the same website, IDWR also developed and published rulemaking support documents, which provide IDWR's recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

After consideration of public comments received in response to this Proposed Rule, IDWR will present the final rule text during the 2025 Legislative Session.

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

IDAPA 37.03.09 sets the procedures for drilling and constructing wells to prevent waste and contamination of Idaho's ground water resources. The rule also establishes the collection of fees to file an application for drilling permit set forth in Idaho Code § 42-235.

**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 April 3, 2024 Idaho [Administrative Bulletin, Vol. 24-4, page 54](#).

**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 Erik Boe at [Erik.Boe@idwr.idaho.gov](mailto:Erik.Boe@idwr.idaho.gov), (208) 287-4800.

Anyone may submit written comments regarding this proposed rulemaking by mail to the address below or by email sent to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov). All written comments must be directed to the undersigned and must be delivered on or before October 23, 2024.

DATED this 30th day of August 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 37-0309-2301**

**37.03.09 – WELL CONSTRUCTION STANDARDS RULES**

**000. LEGAL AUTHORITY (RULE 0).**

~~The Idaho Water Resource Board adopts these administrative rules with the authority provided by Section 42-238(12), Idaho Code.~~ (3-18-22)(    )

**001. ~~TITLE AND SCOPE (RULE 1).~~**

~~01. Title. These rules are cited as IDAPA 37.03.09, “Well Construction Standards Rules.”~~ (3-18-22)

~~02. Scope. The Department of Water Resources has statutory responsibility for the statewide administration of the rules governing well construction.~~ These rules establish minimum standards for the construction of all new wells and the modification and decommissioning (~~abandonment~~) of existing wells. The intent of the rules is to protect the ground water resources of the state against waste and contamination. These rules are applicable to all water wells, monitoring wells, low temperature geothermal wells, injection wells, cathodic protection wells, closed loop heat exchange wells, and other artificial openings and excavations in the ground that are more than eighteen (18) feet in vertical depth below land surface as described in these rules pursuant to Section 42-230 Idaho Code. ~~Some artificial openings and excavations do not constitute a well. For the purposes of these rules, artificial openings and excavations not defined as wells are described in Subsection 045.03 of these rules. Any time that such an artificial opening or excavation is constructed, modified, or decommissioned (abandoned) the intent of these rules must be observed. If waste or contamination is attributable to this type of artificial opening or excavation, the artificial opening or excavation must be modified, or decommissioned (abandoned) as determined by the Director.~~ (3-18-22)(    )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 10).**

~~Unless the context otherwise requires, the following definitions apply to these rules.~~ (3-18-22)

**01. Approved Seal or Seal Material.** Seal material must consist of bentonite chips, pellets, or granules, bentonite grout, neat cement, or neat cement grout as defined by these rules. ~~No other materials may be used unless specifically authorized by the Director~~ (3-18-22)(    )

**02. Annular Space.** The space, measured as one-half (1/2) the difference in diameter between two (2) concentric cylindrical objects, one of which surrounds the other, such as the space between the walls of a drilled hole (borehole) and a casing or the space between two (2) strings of casing. (3-18-22)



**03. Aquifer.** Any geologic formation(s) that will yield water to a well in sufficient quantities to make the production of water from the formation feasible for beneficial use. (3-18-22)

**04. Area of Drilling Concern.** An area designated by the Director in which drillers must comply with additional standards to prevent waste or contamination of ground or surface water due to such factors as aquifer pressure, vertical depth of the aquifer, warm or hot ground water, or contaminated ground or surface waters, in accordance with Section 42-238(715), Idaho Code. (3-18-22)( )

**05. Artesian Water.** Any water that is confined in an aquifer under pressure so that the water will rise in the well casing or drilled hole above the elevation where it was first encountered. This term includes water of flowing and non-flowing wells. (3-18-22)

**06. Artificial Filter Pack.** Clean, rounded, smooth, uniform, sand or gravel placed in the annular space around a perforated well casing or well screen. A filter pack is frequently used to prevent the movement of finer material into the well casing and to increase well efficiency. (3-18-22)

**07. Bentonite.** A commercially processed and packaged, low permeability, sodium montmorillonite clay certified by the NSF International for use in well construction, sealing, plugging, and decommissioning (~~abandonment~~). All bentonite products used in the construction or decommissioning (~~abandoning~~) of wells must have a permeability rating not greater than  $10^{-7}$  (ten to the minus seven) cm/sec. (3-18-22)( )

**a.** Chips. Bentonite composed of pieces ranging in size from one-quarter (1/4)-inch to one (1) inch on their greatest dimension. (3-18-22)

**b.** Granules (also Granular). Bentonite composed of pieces ranging in size from one thirty-seconds (1/32) inch (#20 standard mesh) to seven thirty-seconds (7/32) inch (#3 standard mesh) on their greatest dimension. (3-18-22)

**c.** Bentonite Grout. A mixture of bentonite specifically manufactured for use as a well sealing or plugging material and potable water to produce a grout with an active solids content not less than twenty-five percent (25%) by weight e.g., (twenty-five percent (25%) solids content by weight = fifty (50) pounds bentonite per eighteen (18) gallons of water). (3-18-22)

**d.** Pellets (also Tablets). ~~Bentonite manufactured for a specific purpose and composed of uniform sized, one quarter (1/4) inch, three eighths (3/8) inch, or one half (1/2) inch pieces on their greatest dimension~~ High swelling sodium bentonite compressed into pellet form, including pellets coated with a time release biodegradable coating. (3-18-22)( )

**08. Board.** The Idaho Water Resource Board. (3-18-22)

**09. Bore Diameter.** The diameter of the hole in the formation made by the drill bit or reamer. (3-18-22)

**10. Borehole (also Well Bore and Boring).** The subsurface hole created during the drilling process. (3-18-22)( )

**11. Bottom Hole Temperature ~~of an Existing or Proposed Well~~.** The temperature of the ground water encountered in the bottom of a well or borehole. (3-18-22)( )

**12. Casing.** The permanent ~~conduit~~ steel or thermoplastic pipe installed in a well to ~~provide physical stabilization, prevent caving or collapse of the borehole,~~ maintain the well opening and serve as a solid inner barrier to allow for the installation of an annular seal. ~~Casing does not include temporary surface casing, well screens, liners, or perforated casing as otherwise defined by these rules.~~ (3-18-22)( )

**13. Cathodic Protection Well.** Any artificial excavation ~~in excess of~~ more than eighteen (18) feet in vertical depth constructed for the purpose of protecting certain metallic equipment in contact with the ground.

Commonly referred to as cathodic protection.

(3-18-22)( )

14. **Closed Loop Heat Exchange Well.** A ~~ground source thermal exchange well constructed for the purpose of installing any underground system~~ through which thermal exchange fluids are circulated but remain isolated from direct contact with the subsurface or ground water. (3-18-22)( )

15. **Conductor Pipe.** The first and largest diameter string of permanent casing ~~to be~~ installed in a ~~low temperature geothermal resource~~ well when multiple casing strings are necessary. (3-18-22)( )

16. **Confining Layer.** A subsurface zone of low-permeability earth material that naturally acts to restrict or retard the movement of water or contaminants from one zone to another. ~~The term does not include topsoil.~~ (3-18-22)( )

17. **Consolidated Formations.** Naturally-occurring geologic formations that have been lithified (turned to stone) such as sandstone and limestone, or igneous rocks such as basalt and rhyolite, and metamorphic rocks such as gneiss and slate. (3-18-22)

18. **Contaminant.** ~~Any physical, chemical, ion, radionuclide, synthetic organic compound, microorganism, waste, or other substance that does not occur naturally in ground water or that naturally occurs at a lower concentration~~ Any physical, chemical, biological, or radiological substance or matter. (3-18-22)( )

19. **Contamination.** The introduction into the natural ground water of any physical, chemical, biological or radioactive material that may: (3-18-22)

a. ~~Cause a violation of Idaho Ground Water Quality Standards; or~~ Cause a violation of Standards found in IDAPA 58.01.11, "Ground Water Quality Rule," or primary federal drinking water regulation found in 40 CFR Parts 141 and 142 whichever is more stringent.; or (3-18-22)( )

b. Adversely affect the health of the public; or (3-18-22)

c. Adversely affect a designated or beneficial use of the State's ground water. Contamination includes the introduction of heated or cooled water into the subsurface that will alter the ground water temperature and render the local ground water less suitable for beneficial use, ~~or the introduction of any contaminant that may cause a violation of IDAPA 58.01.11, "Ground Water Quality Rule."~~ (3-18-22)( )

20. **Decommissioned (Abandoned) Well.** Any well that has been permanently removed from service and filled or plugged in accordance with these rules ~~so as~~ to meet the intent of these rules. A properly decommissioned well will not: (3-18-22)( )

a. Produce or accept fluids; (3-18-22)

b. Serve as a conduit for the movement of contaminants inside or outside the well casing; or (3-18-22)

c. Allow the movement of surface or ground water into unsaturated zones, into another aquifer, or between aquifers. (3-18-22)

21. **Decontamination.** The process of ~~cleaning~~ removing contaminants from equipment intended for use in a well ~~in order to prevent the introduction of contaminants into the subsurface and contamination of natural ground water.~~ (3-18-22)( )

22. **Department.** The Idaho Department of Water Resources. (3-18-22)

23. **Dewatering Well.** A well constructed for the purpose of improving slope stability, drying up ~~borrow pits~~ land, or intercepting seepage that would otherwise enter an excavation. (3-18-22)( )

24. **Director.** The Director of the Idaho Department of Water Resources ~~or his duly authorized~~

representatives. (3-18-22)( )

25. **Disinfection.** The introduction of chlorine or other agent or process approved by the Director in sufficient concentration and for the time required to inactivate or kill fecal and Coliform bacteria, indicator organisms, and other ~~potentially harmful~~ pathogens. (3-18-22)( )

26. **Draw Down.** The difference in vertical distance between the static water level and the pumping water level. (3-18-22)

27. **Drive Point (also known as a Sand Point).** A conduit ~~pipe or casing~~ through which ground water of any temperature is sought or encountered; created by joining a “drive point unit” to a length of pipe and driving the assembly into the ground. (3-18-22)( )

~~28. **Exploratory Well.** A well drilled for the purpose of discovering or locating new resources in unproven areas. They are used to extract geological, hydrological, or geophysical information about an area. (3-18-22)~~

~~29. **Global Positioning System (GPS).** A global navigational receiver unit and satellite system used to triangulate a geographic position. (3-18-22)~~

~~30. **Hydraulic Conductivity.** A measurement of permeability. (3-18-22)~~

28. **Geotechnical Borings.** Borings drilled for the sole purpose of obtaining soil samples or other data to determine subsurface geologic properties. ( )

~~31.29. **Hydraulic Fracturing.** A process whereby water or other fluid is pumped under high pressure into a well to further fracture the reservoir rock or aquifer surrounding the production zone of a well to increase well yield. (3-18-22)~~

~~320. **Injection Well.** Any excavation or artificial opening into the ground which meets the following three (3) criteria Any feature that is operated to allow the subsurface emplacement of fluids that also meets at least one (1) of the following criteria: (3-18-22)( )~~

~~a. It is a bored, drilled or dug hole, or is a driven mine shaft or driven well point; and (3-18-22)~~

~~b. It is deeper than its largest straight line surface dimension; and (3-18-22)~~

~~c. It is used for or intended to be used for subsurface placement of fluids. (3-18-22)~~

a. A bored, or driven shaft whose depth is greater than the largest surface dimension; ( )

b. A dug hole whose depth is greater than the largest surface dimension; ( )

c. An improved sinkhole; or ( )

d. A subsurface fluid distribution system. ( )

~~331. **Intermediate String or Casing.** ~~The e~~ Casing installed and sealed ~~below the surface casing within a low temperature geothermal resource well~~ to isolate undesirable water or zones below ~~the bottom of the surface~~ first string of permanent casing. Such strings may either be lapped into the ~~surface~~ casing above it or extend to land surface. (3-18-22)( )~~

~~342. **Liner.** (3-18-22)~~

~~a. A conduit removable steel or thermoplastic pipe ~~that can be removed from the borehole or well~~ that is used ~~to serve~~ as access and protective housing for pumping equipment and provide a pathway for the upward flow of water within the well. (3-18-22)( )~~

~~b.~~ Liner does not include casing required to prevent caving or collapse, or both, of the borehole or serve as a solid inner barrier to allow for the installation of an annular seal. (3-18-22)

~~35.~~ **Mineralized Water.** Any naturally occurring ground water that has an unusually high amount of chemical constituents dissolved within the water. Water with five thousand (5000) mg/L or greater total dissolved solids is considered mineralized. (3-18-22)

~~363.~~ **Modify.** To deepen a well, increase or decrease the diameter of the casing or the well bore, install a liner, place a screen, perforate existing casing or liner, alter the seal between the casing and well bore, or alter the well to not meet well construction standards. (3-18-22)

~~374.~~ **Monitoring Well.** Any well ~~more than eighteen (18) feet in vertical depth constructed~~ used to evaluate, observe or determine the quality, quantity, temperature, pressure or other characteristics of the ground water or aquifer. (3-18-22)(    )

~~385.~~ **Neat Cement.** A mixture of water and cement in the ratio of not more than six (6) gallons of water to ninety-four (94) pounds of Portland cement (~~neat cement~~). Other neat cement ~~grout~~ mixes may be used if specifically approved by the Director. (3-18-22)(    )

~~396.~~ **Neat Cement Grout.** Up to five percent (5%) bentonite by dry weight may be added per sack of cement (~~neat cement grout~~) and the water increased to not more than six and one-half (6.5) gallons per sack of cement. Other neat cement grout mixes may be used if specifically approved by the Director. These grouts must be mixed and installed in accordance with the American Petroleum Institute Standards - API Class A through H. As found in API RP10B, "Recommended Practice for Testing Oil Well Cements and Cement Additives," current edition or other approved standards. (3-18-22)(    )

~~4037.~~ **Oxidized Sediments.** Sediments, characterized by distinct coloration, typically shades of brown, red, or tan, caused by the alteration of certain minerals in an environment with a relative abundance of oxygen. (3-18-22)

~~4438.~~ **Perforated Well Casing.** Well casing that has been modified by the addition of openings created by drilling, torch cutting, saw cutting, mechanical down-hole perforator, or other method. (3-18-22)

~~4239.~~ **Pitless Adaptor or Pitless Unit.** ~~An assembly of parts designed for attachment to a well casing which allows buried pipe to convey water from the well or pump and allows access to the interior of the well casing for installation or removal of the pump or pump appurtenances, while maintaining a water tight connection through the well casing and preventing contaminants from entering the well. An assembly that provides a watertight connection between the pump installed inside the well casing and buried pipe outside the well casing.~~ (3-18-22)(    )

~~430.~~ **Potable Water.** Water of adequate quality for human consumption. (3-18-22)

~~441.~~ **Pressure Grouting (Grouting).** The process of pumping and placing an approved grout mixture into the required annular space, well bore, casing or screens by positive displacement from bottom to top using a tremie pipe, Halliburton method, float shoe, or other method approved by the Director. (3-18-22)(    )

~~452.~~ **Production Casing.** The final string of casing or tubing ~~through which a low temperature geothermal resource is produced. This string extends~~ extending from the producing zone to land surface. (3-18-22)(    )

~~46.~~ **Public Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: (3-18-22)

- ~~a. Any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and (3-18-22)~~
- ~~b. Any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system. (3-18-22)~~
- ~~c. Such term does not include any “special irrigation district.” (3-18-22)~~
- ~~d. A public water system is either a “community water system” or a “non-community water system.” (3-18-22)~~

**43. Public Drinking Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A public drinking water system is either a “community water system” or a “noncommunity water system” as further defined as: ( )

**a. Community water system.** A public drinking water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. ( )

**b. Noncommunity water system.** A public drinking water system that is not a community water system. A non-community water system is either a transient noncommunity water system or a non-transient noncommunity water system. ( )

**c. Nontransient noncommunity water system.** A public drinking water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. ( )

**d. Transient noncommunity public drinking water system.** A noncommunity water system which does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year. ( )

**474. Reduced Sediments.** Sediments, characterized by distinct coloration, typically shades of blue, black, gray, or green, caused by the alteration of certain minerals in an oxygen poor environment. (3-18-22)

**485. Remediation Well.** A well used to inject or withdraw fluids, vapor, or other solutions approved by the Director for the purposes of remediating, enhancing quality, or controlling potential or known contamination. Remediation wells include those used for air sparging, vapor extraction, or injection of chemicals for remediation or in-situ treatment of contaminated sites. (3-18-22)

**496. Sand.** Any sediment particle retained on a U.S. standard sieve #200 (Seventy-five hundredths (0.075) mm to two (2) mm). (3-18-22)

**5047. Screen (Well Screen).** A commercially produced structural tubular retainer with standard sized openings to facilitate production of sand free water. (3-18-22)

**5148. Seal or Sealing.** The placement of approved seal material in the required annular space between a borehole and casing, between casing strings, or as otherwise required to create a low permeability barrier and prevent movement or exchange of fluids. ~~Seals are required in the construction of new wells, repair of existing wells, and in the decommissioning (abandonment) of wells. Seals are essential to the prevention of waste and contamination of ground water.~~ (3-18-22)( )

**5249. Start Card.** An expedited drilling permit process for the construction of cold water, single-family residential wells. (3-18-22)

~~530.~~ **Static Water Level.** The ~~height at which~~ depth to water ~~will rise~~ in a well under non-pumping conditions. (3-18-22)(    )

~~541.~~ **Surface Casing.** The first string of casing in a low temperature geothermal resource well which is set and sealed after the conductor pipe to anchor blow out prevention equipment and to case and seal out all existing cold ground water zones. (3-18-22)

~~552.~~ **Temporary**~~Surface~~ **Casing.** Steel pipe used to support the borehole within unstable or unconsolidated formations during construction of a well that will be removed following the installation of the permanent well casing and prior to or during placement of an annular seal. (3-18-22)(    )

~~563.~~ **Thermoplastic/PVC Casing.** Plastic piping material meeting the requirements of ASTM F 480 and NSF-WC and specifically designed for use as well casing. (3-18-22)(    )

~~574.~~ **Transmissivity.** The capacity of an aquifer to transmit water through its entire saturated thickness. (3-18-22)

~~585.~~ **Tremie Pipe.** A small-diameter pipe used to convey grout, dry bentonite products, or filter pack materials into the annular space, borehole, or well from the bottom to the top of a borehole or well. (3-18-22)

~~596.~~ **Unconfined Aquifer.** An aquifer in which the water table is in contact with and influenced by atmospheric pressure through pore spaces in the overlying formation(s). (3-18-22)

~~6057.~~ **Unconsolidated Formation.** A naturally-occurring earth formation that has not been lithified. Alluvium, soil, sand, gravel, clay, and overburden are some of the terms used to describe this type of formation. (3-18-22)

~~6158.~~ **Unstable Unit.** Unconsolidated formations, and those portions of consolidated formations, that are not sufficiently hard or durable enough to sustain an open borehole without caving or producing obstructions without the aid of fluid hydraulics or other means of chemical or physical stabilization. (3-18-22)

~~6259.~~ **Unusable Well.** Any well that can not be used for its intended purpose or other beneficial use authorized by law. (3-18-22)

~~630.~~ **Waiver.** Approval in writing by the Director of a written request from the well driller and the well owner proposing specific variance from the minimum well construction standards. (3-18-22)

~~641.~~ **Waste.** The loss, transfer, or subsurface exchange of a ground water resource, thermal characteristic, or natural artesian pressure from any aquifer caused by improper construction, misuse, or failure to properly maintain a well. Waste includes: (3-18-22)

a. The flow of water from an aquifer into an unsaturated subsurface zone; (3-18-22)

b. The transfer or mixing, or both, of waters from one aquifer to another (aquifer commingling); or (3-18-22)

c. The release of ground water to the land surface whenever such release does not comply with an authorized beneficial use. (3-18-22)

~~652.~~ **Water Table.** ~~The height at which water will rise in a well; also t~~ The upper surface of the zone of saturation in an unconfined aquifer. This level will change over time due to changes in water supply and aquifer impacts. (3-18-22)(    )

~~663.~~ **Well.** (3-18-22)

~~67~~ An artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth

below land surface by which ground water of any temperature is sought or obtained. ~~The depth of a well is determined by measuring the maximum vertical distance between the land surface and the deepest portion of the well.~~ Any water encountered in the well is considered to be obtained for the purpose of these rules; ~~or.~~ (3-18-22)(\_\_\_\_)

- ~~b.~~ Any waste disposal and injection well, as defined in Section 42-3902, Idaho Code. (3-18-22)
- ~~c.~~ Well does not mean: (3-18-22)
- ~~i.~~ A hole drilled for mineral exploration; ~~or~~ (3-18-22)
- ~~ii.~~ Holes drilled for oil and gas exploration which are subject to the requirements of Section 47-320, Idaho Code; ~~or~~ (3-18-22)
- ~~iii.~~ Holes drilled for the purpose of collecting soil samples above the water table. (3-18-22)

**674.** **Well Development.** The act of bailing, jetting, pumping, or surging water in a well to remove drilling fluids, fines, and suspended materials from within a completed well and production zone ~~in order~~ to establish the optimal hydraulic connection between the well and the aquifer. (3-18-22)(\_\_\_\_)

**685.** **Well Driller or Driller.** Any person who operates drilling equipment, or who controls or supervises the construction of a well, and is licensed under Section 42-238, Idaho Code (3-18-22)

**696.** **Well Drilling or Drilling.** The act of constructing a new well or modifying ~~or changing~~ the construction of an existing well. (3-18-22)(\_\_\_\_)

**7067.** **Well Owner.** Any person, firm, partnership, co-partnership, corporation, association, or other entity, or any combination of these, who owns the property on which the well is or will be located or has secured ownership of the well by means of a deed, covenant, contract, easement, or other enforceable legal instrument for the purpose of benefiting from the well. (3-18-22)

**7468.** **Well Rig (Drill Rig).** Any power driven percussion, rotary, boring, digging, ~~or~~ auguring, ~~machine used in the construction or any other power-driven mechanical equipment used in the drilling~~ of a well. (3-18-22)(\_\_\_\_)

**011. -- 024. (RESERVED)**

**025. CONSTRUCTION OF ~~COLD GROUND WATER WELLS (RULE 25).~~**

All persons constructing wells must comply with the requirements of Section 42-238, Idaho Code, and IDAPA 37.03.10, "Well Driller Licensing Rules." The standards specified in Rule 25 apply to all wells, including waste disposal and injection wells as defined in Section 42-3902, Idaho Code, with a bottom hole temperature ~~of eighty-five (85) degrees Fahrenheit or less than two hundred twelve (212) degrees Fahrenheit.~~ Wells with a bottom hole temperature greater than eighty-five (85) degrees Fahrenheit, but less than two hundred twelve (212) degrees Fahrenheit, must meet also the requirements of Rule 30 ~~in addition to meeting the requirements of Rule 25. These standards also apply to any waste disposal and injection well as defined in Section 42-3902, Idaho Code.~~ (3-18-22)(\_\_\_\_)

**01. General.** The well driller must construct each well as follows: (3-18-22)

**a.** In accordance with these rules and with the conditions of approval of any drilling permit issued pursuant to Section 42-235, Idaho Code, and in a manner that will prevent waste and contamination of the ground water resources of the state of Idaho. The adopted standards are minimum standards which must be adhered to in the construction of all new wells, and in the modification or decommissioning ~~(abandonment)~~ of existing wells. The well driller is charged with the responsibility of preventing waste ~~or and~~ contamination of the ground water resources during the construction, modification or abandonment of a well. The Director may add conditions of approval to a drilling permit issued pursuant to Rule 45 of these rules to require that a well be constructed, modified, maintained or decommissioned ~~(abandoned)~~ in accordance with additional standards when necessary to protect ground water resources and the public health and safety from ~~existing~~ contamination and waste ~~or contamination~~ during the

construction, modification or decommissioning-(~~abandonment~~) of a well. (3-18-22)(    )

**b.** In consideration of the geologic and ground water conditions known to exist or anticipated at the well site. (3-18-22)

**c.** Such that it is capable of producing, where obtainable, the quantity of water to support the allowed or approved beneficial use of the well, subject to law<sup>2</sup>. (3-18-22)(    )

**d.** Meet the siting and separation distance requirements in the table in this Subsection (025.01.d.). Additional siting and separation distance requirements are set forth by the governing district health department and the Idaho Department of Environmental Quality rules at IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules," and IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems".

Separation of Well from:	Minimum Separation Distance (feet)
Existing Public Water Supply well, separate ownership	- 50
Other existing well, separate ownership	- 25
Septic drain field	- 100
Septic tank	- 50
Drainfield of system with more than 2,500 GPD of sewage inflow	- 300*
Sewer line - main line or sub-main, pressurized, from multiple sources	- 100
Sewer line - main line or sub-main, gravity, from multiple sources	- 50
Sewer line - secondary, pressure tested, from a single residence or building	- 25
Effluent pipe	- 50
Property line	- 5
Permanent buildings, other than those to house the well or plumbing apparatus, or both	- 10
Above ground chemical storage tanks	- 20
Permanent (more than six months) or intermittent (more than two months) surface water	- 50
Canals, irrigation ditches or laterals, & other temporary (less than two months) surface water	- 25
*This distance may be less if data from a site investigation demonstrates compliance with IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules," separation distances.	

(3-18-22)

**02. Waivers.** In unique cases where the Director concludes that the ground water resources will be protected against waste and contamination and the public health and safety are not compromised, a waiver of specific standards required by these rules may be approved prior to constructing, decommissioning, or modifying a well. The Director may request comments from IDEQ or local Health Districts when considering waivers seeking a variance of separation distances established by IDEQ Rules, which includes separation distances between wells and septic tanks, wells and septic drain fields, wells and sewer lines, or wells and effluent pipes. (3-18-22)(    )

**a.** To request a waiver the well driller and well owner must: (3-18-22)

**i.** Jointly submit a detailed plan and written request identifying a specific Rule or Rules proposed to be waived. Additionally, the plan must detail the well construction process that will be employed in lieu of complete



Rule compliance: (3-18-22)

ii. Prior to submittal, the well driller and the well owner must sign the plan and written request acknowledging concurrence with the request; and (3-18-22)

iii. Submit the plan and request by facsimile, e-mail, or letter. (3-18-22)

b. The Director will evaluate and respond to the request within ten (10) business days of receiving the request. (3-18-22)

i. If the request for waiver is approved, the intent of the rules will be served, and all standards not waived will apply. Waivers approved by the Director will not supersede the requirements of other regulatory agencies without specific concurrence from that agency. Work activity related to a waiver request will not proceed until ~~a~~ written or verbal approval is granted by the Director. (3-18-22)(    )

ii. Any verbal approval will be followed by a written approval. (3-18-22)

**03. Records.** ~~In order to~~ To enable a comprehensive survey of the extent and occurrence of the state's ground water resource, the coordinates of every newly constructed, modified or decommissioned ~~(abandoned)~~ well location must be identified by latitude and longitude with a global positioning system (GPS) and recorded on the driller's report in degrees and decimal minutes and within the nearest 40 acre parcel using the Public Land Survey System. Every well driller must maintain records as described in IDAPA 37.03.10 "Well Driller Licensing Rules," pursuant to Section 42-238(11), Idaho Code, and provide the well owner with a copy of the approved well drilling permit and a copy of the well driller's report when submitted to the Director. (3-18-22)(    )

**04. Casing.** The well driller must install casing in every well. Steel ~~or thermoplastic~~ casing may be installed in any well, thermoplastic casing may be installed in a well with a bottom hole temperature of eighty-five (85) degrees Fahrenheit or less if drilling of the borehole confirms its suitability for use. ~~Thermoplastic pipe must not be installed in a well with a bottom hole temperature greater than eighty five (85) degrees Fahrenheit.~~ All casing to be installed must be new or in like-new condition, free of defects, and clearly marked by the manufacturer with all specifications required by these rules. For all wells the casing must extend at least twelve (12) inches above land surface and finished grade and to a minimum depth below land surface as required by these rules. Concrete slabs around a well casing will be considered finished grade (Figure 01, Appendix A). The well driller must install casing of sufficient strength to withstand calculated and anticipated subsurface forces and corrosive effects. The well driller must install casings sufficiently plumb and straight to allow the installation or removal of screens, liners, pumps and pump columns without causing adverse effects on the operation of the installed pumping equipment. (3-18-22)(    )

a. Steel Casing. When steel casing lengths are joined together, they joints must be ~~joined by~~ welded joints or screw-couple joints and be watertight. ~~All connection must be water tight. If steel casing~~ Welded joints are welded, the weld must be at least as thick as the well casing and fully penetrating. Welding rods or flux core wire of at least equal quality to the casing metal must be used. Casing ends to be joined by welding must be properly prepared, beveled and gapped to allow full penetration of the weld. All stick welded joints must have a minimum of two (2) passes including a "root" pass and have minimal undercut when complete. (3-18-22)(    )

i. In addition to meeting these standards, all wells that are constructed for public drinking water systems must meet ~~all of the~~ casing wall thickness requirements set forth by the Idaho Department of Environmental Quality Rules, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." (3-18-22)(    )

ii. The well driller must install steel casing that meets or exceeds the American Society of Testing and Materials (ASTM) standard A53, Grade B or American Petroleum Institute (API) 5L Grade B, and that meets the following specifications for wall thickness:

Minimum Single-Wall Steel Well Casing Thickness <sup>1</sup> for Selected Diameters (inches)													
Nominal Diameter (in.) <sup>3</sup>	6 <sup>2</sup>	8	10	12	14	16	18	20	22	24	26	28	30
Depth (ft.)	Nominal Wall Thickness (in.) <sup>1</sup>												
<100	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250
100-200	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250
200-300	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250
300-400	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.375	0.375	0.375	0.375
400-600	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.375	0.375	0.375	0.375	0.375
600-800	0.250	0.250	0.250	0.250	0.250	0.250	0.375	0.375	0.375	0.375	0.375	0.375	0.375
800-1000	0.250	0.250	0.250	0.250	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375
1000-1500	0.280	0.322	0.365	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375
1500-2000	0.280	0.322	0.365	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375

1 Compliance with the minimum nominal wall thicknesses listed is required for any depth or location where casing is used to prevent caving or collapse, or both, of the borehole or serves as a solid inner barrier to allow for the installation of an annular seal.

2 For nominal casing diameters less than six (6) inches, the minimum nominal wall thickness must be equivalent to ASTM Schedule 40.

3 For any other casing diameter not addressed herein, prior approval by the Director is required.

(3-18-22)

b. Thermoplastic Casing. ~~Thermoplastic casing may be used in monitoring wells and cold water wells if drilling of the borehole confirms its suitability for use.~~ (3-18-22)

i. ~~Thermoplastic casing must conform to ASTM F 480 and NSF-WC, have a minimum rating of SDR-21 or a minimum rating of Schedule 40 for nominal diameters of four (4) inches or less.~~ The well driller must not use thermoplastic casing under any condition where the manufacturer's resistance to hydraulic collapse pressure (RHCP) or total depth specifications are exceeded. Thermoplastic casing extending above-ground must be protected from physical and ultraviolet light damage by enclosing it within steel casing extending at least twelve (12) inches above land surface and finished grade and to a minimum depth of eighteen (18) feet below land surface or five (5) feet below land surface for monitoring wells. (3-18-22)( )

ii. ~~Thermoplastic pipe used in wells as casing or liner must have a minimum rating of SDR-21. For nominal diameters of four (4) inches or less, a minimum rating of Schedule 40 is required.~~ If used as casing within unconsolidated or unstable consolidated formations, thermoplastic pipe must be centralized and fully supported throughout the unstable zone(s) with filter pack or seal material as required by these rules. (3-18-22)( )

iii. All thermoplastic casing ~~and liner~~ must be installed in accordance with the manufacturer's recommendations and specifications, and as required by these rules. The well driller will not treat thermoplastic pipe in any manner that would adversely affect its structural integrity. The well driller must: (3-18-22)( )

(1) Ensure that the weight of the pump assembly, if secured to the thermoplastic pipe, does not exceed the weight limitations per manufacturer's recommendations or cause damage to the pipe resulting in breaks or leaks. (3-18-22)

(2) Not use Type III (high-early strength) Portland cement-based seal materials in direct contact with thermoplastic pipe unless approved by the Director. (3-18-22)

(3) Not drive, drop, force, or jack thermoplastic pipe into place. Thermoplastic pipe must be lowered or floated into an oversized, obstruction-free borehole. (3-18-22)

c. Perforated Well Casing. Perforated well casing may be used in the construction or decommissioning of a well when such application does not violate any standards required by these rules. (3-18-22)

**05 Liner.** ~~In addition to well casing, liners may be installed in wells +~~ To prevent damage to pumping equipment, ~~S~~ steel or thermoplastic pipe meeting the specifications and conditions for use as casing may be installed as liner ~~in a well with a bottom hole temperature of eighty five (85) degrees Fahrenheit or less. Thermoplastic liner must conform to ASTM F 480 and NSF WC.~~ Thermoplastic liners must not be used in unconsolidated formations or unstable units. (3-18-22)(    )

**06. Screen.** Well screens must be used in constructing a well when necessary to avoid sand production (see sand production, Rule 25, Subsection 025.24). Well screens must be commercially manufactured, be slotted, louvered or wire wrapped, and be installed ~~according to~~ the manufacturers specifications. (3-18-22)(    )

a. Screens may require a filter pack consisting of sand or gravel to further reduce the quantity of sand produced from the well. (3-18-22)

b. The well driller will not install well screens, perforated casing or filter pack across a confining layer(s) separating aquifers of different pressure, temperature, or quality. (3-18-22)

**07. Use of Approved Sealing Materials and Required Annular Space.** Well casings must be sealed in the required annular space with approved material to prevent the possible downward movement of ~~contaminated~~ surface waters or other fluids in any annular space around the well casing (Figure 02, Appendix A). Proper sealing is also required to prevent the movement of groundwater either upward or downward from zones of different pressure, temperature or quality within the well or outside the casing. The well driller must notify by phone the Department's appropriate Region Office at least four (4) hours in advance of placing any annular seal to provide Department staff the opportunity to observe seal placement. (3-18-22)(    )

a. All casing to be sealed must be adequately centralized to ensure uniform seal thickness around the well casing. Surface seals must extend to not less than thirty-eight (38) feet below land surface for well depths greater than thirty-eight (38) feet. For well depths less than thirty-eight (38) feet, seals must extend to depths as hereafter required. (3-18-22)

b. Seals are required at depths greater than thirty-eight (38) feet in artesian wells or to seal through confining layers separating aquifers of differing pressure, temperature, or quality in any well. (3-18-22)

c. When a well is modified and the existing casing is moved or the original seal is damaged, or a well driller discovers that a seal was not installed or has been damaged, the well driller must repair, replace, or install a seal around the permanent casing that is equal to or better than required when the well was originally constructed. (3-18-22)

d. Manufactured packers ~~and~~ shale traps, and cementing baskets may be used as devices to retain approved seal material when installing a required annular seal. Whenever these devices are used to retain seal material, the well driller must comply with the manufacturer's recommendations for installation. (3-18-22)(    )

e. If a temporary casing has been installed, upon completion of the drilling, the annular space must be filled with approved seal material and kept full while withdrawing the temporary casing. Bentonite chips should be used with caution when the annular space between a temporary casing and permanent casing is filled with water. (3-18-22)

i. When attempts at removing a temporary casing are unsuccessful, the casing must be sealed in place by a method approved by the department. (3-18-22)

ii. The well driller must notify the department whenever a temporary casing can not be removed and propose a plan to adequately seal the casing to prevent waste and contamination of the ground water. The plan must detail how the casing will be sealed on the outside to a sufficient depth below land surface in addition to placement of any required formation seals through the interval at which the casing will remain. (3-18-22)

f. For mixed grout seals the minimum annular space required must provide for a uniform seal thickness not less than one (1) inch on all sides of the casing or a borehole at least two (2) inches larger than the outside diameter (OD) of the casing to be sealed (Figure 02, Appendix A). (Note: a seven and seven-eighths (7 7/8) inch diameter (eight (8) inch nominal) borehole around a six and five-eighths (6 5/8) inch OD (six (6) inch nominal casing does not satisfy the minimum annular space requirements). (3-18-22)

i. When placing grout seals with a removable tremie pipe between casing strings or between a borehole and casing, the required annular space must be ~~at least~~ one (1) inch or equal to the OD of the tremie pipe, whichever is greater. Permanent tremie pipes will be considered as a casing string and subject to minimum annular space requirements in addition to the annular space requirements around the well casing (Figure 03, Appendix A). (3-18-22)

ii. All grout seals must be placed from the bottom up, by using an approved method. Bentonite grout must not be used above the water table unless specifically designed and manufactured for such use and approved by the Director in advance. (3-18-22)

iii. If cement-based grout (neat cement or neat cement grout) is used to create a seal, the casing string sealed must not be moved or driven after the initial set. Construction must not resume for a minimum of twenty-four (24) hours following seal placement; (3-18-22)

g. For dry bentonite seals the minimum annular space required must provide for a uniform seal thickness not less than one and five-eighths (1 5/8) inches on all sides of the casing or a borehole at least four (4) inches larger than the “nominal diameter” of the casing to be sealed. e.g., (six and five-eighths (6 5/8) inch OD (six (6) inch nominal) casing requires a ten and three fourths (10 3/4) inch OD (ten (10) inch nominal) temporary casing or a nine and seven-eighths (9 7/8) inch (ten (10) inch nominal) minimum borehole). Listed below are additional annular space requirements and limitations for placement of dry bentonite seals: (3-18-22)

i. All dry bentonite seals must be tagged during placement and consider volumetric calculations to verify placement. (3-18-22)

ii. Installation of dry bentonite seals must be consistent with the manufacturers’ recommendations and specifications for application and placement. (3-18-22)

iii. Granular bentonite must not be placed through water. (3-18-22)

iv. If a granular bentonite seal is placed deeper than two hundred (200) feet, the minimum annular space must be increased by at least one (1) inch e.g., (six and five-eighths (6 5/8) inch OD (six (6) inch nominal) casing requires a twelve and three fourths (12 3/4) inch OD (twelve (12) inch nominal) temporary casing or an eleven and seven eighths (11 7/8) inch (twelve (12) inch nominal) minimum borehole). (3-18-22)

v. Bentonite chips and pellets may be placed through water or drilling fluid of appropriate viscosity. Bentonite chip seals placed through more than fifty (50) feet of water or drilling fluid will require the minimum annular space to be increased by at least one (1) inch e.g., (six and five-eighths (6 5/8) inch OD (six (6) inch nominal) casing requires a twelve and three fourths (12 3/4) inch OD (twelve (12) inch nominal) temporary casing or an eleven and seven eighths (11 7/8) inch (twelve (12) inch nominal) minimum borehole). (3-18-22)

**08. Sealing of Wells.** Sealing requirements described herein are minimum standards that apply to all wells. The Director may establish alternate minimum sealing requirements in specific areas when it can be determined through detailed studies of the local hydrogeology that a specific alternate minimum will provide protection of the ground water from waste and contamination. (3-18-22)

a. Consolidated Formations. When a ~~water~~ well encounters consolidated formations above the water table and is drilled into and constructed to acquires water from an unconfined aquifer ~~that consists of in the consolidated formations that are above the water table~~, casing must be installed so that it extends and is sealed to a depth not less than thirty-eight (38) feet (Figure 04, Appendix A). If the well depth is less than thirty-eight (38) feet from land surface, well casing must be installed and sealed five (5) feet into the consolidated formation or to a depth of eighteen (18) feet, whichever is greater. (3-18-22)(    )

b. Unconsolidated Formations without Confining Layers of Clay. When a ~~water~~ well encounters unconsolidated formations above the water table and is drilled into and constructed to acquires water from an unconfined aquifer ~~that is overlain with in the unconsolidated formations, such as sand and gravel without confining layers of clay, well~~ casing must extend to at least five (5) feet below the water table and be sealed to a depth not less than thirty-eight (38) feet (Figure 05, Appendix A). If the well depth is less than thirty-eight (38) feet well casing must extend to at least five (5) feet below the water table or eighteen (18) feet, whichever is greater, and be sealed to a depth of at least eighteen (18) feet. (3-18-22)(    )

i. The extensive (for example, one hundred fifty (150) feet thick or more) unconsolidated, non-stratified, sand and gravel of the Rathdrum Prairie are characterized by extremely high transmissivity and hydraulic conductivity. Under these conditions, sealing wells to depths greater than eighteen (18) feet may not be additionally protective. When a water well is drilled within the boundaries of the Rathdrum Prairie, (shown in Figure 06, Appendix A of these rules), ~~well~~ casing must extend to at least five (5) feet below the water table and be sealed to a depth not less than eighteen (18) feet (Figure 07, Appendix A). (3-18-22)(    )

c. Unconsolidated Formations with Confining Layers of Clay. When a well is drilled into and acquires water from an aquifer that is overlain by unconsolidated deposits such as sand and gravel, and there are confining layers ~~of clay~~ above the water table, well casing must be installed from the land surface to the confining layer immediately above and in contact with the production zone and sealed to a depth not less than thirty-eight (38) feet (Figure 08, Appendix A). If the well depth is less than thirty-eight (38) feet from land surface, well casing must extend and be sealed into the first confining layer or to a depth of eighteen (18) feet, whichever is greater. (3-18-22)(    )

**09. Sealing Artesian Wells. (3-18-22)**

a. Unconsolidated Formations. When artesian water is encountered in unconsolidated formations, the production zone or open interval must be limited to zones of like pressure, temperature, and quality. Water encountered in oxidized sediments must not be comingled with water encountered in reduced sediments. Well casing must extend from land surface into the lower most confining layer above the production zone, and must be sealed: (3-18-22)

i. From land surface to a depth of at least thirty-eight (38) feet; and (3-18-22)

ii. Through all confining layer(s); and (3-18-22)

(1) A minimum of five (5) feet of seal material must be placed into or through the lower most confining layer above the production zone (Figure 09, Appendix A); or (3-18-22)

(2) Five (5) feet into or through the lowermost confining layer above the production zone and continuously to land surface (Figure 09, Appendix A). (3-18-22)

iii. If the well depth is less than thirty-eight (38) feet, the well must be cased and sealed from land surface to the confining layer in direct contact with the production zone or to a depth of eighteen (18) feet, whichever is greater. (3-18-22)

b. Consolidated Formations. When artesian water is encountered in a consolidated formation, well casing must be installed and sealed from land surface to a depth of at least thirty-eight (38) feet; and (3-18-22)

i. If the consolidated formation is overlain by a permeable formation(s) and water will rise above the consolidated formation, well casing must extend and be sealed at least five (5) feet into the confining portion of the

consolidated formation (Figure 10, Appendix A). (3-18-22)

ii. If the well depth is less than thirty-eight (38) feet, the well must be cased and sealed from land surface five (5) feet into the confining consolidated formation or to a depth of eighteen (18) feet, whichever is greater. (3-18-22)

c. Control Device. Pursuant to Section 42-1603, Idaho Code, if the well flows at land surface, it must be equipped with a control device approved by the Director, so that the flow can be completely stopped. If leaks occur around the well casing or adjacent to the well, the well leakage must be ~~completed~~ **eliminated to the extent possible** with **approved** seals, casing, or ~~cement grout to eliminate the leakage~~ **other means approved by the Director.** (3-18-22)( )

i. Flowing artesian wells must be equipped with an approved pressure gage fitting that will allow access for measurement of shut-in pressure of a flowing well. All pressure gage fittings must include control valves such that the pressure gage can be removed without resulting in artesian flow from the well. (3-18-22)

ii. The well driller must not move his well drilling rig from the site until all requirements have been satisfied. Some mixing of water may be allowed to develop an adequate water well; however, the mixing must be restricted to water zones of similar pressure, temperature and quality. The driller must take precautions to case and seal out zones which may lead to waste or contamination. (3-18-22)

**10. Alternative Methods for Sealing Wells.** To accommodate ~~for~~ new technology, and in consideration of the wide variety of drilling equipment used to construct wells, other methods of sealing wells not specifically addressed in these rules may be allowed. The Director may consider specific proposals for alternative methods of sealing on a case by case basis. Director approval or acceptance of such procedures will not constitute a “waiver” of any requirements of these rules. In such cases, the well driller must provide sufficient information for the Director to determine that the full intent of the sealing requirements will be satisfied if an alternative method is employed. If it is determined that a specific alternate method will provide protection of the ground water from waste and contamination, the Director may issue a statement of acceptance qualifying the use and implementation of such methods. (3-18-22)( )

**11. Injection Wells.** In addition to meeting the requirements of Rule 25 of these rules, the construction, modification, or decommissioning ~~(abandonment)~~ of all injection wells over eighteen (18) feet in vertical depth must also comply with the IDAPA 37.03.03, “Rules for the Construction and Use of Injection Wells,” and the injection well permit. Drillers must obtain from the Director a certified copy of the permit authorizing construction or modification of an injection well before beginning work. (3-18-22)( )

**12. Cathodic Protection Wells.** All cathodic protection wells must be constructed by a licensed well driller in compliance with these rules. A detailed construction plan must be included with the drilling permit application. (3-18-22)

**13. Monitoring and Remediation Wells.** All monitoring wells and remediation wells must be constructed and maintained in a manner that will prevent waste or contamination and as otherwise required by these rules. When a monitoring well or a remediation well is no longer useful or needed, the owner or operator of the well must decommission ~~(abandon)~~ the well in accordance with Rule 25, Subsection 025.16 of these rules. No person may divert ground water from a monitoring well or a remediation well for any purpose not authorized by the Director. The application for a permit for all monitoring wells and all remediation wells must include a design proposal prepared by a licensed engineer or registered geologist pursuant to Section 42-235, Idaho Code. Blanket permits for monitoring well and remediation well networks may be approved for site-specific monitoring and remediation programs. The designs and specification for monitoring wells and remediation wells must demonstrate that: (3-18-22)( )

a. The ground water resources are protected against waste and contamination; (3-18-22)

b. The well(s) will inject or withdraw only fluids, gases or solutions approved by the Director; (3-18-22)

c. The well(s) will be constructed ~~so as~~ to prevent aquifer commingling; and (3-18-22)( )

d. The well(s) will be properly decommissioned—~~(abandoned)~~ upon project completion and in accordance with these rules. (3-18-22)( )

**14. Closed Loop Heat Exchange Wells.** The well driller must construct closed loop heat exchange wells consistent with these rules. The well driller is not required to install steel casing in such wells. When constructing a closed loop heat exchange well, the well driller must: (3-18-22)

- a. Construct each borehole of sufficient size to provide the annular space required by these rules. (3-18-22)
- b. Seal the annular space of each borehole with approved seal material in accordance with these rules; (3-18-22)
- c. Install fluid-tight circulating pipe, composed of high-density polyethylene, grade PE3408, minimum cell classifications PE355434C or PE345434C conforming to ASTM Standard D3350, or another Director-approved pipe; (3-18-22)( )
- d. Join pipe using thermal fusion techniques according to ASTM Standards D-3261 or D-2683. All personnel creating such system joints must be trained in the appropriate thermal fusion technologies; (3-18-22)
- e. Use only propylene glycol, or other circulating fluid approved by the Director; (3-18-22)
- f. Ensure that any other system additive is NSF approved and has prior approval from the Director; (3-18-22)
- g. Pressure test each loop with potable water prior to grout installation; (3-18-22)
- h. Pressure test the system with potable water prior to installation of the circulating fluid at one hundred percent (100%) of the designed system operating pressure for a minimum duration of twenty-four (24) hours; and (3-18-22)
- i. Properly repair or decommission—~~(abandon)~~ all loops failing the test by pressure pumping approved seal material through the entire length of each failed loop. After grouting, loop ends must be fused together or capped. (3-18-22)( )

**15. Access Port or Pressure Gage.** Upon completion—~~of a well and before removal of the well rig from the site,~~ the well must be equipped with an access port that will allow for measurement of the depth to water or an approved pressure gage fitting that will allow access for measurement of shut-in pressure of an artesian flowing well. All pressure gage fittings must include control valves such that the pressure gage can be removed. Approved access ports are illustrated in Figures [1 and 11](#), APPENDIX A, together with approved locations for pressure gage fittings. Air lines are not a satisfactory substitution for an access port. Nonflowing domestic and stock water wells that are to be equipped with a sanitary seal with a built-in access port are exempt from this requirement. (3-18-22)( )

**16. Decommissioning—~~(Abandoning)~~ of Wells.** (3-18-22)( )

a. The well owner is charged with maintaining and properly decommissioning—~~(abandoning)~~ a well in a manner that will prevent waste or contamination, or both, of the ground water. No person is allowed to decommission a well in Idaho without first obtaining a driller's license or receiving a waiver of the license requirement from the Director of the Department of Water Resources. Authorization is required from the Director prior to decommissioning any well. Upon decommissioning, the person who decommissioned the well must submit to the Director a report describing the procedure. (3-18-22)( )

b. The Director may require decommissioning of a well in compliance with the provisions of these rules, if the well: (3-18-22)

- i. Does not meet minimum well construction standards; (3-18-22)

- ii. Meets the definition of an unusable well; (3-18-22)
  - iii. Poses a threat to human health and safety; (3-18-22)
  - iv. Is in violation of IDAPA 58.01.11, “Ground Water Quality Rule”; or (3-18-22)
  - v. Has no valid water right or other authorization acceptable to the Director for use of the well. (3-18-22)
  - c. When required by the Director, decommissioning must be done in accordance with the following: (3-18-22)
    - i. Cased wells and boreholes without a continuous seal from the top of the intakes or screen to the surface. The well driller must use one (1) of the following methods as applicable: (3-18-22)
      - (1) The Director may require that well casing be perforated every five (5) feet from the bottom of the casing to within five (5) feet of the surface. Perforations made must be adequate to allow the free flow of seal material into any voids outside the well casing. There must be at least four equally spaced perforations per section circumference. Approved grout must be pressure pumped to fill any voids outside of the casing. A sufficient volume must be used to completely fill the well and annular space; or (3-18-22)
      - (2) Fill the borehole with approved seal material as the casing is being removed. (3-18-22)
    - ii. Cased wells and boreholes with full-depth seals. If the well is cased and sealed from the top of the screen or production zone to the land surface, the well must be ~~completely~~ filled with approved seal material. (3-18-22)( )
    - iii. Uncased wells must be ~~completely~~ filled with approved seal material. (3-18-22)( )
    - iv. Dry hole wells or wells from which the quantity of water to meet a beneficial use cannot be obtained must be decommissioned with ~~cement grout, concrete or other~~ approved seal material in accordance with these rules. (3-18-22)( )
- 17. Completion of a Well.** The Director will consider that every well is completed when the well drilling equipment has been removed, unless written notice has been given to the Director by the well driller that he intends to return and do additional work on the well within a specified period ~~of time~~. Upon completion of the well, the well must meet all ~~of the~~ required standards. (3-18-22)( )
- a. Upon completion of drilling and prior to removal of well drilling equipment from a water well site, the top of the casing must be completely covered with: (3-18-22)
    - i. A one-fourth inch (1/4”) thick solid, new or like-new steel plate with a three-fourths inch (3/4) threaded and plugged access port, welded to and completely covering the casing (Figure 12, Appendix A); or (3-18-22)
    - ii. A threaded cap, or a commercially manufactured watertight sanitary well cap (Figure 12, Appendix A); or (3-18-22)
    - iii. A commercially manufactured water-tight, snorkel-vented or non-vented well cap on any well susceptible to submergence; or (3-18-22)
    - iv. A control device approved by the Director per Section 42-1603, Idaho Code, on any well that flows at land surface (Figure 11, Appendix A). (3-18-22)
  - b. Upon the completion of every well, the well driller must permanently affix the stainless steel well tag to the steel ~~surface~~ casing in a manner and location that maintains tag legibility. For closed loop heat exchange



wells, the well driller must obtain approval for the well tag placement and method of attachment. The well driller must secure each tag by: (3-18-22)(    )

- i. A full-length weld across the top and down each side of the tag; or (3-18-22)
- ii. Using one (1) stainless steel, closed-end domed rivet near each of the four (4) corners of the tag. (3-18-22)
- iii. Prior to welding or riveting, the tag must be pre-shaped to fit the casing such that both sides to be welded or riveted touch the casing and no gaps exist between the tag and casing. (3-18-22)

**18. Pitless Adapters.** When a pitless adaptor is used (Figure 12, Appendix A), the adaptor should be of the type approved by the NSF International testing laboratory or the approval code adopted by the Pitless Adaptor Division of the Water Systems Council. The pitless adaptor, including the cap or cover, casing extension, and other attachments, must be so designed and constructed to be water tight and to prevent contamination of the potable water supply from external sources. If a permanent surface or outer casing is installed and is cut off or breached to install the pitless adapter on an inner well casing or liner, the space between the permanent outer casing and the liner or inner casing must be sealed. The well owner or person installing the pitless adaptor must then seal the excavation surrounding the pitless adaptor using an approved seal material. (3-18-22)

**19. Pump Installation.** No person is allowed to install a pump into any well that would cause a violation of Rule 25, of these rules or other applicable rules or state law. (3-18-22)(    )

**20. Explosives.** Explosives used in well construction must never be detonated inside the required well casing. Approved explosive casing perforators may be exempted by the Director. (3-18-22)

**21. Hydraulic Fracturing.** Hydraulic fracturing must be performed only by well drillers licensed in Idaho. The pressure must be transmitted through a drill string and must not be transmitted to the well casing. The driller must provide a report to the Director of the fracturing work which must include well location, fracturing depth, fracturing pressures and other data as requested by the Director. (3-18-22)

**22. Drilling Fluids or Drilling Additives.** The well driller must use only potable water and drilling fluids or drilling additives that are manufactured for use in water wells, are NSF International, American Petroleum Institute (API), or ASTM/ANSI approved; and do not contain a concentration of any substance in excess of Primary Drinking Water Standards, as set forth in IDAPA 58.01.08, “Rules for Public Drinking Water Systems,” according to manufacturer’s specifications. The well driller may seek approval from the Director to use specific, non-certified products on a case-by-case basis. In addition, the well driller must ensure the containment of all drilling fluids and materials used or produced to the immediate drilling site, and will not dispose of such fluids or materials into any streams, canals, boreholes, wells, or other subsurface pathways. (3-18-22)

**23. Disinfection and Decontamination.** Upon completion of a well, the driller is responsible for adding the appropriate amount of disinfecting chemical compound and distributing it throughout the well to achieve a uniform concentration for “in place” disinfection of the well. Chlorine compounds used in accordance with the table listed below will satisfy this requirement. Other methods may be used if approved by the Director in advance.

<b>Amount of Chlorine Needed Per 100 Feet of Water in Well</b>			
Casing Diameter (in.)	Gallons of water in casing per 100 ft. of water depth	Amount of 5.25% Sodium Hypochlorite (Unscented Laundry Bleach)	Amount of 65% Calcium Hypochlorite (Chlorine Granules)
6	147	2 ¼ cups	3 tbsp
8	261	4 cups	5 tbsp
10	408	6 ¼ cups	½ cup
12	588	9 cups	¾ cup

Amount of Chlorine Needed Per 100 Feet of Water in Well			
16	1044	1 gal	1 ¼ cup
Note: 1 gal = 4 qt = 8 pt = 16 cups; 1 cup = 16 tbsp			
Chlorine granules or tablets must be dissolved and placed into the well as a solution.			
If another concentration of hypochlorite solution is used, the following equation should be used for calculating amounts.			
(Volume of water in gallons) X (0.08) / % Hypochlorite (e.g. 50% = 50) = cups of hypochlorite			
Example: To treat 147 gallons of water using a 50% concentration of hypochlorite solution: (147 gallons water) X (0.08) / 50 = .23 (or approximately 1/4) cup of 50% Hypochlorite solution			

(3-18-22)

**24. Sand Production.** The maximum sand content produced from a well after initial well development must not exceed fifteen (15) ppm. ~~For the purpose of this rule, sand is considered to be~~ This rule applies to any sediment particle retained on a U.S. standard sieve #200 (seventy-five hundredths (0.075) mm to two (2) mm).

(3-18-22)( )

a. When necessary to mitigate sand production the well driller must: (3-18-22)

i. Construct each well with properly sized casing, screen(s) or perforated intake(s); and (3-18-22)

ii. Install properly sized filter pack(s); or (3-18-22)

iii. Install pre-packed well screens; or (3-18-22)

iv. Employ other methods approved by the Director. (3-18-22)

b. The Director may grant a waiver exempting a well producing water that exceeds the maximum sand content only if the well driller has met the requirements of Rule 25, Subsection 025.24.a. (3-18-22)

c. Sand production in public drinking water system wells. Wells used in connection with a public drinking water system have more stringent requirements. See IDAPA 58.01.08, "Idaho Rules for Public Water Systems." (3-18-22)( )

**25. Well Development and Testing.** For each well the well driller must measure and record the static (non-pumping) water level and the pumping water level, and the production rate. The production rate will be determined by a pump, bailer, air-lift, or other industry approved test of sufficient duration to establish production from the well. For wells with no returns the driller must report no returns and the static water level. ~~This information must be documented on the well driller's report~~ The well driller's report must document this information.

(3-18-22)( )

026. -- 029. (RESERVED)

**030. CONSTRUCTION OF LOW TEMPERATURE GEOTHERMAL RESOURCE WELLS AND BONDING (RULE 30).**

**01. General.** Drillers constructing low temperature geothermal resource wells (bottom hole temperature more than eighty-five (85) degrees Fahrenheit and less than two hundred twelve (212) degrees Fahrenheit) must be qualified under the Well Driller Licensing Rules. All low temperature geothermal resource wells must be constructed in such a manner that the resource will be protected from waste due to lost artesian pressure and temperature. The owner or well driller is required to provide bottom hole temperature data, but the Director may

make the final determination of bottom hole temperature, based upon information available to him. (3-18-22)

a. All standards and guidelines for construction and decommissioning-~~(abandonment)~~ of cold water wells apply to low temperature geothermal resource wells except as modified by Rule 30, Subsections 030.03, 030.04, and 030.06. (3-18-22)(\_\_\_\_)

b. ~~A~~ When low temperature geothermal resources are known or anticipated, a drilling prospectus must be submitted to and approved by the Director prior to the construction, modification, deepening or decommissioning ~~(abandonment)~~ of any low temperature geothermal resource well. The well owner and the well driller are responsible for the prospectus and subsequent well construction. (3-18-22)(\_\_\_\_)

**02. Well Owner Bonding.** The owner of any low temperature geothermal resource well must file a surety bond or cash bond as required by Section 42-233, Idaho Code, with the Director in an amount not less than five thousand dollars (\$5,000) nor more than twenty thousand dollars (\$20,000) payable to the Director prior to constructing, modifying or deepening the well after July 1, 1987. The bond amount will be determined by the Director within the following guidelines. The bond will be kept in force for one (1) year following completion of the well or until released in writing by the Director, whichever occurs first. (3-18-22)

a. ~~Any well less than three hundred (300) feet deep with a bottom hole temperature of less than one hundred twenty (120) degrees Fahrenheit and a shut in pressure of less than ten (10) pounds per square inch gage (psig) at land surface~~ The owner of an artesian low temperature geothermal resource well must maintain a bond of five thousand dollars (\$5,000). (3-18-22)(\_\_\_\_)

b. The owner of ~~any well three hundred (300) feet to one thousand (1,000) feet deep with a bottom hole temperature of less than one hundred fifty (150) degrees Fahrenheit and a shut in pressure of less than fifty (50) psig~~ a low temperature geothermal resource well which flows at land surface must maintain a bond of ten thousand dollars (\$10,000). (3-18-22)(\_\_\_\_)

c. The owner of ~~any~~ a flowing low temperature geothermal resource well ~~not covered by Rule 30, Subsections 030.02.a. and 030.02.b.~~ with a bottom hole temperature of 140 degrees Fahrenheit or more must maintain a bond of twenty thousand dollars (\$20,000). (3-18-22)(\_\_\_\_)

d. The Director may decrease or increase the bonds required if it is shown to his satisfaction that well construction or other conditions merit an increase or decrease. (3-18-22)

e. The bond requirements of Section 42-233, Idaho Code, are applicable to wells authorized by water right permits or licenses having a priority date earlier than July 1, 1987, if the well authorized by the permit or license was not constructed prior to July 1, 1987, or if an existing well constructed within the terms of the permit or license is modified, deepened or enlarged on or after July 1, 1987. (3-18-22)(\_\_\_\_)

**03. Casing.** Low temperature geothermal resource wells must be properly cased and sealed to protect from cooling by preventing intermingling with cold water aquifers. Casing may consist of several different casing strings (i.e. conductor pipe, surface casing, intermediate casing, production casing) provided drilling depth does not exceed ten times the depth of the last cemented casing. (3-18-22)(\_\_\_\_)

a. Steel casing which meets or exceeds the minimum specifications for permanent steel casing of Rule 25, Subsection 025.04 must be installed in every well. The Director may require a more rigid standard for collapse and burst strength as depths or pressures may dictate. ~~Every~~ Low temperature geothermal resource wells ~~which drilled in areas where existing wells are known to~~ flows at land surface must have a minimum of forty (40) feet of conductor pipe set and ~~cemented sealed~~ its entire length to provide anchorage for well head control devices. (3-18-22)(\_\_\_\_)

b. If artesian pressure is encountered, ~~C~~ casing must be installed from twelve (12) inches above land surface and be sealed with approved seal material into the overlying confining strata of the thermal aquifer. The casing schedule may consist of several different casing strings ~~(i.e. conductor pipe, surface casing, intermediate casing, production casing)~~ which may all extend to land surface or may be overlapped and sealed or packed to prevent fluid migration out of the casing at any depth (Figure 13, Appendix A). (3-18-22)(\_\_\_\_)

i. ~~Low temperature geothermal resource wells less than one thousand (1,000) feet deep and which encounter a shut-in pressure of less than fifty (50) psig at land surface must have two (2) strings of casing set and cemented to land surface. Conductor pipe must be a minimum of forty (40) feet in length or ten percent (10%) of the total depth of the well whichever is greater. Surface casing must extend into the confining stratum overlying the aquifer.~~ (3-18-22)

ii. ~~Low temperature geothermal resource wells one thousand (1,000) feet or more in depth or which will likely encounter a shut-in pressure of fifty (50) psig or more at land surface require prior approval of the drilling plan by the Director and must have three strings of casing cemented their total length to land surface. Conductor pipe must be a minimum length of forty (40) feet. Surface casing must be a minimum of two hundred (200) feet in length or ten percent (10%) of the total depth of the well, whichever is greater. Intermediate casing must extend into the confining stratum overlying the aquifer.~~ (3-18-22)

e. ~~Subsection 030.03.b. may be waived if it can be demonstrated to the Director through the lithology, electrical logs, geophysical logs, injectivity tests or other data that formations encountered below the last casing string set, will neither accept nor yield fluids at anticipated pressure to the borehole.~~ (3-18-22)

~~dc. A nominal borehole size of two (2) inches in diameter larger than the Outside Diameter (O.D.) of the casing or casing coupler (whichever is larger) must be drilled. All casing designations must be by O.D. and wall thickness and must be shown to meet a given specification of the American Petroleum Institute, the American Society for Testing and Materials, the American Water Works Association or the American National Standards Institute. The last string of casing set during drilling operations must, at the Director's option, be flanged and capable of mounting a valve or blow out prevention equipment to control flows at the surface before drilling resumes.~~ (3-18-22)( )

**04. Sealing of Casing.** ~~All casing must be sealed its entire length with e Cement or a cement grout mixture unless waived by the Director~~ is required for wells with a bottom hole temperature of greater than 140 degrees Fahrenheit. The All mixed grout seal material must be placed from the bottom ~~of the casing to land surface up~~ either through the casing or tubing or by use of a tremie pipe. ~~The e Cement or cement grout must be undisturbed for a minimum of twenty-four (24) hours or as needed to allow adequate curing.~~ (3-18-22)( )

a. A caliper log may be run for determining the volume of ~~cement seal material~~ to be placed with an additional twenty-five (25%) percent on site ready for mixing. If a caliper log is not run, an additional one hundred (100%) percent of the calculated volume of ~~cement seal material~~ must be on site ready for placement. (3-18-22)( )

b. When placing mixed grout seal material ~~If there is no return of cement or cement grout~~ at the surface after circulating all of the ~~cement~~ mixture on site, the Director will determine whether remedial work should be done to ~~insure~~ ensure no migration of fluids around the well bore. (3-18-22)( )

c. The use of additives such as bentonite, accelerators, retarders, and lost circulation material must follow manufacturer's specifications. (3-18-22)

**05. Blow Out Prevention Equipment.** The Director may require the installation of gate valves or annular blow out prevention equipment to prevent the uncontrolled blow out of drilling mud and geothermal fluid. (3-18-22)

**06. Repair of Wells.** The well driller must submit a drilling prospectus to the Director for review and approval prior to the repair or modification of a low temperature geothermal resource well. (3-18-22)

**07. Decommissioning (Abandoning) of Wells.** Proper decommissioning ~~(abandonment)~~ of any low temperature geothermal resource well requires the following: (3-18-22)( )

a. All ~~cement plugs~~ mixed grout seal material must be pumped into the hole through drill pipe or tubing. (3-18-22)( )

b. All open annuli must be ~~completely~~ filled with ~~cement~~ approved seal material. (3-18-22)( )

- c. A ~~cement plug~~ Approved seal material at least one hundred (100) feet in vertical depth must be placed straddling (fifty (50) feet above and fifty (50) feet below) the zone where the casing or well bore meets the upper boundary of each ground water aquifer. (3-18-22)( )
- d. A minimum of one hundred (100) feet of ~~cement~~ approved seal material must be placed straddling each drive shoe or guide shoe on all casing including the bottom of the conductor pipe. (3-18-22)( )
- e. A surface plug of ~~either cement grout or concrete~~ approved seal material must be placed from at least fifty (50) feet below the top of the casing to the top of the casing. (3-18-22)( )
- f. A ~~cement plug~~ Approved seal material must extend at least fifty (50) feet above and fifty (50) feet below the top of any liner installed in the well. The Director may waive this rule upon a showing of good cause. (3-18-22)( )
- g. Other decommissioning (~~abandonment~~) procedures may be approved by the Director if the owner or operator can demonstrate that the low temperature geothermal resource, ground waters, and other natural resources will be protected. (3-18-22)( )
- h. Approval for decommissioning (~~abandonment~~) of any low temperature geothermal well must be in writing by the Director prior to the beginning of any decommissioning (~~abandonment~~) procedures. (3-18-22)( )

031. -- 034. (RESERVED)

035. HEALTH STANDARDS (RULE 35).

01. **Public Drinking Water System Wells.** In addition to meeting these standards, all wells that are constructed for public supply of domestic water must meet all ~~of the~~ requirements set forth by the Idaho Department of Environmental Quality Rules, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." (3-18-22)( )

02. **Special Standards for Construction of Wells When Mineralized or Contaminated Water Is Encountered.** Any time in the construction of a well that mineralized or contaminated water is encountered, the well driller must take the appropriate steps necessary to prevent the poor quality waters from entering the well or moving up or down the annular space around the well casing. The method employed to case and seal out this water will be determined by the well driller, provided all other minimum standards are met. The well driller will take special precautions in the case of filter-packed wells to prevent water of inferior quality from moving vertically in the filter packed portions of the well. All actions taken will be clearly documented on the well driller's report. (3-18-22)

03. **Distances From Contaminant Sources.** All water wells constructed for domestic use must comply with minimum distances from septic tanks, drain fields, drainfield replacement area and other siting requirements as set forth in Rule 25, Subsection 025.01.d. (3-18-22)

036. OWNERS RESPONSIBILITIES FOR WELL USE AND MAINTENANCE (RULE 36).

After a well is completed the well owner is responsible for water quality testing, properly maintaining the well, and reporting problems with a well to the Director. All wells must be capped, covered and sealed such that debris cannot enter the well, persons or animals cannot fall into the well, and water cannot enter the well around the outside of the casing. Pursuant to Section 42-1603, Idaho Code, the owner of any artesian well that will flow at land surface is required to apply to the Director for approval of a flow control device. (3-18-22)

01. **Use.** The well owner must not operate any well in a manner that causes waste or contamination of the ground water resource. Failure to operate, maintain, knowingly allow the construction of any well in a manner that violates these rules, or failure to repair or properly decommission (~~abandon~~) any well as herein required will subject the well owner to civil penalties as provided by statute. (3-18-22)( )

02. **Maintenance.** The well owner must: (3-18-22)

a. Not allow modification to wells under their control without first obtaining an approved Idaho Department of Water Resources (IDWR) permit, pursuant to Section 42-235, Idaho Code; (3-18-22)

b. Maintain the minimum casing height of twelve (12) inches above land surface and finished grade; (3-18-22)

c. Maintain the appropriate well cap, and control device if required, according to these Rules; and (3-18-22)

d. Not install or allow the installation of any well pump that would cause a violation of the sand production requirements in accordance with these Rules or allow the well to pump ~~in excess of~~ more than that allowed by a valid water right or domestic exemption. (3-18-22)(    )

e. Maintain the well to prevent waste or contamination of ground waters through leaky casings, pipes, fittings, valves, pumps, seals or through leakage around the outside of the casings, whether the leakage is above or below the land surface. Any person owning or controlling a non-compliant well must have the well repaired by a licensed well driller under a permit issued by the Director in accordance with these Rules. (3-18-22)

**03. New Construction.** The well owner must not construct or allow construction of any permanent building, except for buildings to house a well or plumbing apparatus, or both, closer than ten (10) feet from an existing well. (3-18-22)

**04. Maintain All Other Separation Distances.** The well owner must not construct or install, or allow the construction or installation of any object listed in a location closer than that allowed by the table of Rule 25, Subsection 025.01.d. (3-18-22)

**05. Unusable Wells.** The well owner must have any unusable well repaired or decommissioned (~~abandoned~~) by a licensed well driller under a permit issued by the Director in accordance with these Rules. (3-18-22)(    )

**06. Wells Posing a Threat to Human Health and Safety or Causing Contamination of the Ground Water Resource.** The well owner must have any well shown to pose a threat to human health and safety or cause contamination of the ground water resource immediately repaired or decommissioned (~~abandoned~~) by a licensed well driller under a permit issued by the Director in accordance with these Rules. (3-18-22)(    )

**037. -- 039. (RESERVED)**

**040. AREAS OF DRILLING CONCERN (RULE 40).**

**01. General.** (3-18-22)

a. The Director may designate an “area of drilling concern” to protect public health, or to prevent waste and contamination of ground or surface water, or both, because of factors such as aquifer pressure, vertical depth to the aquifer, warm or hot ground water, or contaminated ground or surface waters. (3-18-22)

b. The designation of an area of drilling concern does not supersede or preclude designation of part or all of an area as a Critical Ground Water Area (Section 42-233a, Idaho Code), Ground Water Management Area (Section 42-233b, Idaho Code), or Geothermal Resource Area (Sections 42-4002 and 42-4003, Idaho Code). (3-18-22)

c. The designation of an area of drilling concern can include certain aquifers or portions thereof while excluding others. The area of drilling concern may include low temperature geothermal resources while not including the shallower cold ground water systems. (3-18-22)

**02. Bond Requirement.** (3-18-22)

a. The minimum bond to be filed by the well driller with the Director for the construction or

modification of any well in an area of drilling concern is ten thousand dollars (\$10,000) unless it can be shown to the satisfaction of the Director that a smaller bond is sufficient. (3-18-22)

b. The Director may determine on a case-by-case basis if a larger bond is required based on the estimated cost to repair, complete or properly decommission ~~(abandon)~~ a well. (3-18-22)( )

**03. Additional Requirements.** (3-18-22)

a. A driller must demonstrate to the satisfaction of the Director that he has the experience and knowledge to adequately construct or decommission ~~(abandon)~~ a well which encounters warm water or pressurized aquifers. (3-18-22)( )

b. A driller must demonstrate to the satisfaction of the Director that he has, or has immediate access to, specialized equipment or resources needed to adequately construct or decommission ~~(abandon)~~ a well. (3-18-22)( )

**041. -- 044. (RESERVED)**

**045. DRILLING PERMIT REQUIREMENTS (RULE 45).**

**01. General Provisions.** (3-18-22)

a. Drilling permits are required pursuant to Section 42-235, Idaho Code, prior to construction or modification of any well. (3-18-22)

b. Drilling permits will not be issued for construction of a well which requires another separate approval from the department, such as a water right permit, transfer, amendment or injection well permit, until the other separate permitting requirements have been satisfied. (3-18-22)

c. The Director may allow the use of a start card permit or give verbal approval to a well driller for the construction of cold water single family domestic wells. Start cards must be received by the Department at least two office hours prior to commencing construction of the well. (3-18-22)

d. The Director may give verbal approval to a well driller for the construction of a well for which other permitting requirements have been met, provided that the driller or owner has filed the drilling permit application and appropriate fee. (3-18-22)

e. ~~The Director will not give a v~~Verbal approval ~~or allow~~ and the use of a start card permits for wells constructed in a designated Area of Drilling Concern, Critical Ground Water Area, ~~or~~ Ground Water Management Area and Areas of Contamination are not allowed unless otherwise authorized by the Director. (3-18-22)( )

f. A well driller will not construct, drill or modify any well until a drilling permit has been issued, or verbal approval granted. (3-18-22)

**02. Effect of a Permit.** (3-18-22)

a. A drilling permit authorizes the construction or modification of a well in compliance with these rules and the conditions of approval on the permit. (3-18-22)

b. A drilling permit does not constitute a water right, injection well permit or other authorization which may be required, authorizing use of water from a well or discharge of fluids into a well. (3-18-22)

c. A drilling permit may not be assigned from one owner to another or from one driller to another. (3-18-22)

d. A drilling permit authorizes the construction of one (1) well, except for blanket monitoring well and blanket remediation well drilling permits. (3-18-22)

**03. Exclusions.** For the purposes of these Rules, artificial openings and excavations that do not constitute a well and are not subject to the drilling permit requirements must be modified, constructed, or decommissioned ~~(abandoned)~~ in accordance with minimum well construction standards. The Director may require decommissioning ~~(abandonment)~~ of artificial openings and excavations constructed pursuant to Rule 45, Subsection 045.03 of these rules, when the use ceases or if the holes may contribute to waste or contamination of the ground water. The following types of artificial openings and excavations are not considered wells: (3-18-22)( )

- a. Artificial openings and excavations with total depth less than eighteen (18) feet. (3-18-22)
- b. Artificial openings and excavations for ~~collecting soil or rock samples, determining geologic properties, or~~ mineral exploration or extraction, including gravel pits. (3-18-22)( )
- c. Artificial openings and excavations for oil and gas exploration for which a permit has been issued pursuant to Section 47-320, Idaho Code. (3-18-22)
- d. Artificial openings and excavations constructed for de-watering building or dam foundation excavations. (3-18-22)
- e. Artificial openings and excavations for collecting soil and rock samples and determining geologic properties above and below the water table. Drill rig(s) and support equipment are to remain onsite until the geotechnical boring(s) are decommissioned in accordance with these rules. ( )
- f. Horizontal borings for utility installations. ( )

~~**04. Converting an Artificial Openings or Excavations Not Constructed as a Well for Use as a Well.** Artificial openings and excavations that were not constructed as a well pursuant to a drilling permit, if subsequently converted to obtain water, monitor water quantity or quality, or to dispose of water or other fluids, must be reconstructed by a licensed driller in compliance with well construction standards and drilling permit requirements. (3-18-22)~~

~~**054. Fees.** (3-18-22)~~

- ~~a. Drilling permit fees are as prescribed by Section 42-235, Idaho Code. (3-18-22)~~
- ~~b. The difference between the drilling permit fee required by Section 42-235 Idaho Code as applicable, must be paid when an existing well constructed on or after July 1, 1987, for which the lower drilling permit fee was paid, is authorized by the Director for a use which would require the larger drilling permit fee. (3-18-22)~~

**046. -- 049. (RESERVED)**

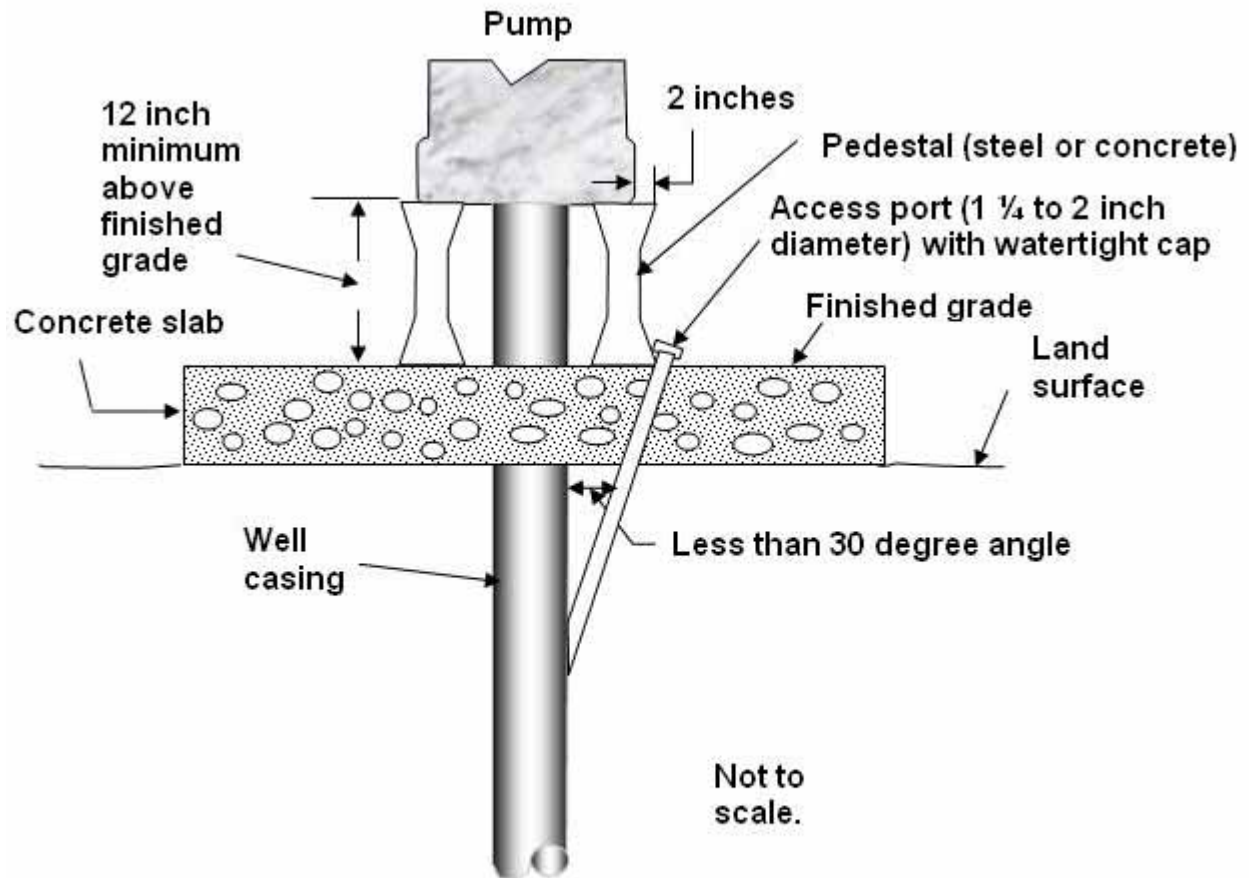
**050. PENALTIES (RULE 50).**

A person owning or controlling a well that allows waste or contamination of the state's ground water resources or causes a well not to meet the construction standards provided in these Rules is subject to the civil penalties as provided by statute. A driller who violates the foregoing provisions of these well construction standards Rules is subject to enforcement action and the penalties as provided by Statute. (3-18-22)

**051. -- 999. (RESERVED)**

**APPENDIX A**  
**Figure 01. Concrete Slabs and Finished Grade**





**Note.** Pedestal shall not extend more than two (2) inches past pump base in horizontal direction.

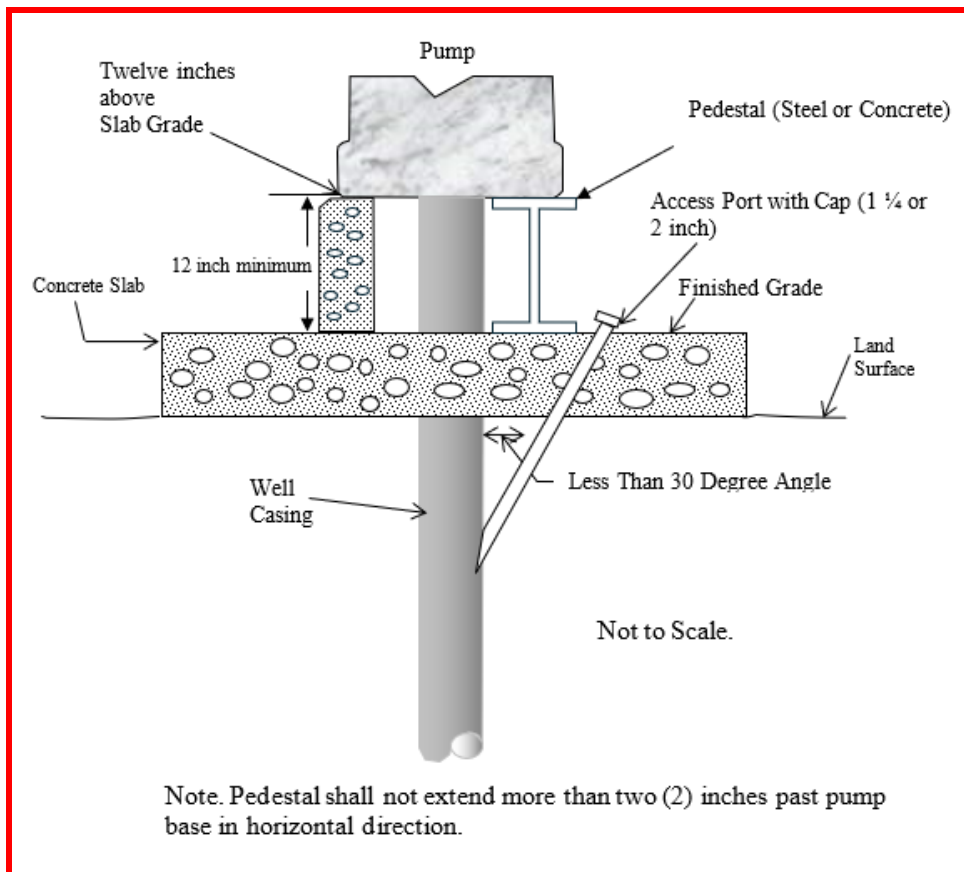


Figure 02. Annular Space and Overbore

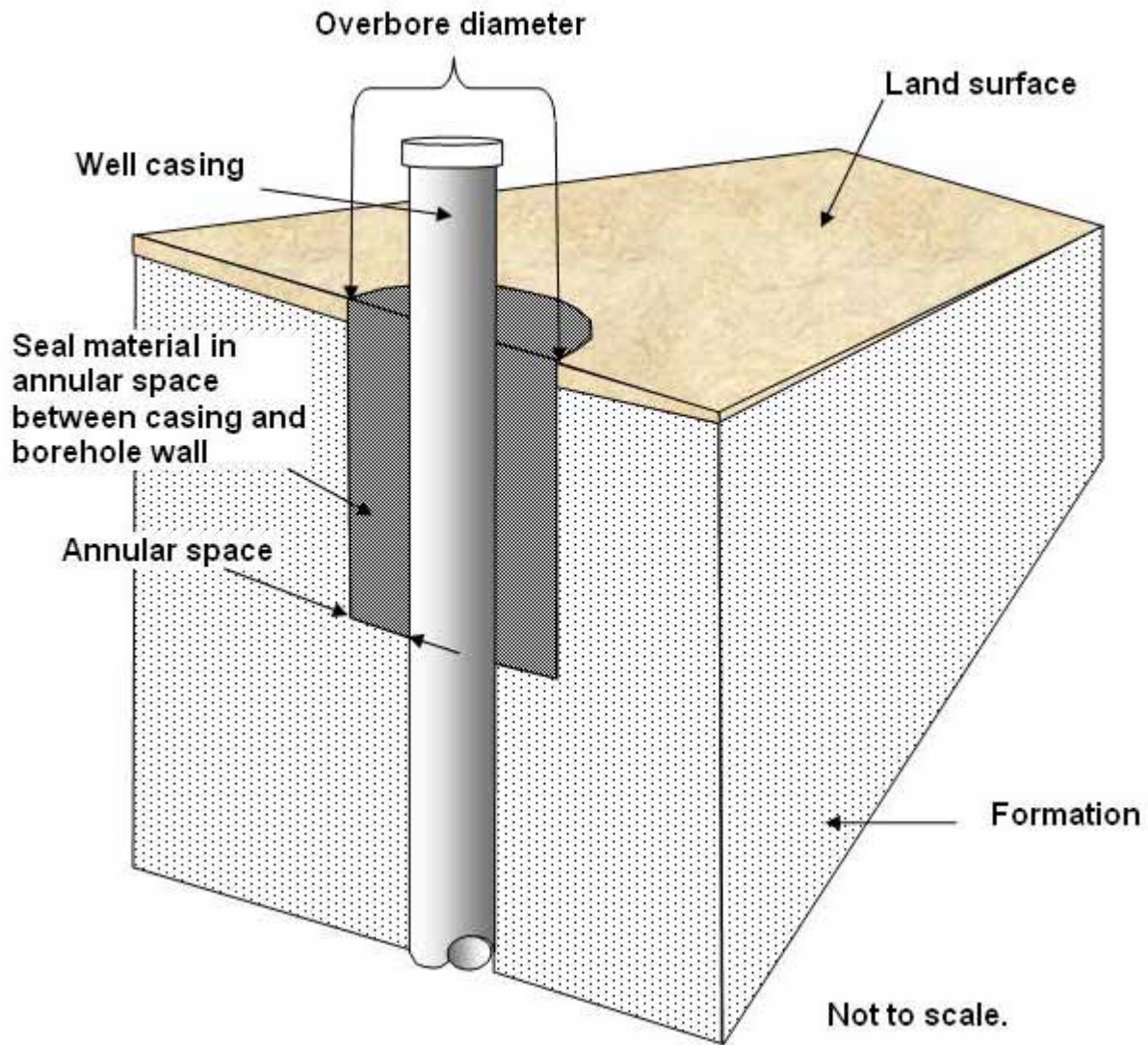


Figure 03. Overbore Requirements When a Tremie Pipe is Left in Place and A Grout Seal Installed

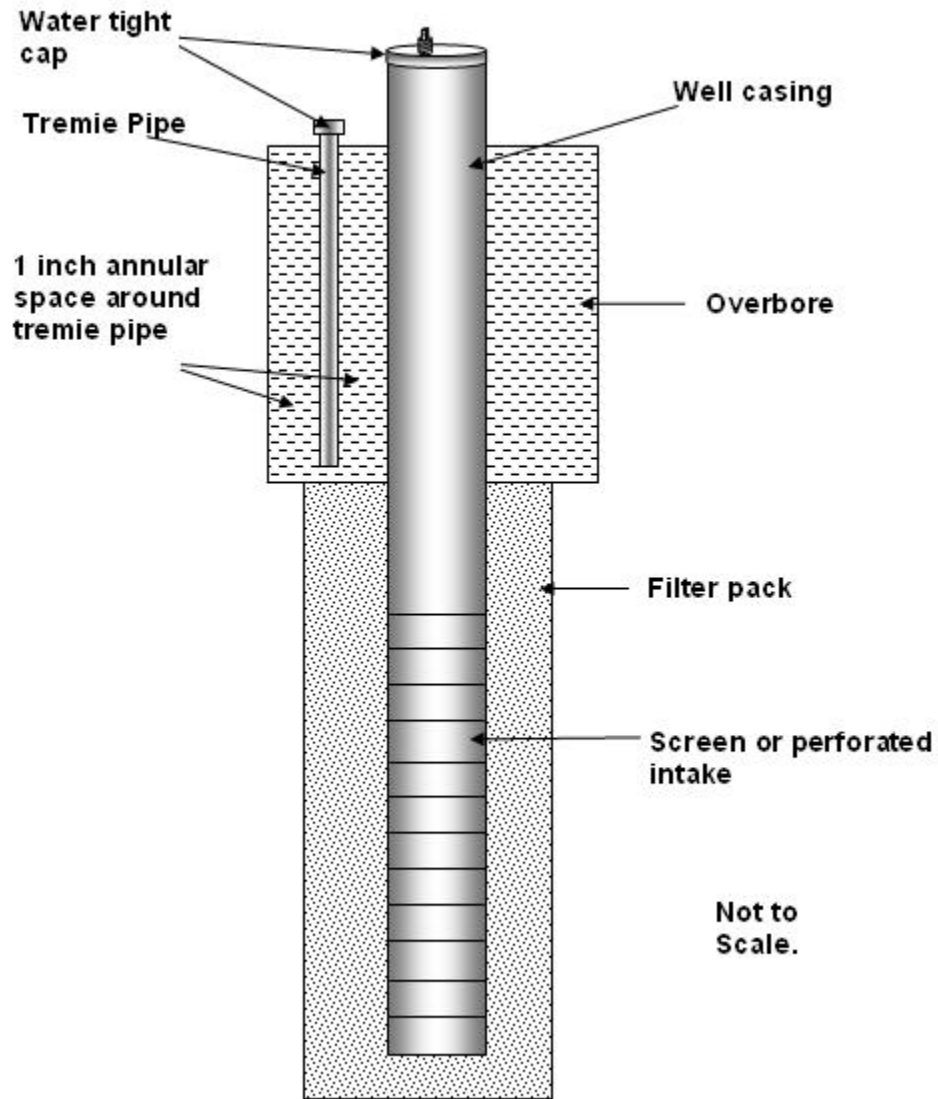


Figure 04. Sealing Requirements in Consolidated Formations

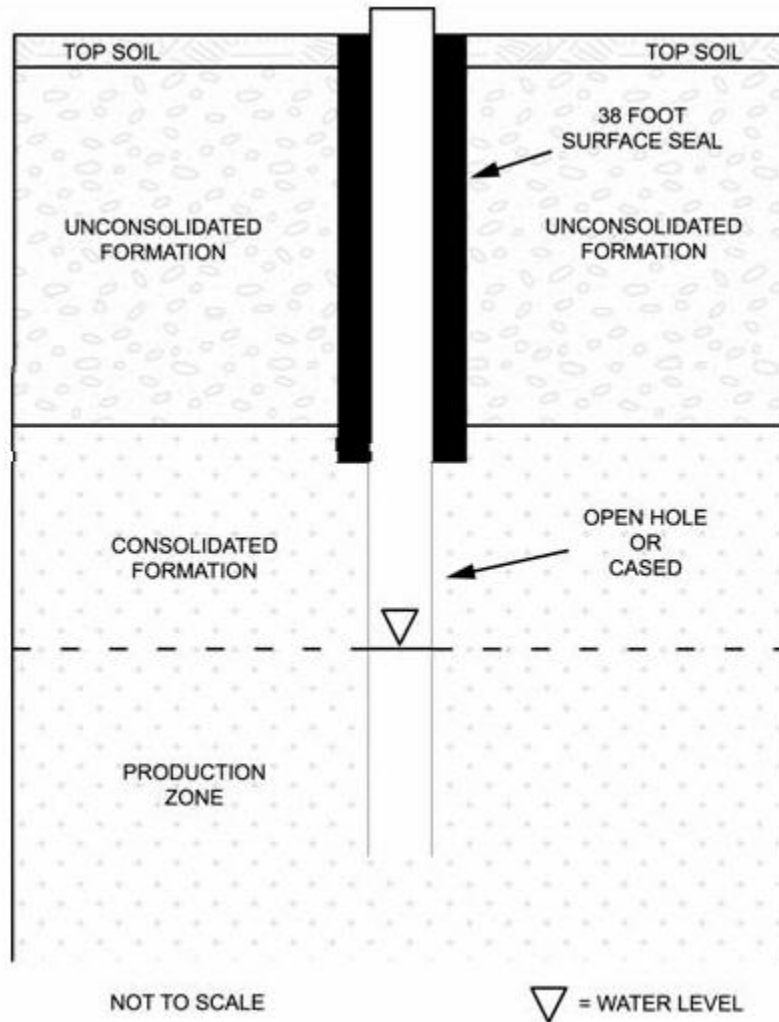


Figure 05. Sealing Requirements in Unconsolidated Formation without Confining Layers

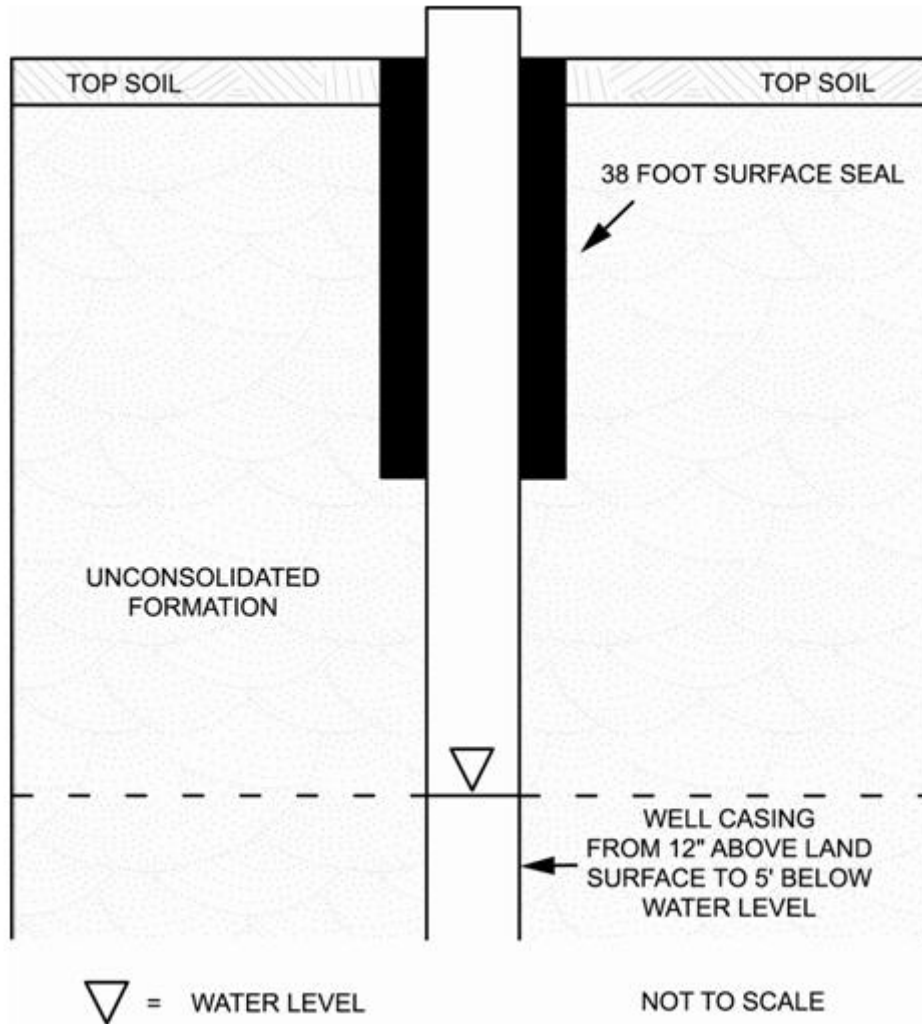


Figure 06. Rathdrum Prairie Boundary

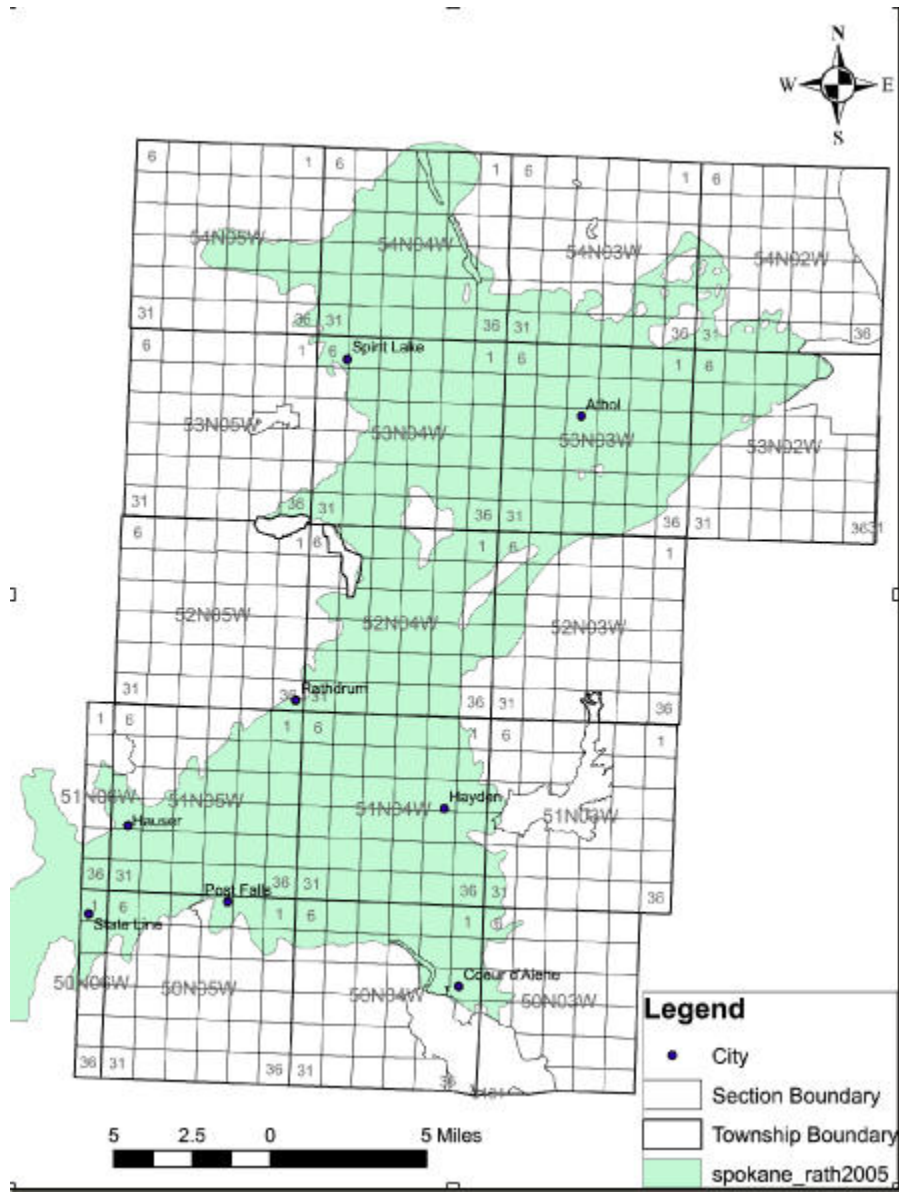


Figure 07. Sealing Requirements in the Rathdrum Prairie

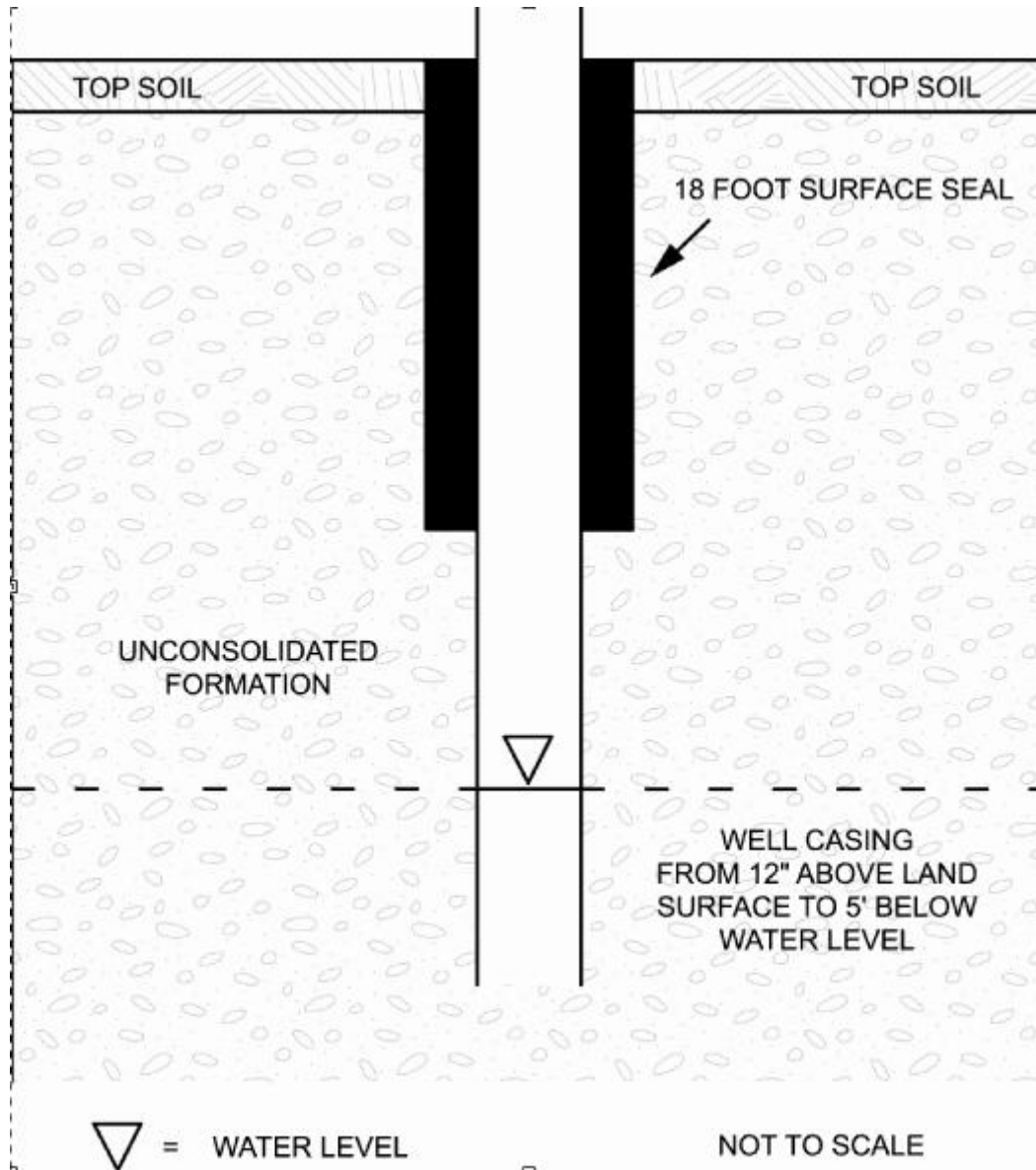


Figure 08. Sealing Requirements in Unconsolidated Formations with Confining Layers



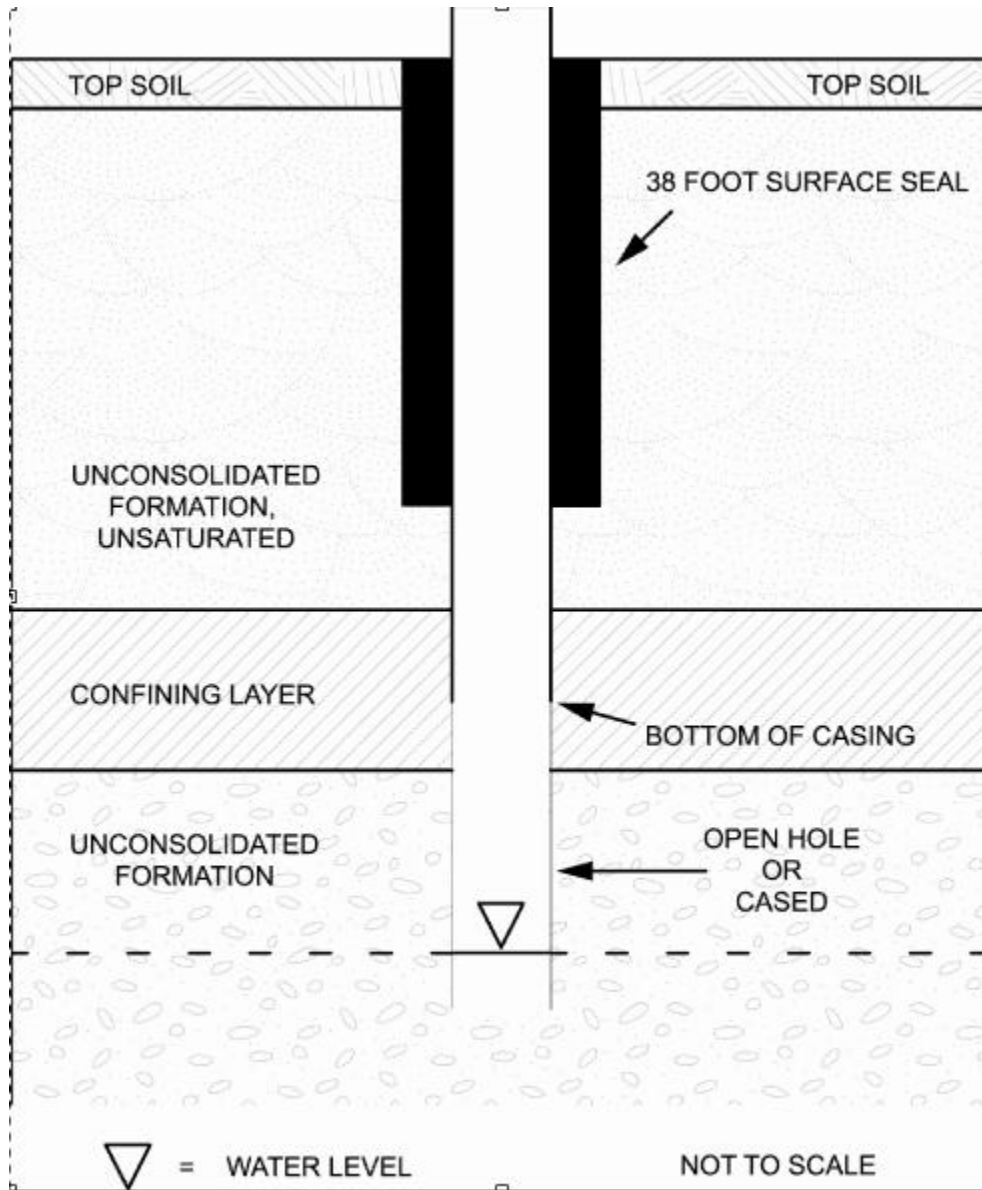


Figure 09. Sealing Requirements for Artesian Wells in Unconsolidated Formations

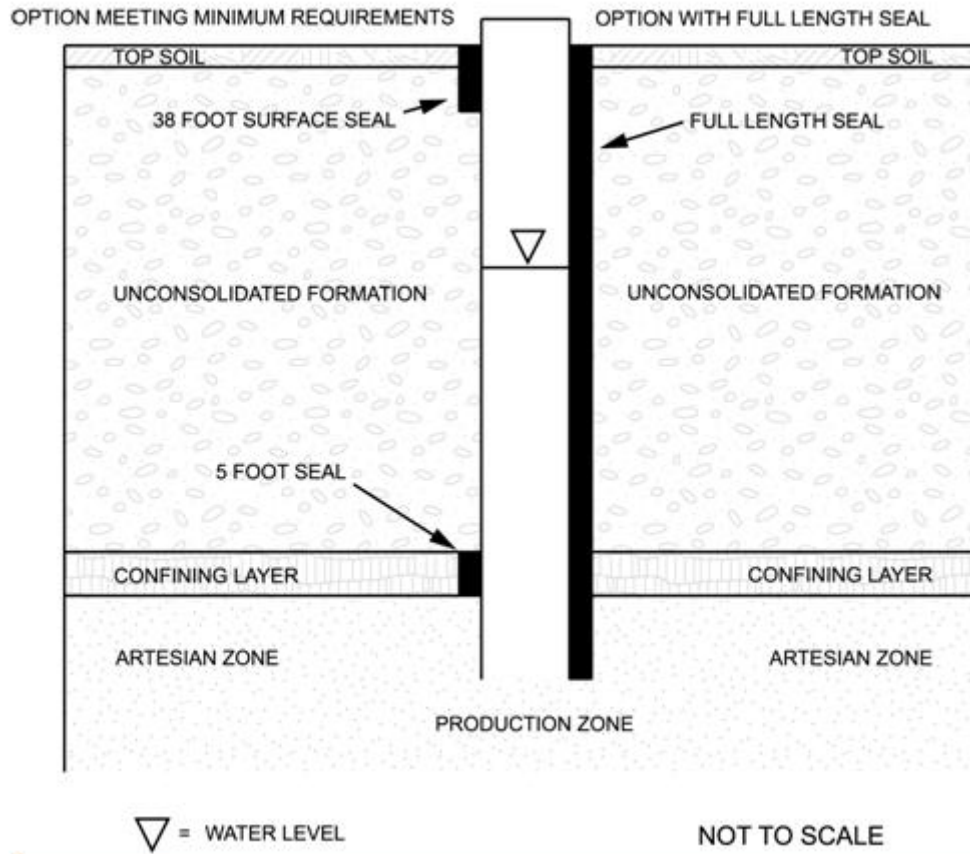


Figure 10. Sealing Requirements for Artesian Wells in Consolidated Formations

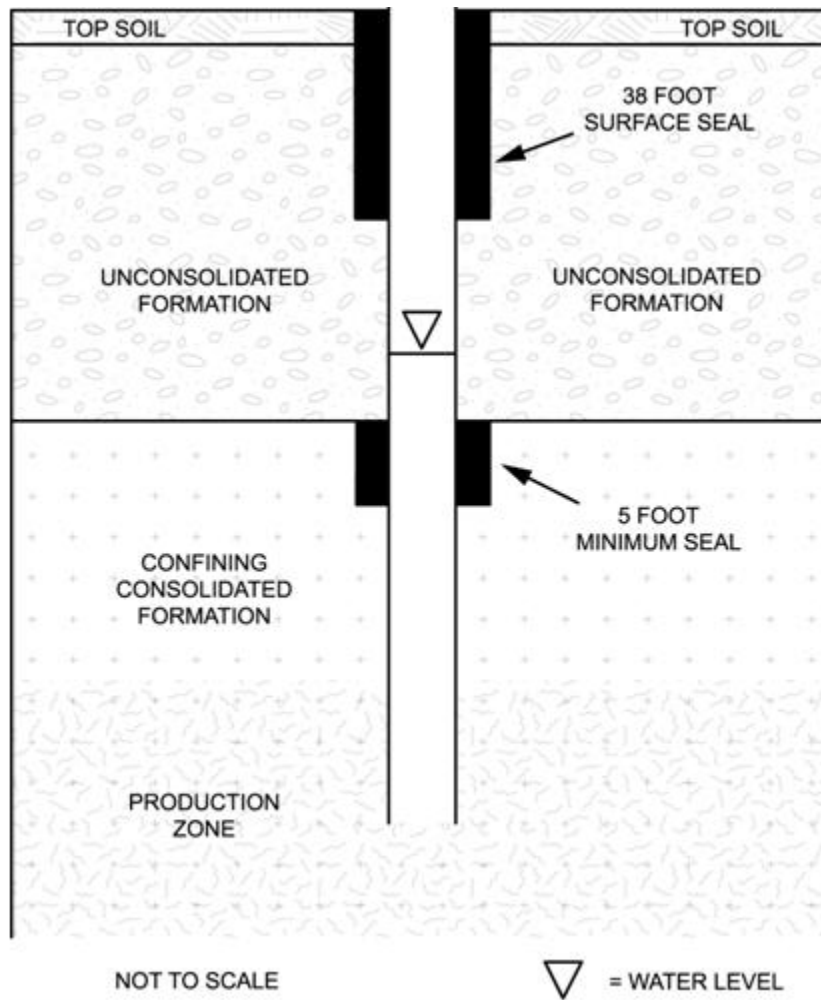
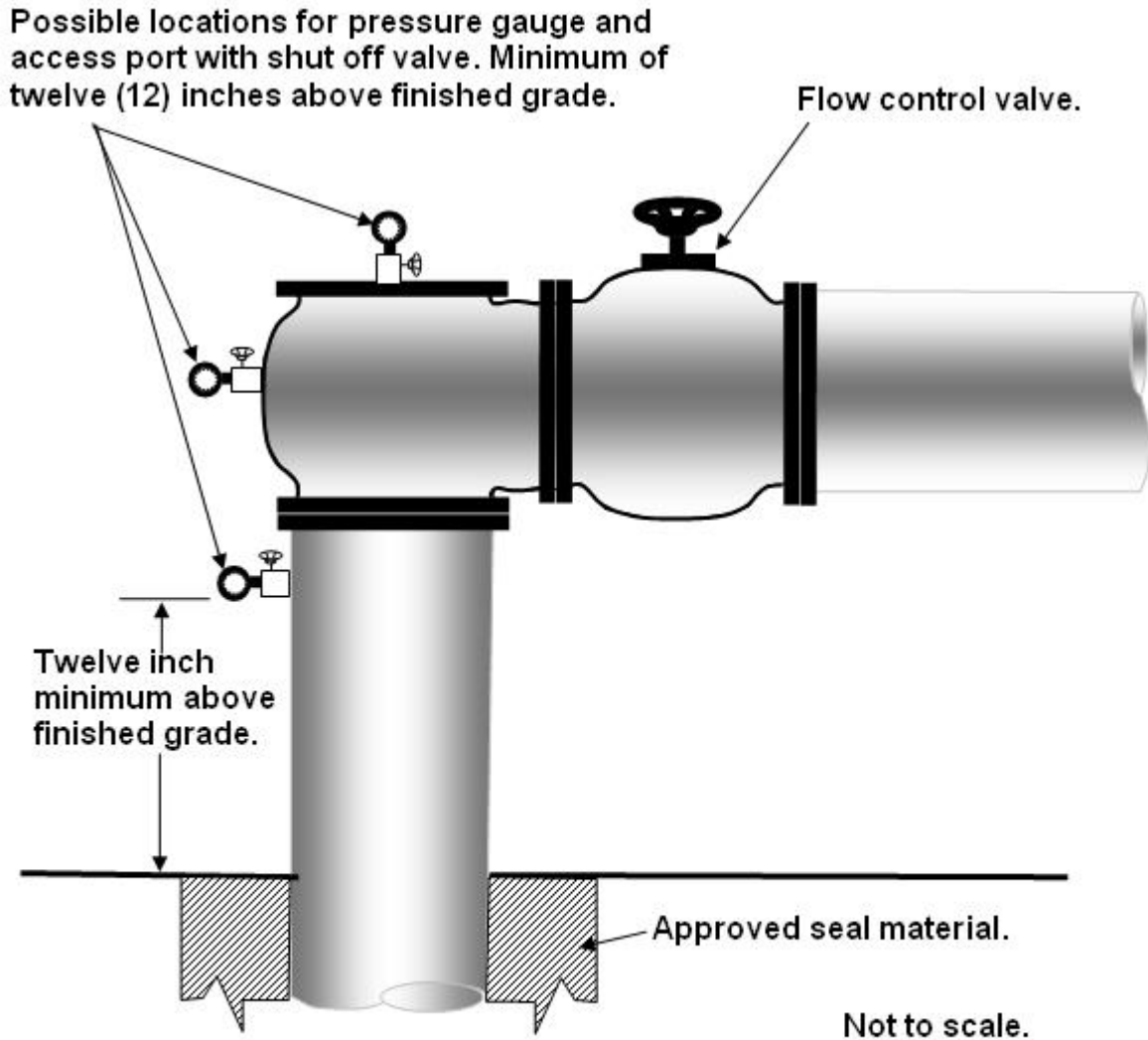


Figure 11. Access Ports, Pressure Gauges, and Control Valves



Note. Application and approval of control device is required on any flowing artesian well per Section 42-1603, Idaho Code.

Figure 12. Well Cap and Access Port

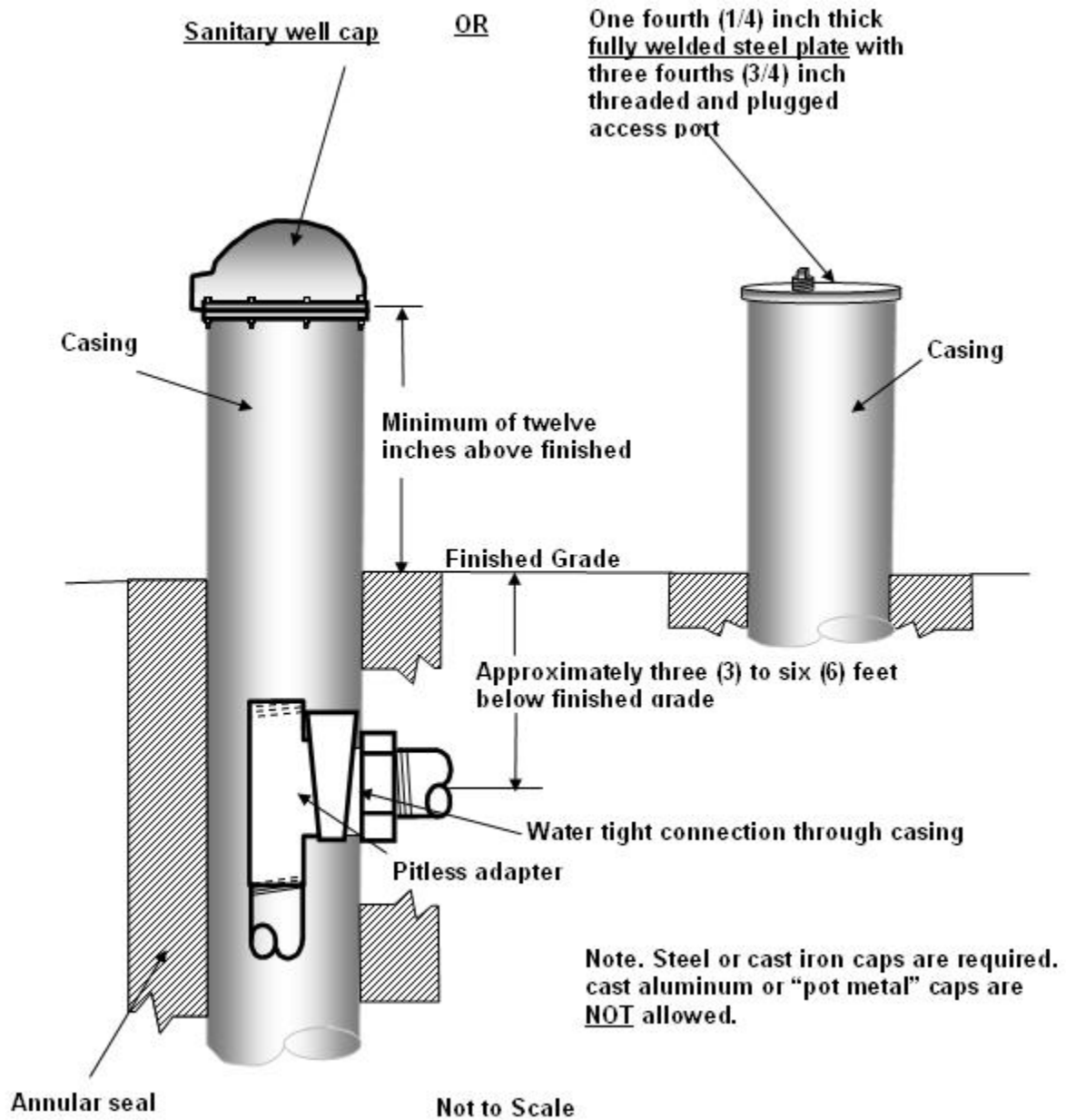
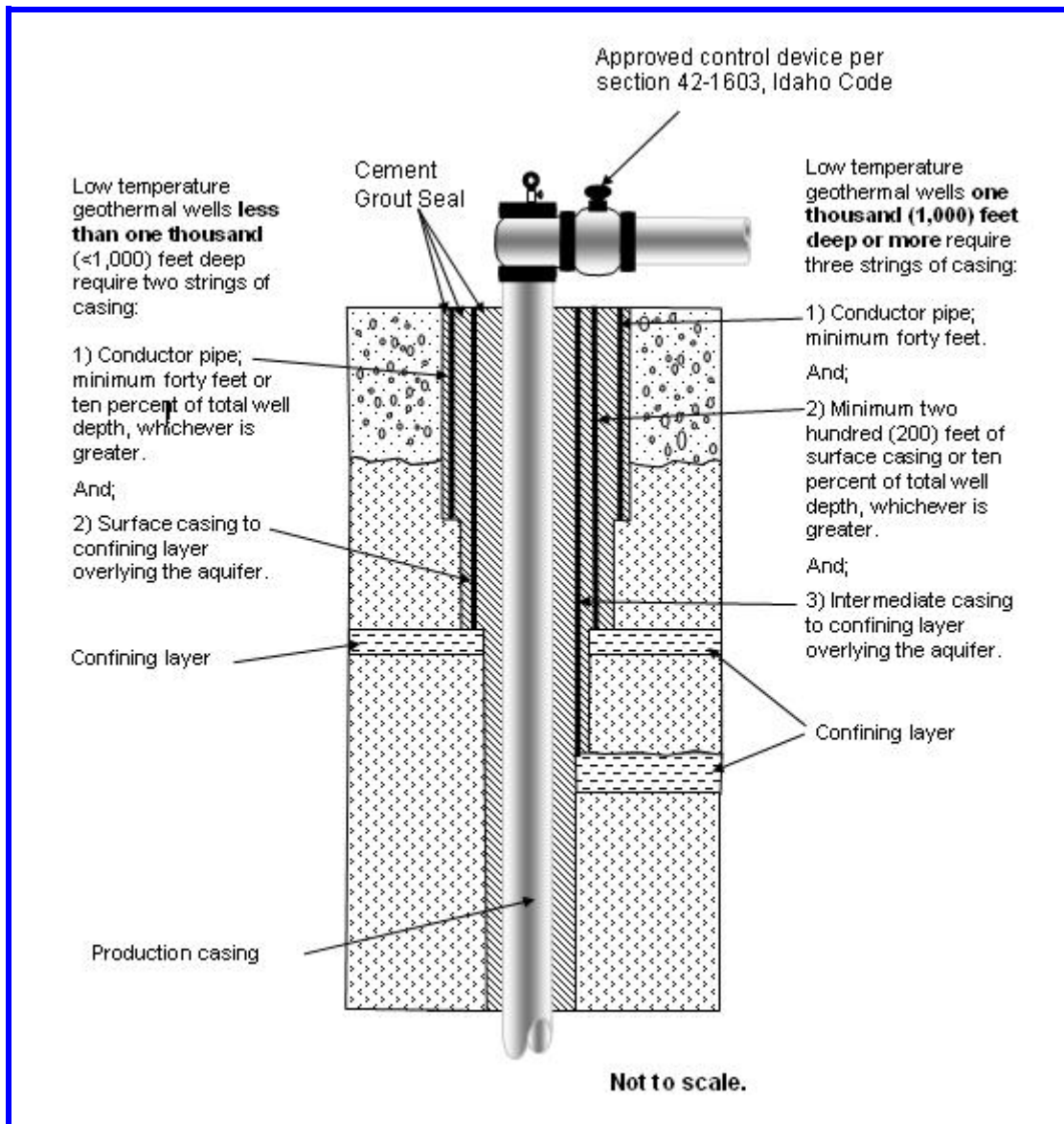
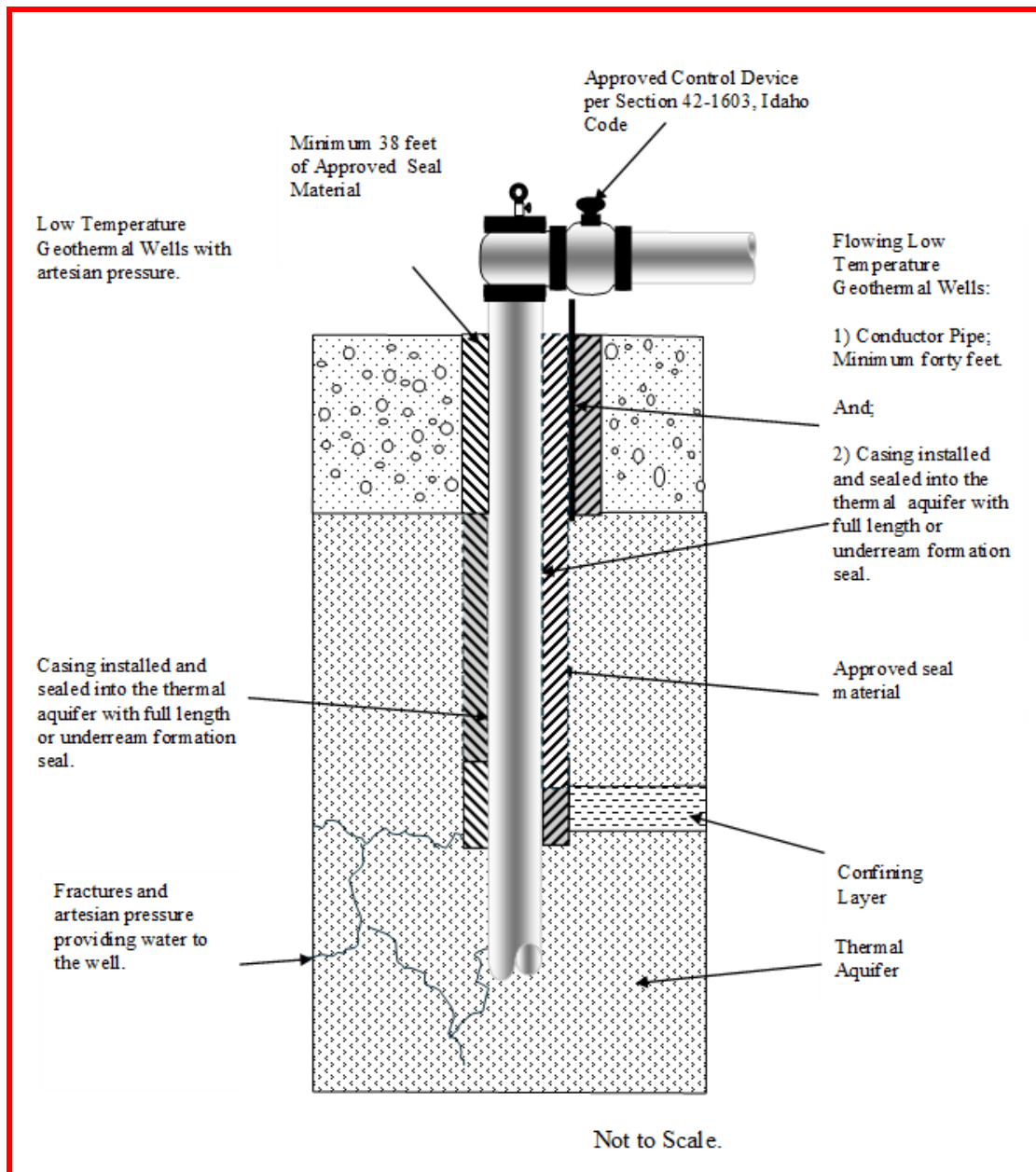


Figure 13. Casing Requirements for Low Temperature Geothermal Wells





## IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

### 37.03.11 – RULES FOR CONJUNCTIVE MANAGEMENT OF SURFACE AND GROUND WATER RESOURCES

DOCKET NO. 37-0311-2401

#### 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 2025 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. Should the pending rule be approved, it will become final and effective on July 1 following the First Regular Session of the Sixty-eighth Idaho Legislature, unless the concurrent resolution states a different effective date.

**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 42-1805(8), 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 October 2, 2024, Idaho Administrative Bulletin, [Vol. 24-10, pages 407-408](#). Adoption of the pending rule aligns IDAPA 37.03.11.050 (Rule 50) with Section 42-233c, Idaho Code. Section 42-233c, Idaho Code, effective on and after July 1, 2024, clarifies the area having a common ground water supply for the Eastern Snake Plain Aquifer (ESPA).

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, a pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: 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.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Erik Boe at [Erik.Boe@idwr.idaho.gov](mailto:Erik.Boe@idwr.idaho.gov), (208) 287-4800.

DATED this 15th day of November, 2024.

Erik Boe  
Water Compliance Bureau Chief, Rules Regulation Officer  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720 Boise, ID 83720-0098  
Phone: (208) 287-4800



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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 42-1805(8), 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 16, 2024.

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 Water Resources (IDWR) initiated this rulemaking to align IDAPA 37.03.11.050 (Rule 50) with Section 42-233c, Idaho Code. Section 42-233c, Idaho Code, effective on and after July 1, 2024, clarifies the area having a common ground water supply for the Eastern Snake Plain Aquifer (ESPA). This targeted change will ensure continuity between statute and rule.

With this Notice, IDWR proposes an amendment of Rules for Conjunctive Management of Surface and Ground Water Resources.

The proposed rule text may be viewed at: <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2024-2025/conjunctive-management-rules/>. On the same website, IDWR also published rulemaking support documents, which includes Senate Bill 1341 at: <https://legislature.idaho.gov/sessioninfo/2024/legislation/S1341/>, and Section 42-233c, Idaho Code, at: <https://legislature.idaho.gov/statutesrules/idstat/Title42/T42CH2/SECT42-233c/>.

After consideration of public comments received in response to this Proposed Rule, IDWR will present the final rule text during the 2025 Legislative Session.

**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: NA.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the amendment to Rule 50 is necessary to align the rule with the provisions of Section 42-233c, Idaho Code, that came into effect on July 1, 2024. This amendment ensures consistency and continuity between the statute and the rule.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Erik Boe at [Erik.Boe@idwr.idaho.gov](mailto:Erik.Boe@idwr.idaho.gov), (208) 287-4800.

Anyone may submit written comments regarding this proposed rulemaking by mail to the address below or by email to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov). All written comments must be directed to the undersigned and must be delivered on or before October 23, 2024.

DATED this 11th day of September, 2024.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 37-0311-2401

**37.03.11 – RULES FOR CONJUNCTIVE MANAGEMENT OF SURFACE  
AND GROUND WATER RESOURCES**

**050. AREAS DETERMINED TO HAVE A COMMON GROUND WATER SUPPLY (RULE 50).**

**01. Eastern Snake Plain Aquifer.** The area of coverage of this rule is the aquifer underlying the Eastern Snake River Plain as ~~the aquifer is defined in the report, Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho, USGS Professional Paper 1408 F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian defined in Section 42-233c, Idaho Code.~~ (3-31-22)(    )

~~a. The Eastern Snake Plain Aquifer supplies water to and receives water from the Snake River. (3-31-22)~~

~~b. The Eastern Snake Plain Aquifer is found to be an area having a common ground water supply. (3-31-22)~~

~~c. The reasonably anticipated average rate of future natural recharge of the Eastern Snake Plain Aquifer will be estimated in any order issued pursuant to Rule 30. (3-31-22)~~

~~d. The Eastern Snake Plain Aquifer area of common ground water supply will be created as a new water district or incorporated into an existing or expanded water district as provided in Section 42-604, Idaho Code, when the rights to the diversion and use of water from the aquifer have been adjudicated, or will be designated a ground water management area. (3-31-22)~~

# IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

## 58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-2401

### 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 2025 Idaho State Legislature for final approval. Pursuant to Section 67-5224(2)(c), Idaho Code, this pending rule must be approved by concurrent resolution of the Legislature. Pursuant to Section 67-5291(2), Idaho Code, all temporary, pending, and final rules of any nature may be approved or rejected by a concurrent resolution of the Legislature. The concurrent resolution shall state the effective date of the approval or rejection. If approved by concurrent resolution, the rules will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

**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 Chapter 36, Title 39, Idaho Code.

**DESCRIPTIVE SUMMARY:** This rulemaking was initiated to remove Sections 851, Petroleum Release Reporting, Investigation, and Confirmation, and 852, Petroleum Release Response and Corrective Action, from IDAPA 58.01.02, and move to IDAPA 58.01.24, Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites. This is a companion rulemaking to Docket No. 58-0124-2401. A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 7, 2024, [Vol. 24-8, pages 194 through 200](#). DEQ received no public comments, and the rule has been adopted as initially proposed. The board meeting documents are available at Water Quality: [Docket No. 58-0102-2401](#) | Idaho Department of Environmental Quality.

**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 4th day of December, 2024.

Diane Cutler  
Rules and Planning Analyst  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706  
Phone: (208)373-0165  
[Diane.Cutler@deq.idaho.gov](mailto:Diane.Cutler@deq.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and Chapter 36, Title 39, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 23, 2024. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** This rulemaking has been initiated to remove Sections 851, Petroleum Release Reporting, Investigation, and Confirmation, and 852, Petroleum Release Response and Corrective Action, from IDAPA 58.01.02, Water Quality Standards, and move to IDAPA 58.01.24, Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites (Docket No. 58-0124-2401). Sections 851 and 852 address petroleum releases and storage tanks, which are not water quality standard regulations as described in Section 1314(a) of the Clean Water Act and are better suited for placement in IDAPA 58.01.24. Docket No. 58-0102-2401 is a companion rulemaking to Docket No. 58-0124-2401 for the purpose of moving sections 851 and 852 from one chapter to the other.

The proposed rule text is in legislative format. Language the agency proposes to remove is struck out. It is these deletions to which public comment should be addressed. If adopted by the Idaho Board of Environmental Quality and approved by concurrent resolution of the 2025 Idaho State Legislature, the rule will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

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

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking, and the transfer of Sections 851 and 852 to IDAPA 58.01.24 was negotiated under Docket No. 58-0124-2401.

**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.

**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.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this proposed rulemaking, contact Elizabeth Spelsberg at [elizabeth.spelsberg@deq.idaho.gov](mailto:elizabeth.spelsberg@deq.idaho.gov) or (208) 373-0158. The webpage for this docket is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/water-quality-docket-no-58-0102-2401/>.

**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 6, 2024. Submit written comments to:

Elizabeth Spelsberg  
Department of Environmental Quality  
1410 N. Hilton, Boise, ID 83706  
[elizabeth.spelsberg@deq.idaho.gov](mailto:elizabeth.spelsberg@deq.idaho.gov)

Dated this 7th day of August, 2024.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-2401

58.01.02 – WATER QUALITY STANDARDS

~~851. PETROLEUM RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION.~~

~~01. Reporting of Suspected Releases for All Petroleum Storage Tank Systems.~~ Owners and operators of petroleum storage tank (PST) systems shall report to the Department within twenty-four (24) hours and follow the procedures in Subsection 851.03 for any of the following conditions: (3-31-22)

~~a. The discovery by owners and operators or others of a petroleum release at the PST site or in the surrounding area other than spills and overfills described in Subsection 851.04, such as the presence of free product or dissolved product in nearby surface water or ground water or vapors in soils, basements, sewer or utility lines. (3-31-22)~~

~~b. Unusual operating conditions observed by owners and operators such as the erratic behavior of product dispensing equipment, the sudden loss of product from the PST system, or an unexplained presence of water in the PST system, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced. (3-31-22)~~

~~e. Monitoring results from a release detection method that indicate a release may have occurred unless: (3-31-22)~~

~~i. The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or (3-31-22)~~

~~ii. In the case of inventory control, a second month of data does not confirm the initial result. (3-31-22)~~

~~02. Investigation Due to Off-Site Impacts.~~ When required by the Department, owners and operators shall follow the procedures in Subsection 851.03 to determine if the PST system is the source of off site impacts. These impacts include the discovery of petroleum, such as the presence of free product or dissolved product in nearby surface water or ground water or vapors in soils, basements, sewer and utility lines, that has been observed by the Department or brought to its attention by another party. (3-31-22)

~~03. Release Investigation and Confirmation Steps.~~ Unless corrective action is initiated in accordance with Section 852, owners and operators shall immediately investigate and confirm all suspected releases of petroleum within seven (7) days, or another time period specified by the Department, of discovery and using at least one (1) of the following steps or another procedure approved by the Department: (3-31-22)

~~a. Owners and operators shall conduct tightness tests that determine whether a leak exists in any portion of the PST system, including the tank, the attached delivery piping, and any connected tanks and piping. All such portions shall be tested either separately or together or in combinations thereof, as required by the Department. (3-31-22)~~

~~i. Owners and operators shall repair, replace or upgrade the PST system in accordance with applicable federal, state and local laws, and begin corrective action in accordance with Section 852 if the test results for the system, tank, or delivery piping indicate that a leak exists. (3-31-22)~~

~~ii. Further investigation is not required if the test results for the system, tank, and delivery piping do~~

~~not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release. (3-31-22)~~

~~iii. Owners and operators shall conduct a site check as described in Subsection 851.03.b. if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release. (3-31-22)~~

~~b. Owners and operators shall measure for the presence of a release where contamination is most likely to be present. In selecting sample types, sample locations, and measurement methods, owners and operators shall consider the nature of the petroleum, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release. Methods of sample collection and sample analysis are subject to Department approval. (3-31-22)~~

~~i. If release has occurred, owners and operators shall begin corrective action in accordance with Section 852. (3-31-22)~~

~~ii. If test results for the PST system do not indicate that a release has occurred, further investigation is not required. (3-31-22)~~

~~**04. Reporting and Cleanup of Above Ground Spills and Overfills.** Owners and operators shall contain and immediately clean up an above ground spill or overflow of petroleum only after identifying and mitigating any fire, explosion and vapor hazards. (3-31-22)~~

~~a. An above ground spill or overflow of petroleum that results in a release that exceeds twenty five (25) gallons or that causes a sheen on nearby surface water shall be reported to the Department within twenty four (24) hours and owners and operators shall begin corrective action in accordance with Section 852. (3-31-22)~~

~~b. An above ground spill or overflow of petroleum that results in a release that is less than twenty five (25) gallons and does not cause a sheen on nearby surface water shall be reported to the Department only if cleanup cannot be accomplished within twenty four (24) hours. (3-31-22)~~

~~**852. PETROLEUM RELEASE RESPONSE AND CORRECTIVE ACTION.**~~

~~**01. Release Response.** Upon confirmation of a petroleum release in accordance with Section 851 or after a release from the PST system is identified in any other manner, owners and operators shall perform the following initial response actions within twenty four (24) hours: (3-31-22)~~

~~a. Identify and mitigate fire, explosion and vapor hazards; (3-31-22)~~

~~b. Take immediate action to prevent any further release of petroleum into the environment; and (3-31-22)~~

~~e. Report the release to the Department. (3-31-22)~~

~~**02. Initial Abatement Measures.** Unless directed to do otherwise by the Department, owners and operators shall perform the following abatement measures: (3-31-22)~~

~~a. Remove as much of the petroleum from the leaking PST system as is necessary to prevent further release to the environment; (3-31-22)~~

~~b. Visually inspect any above ground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils, surface water and ground water; (3-31-22)~~

~~e. Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the PST site and entered into subsurface structures such as sewers or basements; (3-31-22)~~

~~d. Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release~~

~~confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator shall comply with applicable state and local requirements. (3-31-22)~~

~~**03. Initial Site Characterization.** Unless directed to do otherwise by the Department, owners and operators shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in Subsection 852.02. This information shall include, but is not necessarily limited to the following: (3-31-22)~~

~~**a.** Data on the nature and estimated quantity of release; (3-31-22)~~

~~**b.** Data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate location of wells potentially affected by the release, subsurface soil condition, locations of subsurface sewers, climatological conditions and land use; and (3-31-22)~~

~~**e.** Data from measurements that assess the site for the presence of petroleum contamination including: (3-31-22)~~

~~**i.** Measurements for the presence of a release where contamination is most likely to be present, unless the presence and source of the release have been confirmed in accordance with the site check required by Subsection 851.03.b. or the closure site assessments required by applicable federal, state, or local laws. Sample types, sample locations and analytical methods are subject to Department approval and shall be based on consideration of the nature of the petroleum, the type of backfill, depth to ground water and other factors appropriate for identifying the presence and source of the release; and (3-31-22)~~

~~**ii.** Measurements to determine the presence of free product. (3-31-22)~~

~~**d.** Within forty-five (45) days of release confirmation, or another time specified by the Department, owners and operators shall submit the information collected in compliance with Subsection 852.03 to the Department in a manner that demonstrates its applicability and technical adequacy to be reviewed as follows: (3-31-22)~~

~~**i.** If the Department determines that the information shows that no further corrective action is required, owners and operators shall be notified accordingly. (3-31-22)~~

~~**ii.** If the Department determines that the information shows petroleum contamination is limited to soils, owners and operators shall treat or dispose of contaminated soils in accordance with Department guidelines, and need not perform any further corrective action. (3-31-22)~~

~~**iii.** If the Department determines that the information shows that any of the conditions in Subsections 852.05.a. through 852.05.e. exist, owners and operators shall comply with the requirements in Subsections 852.04 through 852.07. (3-31-22)~~

~~**04. Free Product Removal.** At sites where investigations under Subsection 852.03.e.ii. indicate the presence of free product, owners and operators shall remove free product to the maximum extent practicable as determined by the Department while continuing, as necessary, any actions initiated under Subsections 852.01 through 852.03 or preparing for actions required under Subsections 852.05 and 852.06. In meeting the requirements of Subsection 852.04, owners and operators shall: (3-31-22)~~

~~**a.** Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated areas by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by products in compliance with applicable local, state and federal regulations; (3-31-22)~~

~~**b.** Use abatement of free product migration as a minimum objective for the design of the free product removal system; (3-31-22)~~

~~**e.** Handle any flammable products in a safe and competent manner to prevent fires or explosions; and (3-31-22)~~

~~d. Unless directed to do otherwise by the Department, prepare and submit to the Department for review and approval, within forty five (45) days after confirming a release, a free product removal report that provides at least the following information: (3-31-22)~~

- ~~i. The name of the person(s) responsible for implementing the free product removal measures; (3-31-22)~~
- ~~ii. The estimated quantity, type and thickness of free product observed or measured in wells, boreholes, and excavations; (3-31-22)~~
- ~~iii. The type of free product recovery system used; (3-31-22)~~
- ~~iv. Whether any discharge will take place on site or off site during the recovery operation and where this discharge will be located; (3-31-22)~~
- ~~v. The type of treatment applied to, and the effluent quality expected from, any discharge; (3-31-22)~~
- ~~vi. The steps that have been or are being taken to obtain necessary permits for any discharge; and (3-31-22)~~
- ~~vii. The disposition of the recovered free product. (3-31-22)~~

~~**05. Investigations for Soil and Water Cleanup.** If any of the conditions in Subsections 852.05.a. through 852.05.c. exist, and unless directed to do otherwise by the Department, owners and operators shall notify the Department and conduct investigations in accordance with Subsection 852.05.d. of the release, the release site, and the surrounding area possibly affected by the release in order to determine the full extent and location of soils contaminated by the petroleum release and the presence and concentrations of dissolved product contamination in the ground water or surface water: (3-31-22)~~

~~**a.** There is evidence that ground water or surface water has been affected by the release such as found during release confirmation or previous corrective action measures; (3-31-22)~~

~~**b.** Free product is found to need recovery in compliance with Subsection 852.04; (3-31-22)~~

~~**c.** There is evidence that contaminated soils may affect nearby ground water, surface water or the public health and have not been treated or disposed of in accordance with Subsection 852.03.d.ii. (3-31-22)~~

~~**d.** Unless determined otherwise by the Department, investigations conducted under this Subsection, 852.05, shall include, but are not necessarily limited to the following: (3-31-22)~~

- ~~i. The physical and chemical characteristics of the petroleum product including its toxicity, persistence, and potential for migration; (3-31-22)~~
- ~~ii. The type and age of the PST system, inventory loss, and type of containment failure; (3-31-22)~~
- ~~iii. The hydrogeologic characteristics of the release site and the surrounding area; (3-31-22)~~
- ~~iv. The background concentrations of contaminants in soil, surface water and ground water; (3-31-22)~~
- ~~v. A site drawing, showing boring and monitoring well locations, nearby structures, under ground utilities, drainage ditches, streams, suspected locations of leakage, direction of ground water flow, and any domestic or irrigation wells within a one fourth (1/4) mile radius of the site; (3-31-22)~~
- ~~vi. Information on ownership and use of any well identified pursuant to Subsection 852.05.d.v.; (3-31-22)~~



~~vii. Site borings and well logs and rationale for choosing drilling locations, and a description of methods and equipment used for all water and soil sampling; (3-31-22)~~

~~viii. A description of contaminant stratigraphy with accompanying geologic cross-section drawings; (3-31-22)~~

~~ix. A demonstration and description of the horizontal and vertical extent of contamination, free product thickness, modes and rate of contaminant transport, and concentrations of dissolved constituents in surface water and ground water; (3-31-22)~~

~~x. The potential effects of residual contamination on nearby surface water and ground water; and (3-31-22)~~

~~xi. A discussion of laboratory analytical methods and information pertaining to laboratory certification. (3-31-22)~~

~~e. Owners and operators shall submit the information collected in investigating the release site in compliance with Subsection 852.05 for the Department's review and approval in accordance with a schedule established by the Department as provided in Subsection 852.07. (3-31-22)~~

~~**06. Corrective Action Plan.** At any point after reviewing the information submitted in compliance with Subsections 852.01 through 852.05, the Department may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils, surface water and ground water. If a plan is required, owners and operators shall submit the plan according to a schedule and criteria established by the Department as provided in Subsection 852.07. Alternatively, owners and operators may, after fulfilling the requirements of Subsections 852.01 through 852.05, choose to submit a corrective action plan for responding to contaminated soil, surface water and ground water. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the Department, and shall modify their plan as necessary to meet the Department's standards. (3-31-22)~~

~~a. The Department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health and the environment. In making this determination, the Department should consider the following factors as appropriate: (3-31-22)~~

~~i. The maximum contaminant levels for drinking water or other health based levels for water and soil which consider the potential exposure pathway of the petroleum product; (3-31-22)~~

~~ii. The physical and chemical characteristics of the petroleum product including its toxicity, persistence, and potential for migration; (3-31-22)~~

~~iii. The hydrogeologic characteristics of the release site and the surrounding area; (3-31-22)~~

~~iv. The proximity, quality, and current and future uses of nearby surface water and ground water; (3-31-22)~~

~~v. The potential effects of residual contamination on nearby surface water and ground water; and (3-31-22)~~

~~vi. Other information assembled in compliance with Section 851. (3-31-22)~~

~~b. Upon approval of the corrective action plan or as directed by the Department, owners and operators shall implement the plan including modification to the plan made by the Department. Owners and operators shall monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and criteria established by the Department as provided in Subsection 852.07. (3-31-22)~~

~~e. Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil, surface water, and ground water before the corrective action~~

~~plan is approved provided that they:~~ (3-31-22)

- ~~i. Notify the Department of their intention to begin cleanup;~~ (3-31-22)
- ~~ii. Comply with any conditions imposed by the Department, including halting cleanup or mitigating adverse consequences from cleanup activities; and~~ (3-31-22)
- ~~iii. Incorporate these self initiated cleanup measures in the corrective action plan that is submitted to the Department for approval.~~ (3-31-22)

~~**07. Compliance.** If the Department determines that any of the conditions in 852.05.a. through 852.05.e. exist, owners and operators shall be given an opportunity to enter into a consent order with the Department.~~ (3-31-22)

~~**a.** The Department shall send owners and operators a consent order that sets forth at least the following:~~ (3-31-22)

- ~~i. A schedule for owners and operators to submit the information collected in investigating the release site in compliance with Subsection 852.05.~~ (3-31-22)
- ~~ii. A schedule for owners and operators to submit, and a criteria for, a corrective action plan in compliance with Subsection 852.06.~~ (3-31-22)
- ~~iii. A schedule for the Department to review, modify, and approve the site release investigation and corrective action plan.~~ (3-31-22)
- ~~iv. A schedule and criteria for owners and operators to implement a corrective action plan, and monitor, evaluate, and report the results of implementing the corrective action plan.~~ (3-31-22)

~~**b.** Owners and operators shall be given thirty (30) days from receipt of the consent order in which to reach an agreement with the Department regarding the terms of the consent order.~~ (3-31-22)

~~**e.** If owners and operators cannot reach an agreement with the Department within thirty (30) days, the Department shall establish a schedule and criteria with which owners and operators shall comply in order to meet the requirements of Subsections 852.05 and 852.06.~~ (3-31-22)

~~853~~**1. -- 999. (RESERVED)**

## IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

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

DOCKET NO. 58-0103-2301 (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 2025 Idaho State Legislature for final approval. Pursuant to Section 67-5224(2)(c), Idaho Code, this pending rule must be approved by concurrent resolution of the Legislature. Pursuant to Section 67-5291(2), Idaho Code, all temporary, pending, and final rules of any nature may be approved or rejected by a concurrent resolution of the Legislature. The concurrent resolution shall state the effective date of the approval or rejection. If approved by concurrent resolution, the rules will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** This rulemaking was initiated in compliance with [Executive Order No. 2020-01, Zero-Based Regulation \(EO 2020-01\)](#), issued by Governor Little on January 16, 2020. A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, June 5, 2024, [Vol. 24-6, pages 99 through 131](#). After consideration of public comments, the proposed rule has been revised at Subsection 013.04.j., a revision to fix a typographical error was made at Subsection 007.08.a. and editorial revisions were made in Sections 004-007, 010, 013, and 050. The remainder of the rule has been adopted as initially proposed. The board meeting documents are available at <https://www.deq.idaho.gov/individual-subsurface-sewage-disposal-docket-no-58-0103-2301/>.

**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 4th day of December, 2024.

Diane Cutler  
Rules and Planning Analyst  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706  
Phone: (208)373-0165  
[Diane.Cutler@deq.idaho.gov](mailto:Diane.Cutler@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 1 and 36, Title 39, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before June 19, 2024. If no such written request is received, a public hearing will not be held. Two public meetings were held during the negotiated rulemaking process.

**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](https://adminrules.idaho.gov/forms_menu.html). This is one of the DEQ rule chapters up for review in 2024. 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.

Major proposed changes to the rule include removing and replacing definitions, revising and simplifying septic tank approvals, removing specific requirements for large septic tanks, reducing setbacks to surface water, combining the cleaning of septic tanks sections into one section, simplifying the permitting process for service providers, and identifying certain provisions of the Technical Guidance Manual for Individual and Subsurface Sewage Disposal Systems to be moved into the 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. If adopted by the Idaho Board of Environmental Quality and approved by concurrent resolution of the 2025 Idaho State Legislature, the rule will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

**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 resulting from this rulemaking: Not applicable.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was conducted pursuant to Section 67-5220, Idaho Code. On September 6, 2023, the Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking was published in the Idaho Administrative Bulletin. 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/individual-subsurface-sewage-disposal-docket-no-58-0103-2301/>.

**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.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this rulemaking, contact Peter Adams at [peter.adams@deq.idaho.gov](mailto:peter.adams@deq.idaho.gov) or (208)954-1438.

**SUBMISSION OF WRITTEN COMMENTS:** Anyone may submit written comments regarding this proposed rule. The Department will consider all written comments received on or before June 26, 2024. Submit written comments to:

Peter Adams  
Department of Environmental Quality  
1410 N. Hilton, Boise, ID 83706  
[peter.adams@deq.idaho.gov](mailto:peter.adams@deq.idaho.gov)

Dated this 5th day of June, 2024

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 58-0103-2301

Italicized red text that is *double underscored* indicates amendments to the proposed text as adopted in the pending rule.

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

**000. LEGAL AUTHORITY.**

Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code, ~~grants authority to the Board of Environmental Quality to adopt rules and standards to protect the environment and the health of the State, for the installation of cottage site sewage treatment facilities and for the issuance of pollution source permits. Title 39, Chapter 1, Idaho Code, grants to the Director the authority to issue pollution source permits; charges the Director to enforce all laws, rules, regulations, and standards relating to environmental protection and health, and those relating to the storage, handling and transportation of solids, liquids and gases which may cause or contribute to water pollution, and authorizes the Department of Environmental Quality to review for approval the plans and specifications for all proposed waste treatment facilities prior to their construction.~~ (3-31-22)( )

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

**01. ~~Title~~.** These rules are titled IDAPA 58.01.03, "~~Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks.~~" (3-31-22)

**02. ~~Scope~~.** ~~The provisions of~~ these rules: ( )

**a.** ~~establish limitations~~ *Establish limits* on the construction and use of individual and subsurface sewage disposal systems; ( )

**b.** ~~and~~ *Establish the* requirements for obtaining an installation permit and ~~an installer's~~ registration permits *for installers, service providers, and pumpers*; ( )

**c.** ~~These rules~~ *Apply* to every individual and every subsurface blackwaste and wastewater treatment

system in Idaho; ~~and~~ ( )

~~d. These rules also e~~ Establish general requirements for ~~the~~ handling, transportation, and disposal of septic tank wastes ~~and for obtaining a septic tank pumping permit.~~ (3-31-22)( )

~~032. Conflict of Rules, Standards, and Ordinances. In any case w~~ Where a provision of these rules ~~is found to be in~~ conflicts with a provision of any state or local zoning, building, fire, safety, or health regulation, standard, or ordinance, the provision that, in the ~~Director's~~ judgment ~~of the Director~~, establishes the higher standard for ~~the promotion and protection of~~ promoting and protecting the health and safety of the people, ~~shall~~ prevail. (3-31-22)( )

~~043. Responsibilities.~~ (3-31-22)

a. Every owner of real property is jointly and individually responsible for: (3-31-22)

i. Storing, treating, and disposing of blackwaste and wastewater generated on that property. (3-31-22)

ii. Connecting all plumbing fixtures on ~~that the~~ property that discharge wastewaters to an approved wastewater system or facility. (3-31-22)( )

iii. Obtaining necessary permits and approvals for ~~installation of~~ installing individual or subsurface blackwaste and wastewater disposal systems. (3-31-22)( )

iv. ~~Abandonment of~~ Abandoning an individual or subsurface sewage disposal system. (3-31-22)( )

b. Each engineer, building contractor, individual or subsurface disposal system installer, excavator, plumber, supplier, and ~~every other any~~ person, who ~~for compensation shall~~ designs, constructs, abandons, or provides any system or ~~part thereof~~ component, is jointly and individually responsible for compliance with ~~each of these all~~ rules ~~that are~~ relevant to that service or product. (3-31-22)( )

## 002. REFERENCED MATERIAL.

01. **NSF International.** The NSF International (NSF) NSF/ANSI 40: Residential Onsite Systems and NSF/ANSI 245: Nitrogen Reduction are referenced ~~in these rules.~~ The NSF/ANSI 40 and NSF/ANSI 245 and are available at [www.nsf.org/services/by-industry/water-wastewater/onsite-wastewater](http://www.nsf.org/services/by-industry/water-wastewater/onsite-wastewater). (3-31-22)( )

02. **Technical Guidance Manual for Individual Subsurface Sewage Disposal Systems (TGM).** The TGM is referenced ~~in these rules~~ and available at ~~the Idaho~~ Department of Environmental Quality, ~~Surface and Wastewater Division~~, 1410 N. Hilton St., Boise, ID 83706, <https://www.deq.idaho.gov>. (3-31-22)( )

## 003. DEFINITIONS.

~~For the purposes of these rules, the following definitions apply~~ The meanings for the terms "department," "director," and "waters" are in Section 39-103, Idaho Code. (3-31-22)( )

01. **Abandoned System.** A system ~~which has ceased to~~ that no longer receives blackwaste or wastewater due to diversion ~~of those wastes~~ to another treatment system or due to termination of waste flow for more than two (2) years. (3-31-22)( )

02. **Absorption Bed.** A drainfield excavation exceeding six (6) feet in width. ( )

03. **Alternative System.** Any system other than a standard system for which the Department has issued design guidelines or ~~which~~ the Director judges to be determines is a simple modification of a standard system. (3-31-22)( )

a. A basic alternative system is any capping fill system, extra drainrock trench, gravelless trench system, steep-slope system, or other system specified in the TGM. ( )

~~b.~~ A complex alternative system is any evapotranspiration system, ETPS, lagoon system, LSAS, pressure distribution system, PWTP system, intermittent sand filter, sand mound, or other system specified in the TGM. ( )

~~03. Authorized or Approved.~~ The state of being sanctioned or acceptable to the Director as stated in a written document. (3-31-22)

~~04. Bedroom.~~ A habitable room within a dwelling that meets state or local building code requirements applicable to bedrooms and includes methods of ingress and egress. The local building authority may designate any additional room as a bedroom. ( )

~~045. Blackwaste.~~ Human body waste, specifically excreta or urine. This includes toilet paper and other products used in the practice of personal hygiene. ~~As defined in IDAPA 58.01.16, Wastewater Rules.~~ (3-31-22)( )

~~056. Blackwater.~~ A wastewater whose principal pollutant is blackwaste; a combination of blackwaste and water. ~~As defined in IDAPA 58.01.16, Wastewater Rules.~~ (3-31-22)( )

~~06. Board.~~ Idaho State Board Of Environmental Quality. (3-31-22)

~~07. Building Sewer.~~ The extension of the building drain beginning five (5) feet outside the inner face of the building wall. (3-31-22)

~~08. Central System.~~ Any system ~~which that~~ receives blackwaste or wastewater in volumes exceeding twenty-five hundred (2,500) gallons per day; any system ~~which that~~ receives blackwaste or wastewater from more than two (2) dwelling units or more than two (2) buildings under separate ownership. (3-31-22)( )

~~09. Construct.~~ To make, form, excavate, alter, expand, repair, or install a system, ~~and, their derivations.~~ (3-31-22)( )

~~10. Director.~~ The Director of the Idaho Department of Environmental Quality or the Director's designee or authorized agent. (3-31-22)

~~10. Drainfield.~~ A system of aggregate-filled trenches, gravelless chamber systems, drip systems, absorption beds, or other approved subsurface dispersal methods that distribute wastewater effluent into the soil. Also known as a "leachfield" or "soil absorption system." ( )

~~11. Dwelling Unit.~~ A single unit with complete independent living facilities for one (1) or more persons, including permanent improvements for living, sleeping, eating, cooking, and sanitation. ( )

~~12. Existing System.~~ Any system ~~which was~~ installed ~~prior to~~ before the effective date of these rules. (3-31-22)( )

~~123. Expand.~~ To enlarge any nonfailing system. (3-31-22)

~~134. Extended Treatment Package System (ETPS).~~ An advanced subsurface package sewage A wastewater treatment product that requires electricity and provides secondary wastewater treatment and/ or tertiary wastewater treatment to septic tank effluent for systems receiving less than twenty-five hundred (2,500) gallons per day. (3-31-22)( )

~~145. Failing System.~~ Any system ~~which that~~ exhibits one (1) or more of the following characteristics: (3-31-22)( )

a. ~~The system d~~ Does not meet the intent ~~of these rules as~~ stated in Subsection 004.01. (3-31-22)( )

b. ~~The system f~~ Fails to accept blackwaste and wastewater; ~~or~~ (3-31-22)( )

c. ~~The system d~~discharges blackwaste or wastewater into the waters ~~of the State~~ or onto the ground surface. (3-31-22)( )

**16. Gray Water.** As defined in IDAPA 58.01.16, Wastewater Rules. ( )

**157. Ground-Water.** ~~Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil~~ As defined in IDAPA 58.01.11, Ground Water Quality Rule. (3-31-22)( )

**168. High Groundwater Level -- Normal, Seasonal.** High ground-water level may be established by the ~~presence of low chroma mottles soil characteristics~~, actual ground-water monitoring, or historic records. (3-31-22)( )

a. ~~The n~~Normal high groundwater level is the highest elevation of ground-water that is maintained or exceeded ~~for a continuous ly period of for~~ six (6) weeks a year. (3-31-22)( )

b. The seasonal high groundwater level is the highest elevation of ground-water that is maintained or exceeded ~~for a continuous ly period of for~~ one (1) week a year. (3-31-22)( )

**17. High Water Mark.** ~~The line which the water impresses on the soil by covering it for sufficient periods of time to prevent the growth of terrestrial vegetation.~~ (3-31-22)

**189. Individual System.** Any standard, alternative, or subsurface disposal system ~~which that~~ is not a central system. (3-31-22)( )

~~19~~**20. Install.** To excavate or ~~to~~ put in place a system or ~~a~~ component of a system. (3-31-22)( )

**201. Installer.** Any person, corporation, or firm engaged in the business of excavation ~~for,~~ or ~~the~~ construction of individual or subsurface sewage disposal systems in the State. (3-31-22)( )

**242. Large Soil Absorption System (LSAS).** ~~A large soil absorption system is a~~ subsurface sewage disposal system designed to receive two thousand five hundred (2,500) gallons of wastewater or more per day, including where the total wastewater flow from the entire proposed project exceeds two thousand five hundred (2,500) gallons per day, but ~~the flow~~ is separated into absorption modules ~~which that~~ receive less than two thousand five hundred (2,500) gallons per day. (3-31-22)( )

**223. Limiting Layer.** A ~~characteristic~~ subsurface layer or material ~~which will that~~ severely limits the capability of the soil to treat or absorb wastewater including, but not limited to, water tables, fractured bedrock, ~~fissured bedrock~~, excessively permeable material, and ~~relatively~~ impermeable material. (3-31-22)( )

**234. Manufactured Medium Sand.** Sand that meets the following gradation requirements:

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

(3-31-22)



- 25. Minimum Tank Capacity.** The minimum required total liquid capacity of the septic tank facility. ( )
- 24. Mottling.** Irregular areas of different color in the soil that vary in contrast, density, number and size. Mottling generally indicates poor aeration and impeded drainage. (3-31-22)
- 256. New System.** A system ~~which that~~ is or might be ~~authorized or~~ approved on or after the effective date of these rules. (3-31-22)( )
- 267. Nondischarging System.** Any system ~~which is~~ designed and constructed to prevent ~~the~~ subsurface discharge of blackwaste or wastewater. (3-31-22)( )
- 27. Permit.** An individual or subsurface system installation permit or installer's registration permit. (3-31-22)
- 28. Pollutants.** Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a public nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, agricultural, recreational, aesthetic, or other beneficial uses As defined in IDAPA 58.01.16, Wastewater Rules. (3-31-22)( )
- 29. Proprietary Wastewater System Technology.** A manufactured product through which effluent flows and may be stored before infiltration. (3-31-22)
- 3029. Proprietary Wastewater Treatment System Product (PWTP).** A subsurface sewage treatment system that incorporates proprietary wastewater system technology to provide additional treatment to a septic tank effluent system A manufactured product that provides passive treatment to septic tank effluent for systems receiving less than twenty-five hundred (2,500) gallons per day. (3-31-22)( )
- 31. Public System.** Any system owned by a county, city, special service district, or other governmental entity or Indian tribe having the authority to dispose of blackwaste or wastewater; a municipal wastewater treatment facility. (3-31-22)
- 320. Repair.** To remake, reform, replace, or enlarge a failing system, or any component thereof as is necessary to restore proper operation. (3-31-22)( )
- 331. Scarp.** The side of a hill, canyon, ditch, river bank, roadcut, or other geological feature characterized by a slope of forty-five (45) degrees (100% slope) or more from the horizontal. (3-31-22)( )
- 32. Septic Tank.** A watertight, covered receptacle designed and constructed to receive wastewater discharge, separate solids from liquid, digest organic matter, store digested solids through a period of detention, and allow clarified liquids to discharge for final disposal. ( )
- 33. Septic Tank Facility.** A septic tank or series of septic tanks preceding a subsurface disposal system. Tanks or compartments used for housing pretreatment products or used as dosing chambers are not considered part of the septic tank facility. ( )
- 34. Septage.** As defined in IDAPA 58.01.16, Wastewater Rules. ( )
- 345. Service Provider.** Any person, corporation, or firm engaged in the business of providing operation, maintenance, and monitoring of complex alternative systems in the state of Idaho. (3-31-22)
- 356. Sewage.** Sewage has the same meaning as wastewater As defined in IDAPA 58.01.16, Wastewater Rules. (3-31-22)( )
- 36. Soil Texture.** The relative proportion of sand, silt, and clay particles in a mass of soil. (3-31-22)

37. **Standard System.** ~~Any system recognized by the Board through the adoption of design and construction regulations~~ An effluent sewer, one (1) or more aggregate filled trenches, and a gravity flow wastewater distribution system. (3-31-22)(    )

38. **Subsurface Disposal System.** Any system with a point of discharge beneath the earth's surface. (3-31-22)(    )

39. **Surface Water - Intermittent, Permanent, Temporary.** (3-31-22)

a. Any waters ~~of the State which flow or are contained in natural or man made depressions in the earth's surface. This includes, including~~ but ~~is~~ not limited to, lakes, streams, canals, and ditches. (3-31-22)(    )

b. An ~~i~~ntermittent surface water exists continuously for ~~a period of~~ more than two (2) months but not more than six (6) months a year. (3-31-22)(    )

c. A ~~p~~ermanent surface water exists continuously for ~~a period of~~ more than six (6) months a year. (3-31-22)(    )

d. A ~~t~~emporary surface water exists continuously for ~~a period of~~ less than two (2) months a year. (3-31-22)(    )

40. **System.** Beginning at the point of entry, physically connected piping, treatment devices, receptacles, structures, or areas of land designed, used or dedicated to convey, store, stabilize, neutralize, treat, or dispose of blackwaste or wastewater. (3-31-22)(    )

41. **Trench.** A drainfield excavation six (6) feet or less in width. (    )

42. **Wastewater.** ~~Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, grey water or commercial or industrial pollutants; and sewage~~ As defined in IDAPA 58.01.16, Wastewater Rules. (3-31-22)(    )

42. **Waters of the State.** ~~All the accumulations of water, surface and underground, natural and artificial, public and private or parts thereof which are wholly or partially within, which flow through or border upon the state of Idaho.~~ (3-31-22)

43. **Water Table.** ~~The surface of an aquifer.~~ (3-31-22)

#### 004. GENERAL REQUIREMENTS.

01. **Intent of Rules.** The Idaho Board of Environmental Quality, ~~in order~~ to protect the health, safety, and environment of the people of the state of Idaho establishes these rules governing the design, construction, siting and abandonment of individual and subsurface sewage disposal systems. These rules are intended to ensure that blackwastes and wastewater generated in the state of Idaho are safely contained and treated and that blackwaste and wastewater contained in or discharged from each system: (3-31-22)(    )

a. Are not accessible to insects, rodents, or other wild or domestic animals; (3-31-22)

b. Are not accessible to individuals; (3-31-22)

c. Do not ~~give rise to~~ create a public nuisance due to odor or unsightly appearance; (3-31-22)(    )

d. Do not injure or interfere with existing or potential beneficial uses of the waters ~~of the State; and~~ (3-31-22)(    )

**e.** Do not have an adverse impact on public health or the environment. ( )

**02. Compliance with Intent ~~Required~~.** The Director ~~shall will~~ not authorize or approve any system if, in the ~~opinion of the~~ Director's opinion, the system will not ~~be (is does not) in compliance comply~~ with the intent of these rules. (3-31-22)( )

**03. System Limitations.** Cooling water, backwash or backflush water, hot tub or spa water, air conditioning water, water softener brine, groundwater, oil, ~~or~~ roof drainage, or other substances detrimental to the system's performance or to groundwater quality cannot be discharged into any system unless that discharge is approved by the Director. (3-31-22)( )

**04. Increased Flows.** Unless authorized by the Director, ~~no person shall it is unlawful for any person to~~ provide for or connect additional blackwaste or wastewater sources to any system if the resulting flow or volume would exceed the approved design flow of the system. (3-31-22)( )

**05. Failing System.** The owner of any failing system ~~shall must~~ obtain a permit and ~~cause repair~~ the failing system's repair: (3-31-22)( )

**a.** As soon as practical after the owner becomes aware of its failure; or (3-31-22)

**b.** As directed ~~in~~ with proper notice from the Director. (3-31-22)( )

**06. Subsurface Disposal System Replacement Area.** An area of land ~~which is~~ suitable ~~in all respects~~ for the complete replacement of a new subsurface disposal system disposal field ~~shall must~~ be reserved as a replacement area. This area ~~will must~~ be kept vacant, free of vehicular traffic, and free of any soil modification ~~which that~~ would negatively affect its use as a replacement disposal field construction site. (3-31-22)( )

**07. Technical Guidance Committee (TGC).** The Director ~~shall~~ appoints a TGC composed of three (3) representatives from the seven (7) Hhealth Districts, one (1) representative from the Department ~~of Environmental Quality~~, one (1) professional engineer licensed in the state of Idaho and one (1) licensed installer. ~~Initially two (2) committee members shall be appointed to each of one (1), two (2) and three (3) year terms.~~ Appointments to vacancies ~~thereafter shall be to~~ are three (3) year terms. (3-31-22)( )

**08. TGC Duties ~~of the TGC~~.** The TGC ~~shall~~ maintains the TGM ~~to be~~ used in the design, construction, alteration, operation, and maintenance of conventional systems, their components, and alternatives. The TGC ~~shall~~ reviews variances requests and commercially manufactured wastewater treatment components and systems at the request of the Director and provides recommendations. (3-31-22)( )

**09. TGM.** The TGM maintained by the TGC ~~shall~~ provides state-of-the-art technical guidance on alternative sewage disposal components and systems, soil type determination methodology, and other information pertinent to the best management practices of individual and subsurface sewage disposal. (3-31-22)( )

**10. Alternative System.** If a standard system ~~as described in these rules~~ cannot be installed on a parcel of land, an alternative system may be permitted if that system is installed in accordance with the TGC's recommendations ~~of the TGC~~ and is approved by the Director as ~~set forth~~ stated in Section 009. (3-31-22)( )

## 005. PERMIT AND PERMIT APPLICATION.

**01. Permit Required.** Except as specified in Subsection 005.02 ~~it shall be unlawful for any no~~ person ~~to cause or to perform the modification~~ may modify, repair or expand or ~~construction of~~ install any individual or subsurface sewage disposal system within the state of Idaho unless there is a valid installation permit authorizing that activity. (3-31-22)( )

**02. Exceptions to Permit Requirement Permit Exceptions.** The activities listed in this subsection may be lawfully performed in the absence of a valid installation permit. ~~They are, however,~~ but are subject to all other relevant rules and regulations. (3-31-22)( )

a. Portable nondischarging systems may be installed ~~where needed~~ as temporary blackwaste or wastewater systems if ~~they are~~ properly maintained and ~~if they are~~ of a design ~~which has been~~ approved by the Director. (3-31-22)( )

b. Individual and subsurface disposal systems may be repaired when needed ~~as a result of~~ due to clogged or broken solid piping or ~~of~~ malfunctions in an electrical or mechanical system. ~~Such repair~~ Repairs may not expand the system unless authorized by the Director. (3-31-22)( )

03. **Permit Application.** The owner of the system or ~~the owner's~~ their authorized representative ~~shall~~ make must submit the application to the Director ~~in writing and in a manner or form prescribed by the Director~~ in an approved form. (3-31-22)( )

04. ~~Contents of Application~~ Application Contents. ~~A permit application will be used to help determine if the proposed construction will be in conformance with applicable rules and regulations.~~ Information required in the application may include, but is not limited to: (3-31-22)( )

- a. ~~The n~~ Name and address of the owner of the system and of the applicant, if different; (3-31-22)( )
- b. ~~The l~~ Legal description of the parcel of land; (3-31-22)( )
- c. ~~The t~~ Type of establishment served; (3-31-22)( )
- d. ~~The m~~ Maximum number of persons served, number of bedrooms, or other appropriate measure of wastewater flow; (3-31-22)( )
- e. ~~The t~~ Type of system; (3-31-22)( )
- f. ~~The e~~ Construction activity (new construction, enlargement, repair); (3-31-22)( )
- g. ~~A s~~ Scaled or dimensioned plot plan including, if needed, adjacent properties illustrating: (3-31-22)( )
  - i. ~~The l~~ Location and size of all existing and proposed wastewater systems including disposal field replacement areas; (3-31-22)( )
  - ii. ~~The l~~ Location of all existing water supply system features; (3-31-22)( )
  - iii. ~~The l~~ Location of all surface waters; (3-31-22)( )
  - iv. ~~The l~~ Location of scarps, cuts, and rock outcrops; (3-31-22)( )
  - v. Land elevations, ~~surface contours, and ground slopes~~ between features of interest; (3-31-22)( )
  - vi. Property lines, easements, and rights-of-way; and (3-31-22)
  - vii. Location and size of buildings and structures. (3-31-22)
- h. ~~The p~~ Plans and specifications of the proposed system ~~which include~~ including: (3-31-22)( )
  - i. Diagrams of all system facilities ~~which are to be~~ made or fabricated at the site; (3-31-22)( )
  - ii. ~~The m~~ Manufacturer's name and identification of any component approved ~~pursuant to~~ under Sections 007 and 009; and (3-31-22)( )
  - iii. List of materials. (3-31-22)

- i. ~~Site evaluation report that includes but is not limited to a S~~soil description and profile, and groundwater data, ~~percolation or permeability test results and/or a site evaluation report;~~ (3-31-22)(    )
- j. ~~The n~~Nature and quantity of blackwaste and wastewater ~~which~~ the system ~~is to~~ will receive, including the basis for that estimate; (3-31-22)(    )
- k. Proposed operation, maintenance, and monitoring procedures to ~~insure~~ ensure the system's performance and failure detection; (3-31-22)(    )
- l. Copies of legal documents relating to access and to responsibilities for operation, maintenance, and monitoring; (3-31-22)
- m. ~~A s~~Statement from the local zoning or building authority indicating ~~that~~ the proposed system would not be contrary to local ordinances; (3-31-22)(    )
- n. ~~The s~~Signature of the owner of the ~~proposed~~ system and, if different, of the applicant; and (3-31-22)(    )
- o. Any other information, document, or condition ~~that may be~~ required by the Director to substantiate that the ~~proposed~~ system will comply with applicable rules and regulations. (3-31-22)(    )
05. ~~Basis for~~ Permit Application Denial. The Director may deny a permit application if in the Director's judgment: (3-31-22)(    )
- a. The application is incomplete, inaccurate, or misleading; (3-31-22)
- b. The system as proposed is not in compliance with applicable rules and regulations; (3-31-22)
- ~~e.~~ ~~The system as proposed would, when put into use, be considered a failing system;~~ (3-31-22)
- ~~d.~~ ~~The design and description of a public system was not made by a professional engineer;~~ (3-31-22)
- ~~ec.~~ ~~The P~~ublic or central wastewater treatment facilities are reasonably accessible. (3-31-22)(    )
06. Notice of Denial. Upon denial of an application the Director ~~shall~~ will notify the applicant of the reason for denial. (3-31-22)(    )
07. ~~Permit Issuance of Permit.~~ When, in the ~~Director's~~ opinion ~~of the Director~~ the system as proposed will ~~be in conformance~~ conform with applicable rules ~~and regulations~~, the Director ~~shall~~ will issue an "Individual and Subsurface System Installation Permit"; (3-31-22)(    )
08. ~~Valid Application and Permit Valid for One Year.~~ Unless otherwise stated on the application or permit, it ~~shall~~ will become invalid if the authorized construction or activity is not completed and approved within ~~one two~~ (~~±~~2) years of the date of issuance. (3-31-22)(    )
09. Permit Renewal. At the ~~Director's~~ discretion ~~of the Director~~, a permit may be renewed ~~one (1) or more times~~ upon request by the applicant or owner ~~provided that if~~ the request is received by the Director ~~prior to before~~ the permit's date of expiration. (3-31-22)(    )
10. ~~Immediate Effect of the Permit Effect.~~ A valid permit authorizes the construction of an individual or subsurface ~~disposal~~ system and requires ~~that~~ the construction be conducted in compliance with plans, specifications, and conditions contained in the approved permit application. Any deviation from the plans, specifications, ~~and or~~ conditions is prohibited unless it is approved in advance by the Director. (3-31-22)(    )
- ~~11. Cottage Site Facility Certification.~~ A valid permit shall constitute certification and approval for the purposes of Section 39-3637, Idaho Code. (3-31-22)

~~12. Existing Installation Permits.~~ Individual and subsurface sewage disposal installation permits or other lot specific approvals for systems issued prior to February 7, 1978, pursuant to Idaho Code Title 39, Chapter 1 and Title 39, Chapter 36, will become invalid one (1) year after written notice is given by the Director notifying the owner or holder of such a permit or approval that the permit or approval will no longer be valid unless construction or installation of the system provided for in the permit or approval is commenced within one (1) year after giving of the notice. This provision does not apply to certificates filed to satisfy a sanitary restriction pursuant to Section 50-1326, Idaho Code. (3-31-22)

~~131. Abandonment May Be Required.~~ The Director may require as a condition for issuing a permit that the system be abandoned by a specified date or ~~under~~ specific predetermined circumstances. The date or circumstances will be established before ~~the issuance of~~ issuing the permit and be contained in the permit application. These conditions may relate to a specific date, dwelling density, ~~completion of a~~ municipal system completion or other circumstances ~~relative to the~~ regarding availability of central sewerage system services. (3-31-22)( )

~~142. Operation, Maintenance, and Monitoring.~~ (3-31-22)( )

a. The Director may require, as a condition of issuing a permit, ~~that~~ specific operation, maintenance, and monitoring procedures be observed. Those procedures will be contained in the installation permit. (3-31-22)( )

b. All operation, maintenance, and monitoring requirements of installation permits including effluent sampling ~~shall~~ must be perpetual unless: (3-31-22)( )

i. The system is not installed; (3-31-22)

ii. The system is removed, abandoned, or replaced; or (3-31-22)

iii. The permit is amended or revoked by the Director. (3-31-22)

c. If a system ~~gains approval~~ is approved as described by the TGM, sampling requirements may be removed. (3-31-22)( )

~~15. As Built Plans and Specifications.~~ The Director may require as a condition of issuing a permit, ~~that complete and accurate record drawings and specifications depicting the actual construction be submitted to the Director within thirty (30) days after the completion of the construction. Alternately, if the construction proceeded in compliance with the approved plans and specifications, a statement to that effect may be submitted.~~ (3-31-22)

~~163. Permit Fee.~~ All applications ~~shall~~ must be accompanied by payment ~~of the fee~~ specified in IDAPA 58.01.14, ~~Section 110,~~ "Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services". (3-31-22)( )

~~006. INSTALLER'S REGISTRATION PERMIT AND SERVICE PROVIDER CERTIFICATION~~ REGISTRATION PERMITS FOR INSTALLERS AND SERVICE PROVIDERS.

~~01. Permit and Certification Required.~~ Every installer and service provider ~~shall~~ must secure from the Director an ~~installer's~~ registration permit. ~~Service providers must also obtain a service provider's certification.~~ Two (2) types of installer permits and one (1) type of service provider ~~certification~~ permit are available. (3-31-22)( )

a. A ~~standard and~~ basic ~~alternative~~ system installer's ~~registration~~ permit is required to install all individual systems not listed under Subsection 006.01.b. (3-31-22)( )

b. A complex ~~alternative~~ system installer's ~~registration~~ permit is required to install evapotranspiration systems, ETSPs, lagoon systems, ~~large soil absorption systems~~ LSASs, pressure distribution systems, ~~proprietary wastewater treatment~~ PWTP systems, intermittent sand filters, sand mounds, or other alternative systems ~~as may be specified by the Director in the TGM.~~ (3-31-22)( )

c. A service provider ~~certification permit~~ is required to perform operation, maintenance, or monitoring of ETSPs and any other Director-identified complex ~~alternative~~ systems. (3-31-22)( )

02. **Examination.** The initial issuance of the installer's ~~permit and or~~ service provider's ~~certification~~ shall permit will be based on ~~the completion of~~ completing an examination, with a passing score of seventy percent (70%) or more, ~~of the applicant's knowledge of the principles set forth in these rules and the applicable sections of the Technical Guidance Manual. The examinations will be prepared, administered and graded by the Director. The installer examination and service provider examinations shall be~~ are separate ~~exams~~. (3-31-22)( )

03. **Permits ~~and~~ Certifications Required Annually.** ~~Registration permits and service provider certifications~~ Installer and service provider permits expire annually on the first (1st) day of January, and all permits ~~and certifications~~ issued thereafter will be ~~issued~~ for the balance of the calendar year. Additionally, installers ~~and service providers shall will~~ attend at least one (1) refresher course approved by the ~~state of Idaho, Department of Environmental Quality, every three (3) years. Individuals holding both a complex installer registration permit and service provider certification shall attend one refresher course for the complex installer registration permit and another course for the service provider certification. Installer and service provider refresher courses are not interchangeable.~~ (3-31-22)( )

04. **Contents of Application Contents.** (3-31-22)( )

a. Applications for installer ~~permits~~ and service provider ~~certifications shall~~ permits must: (3-31-22)( )

i. Be in writing; (3-31-22)( )

ii. Be signed by the applicant or ~~by~~ an officer or authorized agent of a corporation; (3-31-22)( )

iii. Contain the name and address of the applicant; and (3-31-22)

iv. Indicate whether the permit is ~~to be~~ for; (3-31-22)( )

(1) Installation of standard and basic alternative systems; (3-31-22)

(2) Installation of standard, basic and complex alternative systems; or (3-31-22)

(3) ~~Installation of standard, basic and complex alternative systems and certification as a~~ service provider; and (3-31-22)( )

v. Contain the expiration date of the bond required by Subsection 006.05. (3-31-22)

b. Additionally, for applicants seeking ~~certification as~~ a service provider permit, the application ~~shall also must~~ contain documentation of manufacturer specific training, ~~as required by~~ described in Subsection 006.06.a. (3-31-22)( )

05. **Bond Required.** At the time of application, all applicants, ~~including those~~ seeking a basic or complex installer's permit, or a service provider ~~certification, shall permit must~~ deliver to the Director a bond ~~in a form approved by the Director in the sum of five thousand dollars (\$5,000) for a standard and basic alternative system installer's registration permit, or in the sum of fifteen thousand dollars (\$15,000) for standard, basic and complex alternative system installer's registration permit. The bond will~~ must; ( )

a. Be in a form approved by the Director; ( )

b. Be in the sum of ten thousand dollars (\$10,000) for a basic installer's or service provider's permit, or thirty thousand dollars (\$30,000) for a complex installer's permit; ( )

c. ~~Be~~ executed by a surety company duly authorized to do business in the state of Idaho and ~~must~~ run concurrent with the ~~installer's registration permit;~~ and ( )

~~d.~~ ~~The bond shall be approved by the Director and must guarantee~~ Guarantee the installer or service provider's faithful performance of all work undertaken under the provisions of the ~~installer's registration permit or service provider certification~~ ~~installer's or service provider's permit~~, or both. ( )

~~06.~~ ~~Damages.~~ Any person who suffers damage ~~as the result of from~~ negligent or wrongful acts of the installer or service provider or by the installer's or service provider's failure to competently perform any of the work agreed to be done under the terms of the registration permit ~~or certification shall will~~, in addition to other legal remedies, have a right of action on the bond for all damages not exceeding ~~five ten~~ five ten thousand dollars (\$~~510,000~~) for standard and basic alternative systems ~~or operation, maintenance, and monitoring by certified service providers~~ or ~~fifteen thirty~~ fifteen thirty thousand dollars (\$~~1530,000~~) for complex alternative systems ~~or required operation, maintenance, or monitoring by certified service providers~~. The maximum liability of the ~~surety and/or~~ sureties on the bond, regardless of the number of claims filed against the bond, ~~shall must~~ not exceed the sum of ~~five ten~~ five ten thousand dollars (\$~~510,000~~) for standard and basic alternative systems ~~or operations, maintenance, and monitoring by certified service providers~~ or ~~fifteen thirty~~ fifteen thirty thousand dollars (\$~~1530,000~~) for complex alternative systems ~~or required operation, maintenance, or monitoring by certified service providers~~. (3-31-22)( )

~~067.~~ ~~Service Provider Responsibilities.~~ All ~~certified permitted~~ service providers who ~~provide operation, maintenance, or monitoring for~~ ~~operate, maintain, or monitor~~ any ~~complex alternative~~ system are responsible for compliance with ~~each of these all~~ rules ~~that are~~ relevant to those services. Additionally, each ~~certified~~ service provider ~~shall must~~: (3-31-22)( )

a. Obtain documentation of the completed manufacturer-specific training of each manufactured and packaged treatment system ~~for which~~ the service provider intends to ~~provide operation, maintenance, or monitoring~~ ~~operate, maintain, or monitor~~. Proper documentation includes a certificate or letter of training completion provided by the manufacturer and an expiration date of the manufacturer's certification. If a system manufacturer is no longer in business, that manufacturer-specific training is not required; (3-31-22)( )

b. Maintain a comprehensive list of real property owners who contracted with the certified service provider, including the current real property owner name, service property address, real property owner contact address, and ~~subsurface sewage disposal installation~~ permit number. This list ~~shall must~~ be provided to the Director as part of the annual operation, maintenance, and monitoring reports for individual real property owners; (3-31-22)( )

c. Notify the system owner in writing of any improper system function that cannot be remedied during ~~the time of~~ operation, maintenance, and monitoring services; and (3-31-22)( )

d. Submit all operation, maintenance, and monitoring records in ~~the form of~~ an annual report for each individual real property owner for whom the service provider agrees to fulfill the real property owner's operation, maintenance, or monitoring responsibilities required in Subsection 009.03. The annual reports ~~are to must~~ be provided to the Director by the timeframe specified in the TGM for the specific ~~complex~~ alternative system for which operation, maintenance, or monitoring is required. (3-31-22)( )

~~078.~~ ~~Exemption.~~ An installer's permit ~~shall not be is not~~ required for: (3-31-22)( )

a. Any person, corporation, or firm constructing a central or municipal subsurface sewage disposal system if that person, corporation, or firm is a licensed public works contractor ~~as provided in Title 54, Chapter 19, Idaho Code~~, is experienced in the type of system to be installed and is under the direction of a professional engineer licensed in the state of Idaho; or (3-31-22)( )

b. Owners installing their own standard or basic alternative systems ~~as described in the TGM~~. (3-31-22)( )

~~089.~~ ~~Application Fee.~~ All applications ~~shall must~~ be accompanied by payment of the fee specified in IDAPA 58.01.14, ~~Section 120~~, "Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services." (3-31-22)( )



~~09. **Grounds for Revocation.** Failure to comply with these rules shall be grounds for revocation of the permit or the certification, or both. (3-31-22)~~

~~10. **Transfer from Non-Profit Operation and Maintenance Entity to Certified Service Provider.** (3-31-22)~~

~~a. Real property owners who want to install ETPSs must retain a permitted installer and certified service provider. An easement granting general access to a non profit operation and maintenance entity is no longer required for ETPS installation permits. (3-31-22)~~

~~b. Beginning July 1, 2017, real property owners who had ETPSs installed are not required to be members of non profit operation and maintenance entities. To meet the operation, maintenance, and monitoring requirements of their ETPSs, real property owners shall retain a certified service provider for their existing ETPSs. (3-31-22)~~

## 007. SEPTIC TANKS DESIGN AND CONSTRUCTION STANDARDS.

**01. Materials.** New septic tanks will be constructed of concrete, or other materials approved by the Director. Steel tanks are unacceptable. (3-31-22)

**02. Design.** A professional engineer licensed by the state of Idaho must submit all septic tank designs to the Department for approval. If any design submitted for approval does not meet all requirements in Section 007, the engineer must demonstrate that any deviation is determined by sound engineering practice and meets the intent of the rules. ( )

**023. Construction Requirements.** All septic tanks will be water tight, constructed of sound, durable materials, and not subject to excessive corrosion, decay, frost damage or cracking. (3-31-22)( )

**034. Concrete Septic Tanks.** New concrete septic tanks will at a minimum meet the following requirements: (3-31-22)

a. The walls and floor must be at least two and one-half (2 1/2) inches thick if adequately reinforced and at least six (6) inches thick if not reinforced. (3-31-22)

b. ~~The C~~concrete lids or covers must be at least three (3) inches thick and adequately reinforced. (3-31-22)( )

c. The floor and at least a six (6) inch vertical portion of the walls of a poured tank must be poured at the same time (monolithic pour). (3-31-22)

d. ~~The W~~wall sections poured separately must have interlocking joints on joining edge. (3-31-22)( )

e. All concrete outlet baffles must be finished with an asphalt or other protective coating. (3-31-22)

**045. Horizontal Dimension Limit.** No interior horizontal dimension of a septic tank or compartment may be less than two (2) feet. (3-31-22)

**056. Liquid Depth.** The liquid depth ~~shall~~ must be at least two and one-half (2 1/2) feet ~~but not greater than five (5) feet.~~ (3-31-22)( )

**067. Manufactured Tank Markings.** Septic tanks manufactured in accordance with a specified design approved by the Director, will be legibly and indelibly marked with the manufacturer's name or trademark, total liquid capacity, and ~~shall~~ must indicate the tank's inlet and outlet. (3-31-22)( )

**078. Minimum Tank Capacities.** (3-31-22)

a. Tanks serving ~~one (1) or two (2)~~ single dwelling units: The minimum tank capacity is one thousand (1,000) gallons. For each bedroom over four (4) in a dwelling unit, add two hundred fifty (250) gallons.

MINIMUM CAPACITY PER DWELLING UNIT	
Number of Bedrooms	Minimum Liquid Capacity (Gallons)
1 or 2	900
3 or 4	1,000

For each bedroom over four (4) add two hundred fifty (250) gallons. (3-31-22) ( )

b. Tanks serving all other flows. Septic tank capacity shall be equal to two (2) times the average daily flow as determined from Subsection 007.08. The minimum tank capacity shall be seven hundred and fifty (750) per structure is one thousand (1,000) gallons or a volume equal to at least two (2) times the maximum daily flow, whichever is greater. (3-31-22) ( )

**089. Wastewater Flows from Various Establishments in Gallons per Day.**

ESTABLISHMENTS	
<b>DWELLING UNIT</b>	
Single Family Dwelling, <del>and Apartment</del> , Mobile Homes, 3 bedroom. Add/subtract 50 gallons <u>per day</u> /bedroom	250/Unit
MULTIPLE RESIDENTIAL	
Hotel/ <del>Motel</del> : With Private Baths Without Private Baths	60/Bedspace 40/Bedspace
<u>Overnight Accommodation:</u> <u>Central Toilet</u> <u>Central Toilet &amp; Shower</u>	<u>25/Person</u> <u>35/Person</u>
<del>Motel:</del> <del>With Kitchenette</del>	<del>40/Bedspace</del> <del>60/Bedspace</del>
<del>Boarding House:</del> <del>Add for each nonresident</del>	<del>150/Bedspace</del> <del>25</del>
Rooming House/Bunk House Staff Resident Nonresident	40/Resident 40/Staff 15/Staff
<del>Apartments</del>	<del>250/Unit</del>
INSTITUTIONAL	
<del>Assembly Hall/Meeting House</del>	<del>2/Seat</del>
Church/ <u>Assembly Hall/Meeting House</u> : With Kitchen	3/Seat 7/Seat
Hospital: Kitchen only Laundry only	250/Bedspace 25/Bedspace 40/Bedspace

ESTABLISHMENTS	
Nursing Home/Rest Home	125/Bedspace
Day School: Without Showers With Showers With Cafeteria, add Staff-Resident Nonresident	20/Student 25/Student 3/Student 40/Staff 20/Staff
FOOD SERVICE	
Conventional Service: Toilet & Kitchen Wastes Kitchen Wastes	13/Meal 3.3/Meal
Take Out or Single Service	2/Meal
<del>Dining Hall: Toilet &amp; Kitchen Wastes Kitchen Wastes</del>	<del>8/Meal 3.3/Meal</del>
Drinking Establishment	2/Person
<del>Food Service Employee</del>	<del>15/Employee</del>
COMMERCIAL AND INDUSTRIAL	
<del>Bowling Alley</del>	<del>125/Lane</del>
Laundry - Self Service	50/Wash
<del>Public Transportation Terminal</del>	<del>5/Fare</del>
Service Station	10/Vehicle
<del>Car Wash: 1st Bay Additional Bays</del>	<del>50/Vehicle 1000 500 each</del>
Shopping Center (No food/laundry)	1/Pkg.Sp.
<del>Theaters (including Concession Stand): Auditorium Drive-in</del>	<del>5/Seat 10/Space</del>
Offices	20/Employee
Factories: No Showers With Showers Add for Cafeteria	25/Employee 35/Employee 5/Employee
Stores	2/Employee
SEASONAL AND RECREATIONAL	
<del>Fairground (Peak Daily Attend)</del>	<del>1/Person</del>
<del>Stadium</del>	<del>2/Seat</del>
Swimming Pool: Toilet & Shower Wastes	10/Person

ESTABLISHMENTS	
Parks & Camps (Day Use): Toilet & Shower Wastes	15/Person
Roadside Rest Area: Toilet & Shower Wastes Toilet Waste	10/Person 5/Person
<del>Overnight Accommodation: Central Toilet Central Toilet &amp; Shower</del>	<del>25/Person 35/Person</del>
Designated Camp Area: Toilet & Shower Wastes Toilet Wastes	90/Space 65/Space
<del>Seasonal Camp</del>	<del>50/Space</del>
<del>Luxury Cabin</del>	<del>75/Person</del>
Travel Trailer Park with Sewer & Water Hook-up	125/Space
<del>Seasonal/Construction Camp</del>	<del>50/Person</del>
<del>Resort Camps</del>	<del>50/Person</del>
<del>Luxury Camps</del>	<del>100/Person</del>
Country Clubs Resident Member Add for Nonresident Member	100/Member 25/Person
Public Restrooms: Toilet Wastes Toilet & Shower Wastes	5/Person 15/Person

(3-31-22)( )

~~0910.~~ **Total Volume.** The total volume of a septic tank ~~will~~ **must** be one hundred fifteen percent (115%) of its liquid capacity. (3-31-22)( )

~~101.~~ **Inlets.** (3-31-22)

**a.** The inlet into the tank ~~will~~ **must** be at least four (4) inches in diameter and enter the tank three (3) inches above the liquid level. (3-31-22)( )

**b.** The inlet of the septic tank and each compartment ~~will~~ **must** be submerged by means of a vented tee or baffle. (3-31-22)( )

**c.** Vented tees or baffles ~~will~~ **must** extend above the liquid level seven (7) inches or more but not closer than one (1) inch to the ~~top~~ **lid** of the tank. (3-31-22)( )

**d.** Tees ~~should~~ **must** not extend horizontally into the tank beyond two (2) times the diameter of the inlet. (3-31-22)( )

~~112.~~ **Outlets.** (3-31-22)

**a.** The outlet of the tank ~~will~~ **must** be at least four (4) inches in diameter. (3-31-22)( )

**b.** The outlet of the septic tank and each compartment ~~will~~ **must** be submerged by ~~means of~~ a vented

tee or baffle. (3-31-22)( )

c. Vented tees and baffles ~~will~~ **must** extend above the liquid level seven (7) inches or more ~~above the liquid level~~ but not closer than one (1) inch to the inside ~~top lid~~ of the tank. (3-31-22)( )

d. Tees and baffles ~~will~~ **must** extend below the liquid level to a depth where forty percent (40%) of the tank's liquid volume is above the bottom of the tee or baffle. ~~For vertical walled rectangular tanks, this point is at forty percent (40%) of the liquid depth. In horizontal cylindrical tanks this point is about thirty five percent (35%) of the liquid depth.~~ (3-31-22)( )

e. Tees and baffles ~~should~~ **must** not extend horizontally into the tank beyond two (2) times the diameter of the outlet. (3-31-22)( )

**123. Scum Storage.** A septic tank will provide an air space above the liquid level which will be equal to or greater than fifteen percent (15%) of the tank's liquid capacity. ~~For horizontal cylindrical tanks, this condition is met when the bottom of the outlet port is located at nineteen percent (19%) of the tank's diameter when measured from the inside top of the tank.~~ (3-31-22)( )

**134. Manholes.** **Manholes must extend to the finished grade.** Access to each septic tank or compartment shall **must** be provided by a manhole twenty (20) inches in minimum dimension or a removable cover of equivalent size. Each manhole cover ~~will~~ **must** be provided with a corrosion resistant strap or handle to facilitate removal. (3-31-22)( )

**145. Inspection Ports.** An inspection port measuring at least eight (8) inches in ~~its~~ minimum dimension will be placed above each inlet and outlet. Manholes may be substituted for inspection ports. (3-31-22)( )

**156. Split Flows.** The wastewater from a single building sewer or sewer line ~~may~~ **must** not be divided and discharged into more than one (1) septic tank or compartment. (3-31-22)( )

**167. Multiple Tank or Compartment Capacity.** Multiple ~~septic tanks~~ or compartmented septic tanks connected in series may be used ~~so long as if~~ the sum of their liquid capacities is at least equal to the minimum tank capacity ~~computed~~ in Subsection 007.07, and the initial tank or compartment has a liquid capacity of ~~more than at least~~ one-half (1/2) ~~but no more than two-thirds (2/3)~~ of the total liquid capacity of the septic tank facility. (3-31-22)( )

**178. Minimum Separation Distances Between Septic Tanks and Features of Concern.**

Features of Concern		Minimum Distance to Septic Tank in Feet
Well or Spring or Suction Line	Public Water	100
	Other	50
Water Distribution Line	Public Water	25
	Other	10
Permanent or Intermittent Surface Water		50
Temporary Surface Water		25
Downslope Cut or Scarp		<del>25</del> 10
Dwelling Foundation or Building		5
Property Line		5
Seasonal High Water Level (Vertically from Top of Tank)		2

(3-31-22)( )

~~189.~~ ~~Installation of Manufactured Tanks~~ **Installation**. If written installation instructions are provided by the manufacturer of a septic tank, the installer must follow those instructions relative to the stability and integrity of the tank ~~are to be followed~~ unless otherwise specified in the installation permit ~~of these rules~~. (3-31-22)(    )

~~19.~~ ~~Manhole Extension~~. If the top of the septic tank is to be located more than twenty four (24) inches below the finished grade, manholes will be extended to within eighteen (18) inches of the finished grade. (3-31-22)

~~20.~~ ~~Sectional Tanks~~. Sectional tanks will be joined in a manner that will insure that the tank is watertight. (3-31-22)

~~240.~~ **Inlet and Outlet Piping**. Unless otherwise specified in the installation permit, piping material to and from a septic tank or dosing chamber, ~~to points three (3) feet beyond the tank excavation shall~~ and to the drainfield must be ~~of a material~~ approved by the Director. ~~The following materials are required, and specified as follows.~~ (3-31-22)(    )

a. ABS schedule forty (40) piping or material of equal or greater strength ~~piping shall be used to span the excavations for the septic tank and dosing chamber.~~ (3-31-22)(    )

b. ASTM D-3034 or equivalent plastic pipe may be used to span the septic tank and dosing chamber if the excavation is compacted with fill material. (3-31-22)(    )

i. ~~The fill material must be granular, clean and compacted to ninety percent (90%) standard proctor density.~~ (3-31-22)

ii. ~~Placement of ASTM D-3034 on undisturbed earth is suitable, but in no installation shall there be less than twelve (12) inches of cover over the pipe.~~ (3-31-22)

~~221.~~ **Effluent Pipe Separation Distances**. Effluent pipes ~~shall not be installed closer than fifty (50) feet from a well~~ have the same separation distance requirements as septic tanks unless otherwise approved by the Director. (3-31-22)(    )

~~232.~~ **Septic Tank Abandonment**. ~~Responsibility of properly abandoning a septic tank shall remain with the property owner~~ is responsible for septic tank abandonment and must use the following procedures. ~~Septic tanks shall be abandoned in accordance with the following:~~ (3-31-22)(    )

a. ~~Disconnection of~~ Disconnect the inlet and outlet piping; (3-31-22)(    )

b. ~~Pumping of~~ Pump the scum and septage with approved disposal; and (3-31-22)(    )

c. ~~Filling~~ the septic tank with earthen materials; ~~or,~~ physically destroy the septic tank, or remove the septic tank from the ground. (3-31-22)(    )

~~d.~~ ~~Physically destroying the septic tank or removing the septic tank from the ground.~~ (3-31-22)

## 008. STANDARD SUBSURFACE DISPOSAL FACILITY DESIGN AND CONSTRUCTION.

~~01.~~ **Standard Drainfield**. ~~A drainfield consisting of an effluent sewer, one (1) or more aggregate filled trenches and a gravity flow wastewater distribution system. These standards will be the basis of acceptable design and configuration. Overall dimensions of a specific facility will depend upon site characteristics and the volume of wastewater.~~ (3-31-22)

~~021.~~ **Site Suitability**. The area ~~in which~~ where a standard drainfield ~~is to~~ will be constructed must meet the following conditions ~~stated in this subsection:~~ (3-31-22)(    )

a. ~~Slope.~~ The natural slope of the site will not exceed twenty percent (20%). (3-31-22)(    )

b. ~~Soil types.~~ Suitable soil types ~~must~~ will be present at depths corresponding with the sidewalls of the

proposed drainfield and at depths ~~which will be~~ between the bottom of the proposed drainfield and any limiting ~~soil~~ layer (effective soil depth).

Design Soil Group	Soil Textural Classification	USDA Field Test Textural Classification	
Unsuitable	Gravel	10 Mesh	
	Coarse Sand	10-35 Mesh	Sand
A	Medium Sand	35-60 Mesh	Sand
	Fine Sand	65-140 Mesh	Sand
	Loamy Sand		Sand
B	Very Fine Sand	140-270 Mesh	Sand
	Sandy Loam		Sandy Loam
	Very Fine Loamy Sand		Sandy Loam
	Loam		
C	Silt Loam		Silt Loam
	Silt		Silt Loam
	Clay Loam		Clay Loam
	Sandy Clay Loam		Clay Loam
	Silty Clay Loam		Clay Loam
Unsuitable	Sandy Clay		Clay
	Silty Clay		Clay
	Clay		Clay
	Clay soils with high shrink/swell potential		Clay
	Organic mucks		
	Claypan, Duripan, Hardpan		

(3-31-22)( )

c. ~~Effective Soil Depths~~—Effective soil depths, in feet, below the bottom of the drainfield must be equal to or greater than those values listed in the following table.

<b>EFFECTIVE SOIL DEPTHS TABLE</b>			
<del>Site Conditions</del>	Design	Soil	Group
Limiting Layer	A	B	C
Impermeable Layer	4	4	4
Fractured Bedrock, <del>Fissured Bedrock</del> or Extremely Permeable Material	6	4	3
Normal High Groundwater Level	6	4	3
Seasonal High Groundwater Level	1	1	1

(3-31-22)( )

d. ~~Separation Distances.~~ The drainfield must be located so ~~that~~ the separation distances ~~given be are~~ maintained or exceeded according to the following ~~T~~table:

Feature of Interest	Soil Types All	A	B	C
Public Water Supply	100			
All <del>wells and</del> Other Domestic Water Supplies <del>including Springs and Suction Lines</del>	100			
Water Distribution Lines: <del>Pressure (not double-encased)</del> <del>Suction (double-encased)</del>	25 100			
Permanent or Intermittent Surface Water other than Irrigation Canals & Ditches		<del>300</del> 200	<del>200</del> 125	100
Temporary Surface Water and Irrigation Canals and Ditches	50			
Downslope Cut or Scarp: Impermeable Layer Above Base Impermeable Layer Below Base		75 50	50 25	50 25
Building Foundations: Crawl Space or Slab Basement	10 20			
Property Line	5			

(3-31-22)( )

**032. Subsurface Disposal Facility Sizing.** The size of a subsurface disposal system ~~will be is~~ determined by the following procedures: (3-31-22)( )

a. Daily flow estimates ~~should be are~~ determined in the same manner as ~~are~~ flow estimates for septic tank sizing in Subsection 007.08. (3-31-22)( )

b. ~~The~~ Total required absorption area is obtained by dividing the estimated maximum daily flow by a value below or as specified in the TGM.

Design Soil Group	A	B	C
Absorption Area - Gallons/Square Foot/Day	1.0	0.5	0.2

(3-31-22)( )

c. ~~Required Area. The size of a~~ An acceptable site must be large enough to construct two (2) complete drainfields in which each are sized to receive one hundred percent (100%) of the design wastewater flow. (3-31-22)( )

**043. Standard Subsurface Disposal Facility Specifications.** ~~The following table presents a~~ additional design specifications for new subsurface sewage disposal facilities.



<b>STANDARD SUBSURFACE DISPOSAL FACILITY TABLE SPECIFICATIONS</b>	
Item	All Soil Groups
Length of Individual Distribution Laterals	100 Feet Maximum
Grade of Distribution Laterals and Trench Bottoms	Level
Width of Trenches	1 Foot Minimum 6 Feet Maximum
Depth of Trenches	2 Feet Minimum 4 Feet Maximum
Total Square Feet of Trench	1,500 Sq.ft. Max.
Undisturbed Earth Between Trenches	6 Feet Minimum
Undisturbed Earth Between Septic Tank and Trenches	6 Feet Minimum
Depth of Aggregate:	
Total	12 In. Minimum
Over Distribution Laterals	2 In. Minimum
Under Distribution Laterals	6 In. Minimum
Depth of Soil Over Top of Aggregate	12 In. Minimum

(3-31-22)( )

**054. Wastewater Distribution.** Systems ~~shall~~ **must** be installed to maintain equal or serial effluent distribution. (3-31-22)( )

**065. Excavation.** Trenches ~~will~~ **must** not be excavated during the period of high soil moisture content when that moisture promotes smearing and ~~soil~~ **soil** compaction ~~of the soil~~. (3-31-22)( )

**076. Soil Barrier.** The aggregate ~~will~~ **must** be covered throughout with ~~untreated building paper,~~ a synthetic filter fabric (geotextile), ~~a three (3) inch layer of straw,~~ or other acceptable permeable material. (3-31-22)( )

**087. Aggregate.** The trench aggregate ~~shall~~ **must** be crushed rock, gravel, or other acceptable, durable and inert material ~~which that~~ is; free of fines; and has an effective diameter from one-half (1/2) to two and one-half (2 1/2) inches. (3-31-22)( )

**098. Impermeable Surface Barrier.** ~~No~~ **A** treatment area trench or replacement area ~~shall~~ **may not** be: ( )

**a. Compacted.** ( )

**b. Covered by an impermeable surface barrier, such as tar paper, asphalt or tarmac;** or ( )

**c. Used for parking or driving on, or in any way compacted** and ~~shall~~ **must** be adequately protected from such activities. (3-31-22)( )

**109. Standard Absorption Bed.** Absorption bed disposal facilities may be considered when a site is suitable for a standard subsurface disposal facility except that it is not large enough. (3-31-22)( )

**a. General Requirements.** Except as specified in this section, rules ~~and regulations~~ applicable to a standard subsurface disposal system ~~are applicable~~ **apply** to an absorption bed facility. (3-31-22)( )

~~b. Slope Limitation.~~ Sites with slopes in excess of eight percent (8%) are not suitable for absorption bed facilities. (3-31-22)( )

~~c. Vehicular Traffic.~~ Rubber-tired vehicles must not be driven on the bottom surface of any bed excavation. (3-31-22)

~~d. Distribution Lateral Spacing.~~ Distribution laterals within a bed ~~must be spaced on~~ not may not be spaced on greater than six (6) feet centers, ~~nor may and~~ any sidewall may not be more than three (3) feet from a distribution lateral. (3-31-22)( )

**10. Vehicle and Machinery Traffic.** Rubber-tired vehicles and machinery may not be driven on the bottom surface of any excavation or on the top of any drainfield. ( )

~~11. Seepage Pit.~~ Seepage pit disposal facilities may be used on a case by case basis within the boundaries of District Health Department Seven when an applicant can demonstrate to the district director's satisfaction that the soils and depth to ground water are sufficient to prevent ground water contamination. The district director shall document all such cases. (3-31-22)

~~a. General Requirements.~~ Except as specified in Subsection 008.11.b., rules and regulations applicable to a standard subsurface disposal system are applicable to a seepage pit. (3-31-22)

~~b. Other conditions for approval, sizing and construction will be as provided for in the seepage pit section of the Technical Guidance Manual for Individual and Subsurface Sewage Disposal, except that the site size restriction in condition two (2) of the Conditions for Approval will not apply.~~ (3-31-22)

**12.1. Failing Subsurface Sewage Disposal System.** If the Director determines ~~that the public's health is at risk from a failed septic system~~ a system is failing and ~~that the~~ replacement of ~~a failing subsurface sewage disposal system~~ the system cannot meet the current rules ~~and regulations, then~~ the replacement system must meet the intent of the rules ~~and regulations~~ by ~~utilizing~~ using a ~~standard subsurface sewage disposal design or alternative~~ system design ~~as~~ specified by the Director. (3-31-22)( )

## 009. OTHER COMPONENTS.

**01. Design Approval Required.** Commercially manufactured wastewater treatment components and systems must not be used ~~in the construction of~~ constructing a subsurface sewage system unless ~~their~~ the design is approved by the Director ~~through the recommendation of the TGC as directed in Section 004.~~ The Department ~~has~~ developed recommended standards and guidance for these systems in the TGM. Approval may be limited to those locations or conditions ~~for which~~ where achievement of standards has been demonstrated. Commercially manufactured wastewater treatment components and systems may include but are not limited to: (3-31-22)( )

a. ETPSs (e.g., aerobic treatment systems); (3-31-22)

~~b. Proprietary wastewater treatment systems (e.g., proprietary wastewater system technology with specified sand);~~ (3-31-22)

~~eb. Proprietary wastewater system technology (e.g., gravelless distribution products)~~ PWTPs; and (3-31-22)( )

~~dc. Proprietary non-discharging systems (e.g., individual wastewater incinerators, composting toilets, or vault toilets).~~ (3-31-22)

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

(3-31-22)( )

~~a.~~ a. Manufacturers seeking approval for ETPSs or PWTs that reduce total suspended solids (TSS) and carbonaceous biological oxygen demand 5-day (CBOD5) when used with residential strength wastewater must submit NSF/ANSI 40 approvals, reports, and associated data or equivalent third-party standards. ( )

~~b.~~ b. Manufacturers seeking approval for ETPSs or PWTs that reduce total nitrogen (TN) must submit NSF/ANSI 245 approvals, reports, and associated data or equivalent third-party standards. ( )

~~03.~~ 03. ETPSs. (3-31-22)( )

~~a.~~ a. In addition to the items ~~listed~~ in Subsection 009.02, ETPS plan and specification submittals must include: (3-31-22)( )

~~i.~~ i. A plan for training and certifying system installers and service providers under Section 006; (3-31-22)

~~ii.~~ ii. An operation and maintenance ~~A~~ manual ~~which contains~~ containing all operation and maintenance specified by the design engineer or manufacturer and the Department; and (3-31-22)( )

~~iii.~~ iii. A quality assurance project plan ~~which documents~~ documenting how sampling will occur if ~~sampling is~~ required by the Director for product approval and continued monitoring. (3-31-22)( )

~~b.~~ b. ~~Manufacturers seeking approval of these systems for reducing total suspended solids (TSS) and carbonaceous biological oxygen demand 5-day (CBOD5) when used with residential strength wastewater must submit NSF/ANSI 40: Residential Onsite Systems approvals, reports, and associated data or equivalent third party standards.~~ (3-31-22)

~~e.~~ e. ~~Manufacturers seeking approval for reduction of total nitrogen (TN) must submit NSF/ANSI 245: Nitrogen Reduction approvals, reports, and associated data or equivalent third party standards.~~ (3-31-22)

~~db.~~ db. Design and installation of these systems must meet the following: (3-31-22)

~~i.~~ i. The effluent is discharged to a drainfield meeting the requirements of a standard drainfield as directed in Section 008 or a Director-approved alternative. (3-31-22)

~~ii.~~ ii. ~~Separation between the bottom of the trench or bed to limiting layers protects ground water quality if the distance deviates from the table in Subsection 008.02.e.~~ (3-31-22)

~~iii.~~ iii. ~~The distribution laterals within the trench or bed meet the requirements of Section 008 or a Director approved alternative.~~ (3-31-22)

~~iv.~~ iv. ~~Tank access lids are to grade or above with a sealed riser and fitted with a secured lid for monitoring and maintenance.~~ (3-31-22)

~~vii.~~ vii. If vertical separation distances are reduced from the distances defined in the table in Subsection 008.02 ~~1.c.~~, the reduced separation must protect groundwater quality and a sampling port ~~has to~~ must be installed to provide ~~a~~ access to representative samples ~~s~~ of the effluent from the system. (3-31-22)( )

~~ec.~~ ec. Within thirty (30) days of completing installation of an ETPS, the property owner ~~shall~~ must provide certification to the health district from a representative approved by the manufacturer that the system has been installed and will operate in accordance with the manufacturer's recommendations. The health district ~~shall~~ must not finalize the ~~subsurface sewage disposal~~ installation permit until the certification of proper installation and operation is received and includes information on the manufacturer, product, model number, and serial number of the ETPS installed. (3-31-22)( )

~~fd.~~ fd. Property owners with an ETPS installed on their property must have all operation, maintenance,

and monitoring requirements specified in the permit completed by June 30<sup>th</sup> of each year by a certified service provider in accordance with Section 006, including effluent monitoring if required by the permit. The certified service provider who completed operation, maintenance, and monitoring for the system as specified in the TGM must submit an annual report to the Director by July 31<sup>st</sup> of each calendar year demonstrating ~~that~~ the system is working as designed. (3-31-22)(    )

~~ge.~~ Permit requirements for ETPSs transfer with ownership changes. Before transferring ownership of a property with an ETPS, the system owner must notify all transferees of the ETPS operation, maintenance, and monitoring requirements. ~~Within thirty (30) days of transferring ownership of a property with an ETPS, the transferee must notify the health district of the new owner of the property.~~ (3-31-22)(    )

~~04. Proprietary Wastewater Treatment Systems~~ PWTPs. (3-31-22)(    )

~~a.~~ Manufacturers seeking approval for these systems for reducing total suspended solids (TSS) and carbonaceous biological oxygen demand 5-day (CBOD5) when used with residential strength wastewater must submit NSF/ANSI 40- Residential Onsite Systems approvals, reports, and associated data or equivalent third party standards. (3-31-22)

~~b.~~ Manufacturers seeking approval for reduction of total nitrogen (TN) must submit NSF/ANSI 245- Nitrogen Reduction approvals, reports, and associated data or equivalent third party standards. (3-31-22)

~~ea.~~ ~~Proprietary wastewater s~~System media ~~utilized~~ used with a ~~proprietary wastewater treatment system~~ PWTP must: (3-31-22)(    )

i. Be constructed or manufactured from materials that are non-decaying and non-deteriorating and do not leach unacceptable chemicals when exposed to sewage and the subsurface soil environment; (3-31-22)

ii. Support the distribution pipe and provide suitable effluent distribution and infiltration rate to the absorption area at the soil interface; and (3-31-22)

iii. Maintain the integrity of the trench or bed. The material used, by its nature and manufacturer-prescribed installation procedure, ~~needs to~~ must withstand the physical forces of the soil sidewalls, soil backfill, and weight of equipment used in the backfilling. (3-31-22)(    )

~~db.~~ Design and installation of these systems must meet the following: (3-31-22)

~~i.~~ The effluent is discharged to a drainfield that meets the required effective soil depth for standard drainfields as directed in Section 008. (3-31-22)

~~ii.~~ Separation between the bottom of the manufactured medium sand component of the proprietary wastewater treatment system to limiting layers protects ground water quality if the distance deviates from the table in Subsection 008.02.e. (3-31-22)

~~iii.~~ The distribution laterals within the trench or bed meet the requirements of Section 008 or a Director approved alternative. (3-31-22)

~~iv.~~ Drainfields sized is based on the requirements of a standard drainfield or the manufacturer's recommended minimum sizing requirement ~~or the maximum daily flow of effluent divided by the hydraulic application rate for the applicable soil design subgroup, whichever is greater;~~ and (3-31-22)(    )

~~v.~~ Pressure distribution, when used with a proprietary wastewater treatment product, is designed by an Idaho licensed professional engineer. (3-31-22)

~~ec.~~ A ~~proprietary wastewater treatment system~~ A system using a PWTP may be required to follow the same operation, maintenance, monitoring, and reporting requirements described in Subsection 009.03.f.d. ~~due to factors such as~~ product complexity and ~~or~~ site-specific constituent reduction requirements. (3-31-22)(    )

~~f.d.~~ Permit requirements for these systems transfer with ownership changes. Before transferring ownership of a property with this system, the system owner must notify all transferees of the system operation, maintenance, and monitoring requirements. ~~Within thirty (30) days of transferring ownership of a property with the system, the transferee must notify the health district of the new owner of the property.~~ (3-31-22)(    )

**05. Effect of Design Approval Effect.** The Director may condition a design approval by specifying circumstances under which the component must be installed, used, operated, maintained, or monitored. (3-31-22)(    )

a. The Director ~~shall~~ will specify the complex alternative systems that must undergo professionally managed operation, maintenance, service, or effluent testing. (3-31-22)(    )

b. Manufacturers ~~shall~~ will provide training to a reasonable number of service providers to perform required operation, maintenance, or monitoring as specified by the Director. (3-31-22)(    )

c. Manufacturers may enter into agreements with certified service providers trained in their technology but ~~shall~~ must not limit ~~the~~ service providers from ~~being trained~~ training in the technology of other manufacturers. (3-31-22)(    )

**06. Notice of Design Disapproval Notice.** If the Director ~~is satisfied that~~ determines the component described in the submittal ~~may not be in compliance~~ does not comply with or may not consistently function in compliance with these rules, or ~~that~~ the manufacturer of the proposed system failed to comply with Subsection 009.03, the Director will disapprove the design as submitted. ~~The and notify the~~ manufacturer or distributor submitting the design ~~for approval will be notified,~~ in writing, of the disapproval and the reason for that action. (3-31-22)(    )

**07. Amendments or Revocations.** The Director may amend or revoke any permit or system approved by the Department if: (3-31-22)

a. Approval was based on false or misleading information; (3-31-22)

b. The material, technology, or design no longer achieves performance standards for which it was approved or does not meet the intent of the rules; or (3-31-22)

c. The manufacturer is not meeting the requirements of these rules or conditions of the approval. (3-31-22)

## 010. VARIANCES.

**01. Technical Allowance.** The Director may make a minor technical allowance to the dimensional or construction requirements ~~of these rules~~ for a standard system if the allowance: (3-31-22)(    )

a. ~~The allowance will~~ Does not affect adjacent property owners or the public at large; (3-31-22)(    )

b. ~~The allowance will~~ Does not violate the ~~conditions of Subsection 004.01; and~~ intent of the rules. (3-31-22)(    )

c. ~~The allowance will~~ Does not ~~be in~~ conflict with any other rule, regulation, standard, or ordinance; and (3-31-22)(    )

d. ~~The allowance~~ Changes to a dimensional requirement is not more than ten percent (10%) ~~of the requirements of these rules~~ unless otherwise provided for in the ~~Technical Guidance Manual~~ TGM. (3-31-22)(    )

**02. Variance Petition for Variance.** If a petition of variance to these rules is desired, a request for a variance may be filed with the Director. ~~The petition shall contain the following~~ A petition for rule variance must be filed with the Director and include the following detailed statements describing: (3-31-22)(    )

a. ~~A concise statement of the~~ The facts upon which the variance is requested including a description of the intended use of the property, the estimates of the quantity of blackwaste or wastewater to be discharged, and a description of the existing site conditions; (3-31-22)(\_\_\_\_)

b. ~~A concise statement of why the~~ The reason petitioner believes that compliance with the provision from which variance is sought would impose an arbitrary or unreasonable hardship, and a list of the injury ~~that the grant of the~~ variance would impose on the public; and (3-31-22)(\_\_\_\_)

c. ~~A clear statement of the~~ The precise extent of the relief sought. (3-31-22)(\_\_\_\_)

03. **Public Notice.** ~~At the time of~~ When filing a petition, evidence ~~shall~~ must also be submitted ~~that showing:~~ (3-31-22)(\_\_\_\_)

~~a. A notice has appeared in the local newspaper advising the public of the request for variance;~~ (3-31-22)

~~b. A all property owners within three hundred (300) feet of the affected site have been were notified fifteen (15) days before filing the petition; and~~ (3-31-22)(\_\_\_\_)

~~e. Such notices to the public have been made fifteen (15) days prior to the filing of the petition.~~ (3-31-22)

04. **Objections to Petition** Objections. Any person may file with the Department, within twenty-one (21) days after the filing ~~of the~~ petition, a written objection to the grant of the variance. A copy of ~~such the~~ objection ~~shall~~ must be provided by the Department to the petitioner. (3-31-22)(\_\_\_\_)

05. **Investigation and Decision.** After investigating the variance petition and considering the views of persons who might be adversely affected by the grant of the variance, the Director ~~shall~~ will, within sixty (60) days after the filing of the petition, make a decision ~~as to the disposition of~~ regarding the petition. ~~The decision, a copy of which shall be served on the petitioner, shall include~~ The Department will provide the decision to the petitioner, including: (3-31-22)(\_\_\_\_)

a. A description of the efforts made by the Director to investigate the facts as alleged and to ~~ascertain obtain and summarize~~ the views of persons who might be affected, ~~and a summary of the views so ascertained;~~ (3-31-22)(\_\_\_\_)

b. A statement of the degree to which, if at all, the Director disagrees with the facts as alleged in the petition; ~~and~~ (3-31-22)(\_\_\_\_)

c. Allegations of any other facts believed relevant to the disposition of the petition; ~~and~~. (3-31-22)(\_\_\_\_)

~~d. The Director's decision.~~ (3-31-22)

06. **Limitations on Decision.** No technical allowance or variance ~~shall~~ will be granted unless: (3-31-22)(\_\_\_\_)

a. Adequate proof is shown by the petitioner that compliance would impose an arbitrary or unreasonable hardship; (3-31-22)

b. The technical allowance or variance rendered is consistent with the recommendations of the ~~Technical Guidance Committee~~ TGC or the ~~Technical Guidance Manual~~ TGM in use at the time of the petition; and (3-31-22)(\_\_\_\_)

c. The Director has determined that the approval of the technical allowance or variance will not ~~have an adverse impact on the public health or the environment~~ violate the intent of the rules. (3-31-22)(\_\_\_\_)

011. INSPECTIONS.

01. **One or More Inspections** ~~Required. Such~~ The Director will require inspections ~~as are~~ necessary to determine compliance with any ~~requirement or~~ provision of these rules ~~shall be required by the Director.~~ (3-31-22)( )

02. **Duty to Uncover.** The permittee ~~shall~~ must, at the request of the Director, uncover or make available for inspection any portion or component of ~~an individual or subsurface sewage disposal system which was a~~ system under construction or covered or concealed in violation of these rules. (3-31-22)( )

03. **Advance Notice by Permittee.** If an inspection requires ~~some type of~~ preparation, such as test hole excavation or partial construction of the system, the applicant or permittee ~~will~~ must notify the Director at least forty-eight (48) hours in advance, excluding weekends and holidays, ~~before the time preparation will be completed.~~ (3-31-22)( )

04. **Substantiating Receipts and Delivery Slips.** ~~The permittee shall u~~ Upon request by the Director's request, the permittee must provide copies of receipts, delivery slips, or other similar documents to substantiate the origin, quality, or quantity of materials used in ~~the construction of any individual or subsurface system~~ constructing any system. (3-31-22)( )

05. **Finalizing a Permit.** No system may receive wastewater until the Director conducts a final installation inspection and completes as-built drawings and specifications depicting the actual installation. The Director will provide a copy of the final as-built drawing to the owner within thirty (30) days after completing the final inspection. ( )

012. VIOLATIONS AND PENALTIES.

01. **Failure to Comply.** All individual and subsurface sewage disposal systems ~~shall~~ must be constructed and installed according to these rules. Failure by any person to comply with the permitting, licensing, approval, installation, or variance provisions of these rules ~~shall be deemed~~ is a violation of these rules. (3-31-22)( )

02. **System Operation.** No person ~~shall~~ may discharge pollutants into the ~~underground water of the state of Idaho~~ waters through an individual or subsurface sewage disposal system unless in accordance with the provisions of these rules. (3-31-22)( )

03. ~~Violation a Misdemeanor. Pursuant to Section 39-117, Idaho Code, any person who willfully or negligently violates any of the provisions of these rules shall be guilty of a misdemeanor.~~ (3-31-22)

03. **Amendments or Revocations.** At any time, the Director may amend or revoke any installation or registration permit or the approval of any system component approved by the Department if: ( )

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

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

c. The permitted installer, service provider, or pumper is not in compliance with or has violated the provisions of these rules ( )

04. **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. ( )

013. ~~LARGE SOIL ABSORPTION SYSTEM DESIGN AND CONSTRUCTION~~ LSAS.

**01. Site Investigation.** A site investigation ~~for a large soil absorption system conducted~~ by a soil scientist ~~and/or hydrogeologist may be required by the Director for review and approval and shall be coordinated with the Director.~~ Soil and site investigations shall conclude that the effluent will not adversely impact or harm the waters of the State determining whether the LSAS effluent will adversely impact the waters must be submitted to the Director for review and approval. (3-31-22)(    )

**02. Installation Permit Plans.** Installation permit application plans, ~~as outlined in Subsection 005-04,~~ for ~~an large soil absorption system~~ LSAS submitted for approval ~~shall must~~ include provisions for inspections by the design engineer, designee, or Director of the work during construction ~~by the design engineer or his designee and/or by the Director.~~ (3-31-22)(    )

**03. Module Size.** The maximum size of any subsurface sewage disposal module ~~shall must~~ be ten thousand (10,000) gallons per day. Developments with greater than ten thousand (10,000) gallons per day flow ~~shall must~~ divide the system into absorption modules designed for ten thousand (10,000) gallons per day or less. (3-31-22)(    )

**04. Standard ~~Large Soil Absorption System~~ LSAS Design Specifications.** (3-31-22)(    )

**a.** All design elements and applications rates ~~shall be arrived at by~~ must be developed using sound engineering practice and ~~shall be~~ provided by a professional engineer licensed by the state of Idaho ~~and specializing in environmental or sanitary engineering.~~ (3-31-22)(    )

**b.** All design and installation requirements for standard systems apply to LSASs unless otherwise specified in this section. (    )

**bc.** Within thirty (30) days of completing system installation ~~completion,~~ the design engineer ~~shall must~~ provide either as-built plans or a certificate that the system ~~has been~~ was installed in substantial compliance with the installation permit application plans. (3-31-22)(    )

**ed.** ~~Effective Soil Depths.~~ Effective soil depths, in feet, below the bottom of the absorption module to the site conditions must be equal to or greater than the following table:

<b>TABLE — EFFECTIVE SOIL DEPTHS</b>			
<del>Site Conditions</del> <u>Limiting Layer</u>	Design	Soil	Group
<u>Limiting Layer</u>	A	B	C
Impermeable Layer	8	8	8
Fractured Bedrock, <del>Fissured Bedrock</del> or Extremely Permeable Material	12	8	6
Normal High Groundwater Level	12	8	6
Seasonal High Groundwater Level	2	2	2

(3-31-22)(    )

**de.** ~~Separation Distances.~~ The disposal area absorption module must be located so ~~that~~ the following separation distances ~~given~~ provided in the following table, in feet, are maintained or exceeded ~~as outlined in the following table:~~



TABLE -- SEPARATION DISTANCES			
Feature of Interest	Design	Soil	Group
	A	B	C
All Domestic Water Supplies			
Sewage Volume - 2,500-5,000 GPD	250	200	150
Sewage Volume - 5,000-10,000 GPD	300	250	200
Property Lines			
Sewage Volume - 2,500-5,000 GPD	50	50	50
Sewage Volume - 5,000-10,000 GPD	75	75	75
Building Foundations - Basements			
Sewage Volume - 2,500-5,000 GPD	50	50	50
Sewage Volume - 5,000-10,000 GPD	75	75	75
Downslope Cut or Scarp			
Impermeable Layer - Below Base	100	50	50
Separation Distance - Between Modules	12	12	12

(3-31-22)( )

~~ef.~~ ~~No large soil absorption system shall~~ ~~unless it can be demonstrated that the installation will not result in effluent surfacing at the cut or scarp~~ ~~approved by the Director.~~ **No LSAS may** be installed above a downslope scarp or cut **unless** approved by the Director. (3-31-22)( )

~~fg.~~ A minimum of two (2) disposal systems ~~will~~ **must** be installed, each sized to accept the daily design flow, and a replacement area equal to the size of one (1) disposal system ~~will~~ **must** be reserved. (3-31-22)( )

~~gh.~~ The vertical and horizontal hydraulic limits of the receiving soils ~~shall~~ **must** be established and flows ~~shall~~ **must** not exceed such limits ~~so as~~ to avoid hydraulically overloading any absorption module and replacement area. (3-31-22)( )

~~hi.~~ The distribution system must be pressurized with a duplex dosing system. (3-31-22)

~~i.~~ ~~A geotextile filter fabric shall cover the aggregate.~~ (3-31-22)

~~j.~~ An ~~in-line~~ effluent filter between an extended treatment system or lagoon system and the large soil absorption area ~~shall~~ **must** be installed. (3-31-22)( )

~~k.~~ Observation pipes ~~shall~~ **must** be installed to the bottom of the ~~drainrock~~ **aggregate** throughout the drainfield. (3-31-22)( )

~~l.~~ ~~Pneumatic tired machinery travel over the excavated infiltrative surface is prohibited.~~ (3-31-22)

~~m.~~ The drainfield disposal area ~~shall~~ **must** be constructed to allow for surface drainage and to prevent ponding of surface water ~~erosion.~~ ~~Before the system is put into operation the absorption module disposal area shall be seeded with typical lawn grasses and/or other appropriate shallow rooted vegetation.~~ (3-31-22)( )

~~05.~~ ~~Large Septic Tanks.~~ Large Septic Tanks shall be constructed according to Section 007, except as

~~outlined in this Subsection:~~ (3-31-22)

- ~~a. Length to width ratios shall be maintained at least at a three to one (3:1) ratio. (3-31-22)~~
- ~~b. Tank inlet shall allow for even distribution of the influent across the width of the tank. (3-31-22)~~
- ~~c. The width to liquid depth ratio shall be between one to one (1:1) and two and one quarter to one (2.25:1). (3-31-22)~~

**065. Monitoring and Reporting.** Before an installation permit is issued, the Director will approve a monitoring and reporting plan ~~shall be approved by the Director and shall~~ that contains the following minimum criteria: (3-31-22)(    )

- a. Monthly recording and inspection for ponding in all observation pipes. (3-31-22)
- b. Monthly recording of influent flows based on lapse time meter ~~and/~~ or event meter of the dosing system. (3-31-22)(    )
- c. Monthly recording of groundwater elevation measurements at all monitoring wells if high seasonal groundwater is within fifteen (15) feet of the ground surface. (3-31-22)
- d. Semi-annual groundwater monitoring at all monitoring wells. (3-31-22)
- e. ~~Monitoring shall conform to the requirements of all federal, state, and local rules and regulations. (3-31-22)~~

~~f. An annual "Large Soil Absorption System Report LSAS" shall report including operation, maintenance, and monthly and annual monitoring data, must~~ be filed with the Director no later than January 31 of each year for the last twelve (12) month period ~~and shall include section on operation, maintenance and monthly and annual monitoring data. (3-31-22)(    )~~

**076. Operation and Maintenance.** Before an installation permit is issued, an operation and maintenance plan ~~shall~~ must be approved by the Director and ~~shall~~ contain the following minimum criteria: (3-31-22)(    )

- a. Annual or more frequent rotation of the disposal systems, and whenever ponding is noted. (3-31-22)
- b. A detailed operation and maintenance manual, fully describing and locating all elements of the system and outlining maintenance procedures needed for operation of the system and who ~~will be~~ is responsible for system maintenance, ~~shall~~ must be submitted to the Director ~~prior to~~ before system use. (3-31-22)(    )
- c. A maintenance entity ~~shall~~ must be specified to provide continued operation and maintenance. Approval of the entity shall be made by the Director prior to issuance of an installation permit according to the operator requirements in IDAPA 58.01.16, Wastewater Rules, and approved by the Director before issuance of an installation permit. The entity may assume the responsibilities of a service provider if a service provider is required. (3-31-22)(    )

014. -- 049. (RESERVED)

**050. ~~CLEANING OF SEPTIC TANKS~~ — GENERAL REQUIREMENTS CLEANING.**

All persons, firms, or corporations operating any tank truck or any other device or equipment used or intended ~~to be used for the purpose of~~ for pumping or cleaning septic tanks and ~~or~~ transporting or disposing of human excrement, ~~shall~~ must conform with the following ~~requirements~~ provisions. (3-31-22)(    )

**01. Watertight Equipment to Be Watertight.** The tank or transporting equipment ~~shall~~ must be watertight and ~~so~~ constructed ~~as~~ to prevent spilling or leaking while being loaded, transported, ~~and~~ or unloaded.

(3-31-22)( )

02. **Cleanable Equipment to Be Cleanable.** The tank or transporting equipment ~~shall~~ **must** be constructed ~~in such a manner so~~ that every portion of the interior and exterior can be easily cleaned and maintained in a clean condition at all times while not in ~~actual~~ use. (3-31-22)( )

03. **Disposal Methods.** Disposal of ~~excrement~~ **septage** from septic tanks ~~shall be by~~ **must apply** the following methods ~~only~~: (3-31-22)( )

- a. ~~Discharging~~ **Discharge** to a public sewer; (3-31-22)( )
- b. ~~Discharging~~ **Discharge** to a sewage treatment plant; *or* (3-31-22)( )
- e. ~~Burying under earth in a location and by a method approved by the Department of Environmental Quality;~~ (3-31-22)
- dc. ~~Drying i~~ **In** a location and by a method approved by the Department of Environmental Quality. (3-31-22)( )

**051. CLEANING OF SEPTIC TANKS — PERMIT REQUIREMENTS.**

**04. Permit Application Contents.** ( )

- a. All persons operating septic tank pumping equipment ~~shall~~ **must**: ( )
  - i. ~~Obtain a permit from the Idaho Department of Environmental Quality for the operation of~~ **Director to operate** such equipment; ( )
  - ii. ~~Permits shall be renewed~~ **Renew permit** annually; *and* ( )
  - iii. ~~Applications~~ **Apply** for **permit** renewal ~~of permits shall be made on or~~ before March 1 of each year. (3-31-22)( )

**01. Permit Application Contents.** Applications for permits shall submit the following information on forms prepared by the Department: (3-31-22)

**b. The application must be submitted on forms approved by the Director and include:** ( )

- a.i. Number of tank trucks operated by owner; (3-31-22)
- b.ii. Vehicle license number of each tank truck; (3-31-22)
- e.iii. Name and address of owner *and*/or operator of equipment; (3-31-22)( )
- d.iv. Name and address of business, if different from Subsection 051.01.c.; (3-31-22)
- e.v. Methods of disposal to be used in all areas of operation; (3-31-22)
- f.vi. Location of all disposal sites used by applicant; *and* (3-31-22)( )
- g.vii. ~~A~~ **C**omplete basis of charges made for payment of the work performed. (3-31-22)( )

**025. Permit Fee.** All applications ~~shall~~ **must** be accompanied by payment of the fee specified in ~~Idaho Department of Environmental Quality Rules, IDAPA 58.01.14, Section 115,~~ “Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services.” (3-31-22)( )

**036. Vehicle Number to Be Displayed.** For each permit issued, a number ~~will be~~ **is** assigned to the

owner ~~and~~/or operator of the tank truck or trucks. ~~The assigned number shall~~ **that must** be displayed at all times on the door of the vehicle or vehicles in a **legible** manner ~~easily legible~~. (3-31-22)(    )

~~**04. Permit Suspension or Revocation.** Permits issued are the property of the Department of Environmental Quality and may be suspended or revoked at any time the operator is not in compliance with the requirements of these rules.~~ (3-31-22)

~~052~~**1.** -- 995. (RESERVED)

**996. 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". (3-31-22)

~~**997. CONFIDENTIALITY OF RECORDS.**~~

~~Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 74, Chapter 1, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Department of Environmental Quality."~~ (3-31-22)

~~998~~**7.** -- 999. (RESERVED)

## IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.10 – RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

DOCKET NO. 58-0110-2301 (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 2025 Idaho State Legislature for final approval. Pursuant to Section 67-5224(2)(c), Idaho Code, this pending rule must be approved by concurrent resolution of the Legislature. Pursuant to Section 67-5291(2), Idaho Code, all temporary, pending, and final rules of any nature may be approved or rejected by a concurrent resolution of the Legislature. The concurrent resolution shall state the effective date of the approval or rejection. If approved by concurrent resolution, the rules will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

**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 39-4405, Idaho Code.

**DESCRIPTIVE SUMMARY:** This rulemaking was initiated in compliance with [Executive Order No. 2020-01, Zero-Based Regulation \(EO 2020-01\)](#), issued by Governor Little on January 16, 2020. This rulemaking also includes review of the list of federal regulations incorporated by reference and adjustments based on that review. A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 7, 2024, Vol. 24-8, pages 204 through 210. DEQ received no public comments, and the rule has been adopted as initially proposed. The board meeting documents are available at <https://www.deq.idaho.gov/disposal-radioactive-materials-docket-no-58-0110-2301/>.

**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 4th day of December, 2024.

Diane Cutler  
Rules and Planning Analyst  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706  
Phone: (208)373-0165  
[Diane.Cutler@deq.idaho.gov](mailto:Diane.Cutler@deq.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 39-4405, 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 August 21, 2024. If no such written request is received, a public hearing will not be held. Three public meetings were held during the negotiated rulemaking process.

**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](https://adminrules.idaho.gov/forms_menu.html). This is one of the DEQ rule chapters up for review in 2024. 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.

During the negotiated rulemaking process, DEQ reviewed the list of federal regulations incorporated by reference in Section 004. Based on that review, DEQ made the following adjustments:

1. 10 CFR 30.14 – 30.15, 30.18 – 30.21, 32.11, and 32.18 were identified for deletion from Section 004. These sections are referenced in Section 010, Definitions, but not intended to be incorporated by reference.
2. 10 CFR Part 20, Standards for Protection Against Radiation, was identified as a regulation meant to be incorporated by reference (with the exclusion of Subparts K, M, O, and 10 CFR Sections 20.1001, 20.1002, and 20.1006 through 20.1009) and added to Section 004. 40 CFR Part 20 is referenced in Section 020, Radiation Protection Standards, but had not been incorporated by reference in previous rulemakings.
3. The “revised as of date” of 10 CFR 40.13, Unimportant Quantities of Source Material, has been updated to January 1, 2024, even though 10 CFR 40.13 has not been revised since incorporated by reference into IDAPA 58.01.10 when promulgated in 2001. The purpose of this update is to simplify compliance by making the CFR citation more accessible.

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. If adopted by the Idaho Board of Environmental Quality and approved by concurrent resolution of the 2025 Idaho State Legislature, the rule will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

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

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was conducted pursuant to Section 67-5220, Idaho Code. On September 6, 2023, the Notice of Intent to Promulgate Rules Zero-Based Regulation (ZBR) Negotiated Rulemaking was published in the Idaho Administrative Bulletin. 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/disposal-radioactive-materials-docket-no-58-0110-2301/>.

**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:

1. Incorporation by reference allows DEQ to keep its rules up to date with federal regulations, includes terms and definitions used by the Nuclear Regulatory Commission, and simplifies compliance for the regulated community. Information for obtaining a copy of the federal regulations is included in the rule.
2. 10 CFR Part 20, Standards for Protection Against Radiation, was identified during negotiated rulemaking as a regulation meant to be incorporated by reference (with the exclusion of Subparts K, M, O, and 10 CFR Sections 20.1001, 20.1002, and 20.1006 through 20.1009) and added to Section 004. 40 CFR Part 20 is referenced in Section 020, Radiation Protection Standards, but had not been incorporated by reference in previous rulemakings.
3. For 10 CFR 40.13, Unimportant Quantities of Source Material, the “revised as of date” has been updated to January 1, 2024, even though 10 CFR 40.13 has not been revised since incorporated by reference into IDAPA 58.01.10 when promulgated in 2001. The purpose of this update is to simplify compliance by making the CFR citation more accessible.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule regulates an activity not regulated by the federal government and has previously been approved as meeting the requirements of Section 39-107D, Idaho Code.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this proposed rulemaking, contact Albert Crawshaw at [albert.crawshaw@deq.idaho.gov](mailto:albert.crawshaw@deq.idaho.gov) or (208) 373-0554.

**SUBMISSION OF WRITTEN COMMENTS:** Anyone may submit written comments regarding this proposed rule. The Department will consider all written comments received on or before August 28, 2024. Submit written comments to:

Albert Crawshaw  
Department of Environmental Quality  
1410 N. Hilton, Boise, ID 83706  
[albert.crawshaw@deq.idaho.gov](mailto:albert.crawshaw@deq.idaho.gov)

Dated this 7th day of August, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 58-0110-2301**

**58.01.10 – RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS  
NOT REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED**

**000. LEGAL AUTHORITY.**

~~The Idaho Legislature has given the Board of Environmental Quality the authority to promulgate these rules pursuant to Sections [39-105](#), [39-107](#), and [39-4405](#), Idaho Code. (3-31-22)( )~~

**001. ~~TITLE AND SCOPE.~~**

~~**01. Title.** These rules are titled IDAPA 58.01.10, “Rules Regulating the Disposal of Radioactive~~

~~Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended.” (3-31-22)~~

~~02. Scope.~~ These rules regulate the disposal of radioactive materials not regulated under the Atomic Energy Act of 1954, As Amended, at facilities permitted and subject to the requirements of the Idaho Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and the Idaho Hazardous Waste Facility Siting Act, Chapter 58, Title 39, Idaho Code. These rules do not regulate NORM or TENORM waste from the production of elemental phosphorus or from the production of phosphate fertilizers, ~~which that~~ includes the production of wet and purified phosphoric acid. These rules also place restrictions on disposal of certain radioactive materials at municipal solid waste landfills and identify other approved disposal options for radioactive materials. (3-31-22)( )

**002. WRITTEN INTERPRETATIONS.**

~~Any written statements pertaining to the interpretation of these rules shall be available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. (3-31-22)~~

**002. (RESERVED)**

**003. ADMINISTRATIVE APPEALS.**

~~Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, “Contested Case Rules and Rules for Protection and Disclosure of Records.” (3-31-22)~~

**004. INCORPORATION BY REFERENCE.**

~~01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 004.02 shall constitute the full adoption by reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (3-31-22)~~

~~02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (3-31-22)~~

- ~~a. 10 CFR 30.14 through 30.15, revised as of January 1, 2014. (3-31-22)~~
- ~~b. 10 CFR 30.18 through 30.21, revised as of January 1, 2014. (3-31-22)~~
- ~~c. 10 CFR 32.11, revised as of January 1, 2014. (3-31-22)~~
- ~~d. 10 CFR 32.18, revised as of January 1, 2014. (3-31-22)~~

~~01. Standards for Protection Against Radiation. 10 CFR Part 20, revised as of January 1, 2024, are incorporated by reference into these rules with the following exclusions: Subparts K, M, O, and 10 CFR Sections 20.1001, 20.1002, and 20.1006 through 20.1009. ( )~~

~~e02. Unimportant Quantities of Source Material. 10 CFR 40.13, revised as of January 1, 2014<sup>24</sup>. (3-31-22)( )~~

~~03. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (3-31-22)~~

- ~~a. Department of Environmental Quality, 1410 N. Hilton, Boise ID 83706-1255. (3-31-22)~~
- ~~b. Idaho State Law Library, 451 W. State Street, P.O. Box 83720, Boise ID 83720-0051. (3-31-22)~~
- ~~c. U.S. Government Printing Office, www.ecfr.gov. (3-31-22)~~

**005. OFFICE—OFFICE HOURS—MAILING ADDRESS AND STREET ADDRESS.**

~~The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8:00~~



~~a.m. to 5:00 p.m. Monday through Friday.~~

~~(3-31-22)~~

~~0065.~~ -- 009. (RESERVED)

**010. DEFINITIONS.**

In addition to the definitions found in Section 39-4403, Idaho Code, terms in this chapter have the following definitions. ( )

**01. Accelerator-Produced Radioactive Material.** Any material made radioactive by a particle accelerator. (3-31-22)

~~02. Board.~~ The Idaho Board of Environmental Quality. (3-31-22)

~~032. Byproduct Material.~~ ~~Byproduct Material means:~~ (3-31-22)( )

a. Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material; ~~and.~~ (3-31-22)( )

b. The tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition. (3-31-22)( )

c. Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or any material that: (3-31-22)

i. Has been made radioactive by use of a particle accelerator; and (3-31-22)

ii. Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and (3-31-22)

d. Any discrete source of naturally occurring radioactive material, other than source material, that: (3-31-22)

i. The U.S. Nuclear Regulatory Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium- 226 to the public health and safety or the common defense and security; and (3-31-22)

ii. Before, on, or after August 8, 2005, is extracted for use in a commercial, medical, or research activity. (3-31-22)

~~04. Department.~~ The Idaho Department of Environmental Quality. (3-31-22)

~~053. Exempt Quantities and Concentrations of Byproduct Materials.~~ Radioactive materials defined as exempt byproduct materials by the U.S. Nuclear Regulatory Commission (10 CFR 30.14 through 30.15, 10 CFR 30.18 through 30.21, 10 CFR 32.11 and 10 CFR 32.18). (3-31-22)

~~04. Licensee.~~ When used in the context of 10 CFR and these rules, the definition is Operator or Owner. ( )

~~065. Naturally Occurring Radioactive Material (NORM).~~ ~~Any material containing natural radionuclides at natural background concentrations, where human intervention has not concentrated the naturally occurring radioactive material or altered its potential for causing human exposure. NORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954~~ Materials which contain any of the primordial radionuclides or radioactive elements as they occur in

~~nature, such as radium, uranium, thorium, potassium, and their radioactive decay products.~~ (3-31-22)( )

~~076.~~ **Operator.** Any person(s) currently responsible, or responsible at the time of disposal, for the overall operation of a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-31-22)

~~087.~~ **Owner.** Any person(s) who currently owns, or owned at the time of disposal, a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-31-22)

~~09.~~ **Person.** ~~Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties.~~ (3-31-22)

~~108.~~ **Radioactive Material.** Radioactive Material includes: (3-31-22)

a. Technologically Enhanced Naturally Occurring Radioactive Material; (3-31-22)

b. Byproduct material authorized for disposal pursuant to 10 CFR 20.2008(b); (3-31-22)

c. Exempt Quantities and Concentrations of Byproduct Materials; (3-31-22)

d. Unimportant Quantities of Source Material, not including the natural uranium and thorium concentrations of rocks or soils; and (3-31-22)( )

e. Any other byproduct, source material, or special nuclear material or devices or equipment utilizing such material, which has been exempted or released from radiological control or regulation under the Atomic Energy Act of 1954, as amended, to be disposed of in a commercial hazardous waste facility as regulated pursuant to the rules, permit requirements, and acceptance criteria provided for by Chapter 44, Title 39, Idaho Code. (3-31-22)

~~109.~~ **Reasonably Maximally Exposed Individual.** That individual or group of individuals who by reason of location has been determined, through the use of environmental transport modeling and dose calculation, to receive the highest total effective dose equivalent from radiation emitted from the site and/or radioactive material transported off-site. (3-31-22)

~~120.~~ **Source Material.** ~~Source material means:~~ (3-31-22)( )

a. Uranium or thorium, or any combination thereof, in any physical or chemical form; or (3-31-22)

b. Ores which contain by weight one-twentieth of one percent (0.05%) or more of: (3-31-22)

i. Uranium; (3-31-22)

ii. Thorium; or (3-31-22)

iii. Any combination thereof. (3-31-22)

c. Source material does not include special nuclear material. (3-31-22)

~~131.~~ **Special Nuclear Material.** ~~Special Nuclear Material means:~~ (3-31-22)( )

a. Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material ~~which~~ that the U.S. Nuclear Regulatory Commission determines to be special nuclear material. (3-31-22)( )

b. Any material artificially enriched by any of the material listed in Subsection 010.12.a. (3-31-22)

**142. Technologically Enhanced Naturally Occurring Radioactive Material (TENORM).** ~~Any naturally occurring radioactive materials not subject to regulation under the Atomic Energy Act whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities. TENORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954.~~ Naturally occurring radioactive material whose radionuclide concentrations are increased by or as a result of past or present human practices.

(3-31-22)( )

**13. Total Effective Dose Equivalent (TEDE).** The sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

( )

**154. Unimportant Quantities of Source Material.** ~~Radioactive materials defined as a~~ Unimportant quantities of source materials defined by the U.S. Nuclear Regulatory Commission (10 CFR 40.13).

(3-31-22)( )

011. -- 018. (RESERVED)

**019. NOTIFICATION OF RADIOACTIVE MATERIALS.**

Any person with knowledge of the transfer, or proposed transfer, of radioactive materials for disposal to any location other than a location authorized by Section 020 to receive radioactive materials for disposal ~~shall~~ must notify the Department of the transfer as soon as the transfer takes place or as soon as the person learns of the transfer, or proposed transfer, whichever is sooner.

(3-31-22)( )

**020. RADIATION PROTECTION STANDARDS.**

**01. General Protection Standards.**

(3-31-22)

**a.** All owners and operators ~~shall~~ must conduct operations in a manner consistent with radiation protection standards contained in 10 CFR Part 20;

(3-31-22)( )

**b.** No owner or operator ~~shall~~ may conduct operations, create, use or transfer radioactive materials in a manner such that any member of the public will receive an annual Total Effective Dose Equivalent (TEDE) in excess of one hundred (100) millirem per year (1 milliseivert/year); and

(3-31-22)( )

**c.** No person ~~shall~~ may release radioactive materials for unrestricted use in such a manner that the reasonably maximally exposed individual will receive an annual TEDE in excess of fifteen (15) millirem per year (fifteen one-hundredths (0.15) milliseivert/year) excluding natural background.

(3-31-22)( )

**02. Protection of Workers During Operations.** All owners and operators ~~shall~~ must conduct operations in a manner consistent with radiation protection standards for occupation workers contained in 10 CFR Part 20.

(3-31-22)( )

**03. Disposal of Radioactive Material.** No person, owner, or operator ~~shall~~ may dispose of radioactive materials by any method other than:

(3-31-22)( )

**a.** At a permitted treatment, storage or disposal facility under the authority of ~~the Idaho Hazardous Waste Management Act,~~ Chapter 44, Title 39, Idaho Code, provided that the facility owner or operator complies with each of the following:

(3-31-22)( )

**i.** Department-approved waste acceptance criteria for radioactive material ~~defined in Section 010;~~

(3-31-22)( )

**ii.** A Department-approved closure program that provides reasonable assurance that the radon emanation rate from the closed disposal unit will not exceed twenty (20) picocuries per square meter per second averaged across the entire area of the closed disposal unit and meets the requirements in Subsection 020.01.b.; and

(3-31-22)

iii. A Department-approved environmental monitoring program that monitors air, ground-water, surface water, and soil for radionuclides and ambient radiation levels ~~in~~ at the environs boundary of the facility and which demonstrates that no member of the general public is likely to exceed a radiation dose of one hundred (100) millirem (one (1) milliseivert) per year from operations conducted at the site. (3-31-22)(    )

~~b.~~ By transferring wastes for disposal to a facility licensed under requirements for uranium or thorium byproduct materials in either 40 CFR 192 or 10 CFR 40 Appendix A; (3-31-22)

~~e.~~ By transferring wastes for disposal to a disposal facility licensed by the U.S. Nuclear Regulatory Commission, an agreement state, or a licensing state; or (3-31-22)

~~db.~~ In accordance with alternate methods authorized by the Department upon application or upon the Department's initiative, consistent with Section 020.01 and all applicable state statutes and regulations. (3-31-22)

**04. Prohibit Disposal at a Municipal Solid Waste Landfill.** No person ~~shall~~ may dispose of radioactive material ~~as defined in these rules~~ at a municipal solid waste landfill, except for individual consumer products containing radioactive material or as authorized under Subsection 020.03.b. (3-31-22)(    )

**021. -- 029. (RESERVED)**

**030. RECORDS.**

Records of disposal, including such as a manifest or bill of landing, ~~shall must~~ be maintained for three (3) years ~~in accordance with 40 CFR 262.40 and 40 CFR 262.23.~~ (3-31-22)(    )

**031. -- 039. (RESERVED)**

**040. VIOLATIONS.**

**01. Failure to Comply.** Failure by any person, owner, or operator to comply with the provisions of these rules ~~shall will~~ be deemed a violation of these rules. (3-31-22)(    )

**02. Falsification of Statements and Records.** It ~~shall be~~ is a violation of these rules for any person, owner, or operator to knowingly make a false statement, representation, or certification in any document or record developed, maintained, or submitted pursuant to these rules. (3-31-22)(    )

**03. Penalties.** Any person violating any provision of these rules or order issued thereunder ~~shall may~~ be liable for civil penalty in accordance with Chapter 44, Title 39, Idaho Code. (3-31-22)(    )

**041. -- 999. (RESERVED)**

## IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.14 – RULES GOVERNING FEES FOR ENVIRONMENTAL OPERATING PERMITS, LICENSES, AND INSPECTION SERVICES

#### DOCKET NO. 58-0114-2401 (ZBR CHAPTER REWRITE, FEE RULE)

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

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

**EFFECTIVE DATE:** This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2025 Idaho State Legislature for final approval. Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. Pursuant to Section 67-5291(2), Idaho Code, all temporary, pending, and final rules of any nature may be approved or rejected by a concurrent resolution of the Legislature. The concurrent resolution shall state the effective date of the approval or rejection. If approved by concurrent resolution, the rules will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

**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, 39-119, and 39-175C, Idaho Code.

**DESCRIPTIVE SUMMARY:** This rulemaking was initiated in compliance with [Executive Order No. 2020-01, Zero-Based Regulation \(EO 2020-01\)](#), issued by Governor Little on January 16, 2020. This rulemaking also proposes the consolidation of environmental fees into one chapter. Phase one is consolidation of fees applicable to wastewater treatment facilities. A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 4, 2024, [Vol. 24-9, pages 643 through 651](#). DEQ received no public comments, and the rule has been adopted as initially proposed. The board meeting documents are available at: <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/environmental-fees-docket-no-58-0114-2401/>.

**FEE SUMMARY:** This rule consolidates environmental fees into one chapter in an effort to streamline access to fee schedules and to provide a single stop for the regulated community to view applicable fees and includes: 1) moving the IPDES permit fee schedule language currently in Section 110 of 58.01.25, Idaho Pollutant Discharge Elimination System Rules, to 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services; 2) fees associated with DEQ's recycled water program; and 3) an update that lists subsurface sewage disposal permit fees intended as minimums for specific permit types. The fees are authorized by Idaho Code §§ 39-119 and 39-175C.

**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 4th day of December, 2024.

Diane Cutler  
Rules and Planning Analyst  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706  
Phone: (208)373-0165  
[Diane.Cutler@deq.idaho.gov](mailto:Diane.Cutler@deq.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, 39-119, and 39-175C, 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 20, 2024. If no such written request is received, a public hearing will not be held. Three public meetings were held during the negotiated rulemaking process.

**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](https://adminrules.idaho.gov/forms_menu.html). This is one of the DEQ rule chapters up for review in 2024. 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.

In this rulemaking, DEQ proposes the consolidation of environmental fees into one chapter in an effort to streamline access to fee schedules and to provide a single stop for the regulated community to view applicable fees. Phase one is consolidation of fees applicable to wastewater treatment facilities and includes the following proposals.

**New Section 170, IPDES and Reuse Permit Fee Schedule:** This proposal moves the IPDES permit fee schedule language currently in Section 110 of 58.01.25, Idaho Pollutant Discharge Elimination System Rules, to 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services. Section 170 also includes a proposal for fees associated with DEQ's recycled water program. DEQ evaluated the current number of recycled water permits and the workload associated with providing permits and compliance assistance for these facilities and determined that a minor fee is necessary to offset the costs to the state associated with this effort. During negotiated rulemaking, DEQ presented three different fee schedule scenarios and requested stakeholder input. After consideration of meeting discussions and comments received, DEQ included the fixed annual cost scenario which takes into account the specific counts of each facility type, aiming to distribute the financial burden equitably while ensuring sufficient funding for program operations and development.

**Update Section 110, Subsurface Sewage Disposal:** This proposal lists fees intended as minimums for specific permit types - Subsurface Sewage Disposal System Permits, Subsurface Sewage Disposal System Pumper Permits, and Subsurface Sewage Disposal System Installer's Registration Permits.

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. If adopted by the Idaho Board of Environmental Quality and approved by concurrent resolution of the 2025 Idaho State Legislature, the rule will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

**FEE SUMMARY:** This proposed rule consolidates environmental fees into one chapter in an effort to streamline access to fee schedules and to provide a single stop for the regulated community to view applicable fees and includes: 1) moving the IPDES permit fee schedule language currently in Section 110 of 58.01.25, Idaho Pollutant Discharge Elimination System Rules, to 58.01.14, Rules Governing Fees for Environmental Operating Permits, Licenses, and Inspection Services; 2) fees associated with DEQ's recycled water program; and 3) an update that lists subsurface sewage disposal permit fees intended as minimums for specific permit types. The fees are authorized by Idaho Code §§ 39-119 and 39-175C.

**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 resulting from this rulemaking: Not applicable.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was conducted pursuant to Section 67-5220, Idaho Code. On April 3, 2024, the Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking was published in the Idaho Administrative Bulletin. 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/environmental-fees-docket-no-58-0114-2401/>.

**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.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rulemaking is administrative in nature and proposes to update long-standing administrative rules. The portion of the rule relating to IPDES permit fees does not regulate activities not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. The remaining portions of the proposed rule regulate activities not regulated by the federal government.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this rulemaking, contact Mary Anne Nelson at [mary.anne.nelson@deq.idaho.gov](mailto:mary.anne.nelson@deq.idaho.gov) or (208) 373-0291.

**SUBMISSION OF WRITTEN COMMENTS:** Anyone may submit written comments regarding this proposed rule. The Department will consider all written comments received on or before October 4, 2024. Submit written comments to:

Mary Anne Nelson  
Department of Environmental Quality  
1410 N. Hilton, Boise, ID 83706  
[mary.anne.nelson@deq.idaho.gov](mailto:mary.anne.nelson@deq.idaho.gov)

Dated this 4th day of September, 2024

THE FOLLOWING IS THE TEXT OF ZBR FEE DOCKET NO. 58-0114-2401

**58.01.14 – RULES GOVERNING FEES FOR ENVIRONMENTAL OPERATING PERMITS, LICENSES, AND INSPECTION SERVICES**

**000. LEGAL AUTHORITY.**

~~Pursuant to Sections 39-105, 39-107, and 39-119, and 39-175C, Idaho Code, the Board of Environmental Quality is authorized to promulgate rules establishing reasonable fees to be charged and collected for any service rendered by the Department of Environmental Quality.~~ (3-24-22)(\_\_\_\_)

**001. TITLE AND SCOPE.**

~~01. Title. The rules are titled IDAPA 58.01.14, “Rules Governing Fees for Environmental Operating~~

~~Permits, Licenses, and Inspection Services.”~~

~~(3-24-22)~~

~~02. Scope.~~ These rules establish reasonable fees for environmental operating permits, licenses, inspection services and waiver application processing rendered by the Department of Environmental Quality or its designees. ~~(3-24-22)( )~~

~~002. WRITTEN INTERPRETATIONS.~~

~~In accordance with Section 67-5201(19)(b)(iv), any written statements pertaining to the interpretation of these rules will be available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255.~~

~~(3-24-22)~~

~~003. ADMINISTRATIVE APPEALS.~~

~~Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, “Contested Case Rules and Rules for Protection and Disclosure of Records.”~~

~~(3-24-22)~~

~~004. INCORPORATION BY REFERENCE.~~

~~These rules do not contain documents incorporated by reference.~~

~~(3-24-22)~~

~~005. OFFICE—OFFICE HOURS—MAILING ADDRESS AND STREET ADDRESS.~~

~~The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8 a.m. to 5 p.m. Monday through Friday.~~

~~(3-24-22)~~

~~006. CONFIDENTIALITY OF RECORDS.~~

~~Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.”~~

~~(3-24-22)~~

~~007. DEFINITIONS.~~

~~01. Board.~~ The Idaho Board of Environmental Quality.

~~(3-24-22)~~

~~02. De minimis. A type of reuse permit issued to small-scale or low-risk recycled water reuse activities that are deemed to pose minimal risk to public health or the environment in the associated permit staff analysis. De minimis permits typically involve limited analysis, monitoring, and reporting obligations due to low-risk of activity.~~

~~( )~~

~~023. Department.~~ The Idaho Department of Environmental Quality or its designee.

~~(3-24-22)~~

~~04. Equivalent Dwelling Unit (EDU). A measure where one (1) EDU is equivalent to wastewater generated from one (1) single-family residence. For assessing fees associated with publicly or privately owned domestic sewage treatment, the number of EDUs is calculated as the population served divided by the average household size as defined in the most recent US Census Bureau data (for that municipality, county, or average number of persons per household for the state of Idaho). For fees associated with industrial wastewater treatment owned by a municipality, EDUs are calculated according to the definition of EDU in IDAPA 58.01.16, “Wastewater Rules.”~~

~~( )~~

~~05. Major Facility.~~

~~( )~~

~~a. A publicly or privately owned treatment works with a design flow equal to or greater than one million gallons per day (1 MGD), or serves a population of ten thousand (10,000) or more, or causes significant water quality impacts; or~~

~~( )~~

~~b. A non-municipal facility that equals or exceeds the eighty (80) point accumulation described in the Score Summary of the NPDES Non-municipal Permit Rating Work Sheet (June 27, 1990) or the Department equivalent.~~

~~( )~~



~~03. Director. The Director of the Idaho Department of Environmental Quality or his designee. (3-24-22)~~

0084. -- 099. (RESERVED)

100. ENVIRONMENTAL FEES.

~~The fees specified in Sections 101 through 199 shall be charged for the following environmental services rendered by the Department or its designees. Fees for services rendered by designees that are equivalent or greater than the fees listed in Sections 101 through 199 may be adopted by the district health departments or local government those designees and are intended to cover the cost of maintaining an adequate permitting program. Fees should be formulated consistent with these rules.~~ The fees are to be paid by the party receiving the services to the Department or designee performing the service, in the time, place and manner specified by the performing entity.

~~(3-24-22)( )~~

101. -- 109. (RESERVED)

110. ~~INDIVIDUAL AND SUBSURFACE SEWAGE DISPOSAL SYSTEM PERMIT.~~

~~Fees listed here are intended as minimum fees for specific permit types. Designees may adopt different fees through their governing board, must have their fee schedules published online in an easy to find and searchable manner, and should use the following criteria. For those services rendered in the process of issuing installation permits for individual and subsurface sewage disposal systems (see IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks"), the following fees apply:~~

~~(3-24-22)( )~~

~~01. Subsurface Sewage Disposal System Permit. Base the fee calculation on: ( )~~

~~01a. Individual Households or Buildings. For individual households or buildings, if the individual and subsurface sewage disposal system is a new installation or a replacement or expansion of an existing system, the fee shall be ninety dollars (\$90). The proposed daily wastewater flow: (3-24-22)( )~~

~~(3-24-22)( )~~

~~02b. Multiple Households or Buildings. For individual and subsurface sewage disposal systems serving more than one (1) household or building in any combination, the fee shall be ninety dollars (\$90) plus ten dollars (\$10) per each household or per each two hundred fifty (250) gallons of flow from buildings. The number of proposed systems: (3-24-22)( )~~

~~(3-24-22)( )~~

~~c. The number of structures to be connected to the proposed system: ( )~~

~~d. The county where the proposed system is located: ( )~~

~~e. Whether the proposed system is a standard, basic alternative, or complex alternative design; or ( )~~

~~f. Whether the proposed system is a new, expansion of an existing system, or a repair or replacement, of a failing system. ( )~~

~~02. Subsurface Sewage Disposal System Pumper Permit. The fee is an annual fee and determined based on: ( )~~

~~a. The amount of pumping vehicles per owner or business in service each year; and ( )~~

~~b. The county where the business is located. ( )~~

~~03. Subsurface Sewage Disposal System Installer's Registration Permit. The fee is an annual fee and calculated based on: ( )~~

~~a. Whether the applicant will install standard, basic alternative, or complex alternative systems; and ( )~~

- b.** The county where the business is located. ( )
- 04.** Fees. Minimum fees for services rendered include but are not limited to the following:

Item	Fee
Sewage Disposal Permit: Basic or Complex System	\$400
Sewage Disposal Permit: Large Soil Absorption System or Central System	\$1,000
Sewage Disposal Permit: Tank Only	\$300
Sewage Disposal Permit Renewal	\$40
Installers Registration or Service Provider Certification:	
Basic (annual)	\$50
Complex (annual)	\$100
Pumper Truck License (annual)	\$40
Pumper Additional Truck Fee (per truck annually)	\$20

( )

~~111. — 114.~~ (RESERVED)

~~115. INDIVIDUAL AND SUBSURFACE SEWAGE DISPOSAL SYSTEM PUMPER PERMIT.~~

For those services rendered in the process of issuing permits to persons operating individual and subsurface sewage disposal system pumping equipment (see IDAPA 58.01.03, “Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks”), the fee shall be forty dollars (\$40) plus ten dollars (\$10) for each tank truck or tank per annum. (3-24-22)

~~116. — 119.~~ (RESERVED)

~~120. SUBSURFACE SEWAGE DISPOSAL SYSTEM INSTALLER'S REGISTRATION PERMIT.~~

For those services rendered in the process of issuing Installer's Registration Permits (see IDAPA 58.01.03, “Individual/Subsurface Sewage Disposal Rules and Rules for Cleaning of Septic Tanks”), the fee shall be fifty dollars (\$50) per annum for a standard and basic alternative system installer's registration permit and one hundred dollars (\$100) per annum for a standard, basic and complex alternative system installer's registration permit. (3-24-22)

~~121. — 124.~~ -- 149. (RESERVED)

150. PARCEL SURVEY.

For those services rendered in evaluating existing water supply or sewage disposal systems when such evaluation is a condition for the sale of real property, the fee ~~shall be~~ is sixty dollars (\$60) excluding laboratory services. (3-24-22)( )

151. -- 159. (RESERVED)

160. SANITARY RESTRICTION ADMINISTRATION.

For those services rendered in the administration of sanitary restrictions, ~~pursuant to Section 50-1326, Idaho Code,~~ the following fees apply: (3-24-22)( )

01. Subdivisions or Plats Proposing Individual and Subsurface Sewage Disposal System

**Discharge to Subsurface.** ~~For subdivisions or plats for which sewage treatment and disposal systems are designed to discharge to the subsurface, t~~ The fee shall be is one hundred dollars (\$100) plus twenty dollars (\$20) per lot. (3-24-22)( )

**02. Subdivisions or Plats Proposing Other Than Individual and Subsurface Sewage Disposal System Discharge to Subsurface.** ~~For subdivisions or plats for which sewage treatment and disposal systems are not designed to discharge to the subsurface, t~~ The fee shall be is twenty-five dollars (\$25). (3-24-22)( )

161. -- ~~899~~169. (RESERVED)

**170. IPDES AND REUSE PERMIT FEE SCHEDULE.**

**01. IPDES Fee Schedule.** ( )

**a.** Publicly and privately owned treatment works, and other dischargers designated by the Department (IDAPA 58.01.25.105.11.a.), must pay an annual fee based on the number of EDUs. The fee is \$1.74 per EDU. EDUs and the appropriate annual fee will be calculated according to the definition of EDUs in IDAPA 58.01.14.003 by the following: ( )

- i. The Department calculates facility EDUs; or ( )
- ii. Existing facilities may annually report to the Department the number of EDUs served; or ( )
- iii. New facilities may report to the Department the number of EDUs to be served, based on the facility planning design as part of the IPDES permit application. ( )

**b.** Other permitted IPDES dischargers must pay an annual fee, an application fee, or both according to:

<u>Permit Type</u>	<u>Application</u>	<u>Annual</u>
<u>Non-POTW Individual Permits</u>	=	=
<u>Major</u>	\$0	\$13,000
<u>Minor</u>	\$0	\$4,000
<u>Storm Water General Permits</u>	=	=
<u>Construction (CGP)</u>	=	=
<u>1-10 acres<sup>1</sup></u>	\$200	\$0
<u>&gt;10-50 acres</u>	\$400	\$75
<u>&gt;50-100 acres</u>	\$750	\$100
<u>&gt;100-500 acres</u>	\$1,000	\$400
<u>&gt;500 acres</u>	\$1,250	\$400
<u>Low Erosivity Waiver (CGP)</u>	\$125	\$0
<u>Industrial (MSGP) Permits</u>	\$1,500	\$1,000
<u>Cert. of No Exposure (MSGP)</u>	\$250	\$100
<u>Other General Permits</u>	\$0	\$0

<sup>1</sup>This includes notices of intent for construction that will disturb one or more acres of land or will disturb less than one acre of land but are part of a common plan of development or sale that will ultimately disturb one or more acres of land. ( )

**02. Reuse Permit Fee Schedule.** ( )

**a.** Permitted municipal reuse facilities must pay an annual fee according to population from the most recent 10-year US Census Bureau data:

Type	Fee
De minimis <sup>a</sup>	\$500
Industrial <sup>a</sup>	\$3,000
Municipal Over 15,000 people	\$3,000
Municipal Between 1,000 and 15,000 people	\$1,000
Municipal Under 1,000 people	\$500
Private Domestic or Other <sup>a</sup>	\$750

<sup>a</sup> De minimis, industrial, and private domestic or other recycled water reuse permits are assessed a flat fee not based on US Census Bureau data. ( )

**b.** Reuse general permits will be charged a flat fee of \$100 for processing applications. ( )

**03. Fee Assessment.** ( )

**a.** An annual fee assessment will be generated for each permitted facility for which an annual fee is required under Subsection 170.01 and 170.02. Annual fees will be determined based on the twelve (12) months between October 1 and September 30 each year. ( )

**b.** Application Fees and Annual Fees. ( )

**i.** Application fees, as identified in Subsection 170.01.b., are assessed upon application submittal for coverage under an individual permit or notice of intent for coverage or waiver under a general permit. ( )

**ii.** Owners or operators of multi-year storm water facilities or construction projects are subject to annual fees that will be assessed in the year (October through September) following the receipt of the application or notice of intent for coverage. ( )

**c.** Assessment of annual fees will consider the number of months a permittee was covered under either a general or an individual permit in a year (October through September of each year). If the permittee was covered for less than a full twelve (12) months, the assessed fee will be pro-rated to account for less than a full year's coverage under the permit. ( )

**d.** Permittees with both an IPDES and reuse permit will have the reuse permit fee waived. ( )

**04. Billing.** For permitted facilities subject to an annual fee, the annual fee will be assessed, and the Department will send a statement on or before October 1 of each year. The Department will also assess and send annual fee statements when permit coverage is terminated. ( )

**05. Payment.** ( )

**a.** Payment of the annual fee is due on December 31, unless it is a Saturday, Sunday, or legal holiday, in which event the payment is due on the successive business day. Payment of annual fees for terminated permit

coverage is due at the time of termination. ( )

**b.** Payment of the application fee is due with the application for an individual permit or notice of intent for coverage under a general permit. The Department will not authorize permit coverage until the application fee is paid. ( )

**c.** A publicly owned treatment works (POTW) may request, in writing, monthly or quarterly installment payments upon receipt of the billing statement. The Department will approve or deny the request and inform the POTW within ten (10) business days. ( )

**06. Delinquent Unpaid Fees.** A permittee covered under a general or individual permit will be delinquent in payment if the Department does not receive the assessed annual fee by January 1; or if the permittee opted to pay monthly or quarterly, its monthly or quarterly installment is not received by the Department by the last day of the month the payment is due. ( )

**07. Suspension of Services and Disapproval Designation.** Permittees delinquent in payment of fees assessed under Subsections 170.01 and 170.02: ( )

**a.** After ninety (90) days, the Department will suspend all technical services it provided. The permittee will receive a warning letter identifying administrative enforcement actions the Department may pursue if the permittee does not comply with the terms of the permit. ( )

**b.** After one hundred and eighty (180) days, the Department will consider the permittee in non-compliance with permit conditions and these rules, and subject to provisions described in IDAPA 58.01.25.500 (Enforcement) and Section 39-108, Idaho Code. ( )

**08. Reinstatement of Suspended Services and Approval Status.** Permittees for which delinquency of fee payment under Subsection 170.07 resulted in the suspension of technical services, determination of non-compliance of permit condition, or both, the continuation of technical services, determination of compliance based on payment of fee, or both, will occur upon payment of delinquent annual fee assessments. ( )

**09. Enforcement Action.** Nothing in Section 170 waives the Department's right to undertake a non-fee-related enforcement action at any time, including seeking penalties, as provided in Sections 39-108, 39-109, and 39-117, Idaho Code. ( )

**10. Responsibility to Comply.** Subsection 170.07 does not relieve a permittee from its obligation to comply with the state and federal statutes, rules, regulations, permits, or orders. ( )

**171. -- 899. (RESERVED)**

**900. WAIVER OF FEES.**

Upon written application to the ~~Director of the~~ Department of Environmental Quality, a waiver of a specific fee may be granted to an applicant who is required by these rules to pay such a fee. (3-24-22)( )

**01. Determination of Good Cause.** Good cause for such a waiver must be shown before it ~~shall~~ will be granted by the ~~Director~~ Department. Good cause may include hardship or extenuating circumstances, as determined by the ~~Director~~ Department. (3-24-22)( )

**02. Duration of Waiver.** If the fee sought to be waived becomes due periodically, the fee may be waived for a designated period of time. (3-24-22)

**03. Limitations.** Granting of a waiver ~~shall~~ will not be considered as precedent or be given any force or effect in any other proceeding. (3-24-22)( )

**901. -- 999. (RESERVED)**

## IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

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

DOCKET NO. 58-0122-2401 (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 2025 Idaho State Legislature for final approval. Pursuant to Section 67-5224(2)(c), Idaho Code, this pending rule must be approved by concurrent resolution of the Legislature. Pursuant to Section 67-5291(2), Idaho Code, all temporary, pending, and final rules of any nature may be approved or rejected by a concurrent resolution of the Legislature. The concurrent resolution shall state the effective date of the approval or rejection. If approved by concurrent resolution, the rules will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

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

**DESCRIPTIVE SUMMARY:** This rulemaking was initiated in compliance with [Executive Order No. 2020-01, Zero-Based Regulation \(EO 2020-01\)](#), issued by Governor Little on January 16, 2020. A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 4, 2024, [Vol. 24-9, pages 652 through 668](#). After consideration of public comments, the proposed rule has been revised at Subsections 031.02.e., 032.03, and 040.06, with additional editorial revisions in Section 050 and 080. The remainder of the rule has been adopted as initially proposed. The board meeting documents are available at Drinking Water and Wastewater Grants: [Docket No. 58-0122-2401](#) | Idaho Department of Environmental Quality.

**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 4th day of December, 2024.

Diane Cutler  
Rules and Planning Analyst  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706  
Phone: (208)373-0165  
[Diane.Cutler@deq.idaho.gov](mailto:Diane.Cutler@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 1 and 36, Title 39, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 18, 2024. If no such written request is received, a public hearing will not be held. Two public scoping meets were held before the negotiated rulemaking process and three public meetings were held during the negotiated rulemaking process.

**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.htm](https://adminrules.idaho.gov/forms_menu.htm). This is one of the DEQ rule chapters up for review in 2024. 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.

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. If adopted by the Idaho Board of Environmental Quality and approved by concurrent resolution of the 2025 Idaho State Legislature, the rule will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

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

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was conducted pursuant to Section 67-5220, Idaho Code. On April 3, 2024, the Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking was published in the Idaho Administrative Bulletin. 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/drinking-water-and-wastewater-grants-docket-no-58-0122-2401/>.

**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

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule is an amendment to a long-standing rule that regulates an activity not regulated by the federal government and has previously been approved as meeting the requirements of Section 39-107D, Idaho Code.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this proposed rulemaking, contact MaryAnna Peavey at [maryanna.peavey@deq.idaho.gov](mailto:maryanna.peavey@deq.idaho.gov), (208) 373-0122.

**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 25, 2024. Submit written comments to:

MaryAnna Peavey  
Department of Environmental Quality  
1410 N. Hilton, Boise, ID 83706  
[maryanna.peavey@deq.idaho.gov](mailto:maryanna.peavey@deq.idaho.gov)

Dated this 4th day of September, 2024.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 58-0122-2401

Italicized red text that is *double underscored* indicates amendments to the proposed text as adopted in the pending rule.

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

### 000. LEGAL AUTHORITY.

~~The Idaho State Board of Environmental Quality, pursuant to authority granted in Chapters 1 and 36, Title 39, Idaho Code, adopted the following rules for the administration of Drinking Water and Wastewater Planning Grant Programs in Idaho.~~ (3-31-22)(    )

### 001. ~~TITLE AND SCOPE.~~

~~01. Title. These rules will be known and cited as Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.22, “Rules for Administration of Planning Grants for Drinking Water and Wastewater Facilities.”~~ (3-31-22)

~~02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing, and administering a state planning grant program providing financial assistance to qualifying entities to prepare a drinking water or wastewater facility planning document.~~ (3-31-22)(    )

### 002. (RESERVED)

### 003. ADMINISTRATIVE APPEALS.

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.” (3-31-22)

### 004. ~~INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.~~

~~01. Incorporation by Reference. These rules do not contain documents incorporated by reference.~~ (3-31-22)

~~02. Availability of Referenced Material. The “Customer Handbook Grants and Loans Program” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program Drinking Water Protection and Finance Division, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502, or [www.deq.idaho.gov](http://www.deq.idaho.gov) http://www.deq.idaho.gov/SRF.~~ (3-31-22)(    )



**005. CONFIDENTIALITY.**

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality." (3-31-22)

**006. POLICY.**

It is the policy of the Idaho Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water and Wastewater Grant Programs. The Drinking Water and Wastewater Grant Programs provide assistance to eligible public drinking water and wastewater systems for the planning of facilities to help ensure safe and adequate supplies of drinking water and appropriate processing and disposal of wastewater. It is the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects to facilitate the compliance of any eligible public drinking water system with national primary drinking water regulations applicable to the system, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., and to administer the Wastewater Treatment Facility Grant Program to protect and enhance the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution in accordance with IDAPA 58.01.16, Wastewater Rules. (3-31-22)

**007. SYSTEM ELIGIBILITY.**

**01. Eligible Drinking Water Systems.** Community water systems and nonprofit noncommunity water systems. (3-31-22)

**02. Eligible Wastewater Systems.** Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof, having authority to collect, treat or dispose of wastewater. (3-31-22)

**03. Systems Not Eligible.** The following systems will not be considered eligible for project planning grants: (3-31-22)

**a.** Systems that do not have the financial capability to pay their non-grant share of a planning project. (3-31-22)

**b.** Systems delinquent in payment of the annual state drinking water fee, Idaho Pollutant Discharge Elimination System (IPDES) permit assessments or state revolving fund loan repayments. (3-31-22)

**008.5. -- 009. (RESERVED)**

**010. DEFINITIONS.**

For the purpose of the rules contained in this chapter, the following definitions apply: The terms "board," "department," "director," "person," and "state" have the meaning provided for those terms in Section 39-103, Idaho Code. (3-31-22)(\_\_\_\_)

**01. Applicant.** Any qualifying entity making application for planning grant funds. (3-31-22)

**02. Board.** The Idaho Board of Environmental Quality. (3-31-22)

**03.2. Categorical Exclusion (CE).** Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental information document nor an environmental impact statement is required. (3-31-22)

**04. Collector Sewer.** That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an intercepter sewer or a treatment plant. (3-31-22)

**05.3. Community Water System.** As defined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." (3-31-22)(\_\_\_\_)

- ~~a.~~ Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-31-22)
- ~~b.~~ Regularly serves at least twenty five (25) year round residents. (3-31-22)
- ~~06.~~ **Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (3-31-22)
- ~~07.~~ **Department.** The Idaho Department of Environmental Quality. (3-31-22)
- ~~08.~~ **Director.** The Director of the Idaho Department of Environmental Quality or the Director's designee. (3-31-22)
- ~~09.~~ **Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s), treatment facility(ies), or a combination of source(s) and treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. (3-31-22)
- ~~10.~~ **Domestic Wastewater.** Wastewater derived from public or private residences, business buildings or institutions and similar establishments and which contains water and human body wastes, specifically excreta and urine, along with such products designed to come in contact with excreta and urine in the practice of personal hygiene. (3-31-22)
- ~~1404.~~ **Eligible Costs.** Costs which are necessary for planning. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs ~~shall~~ will be made by the Department pursuant to Section 032. (3-31-22)(    )
- ~~1405.~~ **Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed drinking water project will significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The Environmental Review Procedures contained in the Handbook may be used as guidance when preparing the EIS. (3-31-22)
- ~~1406.~~ **Environmental Information Document (EID).** Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed drinking water or wastewater construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project ~~and ultimately determine if an environmental impact statement (EIS) is warranted.~~ (3-31-22)(    )
- ~~1407.~~ **Financial Capability.** The ability to raise and manage funds to provide the necessary resources for proper operation of the system. (3-31-22)
- ~~1408.~~ **Finding of No Significant Impact (FONSI).** A document prepared by the Department presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an ~~environmental impact statement (EIS)~~ will not be prepared. It ~~shall~~ will include the environmental ~~information document~~ assessment or a summary of it and will note any other environmental documents related to it. (3-31-22)(    )
- ~~1609.~~ **Grant Recipient.** An applicant who has been awarded a grant. (3-31-22)
- ~~17.~~ **Handbook.** "Customer Handbook Grants and Loans Program". (3-31-22)
- ~~180.~~ **Idaho Pollutant Discharge Elimination System (IPDES).** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (3-31-22)(    )
- ~~191.~~ **Ineligible Costs.** Costs which are not eligible for funding pursuant to these rules. (3-31-22)

- ~~20. **Interceptor Sewer.** That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. (3-31-22)~~
- ~~21. **Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public drinking water system. (3-31-22)~~
- ~~22. **Managerial Capability.** The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (3-31-22)~~
- ~~23~~**12. Noncommunity Water System.** A public water system that is not a community water system. As defined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." (3-31-22)(    )
- ~~24. **Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (3-31-22)~~
- ~~25~~**13. Nonprofit Noncommunity Water System.** A public drinking water system that is not a community water system and is governed by Section 501 of the Internal Revenue Code and includes, but is not limited to, state agencies, municipalities and nonprofit organizations such as churches and schools. (3-31-22)
- ~~26. **Nontransient Noncommunity Water System.** A public drinking water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (3-31-22)~~
- ~~27. **Operation and Maintenance Manual.** A guidance and training manual delineating the optimum operation and maintenance of the facility or its components. (3-31-22)~~
- ~~28. **Person.** An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (3-31-22)~~
- ~~29~~**14. Planning Document.** A document which describes the condition of a public drinking water or wastewater system and presents a cost effective and environmentally sound alternative to achieve or maintain regulatory compliance. Engineering reports and facility plans are examples of such planning documents. The planning documents ~~shall~~ **must** be prepared by or under the responsible charge of an Idaho licensed professional engineer and bear the imprint of the engineer's seal. ~~Requirements for planning documents prepared using grant funds are provided in Section 030 of these rules and in the Handbook.~~ (3-31-22)(    )
- ~~30~~**15. Point Source.** Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (3-31-22)
- ~~31. **Pollutant.** Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. (3-31-22)~~
- ~~32~~**16. Priority List.** A ranked list of proposed projects ~~as described in Section 020.~~ (3-31-22)(    )
- ~~33~~**17. Public Drinking Water System/Public Water System/Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such

~~term does not include any “special irrigation district.” A public water system is either a “community water system” or a “noncommunity water system.” As defined in IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems.”~~ (3-31-22)(    )

**3418. Qualifying Entity.** Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public drinking water system, irrigation system, or wastewater system. (3-31-22)

~~35. Rehabilitation.~~ The repair or replacement of segments of drinking water facilities. (3-31-22)

~~36. Reserve Capacity.~~ That portion of the system in the planned facilities to handle future drinking water demand. (3-31-22)

~~37. Sewer Use Ordinance/Sewer Use Resolution.~~ An ordinance or resolution which requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. (3-31-22)

~~38. State.~~ The state of Idaho. (3-31-22)

**319. Suspension.** An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-31-22)

**420. Sustainability.** Sustainability will include efforts for energy and water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement. (3-31-22)

~~41. Technical Capability.~~ The ability of the public drinking water or wastewater system to comply with existing and expected rules. (3-31-22)

**421. Termination.** An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (3-31-22)

~~43. User Charge System.~~ A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required, and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the wastewater treatment facility. (3-31-22)

~~442. Wastewater.~~ A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. As defined in IDAPA 58.01.16, “Wastewater Rules.” (3-31-22)(    )

**4523. Wastewater Treatment Facility.** Any facility, including land, equipment, furnishings and appurtenances thereof, for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater or otherwise provide direct water quality benefits. This includes the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems and land disposal systems. (3-31-22)(    )

~~46. Water Treatment Plant.~~ That portion of the public drinking water system whose primary purpose is to remove contaminants. (3-31-22)

011. -- 0198. (RESERVED)

**019. ELIGIBILITY.**

**01. Eligible Drinking Water Systems.** Community water systems and nonprofit noncommunity water systems. ( )

**02. Eligible Wastewater Systems.** Counties, cities, special service districts, other governmental entities, and nonprofit corporations with authority to collect, treat, or dispose of wastewater or otherwise provide direct water quality benefits. ( )

**03. Systems Not Eligible.** The following systems will not be considered eligible for project planning grants: ( )

**a.** Systems that do not have the financial capability to pay their non-grant share of a planning project; and ( )

**b.** Systems delinquent in payment of the annual state drinking water fee, IPDES permit assessments, or state revolving fund loan repayments. ( )

**020. PRIORITY RATING SYSTEM.**

~~Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Grant funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health, sustainability, and water quality criteria and condition of the existing system.~~ (3-31-22)

**01. Purpose.** A priority rating system ~~shall~~ will be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance in accordance with these rules. (3-31-22)( )

**02. Priority Rating for Drinking Water Systems.** The priority rating system ~~shall~~ will be based on a numerical point system. Priority criteria ~~shall~~ will contain the following points: (3-31-22)( )

**a.** Public Health Hazard. Any documented condition which creates, or may create, a danger to the consumer's health, which may include any one (1) or more of the following, may be awarded a maximum of one hundred (100) points: (3-31-22)( )

i. ~~Documented~~ Unresolved violations of the primary drinking water standards including maximum contaminant levels, action levels, and treatment techniques (to include maximum contaminant levels for acute and chronic contaminants); (3-31-22)( )

ii. ~~Documented~~ Unresolved violations of pressure requirements; (3-31-22)( )

iii. ~~Documented~~ Reduction in source capacity that impacts the system's ability to reliably serve water; (3-31-22)( )

iv. ~~Documented~~ Significant deficiencies (e.g., documented in a sanitary survey) in the physical system that is causing the system to not be able to reliably serve safe drinking water. (3-31-22)( )

v. ~~Documented~~ Unregulated contaminants that have been shown to be a hazard to public health. (3-31-22)( )

**b.** General Conditions of Existing Facilities. Points ~~shall~~ will be given based on deficiencies (which ~~would~~ may not constitute a public health hazard) for pumping, treating, storing, and delivering drinking water - up to sixty (60) points. (3-31-22)( )

**c.** Sustainability ~~E~~fforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) - up to fifty (50) points. (3-31-22)( )

**d.** ~~Consent Order, Compliance Agreement Schedule, or Court Order.~~ Points ~~shall~~ be given if the system is operating under and in compliance with a ~~Consent Order, Compliance Agreement Schedule, or Court Order~~

~~and the proposed construction project will address the Consent Order, Compliance Agreement Schedule, or Court Order~~Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies of the public drinking water system) - up to thirty (30) points. (3-31-22)(    )

e. Incentives. Bonus points ~~shall~~ will be awarded to systems that promote source water protection, conservation, ~~economy~~, proper operation and maintenance, and monitoring - up to ten (10) points. (3-31-22)(    )

f. Affordability. Points ~~shall~~ will be given when current system user charges exceed state affordability guidelines ~~-ten (10) up to fifty (50) points.~~ (3-31-22)(    )

**03. Priority Rating for Wastewater Systems.** The priority rating system ~~shall~~ will be based on a numerical point system. Priority criteria ~~shall~~ will contain the following points. (3-31-22)(    )

~~a. Public health emergency or hazard certified by the Idaho Board of Environmental Quality, the Department, a District Health Department, or by a District Board of Health - one hundred fifty (150) points.~~ (3-31-22)

**ba.** Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies at a wastewater facility) – up to one hundred (100) points. (3-31-22)

**eb.** Watershed restoration (e.g., implementation of best management practices or initiation of construction at wastewater collection and treatment facilities as part of an approved total maximum daily load plan, implementation of nonpoint source management actions in protection of a threatened water, or is part of a special water quality effort) – up to one hundred (100) points. (3-31-22)

**ec.** Watershed protection from impacts (e.g., improvement of beneficial use(s) in a given water body, evidence of community support, or recognition of the special status of the affected water body) – up to one hundred (100) points. (3-31-22)

**ed.** Preventing impacts to uses (nonpoint source pollution projects) – up to one hundred (100) points. (3-31-22)

**ec.** Sustainability efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) – up to fifty (50) points. (3-31-22)

**ef.** Affordability (current system user charges exceed state affordability guidelines) ~~-ten up to fifty~~ (4050) points. (3-31-22)(    )

**04. Rating Forms.** ~~Rating criteria for Subsections 020.02 and 020.03 is set forth in a rating form that is available at [www.deq.idaho.gov](http://www.deq.idaho.gov).~~ (3-31-22)

**054. Priority List.** A list ~~shall~~ will be developed from projects rated according to the priority rating system, submitted for public review and comment, and submitted to the Board for approval and adoption. (3-31-22)(    )

a. **Priority Reevaluation.** ~~Whenever significant changes occur, which in the Department's judgment would affect~~ the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (3-31-22)(    )

b. **Priority Target Date.** An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed grant application will be established. (3-31-22)(    )

c. **Project Bypass.** A project that does not or will not meet the ~~project target date or a Department schedule that allows for timely utilization of grant funds~~ priority target date for submission of a completed application may be bypassed, substituting in its place the next highest ranking project that is ready to proceed. An eligible

applicant that is bypassed will be notified in writing of the reasons for being bypassed. (3-31-22)( )

**065.** Amendment of Priority List. The ~~Director~~ Department may amend the ~~P~~priority ~~L~~list as set forth in Section 080 ~~of these rules~~. (3-31-22)( )

**021. -- 029. (RESERVED)**

**030. PROJECT SCOPE AND FUNDING.**

Grant funds awarded under this program will be used entirely to prepare a planning document to identify the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq.; or maintain compliance with IDAPA 58.01.16, "Wastewater Rules," and the federal Clean Water Act, 33 U.S.C. Sections 1381 et seq. The planning document must be approved by the Department. (3-31-22)( )

**01. Planning Document. (3-31-22)**

a. A planning document ~~shall~~ must include all items ~~required by listed in~~ IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 503.03 or 502.04 or IDAPA 58.01.16, "Wastewater Rules," Subsection 411.03 or 410.04, and project specific efforts committed to in the Letter of Interest submitted for the project. A planning document checklist can be found in the Handbook. ~~Should If~~ the grant recipient proceeds to construction using federal funds (e.g., a state revolving fund loan), then the items listed in Subsection 030.01.b. ~~of these rules~~ will be ~~required~~ necessary prior to construction. (3-31-22)( )

b. A planning document that is prepared anticipating the use of federal funds ~~shall~~ must include an environmental review ~~that and~~ will require the Department approval of both a technical draft and final planning document. (3-31-22)( )

i. ~~The draft planning document shall include all items required by IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 502.04 or 503.03, as well as the following; or 58.01.16, "Wastewater Rules," Subsection 411.03 or 410.04~~ In addition to the provisions of Subsection 030.01.a., the technical draft planning document must include: (3-31-22)( )

- (1) Description of existing conditions for the proposed project area; (3-31-22)
- (2) Description of future conditions for the proposed project area; (3-31-22)
- (3) Development and initial screening of alternatives; and (3-31-22)( )
- (4) Development of an environmental review specified by the Department as described in Section 040. (3-31-22)

ii. The grant recipient must provide an opportunity for the public to comment on the technical draft planning document after alternatives have been developed and the Department has approved the technical draft planning document. In addition, the recipient must: ( )

(1) Provide documentation of the public notice, comment period, and at least one (1) public meeting within the jurisdiction of the grant recipient was held during the public comment period; ( )

(2) Present the technical draft planning document with an explanation of the alternatives identified; ( )

(3) Consider public comments received from those affected by the proposed project in evaluating and selecting the cost effective and environmentally sound alternative; ( )

(4) Identify the selected alternative after the public meeting and comment period; and ( )

(5) Prepare the environmental documentation. ( )

~~ii~~ ~~iii~~. The final planning document ~~shall~~ must include all items required of the technical draft planning document as well as the following: (3-31-22)(    )

(1) Final ~~screening~~ evaluation of ~~principal~~ alternatives ~~and plan adoption~~ including documentation of public comment period and results; (3-31-22)(    )

(2) S~~Description of the selected~~ alternative, ~~plan description and adoption, and~~ implementation arrangements; ~~and~~ (3-31-22)(    )

(3) Relevant engineering data supporting the ~~final~~ selected alternative; ~~and~~ (3-31-22)(    )

(4) Assessment of the cost and effectiveness, to the maximum extent practicable, of efficient water use, reuse, recapture and conservation, and energy conservation, with cost including construction, operation and maintenance, and replacement. (3-31-22)

~~iii~~. The grant recipient shall provide an opportunity for the public to comment on the draft planning document. The public comment period shall be held after alternatives have been developed and the Department has approved the draft planning document. The grant recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the grant recipient during the public comment period. At the public meeting, the grant recipient shall present the draft planning document with an explanation of the alternatives identified. The cost effective and environmentally sound alternative selected shall consider public comments received from those affected by the proposed project. After the public meeting and public comment period, the final alternative will be selected and the Environmental Information Document may be prepared. (3-31-22)

c. The technical draft and final planning document ~~shall~~ must bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. (3-31-22)(    )

d. The technical draft and final planning documents must be reviewed and approved by the Department. (3-31-22)(    )

e. The planning period ~~shall~~ must be twenty (20) years for all facilities except for distribution and transmission systems which may be forty (40) years. Build-out conditions must also be considered for collection systems. (3-31-22)(    )

**02. Limitation on Funding Assistance.** The maximum grant funding provided in a state planning grant award ~~shall~~ will not exceed fifty percent (50%) of the total eligible costs for grants awarded. (3-31-22)(    )

**03. Professional Services.** The engineering firm retained to prepare the planning document must be selected based on qualifications in accordance with Section 67-2320, Idaho Code, and at a minimum is: (    )

a. A registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; (    )

b. Not debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (    )

c. Covered by professional liability insurance in accordance with Subsection 050.05.d. (    )

### 031. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

**01. Submission of Application.** Those eligible systems which received high priority ranking ~~shall~~ will be invited to ~~submit an application~~ apply. The applicant ~~shall~~ must submit to the Department, by the priority target date, a completed application ~~in~~ on a form prescribed by the Department. (3-31-22)(    )

**02. Application—Requirements Contents.** Applications ~~shall~~ must contain the following documentation, as applicable: (3-31-22)(    )



a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; ~~and~~ (3-31-22)(\_\_\_\_)

b. Contracts for engineering services or other technical services and the description of costs and tasks set forth therein ~~shall~~ **must** be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 032; ~~and~~ (3-31-22)(\_\_\_\_)

c. A ~~plan of study~~ **scope of work** describing the work tasks to be performed in the planning document, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; ~~and~~ (3-31-22)(\_\_\_\_)

~~d. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum:~~ (3-31-22)

~~i. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and~~ (3-31-22)

~~ii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and~~ (3-31-22)

~~iii. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and~~ (3-31-22)

~~ed.~~ A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 032; ~~and~~ (3-31-22)(\_\_\_\_)

~~fe.~~ A demonstration that the obligation to pay the costs for which funding is requested; is the result or will be the result of the applicant's compliance with applicable **requirements for public works procurement competitive bidding requirements** and ~~requirements for~~ professional service contracts, including without limitation, the **requirements provisions** set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code; ~~and~~ (3-31-22)(\_\_\_\_)

~~gf.~~ A statement regarding how the non-grant portion of the project will be funded; and (3-31-22)

~~hg.~~ For incorporated nonprofit applicants only, Articles of Incorporation and ~~or~~ Bylaws showing nonprofit and incorporated status according to Chapter 3, Title 30, Idaho Code. (3-31-22)(\_\_\_\_)

**03. Determination of Completeness of Application.** Applications will be reviewed to determine whether they contain all of the information ~~required by~~ **listed in** Subsection 031.02. (3-31-22)(\_\_\_\_)

**04. Notification Regarding Incompleteness of Application.** Written notification if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. (3-31-22)

**05. Reapplication for Grant.** The action of disapproving, recalling, or terminating a grant in no way precludes or limits ~~the former~~ **an** applicant from reapplying for another grant when the project deficiencies are resolved and project readiness is secured. (3-31-22)(\_\_\_\_)

**032. DETERMINATION OF ELIGIBILITY OF COSTS.**

The Department will review the application, including ~~any~~ **necessary** contracts ~~required~~ to be submitted with the application, to determine whether the costs are eligible costs for funding. (3-31-22)(\_\_\_\_)

**01. Eligible Costs.** Eligible costs are those determined by the Department to be: (3-31-22)

a. Necessary costs; (3-31-22)

- b. Reasonable costs; and (3-31-22)
- c. Costs that are not ineligible as described in Subsection 032.05. (3-31-22)
- 02. Necessary Costs.** The Department will determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the ~~plan of study~~ scope of work for the planning document. (3-31-22)(    )
- 03. Reasonable Costs.** Costs will be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable requirements for public works procurement ~~competitive bidding requirements~~ and ~~requirements for~~ professional service contracts, including without limitation, the requirements provisions set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. (3-31-22)(    )
- 04. Examples of Costs That May Be Eligible.** Examples of costs that may be eligible, if determined necessary, and reasonable ~~and not ineligible costs include:~~ (3-31-22)(    )
- a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary expenses such as salaries and expenses of a mayor; city council members; board; or a city, district or board attorney; (3-31-22)
- b. Professional and consulting services, specifying costs of individual tasks. (3-31-22)
- c. Engineering costs specifying costs of individual tasks, directly related to the planning of facilities including but not limited to the preparation of a planning document and environmental review ~~report;~~ (3-31-22)(    )
- d. Financial, technical and management capability analysis; (3-31-22)
- e. Public participation for alternative selection; (3-31-22)
- f. Certain direct and other costs as determined eligible by the Department; and (3-31-22)
- g. Legal costs necessary to allow for the completion of the ~~facility plan~~ planning document. (3-31-22)(    )
- 05. Ineligible Project Costs.** ~~Examples of~~ Examples of costs which are ineligible for funding include, but are not limited to: (3-31-22)(    )
- a. Planning not directly related to the project; (3-31-22)
- b. Personal injury compensation or damages arising out of the project; (3-31-22)
- c. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (3-31-22)
- d. Costs outside the scope of the approved project; (3-31-22)
- e. Ordinary operating expenses such as salaries and expenses of a mayor, city council members, city attorney, district or association personnel costs, and acquiring project funding; (3-31-22)
- f. Preparation of a grant application; (3-31-22)
- g. All costs related to assessment, defense and settlement of disputes, ~~unless such costs are integral to the completion of the project;~~ (3-31-22)(    )

- h. Costs of supplying ~~required~~ permits or waivers; and (3-31-22)( )
- i. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department in advance of incurring costs. (3-31-22)( )

**06. Notification Regarding Ineligible Costs.** Prior to providing a grant offer, the Department will notify the applicant that certain costs are not eligible for funding and the reasons for the Department's determination. ~~If such costs are included in the engineering contract, the Department will also provide notification to the engineer.~~ The applicant may provide the Department with additional information in response to the notice. (3-31-22)( )

**07. Eligible Costs and the Grant Offer.** The grant offer will reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs ~~that have not yet been set~~. Actual eligible costs may differ from ~~such~~ estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified. (3-31-22)( )

033. -- 039. (RESERVED)

**040. ENVIRONMENTAL REVIEW.**

**01. Environmental Documentation.** The grant recipient may complete an environmental review as part of and in conjunction with a planning document. Guidance on how to complete an environmental review may be found in the Handbook. If the grant recipient prepares an environmental review, then the Department will be consulted at an early stage in the preparation of the planning document to determine the ~~required~~ necessary level of environmental review. Based on review of existing information and assessment of environmental impacts, the grant recipient may complete at least one (1) of the following: (3-31-22)( )

a. ~~Submit a request for~~ Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (3-31-22)( )

b. ~~Prepare an~~ Environmental Information Document (EID) in a format specified by the Department; (3-31-22)( )

c. ~~Prepare an~~ Environmental Impact Statement (EIS) in a format specified by the Department. (3-31-22)( )

**02. ~~Categorical Exclusions~~ CE.** ~~If the grant recipient requests a CE, the~~ Department will ~~review the request and, based upon the supporting documentation,~~ take one (1) of the following actions: (3-31-22)( )

a. Determine if an action is consistent with categories eligible for exclusion whereupon the Department will issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative(s), the Department will publish a notice of CE in a local newspaper; ~~following which the planning document can be approved;~~ or (3-31-22)( )

b. Determine if an action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department will notify the grant recipient of the need to prepare an EID. (3-31-22)

**03. ~~Environmental Information Document Requirements~~ EID.** When an EID is required, the grant recipient ~~shall~~ must prepare the EID in accordance with the following Department procedures: (3-31-22)( )

a. Various laws and executive orders related to environmentally sensitive resources ~~shall~~ must be considered as the EID is prepared. Appropriate state and federal agencies ~~shall~~ must be consulted regarding these laws and executive orders. (3-31-22)( )

b. A full range of relevant impacts, both direct and indirect, of the proposed project ~~shall~~ must be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that ~~shall~~ will cause irreversible or irretrievable commitment of resources. (3-31-22)( )

c. The Department will review the draft EID and either request additional information about one (1) or more potential impacts, or will draft a “finding of no significant impact” (FONSI). (3-31-22)

04. ~~Final Finding of No Significant Impact~~**FONSI**. The Department will publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and ~~shall will~~ allow a minimum thirty (30) day public comment period. Following the ~~required~~ period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI ~~shall will~~ become final. The Department will assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the planning document. (3-31-22)(    )

05. ~~Environmental Impact Statement (EIS) Requirements~~. If an EIS is required, the grant recipient ~~shall must~~: (3-31-22)(    )

a. Contact all affected state agencies, and other interested parties, to determine the ~~required~~ scope of the document; (3-31-22)(    )

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (3-31-22)

c. Conduct a public meeting which may be held in conjunction with a planning document meeting; and (3-31-22)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (3-31-22)

06. **Final EIS**. Upon completion of the EIS by the grant recipient and approval by the Department of all ~~requirements provisions~~ listed in Subsection 040.05, the Department will issue a record of decision, documenting the mitigative measures to be required of the grant recipient. The planning document ~~can may~~ be completed once the final EIS has been approved by the Department. (3-31-22)(    )

07. **Use of Environmental Reviews Conducted by Other Agencies**. If an environmental review for the project has been conducted by another state, federal, or local agency, the Department may, at its discretion, issue its own determination by adopting the document and public notification process of the other agency. (3-31-22)

08. **Validity of Review**. Environmental reviews, once completed by the Department, are valid for five (5) years from the date of completion. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department will reevaluate the project, environmental conditions, and public comments and will: (3-31-22)

a. Reaffirm the earlier decision; or (3-31-22)

b. ~~Require~~**Request** supplemental information to the earlier ~~Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion~~ **EIS, EID, or request for CE**. Based upon a review of the updated document, the Department will issue and distribute a revised notice of ~~Categorical Exclusion, finding of no significant impact, CE, FONSI~~, or record of decision. (3-31-22)(    )

041. -- 049. (RESERVED)

#### 050. GRANT OFFER AND ACCEPTANCE.

01. **Grant Offer**. Grant offers will be delivered ~~by certified mail~~ to applicants who received high priority ranking, were invited to ~~submit an application~~ **apply**, and provided a complete application. (3-31-22)(    )

02. **Acceptance of Grant Offer**. Applicants have sixty (60) days in which to officially accept the grant offer on prescribed forms furnished by the State. The sixty (60) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the sixty (60) day period, the

grant funds may be offered to the next project of priority. (3-31-22)

**03. Acceptance Executed as a Contract Agreement.** Upon signature by the Director or the Director's designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grant recipient, the grant offer will become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the ~~Director~~ Department that the grant recipient has complied with all agreement conditions and has prudently managed the project. The ~~Director~~ Department may, as a condition of payment, require that a grant recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements ~~shall will~~ be interpreted according to the law of grants in aid. No third party ~~shall may~~ acquire any rights against the State or its employees from a grant contract agreement. (3-31-22)(    )

**04. Estimate of Reasonable Cost.** Each grant project contract will include the eligible cost of conducting the planning study. Some eligible costs may be estimated, and payments may be increased or decreased as provided in Section 060. (3-31-22)(    )

**05. Terms of Agreement.** The grant offer ~~shall will~~ contain terms of agreement ~~as prescribed by the Department including, but not limited to and~~ special conditions as determined ~~necessary~~ by the Department for the successful planning of the project, including but not limited to:- (3-31-22)(    )

a. Terms consistent with these rules and consistent with the scope of the grant project; ~~and~~ (3-31-22)(    )

b. Special clauses as determined necessary by the Department for the successful investigation and management of the project; ~~and~~ (3-31-22)(    )

c. Terms consistent with applicable state provisions pertaining to planning documents; and (3-31-22)(    )

d. Requirement for the prime engineering firm(s) retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability ~~shall must~~ be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. (3-31-22)(    )

**051. -- 059. (RESERVED)**

**060. PAYMENTS.**

**01. Eligibility Determination.** Grant funds will only be provided for eligible costs as defined at Section 010 and determined in accordance with Section 032. (3-31-22)

**02. Payments for State Grants.** Requests for payment ~~shall must~~ be submitted to the Department on a form provided by the Department. The Department will pay for those costs that are determined to be eligible. (3-31-22)(    )

**03. Grant Increases.** Grant amendment increase requests as a result of an increase in eligible project costs ~~will may~~ be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-31-22)(    )

**04. Grant Decreases.** If the actual eligible cost is determined to be lower than the estimated eligible cost the grant amount ~~will may~~ be reduced proportionately. (3-31-22)(    )

**05. Final Project Review to Determine Actual Eligible Costs.** The Department may conduct a final

project review to determine the actual eligible costs. The financial records of the grant recipient may be reviewed by the Department. (3-31-22)

**06. Final Payment.** The final payment consisting of five percent (5%) of the total state grant will not be made until the ~~requirements contained~~ provisions in the grant agreement have been satisfied. (3-31-22)(    )

**061. -- 069. (RESERVED)**

**070. SUSPENSION OR TERMINATION OF GRANT.**

**01. Causes.** The Director may suspend or terminate any grant for failure by the ~~grantee~~ grant recipient or its agents, including his engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (3-31-22)(    )

**a.** Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-31-22)

**b.** Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-31-22)

**c.** Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-31-22)

**d.** Any willful or serious failure to perform within the scope of the project; or (3-31-22)

**e.** Debarment of an engineering firm, contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-31-22)

**02. Notice.** The Director will notify the ~~grantee~~ recipient in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent ~~shall~~ will state: (3-31-22)(    )

**a.** Specific acts or omissions which form the basis for suspension or termination; and (3-31-22)

**b.** That the ~~grantee~~ recipient may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, ~~“Contested Case Rules and Rules for Protection and Disclosure of Records.”~~ Section 003. (3-31-22)(    )

~~**03. Determination.** A determination will be made by the Board pursuant to IDAPA 58.01.23, “Contested Case Rules and Rules for Protection and Disclosure of Records.”~~ (3-31-22)

~~**043. Reinstatement of Suspended Grant.** Upon written request by the ~~grantee~~ recipient and evidence that the cause(s) for suspension no longer exist, the Director may, if funds are available, reinstate the grant.~~ (3-31-22)(    )

~~**054. Reinstatement of Terminated Grant.** No terminated grant ~~shall~~ will be reinstated.~~ (3-31-22)(    )

**071. -- 079. (RESERVED)**

**080. WAIVERS.**

~~Waivers from the requirements of these rules may be granted by the Department on a case-by-case basis upon full demonstration that a significant public health hazard exists.~~ The Department may amend the priority list or grant a waiver from the provisions of these rules on a case-by-case basis upon full demonstration that the following conditions exist. (3-31-22)(    )

**01. Public Health Protection.** The requirement is not necessary for the protection of public health and the environment and does not affect the priority ranking status of the project. (    )

02. **Affordability Criteria Exceeded.** The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted. ( )

081. -- 999. (RESERVED)

## **IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **58.01.23 – CONTESTED CASE RULES AND RULES FOR PROTECTION AND DISCLOSURE OF RECORDS**

**DOCKET NO. 58-0123-2401**

### **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 2025 Idaho State Legislature for final approval. Pursuant to Section 67-5224(2)(c), Idaho Code, this pending rule must be approved by concurrent resolution of the Legislature. Pursuant to Section 67-5291(2), Idaho Code, all temporary, pending, and final rules of any nature may be approved or rejected by a concurrent resolution of the Legislature. The concurrent resolution shall state the effective date of the approval or rejection. If approved by concurrent resolution, the rules will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution. These rules were adopted by the Idaho Board of Environmental Quality in June 2024 as temporary rules and are currently effective.

**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 74-114(8), Idaho Code.

**DESCRIPTIVE SUMMARY:** This rulemaking was initiated to update IDAPA 58.01.23 for consistency with IDAPA 62.01.01, Idaho Rules of Administrative Procedure, recently adopted by the Office of Administrative Hearings. A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, July 3, 2024, [Vol. 24-7, pages 277 through 284](#). DEQ received no public comments, and the rule has been adopted as initially proposed. The board meeting documents are available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/contested-cases-docket-no-58-0123-2401/>.

**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 4th day of December, 2024.

Diane Cutler  
Rules and Planning Analyst  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706  
Phone: (208)373-0165  
[Diane.Cutler@deq.idaho.gov](mailto:Diane.Cutler@deq.idaho.gov)



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

**EFFECTIVE DATE:** The temporary rule is effective July 1, 2024.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226(1), Idaho Code, notice is hereby given that this agency has adopted a temporary rule and has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 74-114(8), 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 July 17, 2024. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** This rulemaking updates IDAPA 58.01.23, Contested Case Rules and Rules for Protection and Disclosure of Records (DEQ rules), for consistency with IDAPA 62.01.01, Idaho Rules of Administrative Procedure, recently adopted by the Office of Administrative Hearings (OAH rules) pursuant to Idaho Code § 67-5280. The OAH rules were adopted as pending rules and submitted to the 2024 Idaho State Legislature for review and approved with an effective date of July 1, 2024.

Pursuant to Idaho Code § 67-5206(3), IDAPA 04.11.01, Idaho Rules of Administrative Procedure of the Attorney General (Attorney General rules), are no longer in full force and effect as of July 1, 2024, due to the promulgation of the OAH rules. The DEQ rules refer to the Attorney General rules and contain procedures that are now covered by OAH; therefore, it is necessary to update the DEQ rules. At its June 2024 Board meeting, the Idaho Board of Environmental Quality (Board) adopted temporary rules that are consistent with the OAH rules.

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. If a pending rule is adopted by the Board and approved by concurrent resolution of the 2025 Idaho State Legislature, the final rule will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is necessary for compliance with the deadline in amendments to governing law. IDAPA 62.01.01, Idaho Rules of Administrative Procedure (OAH rules), were adopted pursuant to Idaho Code § 67-5280 with an effective date of July 1, 2024. Temporary adoption of this rule docket ensures that the DEQ administrative procedural rules remain consistent with Idaho law.

**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 resulting from this rulemaking: Not applicable.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking. This rulemaking updates the DEQ rules for consistency with the OAH 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.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule regulates an activity not regulated by the federal government. The federal government does not regulate administrative procedures for the state of Idaho. Section 39-107, Idaho Code, grants authority to the Board to adopt rules that are necessary to carry out the purposes of the Environmental Protection and Health Act, Chapter 1, Title 39, Idaho Code.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this rulemaking, contact the undersigned. The web page for this docket is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/rulemaking/contested-cases-docket-no-58-0123-2401/>.

**SUBMISSION OF WRITTEN COMMENTS:** Anyone may submit written comments regarding this proposed rule. The Department will consider all written comments received on or before July 24, 2024. Submit written comments to the undersigned.

Dated this 3rd day of July, 2024.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0123-2401

### 58.01.23 – CONTESTED CASE RULES AND RULES FOR PROTECTION AND DISCLOSURE OF RECORDS

**000. LEGAL AUTHORITY.**

~~Under Sections 39-105, 39-107, 67-5206, and 74-114(8), Idaho Code, the Idaho Legislature has granted the Board of Environmental Quality the authority to promulgate these rules.~~ (3-31-22)( )

**001. ~~TITLE AND SCOPE AND APPLICABILITY.~~**

~~01. Title. These rules are titled IDAPA 58.01.23, “Contested Case Rules and Rules for Protection and Disclosure of Records.”~~ (3-31-22)

~~02. Scope. These rules establish general standards for contested case proceedings and procedures to safeguard trade secrets.~~ (3-31-22)

**002. ~~RULES FOR CONTESTED CASES.~~**

~~01. Purpose. The purpose of Sections 002 through 730 is to provide procedures for contested cases as required under Idaho Code § 39-107.~~ (3-31-22)

~~02. Applicability. Any person aggrieved by an action or inaction of the Department may file a petition to initiate a contested case pursuant to Chapter 52, Title 67, Idaho Code. These rules govern such and outline substantive, non-procedural requirements prior to and during any contested case proceedings, except that Idaho Pollutant Discharge Elimination System permit decisions are governed by IDAPA 58.01.25, “Rules Regulating the Idaho Pollutant Discharge Elimination System Program,” Section 204.~~ (3-31-22)( )

**002. ~~INFORMATION FOR FILING PETITION TO INITIATE CONTESTED CASE.~~**

~~Hearing coordinator contact and information for filing a petition to initiate a contested case is available at: <http://deq.idaho.gov/public-information/laws-guidance-and-orders/petitions-for-review-and-precedential-orders/>.~~ ( )

**003. IDAHO RULES OF ADMINISTRATIVE PROCEDURE ~~OF THE ATTORNEY GENERAL.~~**

For purposes of contested case procedures, other than specifically provided for in these rules, refer to ~~IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General,” which include, but are not limited to, the following sections: IDAPA 62.01.01, Idaho Rules of Administrative Procedure.~~ (3-31-22)( )

~~01. Liberal Construction. Section 052;~~ (3-31-22)

- ~~02. Computation of Time. Section 056; (3-31-22)~~
  - ~~03. Substitution, Withdrawal of Representative. Section 205; (3-31-22)~~
  - ~~04. Defective, Insufficient or Late Pleadings. Section 304; (3-31-22)~~
  - ~~05. Amendment, Withdrawal Pleadings. Section 305; (3-31-22)~~
  - ~~06. Intervention. Sections 350, 351 and 354; (3-31-22)~~
  - ~~07. Disqualification of Hearing Officers. Section 412; (3-31-22)~~
  - ~~08. Scope of Authority of Hearing Officers. Section 413; (3-31-22)~~
  - ~~09. Ex Parte Communications. Section 417; (3-31-22)~~
  - ~~10. Prehearing Conference. Sections 510—514; (3-31-22)~~
  - ~~11. Discovery Related Prehearing Procedures. Sections 520—532; (3-31-22)~~
  - ~~12. Hearings. Sections 550—566; (3-31-22)~~
  - ~~13. Evidence. Sections 600—606; (3-31-22)~~
  - ~~14. Settlements. Sections 610—614; (3-31-22)~~
  - ~~15. Record of Decision. Sections 650—651; (3-31-22)~~
  - ~~16. Defaults. Sections 700—702; (3-31-22)~~
  - ~~17. Interlocutory Orders. Sections 710—711; (3-31-22)~~
  - ~~18. Final Orders. Section 740; (3-31-22)~~
  - ~~19. Orders Not Designated. Section 750; (3-31-22)~~
  - ~~20. Modification of Orders. Section 760; (3-31-22)~~
  - ~~21. Clarification of Orders. Section 770; and (3-31-22)~~
  - ~~22. Stay of Orders. Section 780. (3-31-22)~~
004. (RESERVED)
005. DEFINITIONS.
- The terms “board,” “department,” and “director” have the meaning provided for those terms in [Section 39-103, Idaho Code](#). The terms “contested case,” “order,” “party,” and “person” have the meaning provided for those terms in [Section 67-5201, Idaho Code](#). (3-31-22)
- 01. **Aggrieved Person or Person Aggrieved.** Any person or entity with legal standing to challenge an action or inaction of the Department, including but not limited to permit holders and applicants for permits challenging Department permitting actions. (3-31-22)
  - 02. **Petition.** The pleading initiating a contested case. (3-31-22)
  - 03. **Pleadings.** Documents filed in a contested case. (3-31-22)

~~04. Presiding Officer(s). One (1) member of the board or a duly appointed hearing officer. (3-31-22)~~

~~006. -- 00741. (RESERVED)~~

~~008. FILING AND SERVICE OF DOCUMENTS.~~

~~01. Filing of Documents. (3-31-22)~~

~~a. All documents must be filed with the hearing coordinator and may be filed by email, U.S. mail, hand delivery, or fax. The hearing coordinator assigns case docket numbers, maintains case records, and issues notices on behalf of the Board. Information for filing documents is available at <http://deq.idaho.gov/public-information/laws-guidance-and-orders/petitions-for-review-and-precedential-orders/>. (3-31-22)~~

~~b. Upon receipt of a petition initiating a contested case, the hearing coordinator will: (3-31-22)~~

~~i. Provide confirmation of filing date to the originating party; (3-31-22)~~

~~ii. Serve the petition upon the Department; and (3-31-22)~~

~~iii. In any proceeding involving a permit, serve upon the permit applicant or permit holder the petition and a notice informing the permit applicant or permit holder that they have twenty-one (21) days after the date of service of the petition to intervene in the proceeding and that they may be bound by any decision rendered in the proceeding. (3-31-22)~~

~~02. Service of Documents. From the time a party files its petition, that party and all other parties must serve all future documents intended to be part of the agency record upon all other parties or representatives designated pursuant to Section 040 of these rules unless otherwise directed by order or notice or by the presiding officer. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The parties will serve courtesy copies upon the presiding officer. (3-31-22)~~

~~009.—019. (RESERVED)~~

~~020. FORM OF PLEADINGS.~~

~~A pleading template for documents to be filed in a contested case is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/petitions-for-review-and-precedential-orders/>. (3-31-22)~~

~~021. PROOF OF SERVICE.~~

~~Every document meeting the conditions for service set out in Subsection 008.02 of these rules must be accompanied by proof of service. A certificate of service template is available at <https://www.deq.idaho.gov/public-information/laws-guidance-and-orders/petitions-for-review-and-precedential-orders/>. (3-31-22)~~

~~022.—039. (RESERVED)~~

~~040. INITIAL PLEADING BY PARTY—LISTING OF REPRESENTATIVES.~~

~~The initial pleading of each party must name the party's representative(s) for service and state the representative's(s)' address(es) for purposes of receipt of all official documents. No more than two (2) representatives for service of documents may be listed in an initial pleading. Service of documents on the named representative(s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party's representative, the person signing the pleading will be considered the party's representative. If an initial pleading is signed by more than one (1) person without identifying the representative(s) for service of documents, the presiding officer may select the person(s) upon whom documents are to be served. If two (2) or more parties or persons file identical or substantially like initial pleadings, the presiding officer may limit the number of parties or persons to be served with official documents in order to expedite the proceeding and reasonably manage the burden of service upon the parties. (3-31-22)~~

~~041. REPRESENTATION OF PARTIES.~~

~~The representatives of the parties, and no other persons, are entitled to examine witnesses at a hearing or to make or argue motions. Unless otherwise authorized by law:~~ (3-31-22)

~~**01. Natural Person.** A natural person may represent himself or herself or be represented by an attorney or, if the person lacks full legal capacity to act for himself or herself, then by a legal guardian or guardian ad litem or representative of an estate;~~ (3-31-22)

~~**02. General Partnership.** A general partnership may be represented by a partner or an attorney; and~~ (3-31-22)

~~**03. Represented by Attorney.** The following must be represented by an attorney:~~ (3-31-22)

~~**a.** A corporation, or any other business entity other than a general partnership;~~ (3-31-22)

~~**b.** A municipal corporation, local government agency, unincorporated association or nonprofit organization; and~~ (3-31-22)

~~**e.** A state, federal or tribal governmental entity or agency~~ (3-31-22)

**042. PUBLIC NOTICE OF PETITION.**

Within fourteen (14) days of the date a petition is filed with the Board, the Board will give reasonable notice to the public. The methods for giving notice will include, at a minimum, the following: (3-31-22)

**01. Publication.** Publish a one-time legal notice in the newspaper of general circulation in the county in which the petitioner resides or in which the facility or other subject of the petition is located and post the petition on the agency's website at <http://deq.idaho.gov/public-information/laws-guidance-and-orders/petitions-for-review-and-precedential-orders/>. The legal notice will describe the nature of the action initiated by the filing of the petition and will include the date the petition was filed, ~~the deadline for filing petitions to intervene,~~ and a method by which interested persons may obtain a copy of the petition; and (3-31-22)( )

**02. Mail.** Deliver via email, or First Class U.S. mail if email address is not available, a copy of the legal notice prepared in accordance with Subsection 042.01 of these rules to persons on any mailing list developed by the Department relating to the subject matter of the petition. (3-31-22)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~**062. PETITIONER HAS BURDEN OF PROOF.**~~

~~Unless otherwise provided by statute, the petitioner has the burden of proving by a preponderance of the evidence, the allegations in the petition.~~ (3-31-22)

~~**063. DISMISSAL OF INACTIVE CASES.**~~

~~In the absence of a showing of good cause for retention, any case in which no action has been taken for a period of six (6) months will be dismissed. At least fourteen (14) days prior to such dismissal, the notice of the pending dismissal will be served on all parties by mailing the notice to the last known addresses most likely to give notice to the parties.~~ (3-31-22)

~~064~~2. -- 159. (RESERVED)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~**161. RESPONSE.**~~

~~The response must:~~ (3-31-22)

- ~~01. **Content.** (3-31-22)~~
- ~~a. Separately admit or deny to each factual averment in the petition; (3-31-22)~~
- ~~b. Separately admit or deny the applicability of each legal authority asserted in the petition; (3-31-22)~~
- ~~c. Fully state any additional facts necessary to the decision of the contested case; (3-31-22)~~
- ~~d. Refer to any additional provisions of statute, rule, order or other controlling law upon which it is based. Legal assertions will be accompanied by citations of cases and statutory provisions; and (3-31-22)~~
- ~~e. State the relief sought; and (3-31-22)~~
- ~~02. **Filing.** Be filed within twenty one (21) days after service of the petition, unless an order or stipulation modifies the time within which a response may be made, or a motion to dismiss is filed within twenty one (21) days. When a response is not timely filed under this rule, the presiding officer may enter a default order pursuant to IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 700 through 702. (3-31-22)~~

**162. MOTIONS.**

~~01. **Defined.** All pleadings requesting the Board or presiding officer to take any action in a contested case, except petitions, are called "motions." Motions include, but are not limited to, those allowed by the Idaho Rules of Civil Procedure. (3-31-22)~~

~~02. **Procedure on Prehearing Motions.** The presiding officer may consider and decide prehearing motions with or without oral argument or hearing. If oral argument or hearing on a motion is requested and denied, the presiding officer will state the grounds for denying the request. Unless otherwise provided by the presiding officer, motions for summary judgment are governed by the Idaho Rules of Civil Procedure, including the form, standard for determining, procedure and time frames for filing and responding. For any other motion, unless otherwise provided by the presiding officer, when a motion has been filed, all parties seeking similar substantive or procedural relief must join in the motion or file a similar motion within seven (7) days after receiving the original motion. The party(ies) responding to the motion(s) will have fourteen (14) days to respond. The presiding officer may allow an opportunity for the movant to file a reply brief. (3-31-22)~~

~~163~~1. -- 351. (RESERVED)

**352. ~~TIMELY FILING OF PETITIONS TO INTERVENE -~~ PROCEEDINGS INVOLVING A PERMIT.**

~~01. **General.** Petitions to intervene must be filed within fourteen (14) days of publication of the notice of filing of the petition initiating a contested case as provided in Section 042 of these rules unless a different time is provided by order or notice. (3-31-22)~~

~~02. **Proceedings Involving a Permit.** A permit applicant or permit holder may intervene as a matter of right in any contested case in which the permit is contested. Petitions to intervene by the permit applicant or permit holder must be filed within twenty-one (21) days after service of the initiating petition ~~as provided in Subsection 008.01.b.iii. of these rules~~ upon the permit applicant or permit holder. (3-31-22)(    )~~

~~03. **Petitions Not Timely Filed.** The presiding officer may deny or conditionally grant a petition to intervene if the petition is not timely filed and does not state good cause for untimely filing, or if granting the petition unconditionally would cause disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenor are bound by orders and notices entered earlier in the proceeding. (3-31-22)~~

**353. GRANTING PETITIONS TO INTERVENE.**

~~01. **General.** If a timely petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding, does not unduly broaden the issues, and will not cause delay or prejudice to the~~

~~parties, the presiding officer may grant intervention, subject to reasonable conditions. In addition, upon timely filing of a petition in accordance with Subsection 352.02 of these rules, a permit applicant or permit holder may intervene as a matter of right in any contested case in which the permit is contested. (3-31-22)~~

~~**02. Intervenor Response.** Within fourteen (14) days of the service date of the order granting the petition to intervene, the intervenor must file a response to the petition initiating the contested case and include the content in Subsection 161.01 of these rules. (3-31-22)~~

~~**354.—409. (RESERVED)**~~

~~**410. BOARD MEMBERS AS PRESIDING OFFICERS, APPOINTMENT OF HEARING OFFICERS.**~~

~~One (1) member of the Board may act as the presiding officer. The Board may appoint a hearing officer to act as the presiding officer on behalf of the Board. The hearing coordinator will administer the appointment of the hearing officer. Notice of appointment of a hearing officer or notice of a Board member who will act as presiding officer will be served on all parties. (3-31-22)~~

~~**411.—719. (RESERVED)**~~

~~**720. RECOMMENDED ORDERS.**~~

~~**01. Board Reviews.** A recommended order is an order issued by the presiding officer that will become a final order only after review by the Board pursuant to Section 67-5244, Idaho Code. A recommended order that becomes a final order is a final agency action and may be subject to judicial review pursuant to Section 39-107(6), Idaho Code. (3-31-22)~~

~~**02. Content.** Every recommended order will include a schedule for Board review and contain the following paragraphs: (3-31-22)~~

~~**a.** This is a recommended order of the presiding officer and will not become final without action of the Board.; and (3-31-22)~~

~~**b.** The Board will allow all parties an opportunity to file briefs in support or taking exceptions to the recommended order and may schedule oral argument in the matter before issuing a final order. The hearing coordinator will issue a notice setting out the briefing schedule and date and time for oral argument. The Board will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived or extended by the parties or for good cause shown. The Board may hold additional hearings or may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (3-31-22)~~

~~**721.—729. (RESERVED)**~~

~~**730. PRELIMINARY ORDERS.**~~

~~**01. Board May Review.** A preliminary order is an order issued by the presiding officer that will become a final order unless reviewed by the Board pursuant to Section 67-5245, Idaho Code. A preliminary order that becomes a final order is a final agency action and may be subject to judicial review pursuant to Section 39-107(6), Idaho Code. (3-31-22)~~

~~**02. Content.** Every preliminary order will contain the following paragraphs: (3-31-22)~~

~~**a.** This is a preliminary order of the presiding officer and will become final without further action of the Board unless any party appeals to the Board by filing a petition for review of the preliminary order; and (3-31-22)~~

~~**b.** Within fourteen (14) days of the service date of this preliminary order, any party may take exceptions to any part of this preliminary order by filing a petition for review of the preliminary order. Otherwise, this preliminary order will become a final order of the Board. The basis for review must be stated in the petition. The~~

~~Board may review the preliminary order on its own motion.~~

~~(3-31-22)~~

~~**03. Review of Preliminary Orders.** If any party files a petition for review of the preliminary order, the Board will allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The hearing coordinator will issue a notice setting out the briefing schedule and date and time for oral argument. The Board will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived or extended by the parties or for good cause shown. The Board may hold additional hearings or may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (3-31-22)~~

~~731~~**353.** -- 899. (RESERVED)



## IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.24 – STANDARDS AND PROCEDURES FOR APPLICATION OF RISK BASED CORRECTIVE ACTION AT PETROLEUM RELEASE SITES

DOCKET NO. 58-0124-2401 (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 2025 Idaho State Legislature for final approval. Pursuant to Section 67-5224(2)(c), Idaho Code, this pending rule must be approved by concurrent resolution of the Legislature. Pursuant to Section 67-5291(2), Idaho Code, all temporary, pending, and final rules of any nature may be approved or rejected by a concurrent resolution of the Legislature. The concurrent resolution shall state the effective date of the approval or rejection. If approved by concurrent resolution, the rules will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapters 1, 36, 44, 72, and 74, Title 39, Idaho Code.

**DESCRIPTIVE SUMMARY:** This rulemaking was initiated in compliance with [Executive Order No. 2020-01, Zero-Based Regulation \(EO 2020-01\)](#), issued by Governor Little on January 16, 2020. This rulemaking also moves Sections 851 and 852 from IDAPA 58.01.02, Water Quality Standards, under companion Docket No. 58-0102-2401, to IDAPA 58.01.24. A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 7, 2024, [Vol. 24-8, pages 211 through 228](#). DEQ received no public comments, and the rule has been adopted as initially proposed. The board meeting documents are available at Petroleum Release Corrective Action: [Docket No. 58-0124-2401](#) | Idaho Department of Environmental Quality.

**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 4th day of December, 2024.

Diane Cutler  
Rules and Planning Analyst  
Department of Environmental Quality  
1410 N. Hilton Street  
Boise, Idaho 83706  
Phone: (208)373-0165  
[Diane.Cutler@deq.idaho.gov](mailto:Diane.Cutler@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 Section 39-107(7), and Chapters 1, 36, 44, 72, and 74, 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 August 21, 2024. If no such written request is received, a public hearing will not be held. Two public scoping meets were held before the negotiated rulemaking process and three public meetings were held during the negotiated rulemaking process.

**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](https://adminrules.idaho.gov/forms_menu.html). This is one of the DEQ rule chapters up for review in 2024. 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, increase clarity and ease of use, and maintain state program approval.

This proposed rule includes retiring DEQ's risk evaluation software in exchange for the Environmental Protection Agency's (EPA) risk evaluation process using EPA's Regional Screening Level Calculator and Vapor Intrusion Screening Level Calculator. It also includes updates consistent with the adopted Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (40 CFR Part 280) required for state program approval.

In addition, this proposed rule includes moving Sections 851, Petroleum Release Reporting, Investigation, and Confirmation, and 852, Petroleum Release Response and Corrective Action, from IDAPA 58.01.02, Water Quality Standards, to new sections IDAPA 58.01.24.060 and 061 and moving IDAPA 58.01.24.200.03 to new 58.01.24.061.01.b. As these sections were moved from one rule chapter or section to another, unnecessary restrictive words were removed. DEQ initiated companion rulemaking docket 58-0102-2401 for the purpose of deleting Sections 851 and 852 from IDAPA 58.01.02.

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. If adopted by the Idaho Board of Environmental Quality and approved by concurrent resolution of the 2025 Idaho State Legislature, the rule will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

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

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was conducted pursuant to Section 67-5220, Idaho Code. On March 6, 2024, the Notice of Intent to Promulgate Rules – Zero-Based Regulation (ZBR) Negotiated Rulemaking was published in the Idaho Administrative Bulletin. 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/petroleum-release-corrective-action-docket-no-58-0124-2401/>.

**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.

**IDAHO CODE SECTION 39-107D STATEMENT:** There is no federal law or regulation that is comparable to the Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites. Therefore, this rule is not broader in scope or more stringent than federal law or regulations.

Section 39-107D, Idaho Code, also applies to a rule which “proposes to regulate an activity not regulated by the federal government.” This rule does not propose to regulate an activity not regulated by the federal government. However, the proposed rule does make revisions to a process currently in the rule that is not specifically delineated or required by the federal government. DEQ previously addressed Sections 39-107D(3) and (4), Idaho Code, when this rule chapter was first promulgated in 2009 under Docket No. 58-0124-0801.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this proposed rulemaking, contact Kristi Lowder at [kristi.lowder@deq.idaho.gov](mailto:kristi.lowder@deq.idaho.gov) or (208) 373-0347.

**SUBMISSION OF WRITTEN COMMENTS:** Anyone may submit written comments regarding this proposed rule. The Department will consider all written comments received on or before August 28, 2024. Submit written comments to:

Kristi Lowder  
Department of Environmental Quality  
1410 N. Hilton, Boise, ID 83706  
[kristi.lowder@deq.idaho.gov](mailto:kristi.lowder@deq.idaho.gov)

Dated this 7th day of August, 2024.

**THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 58-0124-2401**

**~~58.01.24 – STANDARDS AND PROCEDURES FOR APPLICATION OF RISK BASED-CORRECTIVE ACTION AT PETROLEUM RELEASE SITES~~ RULES FOR PETROLEUM RELEASE CORRECTIVE ACTION**

**000. LEGAL AUTHORITY.**

~~Section 39-107(7), and~~ Chapters 1, 36, 44, 72 and 74, Title 39, Idaho Code ~~grant authority to the Board of Environmental Quality to adopt rules and administer programs to protect public health and the environment, including the protection of surface water, ground water, and drinking water quality.~~ (3-31-22)(\_\_\_\_)

**001. ~~TITLE, SCOPE AND APPLICABILITY.~~**

**01. ~~Title.~~** These rules are titled IDAPA 58.01.24, “Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites.” (3-31-22)

**02. ~~Scope.~~** These rules establish standards and procedures to determine whether and what ~~risk-based corrective action~~ measures should be applied to property subject to petroleum release response, assessment, and corrective action ~~cleanup requirements under IDAPA 58.01.02, Sections 851 and 852, “Water Quality Standards,” and associated definitions; IDAPA 58.01.11, Subsection 400.05, “Ground Water Quality Rule;” or when assessment~~

~~and cleanup requirements are incorporated into compliance documents entered into per Chapter 1, Title 39, Idaho Code. Compliance with these rules shall not relieve persons from the obligation to comply with other applicable state or federal laws. These rules do not apply to previously closed sites releases. The Department will not require any additional evaluation of petroleum sites previously granted closure unless there is a new petroleum release.~~

~~(3-31-22)( )~~

**002. WRITTEN INTERPRETATIONS.**

~~As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255.~~ (3-31-22)

**003. 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."~~ (3-31-22)

**004. INCORPORATION BY REFERENCE.**

~~These rules do not contain documents incorporated by reference.~~ (3-31-22)

**005. AVAILABILITY OF REFERENCED MATERIAL.**

~~Documents and data bases referenced within these rules are available at the following locations:~~ (3-31-22)

~~01. Idaho Risk Evaluation Manual for Petroleum Releases. Idaho Risk Evaluation Manual for Petroleum Releases and subsequent editions, <http://www.deq.idaho.gov>.~~ (3-31-22)

~~02. U.S. EPA RAGS. U.S. EPA RAGS, Volume 1, <http://www.epa.gov/oswer/riskassessment/policy.htm#5>.~~ (3-31-22)

~~03. U.S. EPA Exposure Factors Handbook. U.S. EPA Exposure Factors Handbook, <http://www.epa.gov/ncea/pdfs/efh/front.pdf>.~~ (3-31-22)

~~04. Idaho Source Water Assessment Plan. Idaho Source Water Assessment Plan, <http://www.deq.idaho.gov>.~~ (3-31-22)

~~05. EPA Regional Screening Tables. EPA Regional Screening Tables, <http://www.epa.gov/reg3hwmd/risk/human/rb-concentration-table/index.htm>.~~ (3-31-22)

**006. OFFICE HOURS MAILING ADDRESS AND STREET ADDRESS.**

~~The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, (208) 373-0502, [www.deq.idaho.gov](http://www.deq.idaho.gov). The office hours are 8 a.m. to 5 p.m. Monday through Friday.~~ (3-31-22)

**007. CONFIDENTIALITY OF RECORDS.**

~~Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 74, Chapter 1, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality."~~ (3-31-22)

**008. TABLES.**

~~01. Chemicals of Interest for Various Petroleum Products. The table of chemicals of interest for various petroleum products is available in Section 800 of these rules.~~ (3-31-22)

~~02. Screening Level Concentrations for Soil, Ground Water, and Soil Vapor. The table of screening level concentrations for soil, ground water, and soil vapor is available in the Idaho Risk Evaluation Manual for Petroleum Releases at [www.deq.idaho.gov](http://www.deq.idaho.gov).~~ (3-31-22)

~~03. Default Toxicity Values for Risk Evaluation. The table of default toxicity values for risk evaluation is available in the Idaho Risk Evaluation Manual for Petroleum Releases at [www.deq.idaho.gov](http://www.deq.idaho.gov).~~

(3-31-22)

**009. ACRONYMS.**

- 01.** ~~EPA. The United States Environmental Protection Agency.~~ (3-31-22)
- 02.** ~~PST. Petroleum Storage Tank System.~~ (3-31-22)
- 03.** ~~RAGS. Risk Assessment Guidance for Superfund.~~ (3-31-22)
- 04.** ~~UECA. Uniform Environmental Covenant Act. See definition in Section 010.~~ (3-31-22)

**003. -- 009. (RESERVED)**

**010. DEFINITIONS.**

~~For the purpose of the rules contained in IDAPA 58.01.24, "Standards and Procedures for Application of Risk Based Corrective Action at Petroleum Release Sites," the following definitions apply: The terms "department," "person," and "waters" have the same meaning provided for those terms in Section 39-103, Idaho Code. The term "environmental covenant" has the same meaning provided for that term in Section 55-3002, Idaho Code. The terms "petroleum" and "release" have the same meaning provided for those terms in Section 39-7203, Idaho Code.~~

(3-31-22)( )

**01. Acceptable Target Hazard Index.** The summation of the hazard quotients of all chemicals and routes of exposure to which a receptor is exposed and equal to a value of one (1). If the initial value exceeds one (1), further evaluation, including individual organs, can be completed. (3-31-22)

**02. Acceptable Target Hazard Quotient.** ~~The ratio of a dose of a single chemical over a specified time period to a reference dose for that chemical derived for a similar exposure period.~~ A hazard quotient of one (1) for a specified receptor when applied to individual chemicals. A hazard quotient of 0.1 (zero point one) for a specified receptor when multiple chemicals and/or exposure routes are present. (3-31-22)( )

**03. Acceptable Target Risk Level.** Acceptable risk level for human exposure to carcinogens. For exposure to individual carcinogens a lifetime excess cancer risk of less than or equal to one per one million (1 E-6) for a receptor at a reasonable maximum exposure. For combined exposure to all carcinogens and routes of exposure, a lifetime excess cancer risk of less than or equal to one per one hundred thousand (1 E-5) for a receptor at a reasonable maximum exposure. (3-31-22)

**04. Activity and Use Limitations.** Restrictions or obligations, with respect to real property, created by an environmental covenant. Activity and use limitations may include, but are not limited to, land use controls, activity and use restrictions, environmental monitoring requirements, and site access and security measures. Also known as institutional controls. (3-31-22)

**05. Background.** Media specific concentration of a chemical that is consistently present in the environment in the vicinity of a site which is the result of human activities unrelated to release(s) from that site under investigation. (3-31-22)

**06.** ~~Board. The Idaho Board of Environmental Quality.~~ (3-31-22)

**07.6. Corrective Action Plan (CAP).** A document, subject to approval by the Department, ~~which that~~ describes: ( )

**a.** ~~describes~~ The actions and measures that will be implemented to ensure that adequate protection of human health and the environment is achieved and maintained. ~~A corrective action plan also;~~ and ( )

**b.** ~~describes~~ The applicable remediation standards. ~~Also may~~ May also be known as a risk management plan or a remediation workplan. (3-31-22)( )

**087. Delineated Source Water Protection Area.** The physical area around a public drinking water supply well or surface water intake identified in an approved Department source water assessment that contributes water to a well (the zone of contribution). The size and shape of the delineated source water area depend on the delineation method and site-specific factors. The area may be mapped as a one thousand (1000) ft. fixed radius around the well (transient public water systems) or divided into three (3), six (6), and ten (10) year time of travel zones (e.g. zones indicating the number of years necessary for a particle of water to reach a well or surface water intake). For the purposes of these rules, where ground-water time of travel zones have been delineated, the three (3) year time of travel zone shall apply. Where surface water systems have been delineated, this area includes a five hundred (500) ft. buffer around a lake or reservoir, or a five hundred (500) ft. buffer along the four (4) hour upstream time of travel of streams. See the Idaho Source Water Assessment Plan. (3-31-22)(    )

**09. Department.** ~~The Idaho Department of Environmental Quality.~~ (3-31-22)

**08. Dissolved Product.** ~~Petroleum product constituents found in solution with water.~~ (    )

**10. Environmental Covenant.** ~~As defined in the Uniform Environmental Covenant Act (UECA), Chapter 30, Title 55, Idaho Code, an environmental covenant is a servitude arising under an environmental response project that imposes activity and use limitations.~~ (3-31-22)

**109. Exposure Point Concentration.** The average concentration of a chemical to which receptors are exposed over a specified duration within a specified geographical area. The exposure point concentration is typically a conservative estimate of the mean. Also referred to as the representative concentration. (3-31-22)

**12. Hazard Quotient.** ~~The ratio of a dose of a single chemical over a specified time period to a reference dose for that chemical derived for a similar exposure period.~~ (3-31-22)

**130. Method Detection Limit.** The minimum concentration of a substance that can be reported with ninety-nine percent (99%) confidence is greater than zero. Method detection limits can be operator, method, laboratory, and matrix specific. (3-31-22)

**141. Operator.** Any person presently or who was at any time during a release in control of, or responsible for, the daily operation of the petroleum storage tank (PST) system. (3-31-22)

**152. Owner.** Any person who owns or owned a PST system any time during a release and the current owner of the property where the PST system is or was located. (3-31-22)

**16. Person.** ~~An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body, or any legal entity which is recognized by law as the subject of rights and duties.~~ (3-31-22)

**17. Petroleum.** ~~Crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven tenths (14.7) pounds per square inch absolute). This includes petroleum based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, and lubricants.~~ (3-31-22)

**183. Petroleum Storage Tank (PST) System.** Any one (1) or combination of storage tanks or other containers, including pipes connected thereto, dispensing equipment, and other connected ancillary equipment, and stationary or mobile equipment, that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. (3-31-22)

**194. Practical Quantitation Limit.** The lowest concentration of a chemical that can be reliably quantified among laboratories within specified limits of precision and accuracy for a specific laboratory analytical method during routine laboratory operating conditions. Specified limits of precision and accuracy are the criteria listed in the calibration specifications or quality control specifications of an analytical method. Practical quantitation limits can be operator, method, laboratory, and matrix specific. (3-31-22)

**2015. Reasonable Maximum Exposure.** The highest exposure that can be reasonably expected to occur for a human or other living organism at a site under current and potential future site use. (3-31-22)

**2416. Reference Dose.** For chronic or long-term exposures an estimate of a daily exposure level to a chemical for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of deleterious noncarcinogenic effects during a lifetime, expressed in units of milligrams per kilogram body weight per day. (3-31-22)

~~22. Release. Any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a PST into soil, ground water, or surface water. (3-31-22)~~

~~2317. Remediation Standard.~~ A media specific concentration ~~which that~~, when attained, is considered to provide adequate protection of human health and the environment. (3-31-22)( )

**2418. Residential Use.** Residential use means land uses ~~which that~~ include residential or sensitive populations. (3-31-22)( )

**2519. Risk-Based Concentration.** The residual media specific concentration of a chemical that is determined to be protective of human health and the environment under specified exposure conditions. (3-31-22)

**260. Risk Evaluation.** The process used to determine the probability of an adverse effect due to the presence of a chemical. A risk evaluation includes development of a ~~site~~ conceptual ~~site~~ model, identification of the chemicals present in environmental media, assessment of exposure and exposure pathways, assessment of the toxicity of the chemicals present, characterization of human risks, and characterization of impacts or risks to the environment. (3-31-22)( )

**271. Screening Level.** A media specific concentration ~~which that~~, based on specified levels of risk or hazard, exposure pathways and routes of exposure, expected land use, and exposure factors, can be used to assess the need for additional investigation or corrective action. (3-31-22)( )

**282. Slope Factor.** A plausible upper-bound estimate of the probability of an individual developing cancer as a result of a lifetime of exposure to a particular level of a potential carcinogen. It is expressed as the probability of a response per unit intake of a chemical over a lifetime. (3-31-22)

~~29. Uniform Environmental Covenant Act (UECA). UECA is found in Chapter 30, Title 55, Idaho Code. UECA provides a statutory mechanism for creating, modifying, enforcing and terminating environmental covenants. (3-31-22)~~

011. -- ~~09959.~~ (RESERVED)

**060. PETROLEUM RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION.**

**01. Reporting of Suspected Releases.** Owners and operators of petroleum storage tank (PST) systems must report to the Department within twenty-four (24) hours and follow the procedures in Subsection 060.03 for any of the following conditions. ( )

**a.** The discovery by owners and operators or others of a petroleum release at the PST site or in the surrounding area other than spills and overfills described in Subsection 060.04, such as the presence of free product or dissolved product in nearby surface water or groundwater or vapors in soils, basements, sewer or utility lines. ( )

**b.** Unusual operating conditions observed by owners and operators such as the erratic behavior of product dispensing equipment, the sudden loss of product from the PST system, liquid in the interstitial space of secondarily contained systems, or an unexplained presence of water in the PST system, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced. ( )

c. Monitoring results, including investigation of an alarm, from a release detection method that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result. ( )

02. Investigation Due to Off-Site Impacts. When required by the Department, owners and operators must follow the procedures in Subsection 060.03 to determine if the PST system is the source of off-site impacts. These impacts include the discovery of petroleum, such as the presence of free product or dissolved product in nearby surface water or groundwater or vapors in soils, basements, sewer, and utility lines. ( )

03. Release Investigation and Confirmation Steps. Unless corrective action is initiated in accordance with Section 061, owners and operators must immediately investigate and confirm all suspected releases of petroleum within seven (7) days, or another time period specified by the Department, of discovery and using at least one (1) of the following steps or another procedure approved by the Department: ( )

a. Conduct tightness tests or, as appropriate, secondary containment testing that determine whether a leak exists in any portion of the PST system, including the tank, the attached delivery piping, a breach of either wall of the secondary containment, and any connected tanks and piping. All such portions can be tested either separately or together or in combinations thereof. ( )

i. Repair, replace or upgrade the PST system in accordance with applicable federal, state and local laws, and begin corrective action in accordance with Section 061 if the test results for the system, tank, or delivery piping indicate that a leak exists. ( )

ii. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release. ( )

iii. Conduct a site check as described in Subsection 060.03.b. if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release. ( )

b. Measure for the presence of a release where contamination is most likely to be present. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the petroleum, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Methods of sample collection and sample analysis are subject to these rules and Department approval. ( )

i. If a release has occurred, begin corrective action in accordance with Section 061. ( )

ii. If test results for the PST system do not indicate that a release has occurred, further investigation is not required. ( )

04. Reporting and Cleanup of Above Ground Releases. Owners and operators shall contain and immediately clean up an above ground release of petroleum only after identifying and mitigating any fire, explosion, and vapor hazards. ( )

a. A release that exceeds twenty-five (25) gallons or that causes a sheen on nearby surface water must be reported to the Department within twenty-four (24) hours and begin corrective action in accordance with Section 061. ( )

b. A release that is less than twenty-five (25) gallons and does not cause a sheen on nearby surface water must be reported to the Department only if cleanup cannot be accomplished within twenty-four (24) hours. ( )

**061. PETROLEUM RELEASE RESPONSE AND CORRECTIVE ACTION.**

01. Release Response. Upon confirmation of a petroleum release in accordance with Section 060 or after a release from the PST system is identified in any other manner, owners and operators must perform the



following initial response actions within twenty-four (24) hours: ( )

**a.** Identify and mitigate fire, explosion and vapor hazards; ( )

**b.** Take immediate action to prevent any further release of petroleum into the environment; and ( )

**c.** Report the release to the Department. ( )

**02.** Initial Abatement Measures. Unless directed to do otherwise by the Department, owners and operators must perform the following abatement measures: ( )

**a.** Remove as much of the petroleum from the leaking PST system as is necessary to prevent further release to the environment; ( )

**b.** Visually inspect any above ground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils, surface water and groundwater; ( )

**c.** Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the PST site and entered into subsurface structures such as sewers or basements; and ( )

**d.** Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements. ( )

**03.** Initial Site Characterization. Unless directed to do otherwise by the Department, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in Subsection 061.02. This information includes, but is not necessarily limited to the following data: ( )

**a.** On the nature and estimated quantity of release; ( )

**b.** From available sources and site investigations concerning the following factors: surrounding populations, water quality, use and approximate location of wells potentially affected by the release, subsurface soil condition, locations of subsurface sewers, climatological conditions, and land use; and ( )

**c.** From measurements that assess the site for the presence of petroleum contamination including measurements: ( )

**i.** For the presence of a release where contamination is most likely to be present, unless the presence and source of the release have been confirmed in accordance with the site check described in Subsection 060.03.b. or the closure site assessments required by applicable federal, state, or local laws. Sample types, sample locations and analytical methods are subject to these rules and Department approval and will be based on consideration of the nature of the petroleum, the type of backfill, depth to groundwater, and other factors appropriate for identifying the presence and source of the release; and ( )

**ii.** To determine the presence of free product. ( )

**d.** Within forty-five (45) days of release confirmation, or another time specified by the Department, owners and operators must submit the information collected in compliance with Subsection 061.03 to the Department in a manner that demonstrates its applicability and technical adequacy to be reviewed as follows, if the Department determines that the information shows: ( )

**i.** That no further corrective action is required, owners and operators will be notified accordingly; ( )

ii. Contamination is limited to soils, owners and operators must treat or dispose of contaminated soils in accordance with Department guidelines, and need not perform any further corrective action; ( )

iii. That any of the conditions in Subsections 061.05.a. through 061.05.c. exist, owners and operators must comply with the provisions in Subsections 061.04 through 061.07. ( )

**04. Free Product Removal.** At sites where investigations under Subsection 061.03.c.ii. indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the Department while continuing, as necessary, any actions initiated under Subsections 061.01 through 061.03 or preparing for actions under Subsections 061.05 and 061.06. In meeting the provisions of Subsection 061.04, owners and operators must: ( )

a. Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated areas by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by-products in compliance with applicable local, state and federal regulations; ( )

b. Use abatement of free product migration as a minimum objective for the design of the free product removal system; ( )

c. Handle any flammable products in a safe and competent manner to prevent fires or explosions; and ( )

d. Unless directed to do otherwise by the Department, submit to the Department for review and approval, within forty-five (45) days after confirming a release, a free product removal report that provides at least the following information: ( )

i. The name of the person(s) responsible for implementing the free product removal measures;( )

ii. The estimated quantity, type and thickness of free product observed or measured in wells, boreholes, and excavations; ( )

iii. The type of free product recovery system used; ( )

iv. Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located; ( )

v. The type of treatment applied to, and the effluent quality expected from, any discharge; ( )

vi. The steps that have been or are being taken to obtain necessary permits for any discharge; and ( )

vii. The disposition of the recovered free product. ( )

**05. Investigations for Soil and Water Cleanup.** If any of the conditions in Subsections 061.05.a. through 061.05.c. exist, and unless directed to do otherwise by the Department, owners and operators must notify the Department and conduct investigations in accordance with Subsection 061.05.d. of the release, the release site, and the surrounding area possibly affected by the release in order to determine the full extent and location of soils contaminated by the petroleum release and the presence and concentrations of dissolved product contamination in the groundwater or surface water: ( )

a. There is evidence that groundwater or surface water has been affected by the release such as found during release confirmation or previous corrective action measures; ( )

b. Free product is found to need recovery in compliance with Subsection 061.04; ( )

c. There is evidence that contaminated soils may affect nearby groundwater, surface water or the

public health and have not been treated or disposed of in accordance with Subsection 061.03.d.ii. ( )

**d.** Unless determined otherwise by the Department, investigations conducted under Subsection 061.05 are subject to these rules and include, but are not limited to: ( )

i. The physical and chemical characteristics of the petroleum product including its toxicity, persistence, and potential for migration; ( )

ii. The type and age of the PST system, inventory loss, and type of containment failure; ( )

iii. The hydrogeologic characteristics of the release site and the surrounding area; ( )

iv. The background concentrations of contaminants in soil, surface water and groundwater; ( )

v. A site drawing, showing boring and monitoring well locations, nearby structures, underground utilities, drainage ditches, streams, suspected locations of leakage, direction of groundwater flow, and any domestic or irrigation wells within a one half (1/2) mile radius of the site; ( )

vi. Information on ownership and use of any well identified pursuant to Subsection 061.05.d.v.; ( )

vii. Site borings and well logs and rationale for choosing drilling locations, and a description of methods and equipment used for all water and soil sampling; ( )

viii. A description of contaminant stratigraphy with accompanying geologic cross-section drawings; ( )

ix. A demonstration and description of the horizontal and vertical extent of contamination, free product thickness, modes and rate of contaminant transport, and concentrations of dissolved constituents in surface water and groundwater; ( )

x. The potential effects of residual contamination on nearby surface water and groundwater; and ( )

xi. A discussion of laboratory analytical methods and information pertaining to laboratory certification. ( )

**e.** Owners and operators must submit the information collected in investigating the release site in compliance with Subsection 061.05 for the Department's review and approval in accordance with a schedule established by the Department as provided in Subsection 061.07. ( )

**06. CAP.** At any point after reviewing the information submitted in compliance with Subsections 061.01 through 061.05, the Department may require owners and operators to submit additional information or to develop and submit a CAP for responding to contaminated soils, surface water and groundwater. If a CAP is required, owners and operators must submit the CAP according to a consent order or a schedule and criteria established by the Department as provided in Subsection 061.07. ( )

**a.** The Department will approve the CAP only after ensuring that implementation of the plan will adequately protect human health and the environment. In making this determination, the Department will consider the following factors as appropriate: ( )

i. The maximum contaminant levels for drinking water or other health-based levels for water and soil that consider the potential exposure pathway of the petroleum product; ( )

ii. The physical and chemical characteristics of the petroleum product including its toxicity, persistence, and potential for migration; ( )

- iii. The hydrogeologic characteristics of the release site and the surrounding area; ( )
- iv. The proximity, quality, and current and future uses of nearby surface water and groundwater; ( )
- v. The potential effects of residual contamination on nearby surface water and groundwater; and ( )
- vi. Other information assembled in compliance with Section 060. ( )
- b.** The CAP must include, but not be limited to, the following information as applicable: ( )
  - i. Description of remediation standards, points of exposure, and points of compliance where remediation standards will be achieved; ( )
  - ii. Description of remedial strategy and actions that will be taken to achieve the remediation standards; ( )
  - iii. Current and reasonably anticipated future land use and use of on-site and immediately adjacent off-site groundwater and surface water; ( )
  - iv. Activity and use limitations, if any, that will be required as part of the remedial strategy; ( )
  - v. Proposed environmental covenants, developed to implement activity and use limitations, in accordance with Section 600; ( )
  - vi. Estimated timeline for completion; ( )
  - vii. Monitoring Plan to monitor effectiveness of remedial actions; ( )
  - viii. Description of practical quantitation limits as they apply; and ( )
  - ix. Description of background concentrations as they apply. ( )
- c.** Upon approval of the CAP pursuant to Subsection 200.04 or as directed by the Department, owners and operators must: ( )
  - i. Implement the plan including modification to the plan made by the Department; and ( )
  - ii. Monitor, evaluate, and report the results of implementing the CAP in accordance with a consent order or a schedule and criteria established by the Department as provided in Subsection 061.07. ( )
- d.** Owners and operators may begin cleanup of soil, surface water, and groundwater before the CAP is approved provided that they: ( )
  - i. Notify the Department of their intention to begin cleanup; ( )
  - ii. Comply with any conditions imposed by the Department, including halting cleanup or mitigating adverse consequences from cleanup activities; and ( )
  - iii. Incorporate the self-initiated cleanup measures in the CAP submitted to the Department for approval. ( )
- 07. Compliance.** If the Department determines that any of the conditions in 061.05.a. through 061.05.c. exist, owners and operators will be given an opportunity to enter into a consent order with the Department. ( )

- a.** The Department will send owners and operators a consent order that sets forth at least the following schedules: ( )
- i.** For owners and operators to submit the information collected in investigating the release site in compliance with Subsection 061.05; ( )
- ii.** For owners and operators to submit, and criteria for, a CAP in compliance with Subsection 061.06; ( )
- iii.** For the Department to review, modify, and approve the site release investigation and CAP; and ( )
- iv.** For owners and operators to implement a CAP, and monitor, evaluate, and report the results of implementing the CAP. ( )
- b.** Owners and operators will be given thirty (30) days from receipt of the consent order in which to reach an agreement with the Department regarding the terms of the consent order. ( )
- c.** If owners and operators cannot reach an agreement with the Department within thirty (30) days, the Department will establish a schedule and criteria which owners and operators must comply in order to meet the provisions of Subsections 061.05 and 061.06. ( )

**062. -- 099. (RESERVED)**

**100. CHEMICALS EVALUATED AT PETROLEUM RELEASE SITES.**

**01. General Applicability.** ~~For petroleum sites governed by Sections 851 and 852 of IDAPA 58.01.02, "Water Quality Standards,"~~ The chemicals listed in Section 800, table of chemicals of interest for various petroleum products, will be evaluated based on the specific petroleum product or products known or suspected to have been released. (3-31-22)( )

**02. Additional Chemicals.** ~~Evaluation of non-petroleum chemicals in addition to those in Section 800, table of chemicals of interest for various petroleum products,~~ may be required by the Department when there is a reasonable basis based on site-specific information. A reasonable basis ~~shall~~ will be demonstrated by the Department when it can show documentation of releases or suspected releases of other non-petroleum chemicals. (3-31-22)( )

**101. -- 199. (RESERVED)**

**200. RISK EVALUATION PROCESS.**

~~The following risk evaluation process shall must be used for petroleum releases in accordance with the Petroleum Release Response and Corrective Action Rules described in IDAPA 58.01.02, "Water Quality Standards," Section 852 EPA's RSL Calculator (<https://epa-prgs.onml.gov/cgi-bin/chemicals/cslsearch>) and VISL Calculator (<https://epa-visl.onml.gov/cgi-bin/vislsearch>), or other approved methods, may be used for screening and risk evaluations.~~ (3-31-22)( )

**01. Screening Evaluation.** ~~The screening evaluation may be performed at any time during the release response and corrective action process described in IDAPA 58.01.02, "Water Quality Standards," Section 852. The screening evaluation shall and must~~ include, at a minimum: (3-31-22)( )

- a.** Collection of media-specific (soil, surface water, ground-water, soil vapor) data; and (3-31-22)( )
- b.** Identification of maximum soil, ground-water, and soil vapor petroleum chemical concentrations for the chemicals identified in Section 800, ~~table of chemicals of interest for various petroleum products,~~ as appropriate for the petroleum product or products released; and (3-31-22)( )

c. Comparison of the maximum media-specific petroleum contaminant concentrations to the EPA regional screening levels ~~identified in the table of screening level concentrations for soil, ground water, and soil vapor in the Idaho Risk Evaluation Manual for Petroleum Releases (<https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables>)~~. If the maximum media-specific petroleum contaminant concentrations at a site do not exceed the screening levels, the owner and/or operator may petition for site closure, subject to other Department regulatory obligations. If the maximum media-specific concentrations at a site exceed the screening levels, the owner and/or operator ~~shall~~ must proceed to: (3-31-22)(    )

i. Adopt the screening levels as cleanup levels remediation standards and develop a corrective action plan CAP to achieve those levels pursuant to Subsection ~~200-03\_061.06.b.~~; or (3-31-22)(    )

ii. Perform a site-specific risk evaluation pursuant to Section 300. The Department may require the collection of additional site-specific data prior to the approval of the risk evaluation. (3-31-22)(    )

**02. Results of Risk Evaluation.** If the results of the approved risk evaluation do not exceed the acceptable target risk level, acceptable target hazard quotient, or acceptable target hazard index specified in Section 300, the owner and/or operator may petition for site closure, subject to other Department regulatory obligations. If the results of the approved risk evaluation indicates exceedance of the acceptable target risk level, acceptable target hazard quotient, or acceptable target hazard index specified in Section 300, the risk evaluation ~~shall~~ must: (3-31-22)(    )

a. Be modified by collection of additional site-specific data, or review of chemical toxicological information, and resubmitted to the Department for review and approval; or (3-31-22)

b. Provide the basis for the development of risk-based concentrations, establishment of remediation standards as described in Section 400, and development of a corrective action plan CAP. (3-31-22)(    )

~~**03. Development and Implementation of Corrective Action Plan.** A Corrective Action plan required as a result of the risk evaluation process described in Section 200 shall include, but not be limited to, the following information, as applicable:~~ (3-31-22)

~~a. Description of remediation standards, points of exposure, and points of compliance where remediation standards shall be achieved;~~ (3-31-22)

~~b. Description of remedial strategy and actions that will be taken to achieve the remediation standards;~~ (3-31-22)

~~c. Current and reasonably anticipated future land use and use of on-site and immediately adjacent off-site ground water, and surface water;~~ (3-31-22)

~~d. Activity and use limitations, if any, that will be required as part of the remedial strategy;~~ (3-31-22)

~~e. Proposed environmental covenants, developed to implement activity and use limitations, in accordance with Section 600;~~ (3-31-22)

~~f. Estimated timeline for completion; and~~ (3-31-22)

~~g. Monitoring Plan to monitor effectiveness of remedial actions.~~ (3-31-22)

~~h. Description of practical quantitation limits as they apply.~~ (3-31-22)

~~i. Description of background concentrations as they apply.~~ (3-31-22)

**043. Department Review and Approval of Risk Evaluation or Corrective Action Plan CAP.** Within thirty (30) days of receipt of the risk evaluation or corrective action plan CAP, the Department ~~shall~~ will provide in writing either approval, approval with modifications, or rejection of the risk evaluation or corrective action plan CAP. If the Department rejects the risk evaluation or corrective action plan CAP, it ~~shall~~ will notify the owner and/or

operator in writing specifying the reasons for the rejection. If the Department needs additional time to review the documents, it will provide written notice to the owner and/or operator that additional time to review is necessary and will include an estimated time for review. Extension for review time ~~shall will~~ not exceed one hundred eighty (180) days without a reasonable basis and written notice to the owner and/or operator. (3-31-22)( )

201. -- 299. (RESERVED)

300. SITE-SPECIFIC RISK EVALUATION REQUIREMENTS.

01. **General Requirements.** The general requirements for human health risk evaluations ~~shall~~ **must** include, at a minimum: (3-31-22)( )

a. A conceptual site model ~~which that~~ describes contaminant sources; release mechanisms; the magnitude, spatial extent, and temporal trends of petroleum contamination in all affected media; transport routes; current and reasonably likely future land use and human receptors; and relevant exposure scenarios. (3-31-22)( )

b. Toxicity information derived from appropriate sources including, but not limited to, those listed in Subsection 300.01.e. (3-31-22)( )

c. Data quality objectives and sampling approaches based on the conceptual site model that support the risk evaluation and risk management process. (3-31-22)

d. Estimated exposure point concentrations for a reasonable maximum exposure based on a conservative estimate of the mean of concentrations of chemicals that would be contacted by an exposed receptor. (3-31-22)

e. Exposure analysis including identification of contaminants of concern, potentially exposed populations, pathways and routes of exposure, exposure point concentrations and their derivation, and a quantitative estimate of reasonable maximum exposure for both current and reasonably likely future land and water use scenarios. ~~Appropriate reference sources of reasonable maximum exposure factor information may include, but are not limited to: The EPA RSL and VISL calculators are appropriate sources of reasonable maximum exposure factor information. Alternative sources must be reasonably justified.~~ (3-31-22)( )

~~i. U.S. EPA RAGS, Volume I; (3-31-22)~~

~~ii. U.S. EPA Exposure Factors Handbook; (3-31-22)~~

~~iii. Idaho Risk Evaluation Manual for Petroleum Releases; and (3-31-22)~~

~~iv. Other referenced technical publications. (3-31-22)~~

f. Risk characterization presenting the quantitative human health risks and a qualitative and quantitative assessment of uncertainty for each portion of the risk evaluation. (3-31-22)

g. Risk evaluations may include the use of transport and fate models, subject to Department approval of the model and the data to be used for the parameters specified in the model. (3-31-22)

02. **Specific Requirements.** Human health risk evaluations ~~shall~~ **must**, at a minimum: (3-31-22)( )

a. Utilize an acceptable target risk level as defined in Section 010; (3-31-22)

b. Utilize an acceptable target hazard index as defined in Section 010; (3-31-22)

c. Utilize an acceptable target hazard quotient as defined in Section 010; (3-31-22)

d. Evaluate the potential for exposure from: (3-31-22)

- i. Ground-water ingestion; (3-31-22)( )
- ii. Direct contact with contaminated soils resulting from soil ingestion, dermal contact, and inhalation of particulates and vapors; (3-31-22)
- iii. Indoor inhalation of volatile chemicals via ~~volatilization~~ volatilization of chemicals from soil, ground-water, or free phase product; (3-31-22)( )
- iv. Ingestion, inhalation, or dermal exposure to ground-water and/or surface water ~~which that~~ has been impacted by contaminants that have leached from the soils; and (3-31-22)( )
- v. Other complete or potentially complete routes of exposure; (3-31-22)
- e. Evaluate the potential for exposure to: (3-31-22)
  - i. Adult and child residential receptors; (3-31-22)
  - ii. Adult construction and utility workers; (3-31-22)
  - iii. Aquatic life; (3-31-22)
  - iv. Recreational receptors; and (3-31-22)
  - v. Other relevant potentially exposed receptors; (3-31-22)
- f. Evaluate the potential for use of impacted ground-water for ingestion based on: (3-31-22)( )
  - i. The current and historical use of the ground-water for drinking water or irrigation; (3-31-22)( )
  - ii. The location and approved use of existing ground-water wells in a one half (½) mile radius from the contaminated site at the release point; (3-31-22)( )
  - iii. The degree of hydraulic connectivity between the impacted ground-water and other ground-water bearing zones or surface water; and (3-31-22)( )
  - iv. The location of delineated source water protection areas for public drinking water systems. (3-31-22)

**301. -- 399. (RESERVED)**

**400. ESTABLISHMENT OF REMEDIATION STANDARDS.**

If, as a result of the assessment and risk evaluation completed as described in Section 300, it is determined that corrective action is required, remediation standards ~~shall~~ must be established. The remediation standards established in these rules ~~shall~~ must be no more stringent than applicable or relevant and appropriate federal and state standards and are consistent with Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. Section 9621) and Section 39-107D(2), Idaho Code, taking into consideration site-specific conditions. These standards, and any activity use limitations proposed for the site, ~~shall~~ must be established as part of a ~~corrective action plan~~ CAP approved in writing by the Department. The standards may consist of the following or combinations of the following. (3-31-22)( )

**01. Screening Levels.** The petroleum contaminant concentrations in soil, ground-water, and soil vapor in the ~~table of screening level concentrations for soil, ground water, and soil vapor in the Idaho Risk Evaluation Manual for Petroleum Releases~~ EPA RSLs Tables. (3-31-22)( )

**02. Risk-Based Levels.** Site-specific, media-specific petroleum contaminant concentrations established in accordance with the risk evaluation procedures ~~and requirements~~ described in Section 300. (3-31-22)( )



**03. Generic Health Standards.** An established state or federal generic numerical health standard ~~which that~~ achieves an appropriate health-based level so that any substantial present or probable future risk to human health or the environment is eliminated or reduced to protective levels based upon present and reasonably anticipated future uses of the site. (3-31-22)(    )

~~**04. Other.** Remediation standards may be a combination of standards found in Subsections 400.01 through 400.03. (3-31-22)~~

401. -- 499. (RESERVED)

**500. FACTORS WHEN PRACTICAL QUANTITATION LIMITS ARE GREATER THAN SCREENING LEVELS AND CLEANUP LEVELS.**

Practical quantitation limits may be greater than screening levels or risk-based concentrations for certain chemicals. In such cases the following factors, or others, may be used in allowing practical quantitation limits as remediation standards: (3-31-22)(    )

**01. Analytical Method.** The published or expected practical quantitation limit for a specific chemical and method, and the availability of other methods ~~which that~~ may enable lower practical quantitation limits to be achieved. (3-31-22)(    )

**02. Method Detection Limit.** The magnitude of the difference between the stated practical quantitation limit and the method detection limit. (3-31-22)

**03. Sampling Procedures.** The availability of alternative sampling procedures ~~which that~~ may enable lower practical quantitation limits to be achieved. (3-31-22)(    )

**04. Estimated Risk Levels.** The estimated risk levels when site concentrations are assumed to be at the practical quantitation limit. (3-31-22)

~~**05. Other.** Site specific factors other than those listed above. (3-31-22)~~

501. -- 599. (RESERVED)

**600. ACTIVITY AND USE LIMITATIONS.**

**01. Purpose.** The provisions of the Uniform Environmental Covenants Act (UECA), Chapter 30, Title 55, Idaho Code, may be utilized to create restrictions and ~~or~~ obligations regarding activity and use to protect the integrity of a cleanup action and assure the continued protection of human health and the environment. Activity and use limitations ~~shall may~~ be proposed as elements of a ~~corrective action plan CAP~~ in at least the following circumstances: (3-31-22)(    )

**a.** Where onsite current or proposed land use is not residential and maximum residual site concentrations are greater than screening levels for residential use; (3-31-22)

**b.** Where onsite current or proposed land use is not residential and the risk or hazard calculated for residential receptors through an approved risk evaluation is unacceptable; (3-31-22)

**c.** Where off-site ground-water concentrations exceed residential use screening levels or risk-based concentrations; or (3-31-22)(    )

**d.** When the Department determines, based upon the proposed ~~corrective action plan CAP~~, that such activity and use limitations are required to assure the continued protection of human health and the environment or the integrity of the cleanup action. (3-31-22)(    )

**02. Documentation of Controls.** Activity and use limitations, approved by the Department, ~~shall must~~ be described in an environmental covenant executed pursuant to the UECA and ~~shall must~~ be incorporated into a

~~corrective action plan CAP. (3-31-22)( )~~

~~**03. Removal of Activity and Use Limitations.** Activity and use limitations may be removed from a site in accordance with Sections 55-3009 and 55-3010, Idaho Code, of UECA. (3-31-22)~~

**601. -- 699. (RESERVED)**

**700. DEVELOPMENT OF GUIDANCE MANUAL.**

~~The Department will prepare a risk evaluation manual for petroleum releases which will be used as guidance for implementation of these rules. The Department will, through public notice, invite the Board of Trustees established in Section 41-4904, Idaho Code, and members of the public, including the regulated community, to participate in the process to provide input to the Department in developing this manual. If the Department identifies the need for future substantive revisions of the risk evaluation manual for petroleum releases, the Department will follow the same public notice process as described above. If any material revisions to the risk evaluation manual for petroleum releases are required, the Department will, through public notice, invite the Board of Trustees established in Section 41-4904, Idaho Code, and members of the public, including the regulated community, to participate in making such revisions. Material revisions are those changes that result in, or could result in, a different interpretation or use of any provision of the guidance manual. (3-31-22)( )~~

**701. -- 799. (RESERVED)**

**800. TABLE.**

Chemicals of Interest for Various Petroleum Products:

CHEMICALS OF INTEREST FOR VARIOUS PETROLEUM PRODUCTS				
Chemical	Gasoline/ JP-4/ AVG <del>v</del> gas	Diesel/ Fuel Oil No. 2/ Kerosene	Fuel Oil No.4	Jet Fuels (Jet A, JP-5, JP-8)
Benzene	X	X		X
Toluene	X	X		X
Ethyl benzene	X	X		X
Xylenes (mixed)	X	X		X
<del>Ethylene Dibromide<sup>1,2</sup></del> Dibromoethane (EDB) <sup>1</sup>	X <sup>+</sup>			
1,2 Dichloroethane (EDC) <sup>1</sup>	X <sup>+</sup>			
Methyl Tert-Butyl Ether (MTBE)	X			
Acenaphthene <sup>2</sup>		X	X	X
Anthracene <sup>2</sup>		X	X	X
Benzo(a)pyrene <sup>2</sup>		X	X	X
Benzo(b)fluoranthene <sup>2</sup>		X	X	X
Benzo(k)fluoranthene <sup>2</sup>		X	X	X
Benz(a)anthracene		X	X	X
Chrysene <sup>2</sup>		X	X	X
Fluorene <sup>2</sup>		X	X	X
Fluoranthene <sup>2</sup>		X	X	X

CHEMICALS OF INTEREST FOR VARIOUS PETROLEUM PRODUCTS				
Chemical	Gasoline/ JP-4/ AVGgas	Diesel/ Fuel Oil No. 2/ Kerosene	Fuel Oil No.4	Jet Fuels (Jet A, JP-5, JP-8)
Naphthalene	X	X	X	X
Pyrene <sup>2</sup>		X	X	X
<sup>1</sup> <del>Leaded Regular</del> only <sup>2</sup> Vapor intrusion is not applicable because there is no inhalation toxicity information and/or the chemical is not sufficiently volatile and toxic to pose an inhalation risk from a soil or groundwater source.				

(3-31-22)( )

801. -- 999. (RESERVED)