

RESOURCES & ENVIRONMENT COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2013 Legislative Session

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IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.02 - RULES GOVERNING PUBLIC SAFETY

DOCKET NO. 13-0102-1201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the temporary rule is **January 1, 2013**. This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 36-104(b)(16), 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 will establish a Mentored Hunting Program for persons interested in trying hunting. Rules are needed to create a special authorization to take wildlife, describe a mentee, and describe a mentor for the Mentored Hunting Program.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, **Vol. 12-10, pages 214 through 216**.

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

The temporary rule complies with an amendment to the governing law and confers a benefit to certain hunters.

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 the pending rule and temporary rule, contact Sharon Kiefer (208) 287-2780.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 36-104(b)(16), 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 24, 2012.

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

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

This rule will establish a Mentored Hunting Program for persons interested in trying hunting. Rules are needed to create a special authorization to take wildlife, describe a mentee, and describe a mentor for the Mentored Hunting Program. Chapter name is being changed to "Rules Governing Hunter Education and Mentored Hunting" to more adequately reflect the program.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a new program and there are no identifiable representatives for persons interested in trying hunting for the first time.

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

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where

copyrighted or other proprietary materials may be obtained: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0102-1201

IDAPA 13
TITLE 01
CHAPTER 02

**13.01.02 - RULES GOVERNING ~~PUBLIC SAFETY~~ HUNTER EDUCATION
AND MENTORED HUNTING**

000. LEGAL AUTHORITY.

The Idaho Fish and Game Commission is authorized under Sections 36-103, 36-104(b) and 36-412, Idaho Code, to adopt rules concerning education programs in hunting and archery. The Idaho Fish and Game Commission is authorized to adopt rules concerning a mentored hunting program under Idaho Code Section 36-1508(b). ~~(3-20-04)~~()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 13.01.02.000, et seq., Rules of the Idaho Fish and Game Commission, IDAPA 13.01.02, “Rules Governing ~~Public Safety~~ Hunter Education and Mentored Hunting.” ~~(3-20-04)~~()

02. Scope. These rules establish criteria for education programs in hunting and archery, and for mentored hunting. ~~(3-20-04)~~()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. **Accompanied.** The term “accompanied” as used in the requirement for a Youth Hunter Education Graduate License holder or Youth Small Game License holder or the Mentored Hunting program shall mean close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

101. MENTORED HUNTING PROGRAM.

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

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

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

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

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

d. Any person who has possessed a Hunter Passport may not apply for a Hunter Passport in any subsequent year. ()

02. **Eligibility of Mentee.** ()

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

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

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

d. Any mentee with a Hunting Passport shall be twelve (12) years of age to hunt big game. ()

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

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

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

03. **Eligibility of Mentor.** ()

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

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

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

10~~2~~. -- 999. (RESERVED)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b) and 36-408(9), 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:

2012 Senate Bill No. 1256 created the Governor's Wildlife partnership Tags. A portion of these rules address these new auction tags. Address a rule change that allows for equitable adjustments in resident and nonresident elk tag allocation where resident demand exceeds tag availability and nonresident tags are under subscribed. Address a rule change to sell leftover nonresident deer or elk tags as a second tag to residents and nonresidents earlier than September 1.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 217 through 221](#).

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 W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut

P.O. Box 25
Boise, Idaho 83707

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

EFFECTIVE DATE: The effective date of the temporary rule is **August 27, 2012**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-408(9), 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 24, 2012.

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:

2012 Senate Bill no. 1256 created the Governor's Wildlife partnership Tags. A portion of these rules address these new auction tags. Address a rule change that allows for equitable adjustments in resident and nonresident elk tag allocation where resident demand exceeds tag availability and nonresident tags are undersubscribed. Address a rule change to sell leftover nonresident deer or elk tags as a second tag to residents and nonresidents earlier than September 1.

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

The temporary rule complies with an amendment to governing law and confers a benefit to certain hunters.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated

rulemaking was not conducted because rules to implement the Governor's Wildlife Partnership Tags are needed because of statutory amendment, there are no identifiable representatives of nonresident hunters, and resident and nonresident hunters are not likely to reach consensus on tag allocation.

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

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-1201

505. DEER AND ELK TAG ALLOCATION.

01. Allocation of Tags. Pursuant to Idaho Code, Section 36-408, the Fish and Game Commission may allocate a number of deer and/or elk tags for use by hunters with signed agreements with licensed outfitters in zones with limited numbers of tags. ~~The allocation will be calculated on a zone basis with reductions or increases in hunting opportunities to be proportionate among resident hunters, nonoutfitted nonresident hunters, and outfitted hunters.~~

a. When the number of hunters in a general hunt unit or zone becomes restricted, the Department will calculate the initial number of allocated tags for each zone using the Idaho Outfitters and Guides Licensing Board's records of average historic use during the previous five (5) year period. Where it is biologically feasible, any reductions in the number of tags available within a zone which exceeds twenty percent (20%) will be spread over a three (3) year period with a maximum reduction of fifty percent (50%) taken in the first year and twenty-five percent (25%) in the second year. ~~When an area becomes controlled, hunt application and eligibility rules will apply to allocated tags in controlled hunts. Only those units or zones with licensed outfitted~~

~~areas with historic use will be considered for tag allocation.~~

~~(3-8-07)()~~

b. ~~The allocation of tags will be calculated on a zone basis. Any reduction or increase in hunting opportunities will be proportionate among non-outfitted hunters and outfitted hunters and will be proportionate among resident and non-resident hunters; EXCEPT where such reduction would result in an allocation of greater than twenty-five percent (25%) for non-resident hunters, the Commission may reduce the allocation for non-resident hunters to a percentage of not less than twenty-five percent (25%).~~ ()

02. Controlled Hunt Areas. Only those controlled hunt areas with historic licensed deer and/or elk outfitted area(s) may be considered for a tag allocation. Hunt application and eligibility rules will apply to allocated tags in controlled hunts. The allocation will be calculated on a controlled hunt area basis with reductions or increases in hunting opportunities to be proportionate among resident hunters, non-outfitted nonresident hunters, and outfitted hunters.

~~(4-7-11)()~~

a. The number of allocated tags will be in addition to the number of tags authorized by the Commission within each controlled hunt area with historic licensed deer and/or elk outfitter areas. (4-7-11)

b. Prior to submitting an application for an outfitter allocated controlled hunt, the applicant must have a written agreement with an outfitter licensed in the hunt area. Successful applicants of an outfitter allocated controlled hunt must hunt with an outfitter licensed for the hunt area. The outfitter must purchase the successful applicant's controlled hunt tag by August 20.

(4-7-11)

c. Successful applicants who do not want to participate in the outfitted hunt can decline the hunt upon written notification to the Department. Those declining the hunt will then be eligible to participate in a general season or leftover controlled hunt. Those drawing an outfitted controlled hunt and then declining the controlled hunt will be subject to the appropriate waiting period.

(5-3-03)

d. Successful applicants that do not secure the services of an Idaho licensed outfitter and have not purchased the controlled hunt tag by August 20 will forfeit the opportunity to purchase a controlled hunt tag. The forfeited controlled hunt tag will then be listed as a leftover controlled hunt tag. The Department will inform the Idaho Outfitters and Guides Board that a leftover controlled hunt tag is available. After securing a client, the outfitter(s) may then purchase the leftover controlled hunt tag at a Department regional or headquarters office.

(4-7-11)

e. The number of allocated tag(s) will be determined by using one (1) of the following options: (4-7-11)

i. The number of allocated tags available within the controlled hunt area will be no less than one (1) tag and no more than three percent (3%); or (4-7-11)

ii. The number of tags available within the controlled hunt area will be based on the average historic use during the previous five (5) year period and calculated tag numbers will be rounded up when controlled hunt tags equal or exceed zero point six (0.6) and rounded down

when controlled hunt tags are less than zero point six (0.6); or (4-7-11)

iii. No tags will be allocated. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

600. NONRESIDENT DEER AND ELK TAG QUOTAS.

01. Tag Quotas. The following number of deer tags and elk tags shall be set aside annually and reserved for sale to nonresidents: (3-20-97)

a. Fourteen thousand (14,000) regular or White-tailed deer tags; (3-29-10)

b. Twelve thousand eight hundred fifteen (12,815) A or B elk tags for all zones; (3-20-04)

c. One thousand five hundred (1,500) White-tailed deer tags available only upon sell out of deer tags referenced in Subsection 600.01.a. of these rules. (3-29-10)

02. Exceptions. Sales of nonresident deer and elk tags to the following persons shall not be counted in the quota: (7-1-93)

a. Unqualified Residents: Persons who have moved into Idaho and by notarized affidavit show proof of their intent to become bona fide Idaho residents but are not yet qualified to purchase a resident license. (7-1-93)

b. Designated Buyers: Nonresident tag buyers who return their unused nonresident deer or elk tag and a notarized affidavit stating that the tag buyer has not hunted may designate another nonresident to purchase an additional tag. If the original buyer does not make a designation and has retained an outfitter or guide, the outfitter or guide may make the designation. The designated buyer must pay the regular fee for the replacement tag. If no designation is made by either the original buyer or the outfitter or guide, the Department may sell the replacement tag on a first-come, first-serve basis. (7-1-93)

c. Successful nonresident controlled hunt applicants who have not purchased a tag as of the date of the controlled hunt drawing. (7-1-93)

d. Junior mentored tag holders. (3-20-04)

03. Refunds. The fee for any nonresident license (as defined in Section 36-202(z), Idaho Code) shall not be refunded for any reason except as follows. (7-1-98)

a. Hunting license and general season deer and elk tag refunds due to death, illness/injury or military deployment of licensee. Non-resident general season deer or elk tag fees and prerequisite hunting license fee and controlled hunt deer and elk tag fees may be refunded for

death of licensee; illness or injury of licensee which totally disabled the licensee for the entire length of any applicable hunting season; or military deployment of licensee due to an armed conflict. Refund must be substantiated by death certificate, published obituary, written justification by a licensed medical doctor, copy of military orders, or other similar substantiating documents. The hunting license fee will not be refunded if it was used to apply for any controlled hunt or to purchase a turkey, mountain lion, or bear tag. The amount refunded will be the amount of the applicable deer or elk tag and hunting license less all issuance fees and a fifty dollar (\$50) processing fee. The refund request must be postmarked on or before December 31 of the calendar year in which the license and tags were valid. (4-6-05)

b. General season and controlled hunt deer and elk tag refunds for other than death, illness/injury, or military deployment of licensee. Non-resident general season and controlled hunt deer or elk tag fees may be refunded for any reason other than death of the licensee; illness or injury of licensee that totally disables the licensee for the entire length of all applicable seasons; or military deployment of licensee due to an armed conflict. The request for the refund must be postmarked in the year in which the tag is valid. The hunting license fee will not be refunded. The refund will be based on the following sliding scale as a percent of the deer or elk tag fee.

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

(4-6-05)

c. Department Error. The Department determines that a Department employee made an error in the issuance of the license. (7-1-98)

d. Submission Requirements. All refund requests must be in writing and be accompanied with the original copy of the license or tag. (7-1-98)

e. Effective. These changes will be effective with the 1997 licenses and tags. (7-1-98)

04. Sale of Unsold Nonresident Deer and Elk Tags to Residents. Any unsold nonresident deer or elk tags may be sold to residents and to nonresidents as a second tag, at the nonresident deer or elk tag price, beginning ~~September~~ August 1. All privileges and restrictions associated with the use of the nonresident deer or elk tag will apply equally to residents who purchase a nonresident deer or elk tag. (~~3-15-02~~)()

(BREAK IN CONTINUITY OF SECTIONS)

701. GOVERNOR'S WILDLIFE PARTNERSHIP TAGS.

01. Application of Big Game Rules. All rules in IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in Idaho," shall apply to recipients of Governor's Wildlife Partnership Tags other than as specified in this Section 701. ()

02. Eligibility. ()

a. In order to be eligible to bid on a Governor's Wildlife Partnership Tag, a person must be eligible to purchase an Idaho hunting or combination license. ()

b. A person is eligible to receive only one (1) Governor's Wildlife Partnership Tag in the same year. ()

c. A person is not eligible to receive a Governor's Wildlife Partnership Tag for a bighorn sheep, moose, or mountain goat if he is not eligible, based on prior harvest of that species, to apply for an equivalent controlled hunt under IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," Subsection 260.03. A person who has had a controlled hunt tag for a bighorn sheep, moose, or mountain goat, but who has been unsuccessful in taking that species, is eligible to receive a Governor's Wildlife Partnership Tag for that species the following year. ()

d. There is no waiting period for eligibility for Governor's Wildlife Partnership Tags for elk, deer, or pronghorn. ()

03. Validity of Tag. Each Governor's Wildlife Partnership Tag shall be valid for one (1) designated species annually and within the timeframe and area prescribed by the Commission. ()

04. License and Controlled Hunt Tag. ()

a. A hunting license and controlled hunt tag will be provided to the successful bidder from the net proceeds of the Governor's Wildlife Partnership Tag auction. ()

b. The successful bidder for a Governor's Wildlife Partnership Tag must file a notarized affidavit within fifteen (15) days of the successful bid if the hunting license and tag are to be designated to another individual. ()

c. If a recipient of a Governor's Wildlife Partnership Tag draws a controlled hunt tag for that species for the same year, the controlled hunt tag shall be returned to the Department and voided and the tag fees refunded, unless the tag is a controlled depredation hunt tag or a controlled hunt extra tag. The recipient of a Governor's Wildlife Partnership Tag may purchase second, extra, or leftover tags if a holder of a controlled hunt tag for deer, elk, or pronghorn is allowed to do so under IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," Subsection 260.01. ()

d. Any person who receives a Governor's Wildlife Partnership Tag for bighorn sheep, mountain goat or moose, and who is otherwise eligible to apply for a deer, elk or pronghorn controlled hunt tag, and who draws such a tag, shall be allowed to hunt for those species during the same year the Governor's Wildlife Partnership Tag is valid. ()

70~~2~~. -- 799. (RESERVED)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1202

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

The Commission has received comments about the equitable distribution of Landowner Appreciation Tags. The proposed rules make the following changes: 1) implement a one year waiting period for antlered deer and elk LAP hunts oversubscribed by a ratio of 2:1 or greater; 2) cap LAP allocation to an additional 10% of regular controlled hunt permit levels in all LAP hunts; and 3) define “designated agent(s)” as referenced in Idaho Code Section 36-104(b)(5)(B) as immediate family, youth, disabled veterans, and/or direct employees as valid designations.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 222 through 226](#).

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 W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) 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 24, 2012.

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 proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Commission has received comments about the equitable distribution of Landowner Appreciation Tags. The proposed rules make the following changes:

1. Implement a one year waiting period for antlered deer and elk LAP hunts oversubscribed by a ratio of 2:1 or greater;
2. Cap LAP allocation to an additional 10% of regular controlled hunt permit levels in all LAP hunts; and
3. Define “designated agent(s)” as referenced in Idaho Code Section 36-104(b)(5)(B) as immediate family, youth, disabled veterans, and/or direct employees as valid designations.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted because the Landowner Appreciation Program and the distribution of LAP tags are controversial. Landowners, hunters and sporting groups are unlikely to reach a consensus.

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 Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-1202

010. DEFINITIONS.

These definitions will provide clarity and consistency in enforcement of these rules. (7-1-93)

01. Authorized Corporate Representative. Any shareholder in a corporation, designated in writing by the corporation as the eligible applicant, who is in actual physical control of the eligible property. (7-1-93)

02. Blind Person. A blind person is one who has a medically documented loss or impairment of his or her vision and includes any person whose visual acuity with correcting lens does not exceed twenty/two hundred (20/200) in the better eye, or whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees. (7-1-93)

03. Domicile. The term “domicile” means the place where an individual has his true, fixed, permanent home and to which place he has the intention of returning whenever he is absent. An individual can have several dwelling places, but only one (1) domicile. Factors to consider to establish domicile include, but are not limited to: (7-1-93)

a. What address does the person use on tax returns and where does the person file a state resident income tax return? (7-1-93)

b. Where is the person registered to vote? (7-1-93)

c. Where does the person and his immediate family live? (7-1-93)

d. Where does the person have his mail sent or forwarded to? (7-1-93)

e. Does the person remain listed in the telephone directory? (7-1-93)

f. Where does he register his automobiles? (7-1-93)

g. Where has the person claimed a homeowner exemption on a personal residence?

(7-1-93)

h. Where does he have a driver's license? (7-1-93)

i. Where are his regular physicians and dentists located? (7-1-93)

04. Direct Employee. Any person who is on the payroll of the eligible landowner, partnership, or corporation and is directly involved with the production of goods and services from the registered property. ()

045. **Disabled.** A person is disabled if they are deemed disabled by one (1) or more, but not necessarily all of the following: the railroad retirement board pursuant to Title 45 of the United States Code, or certified as eligible for Federal Supplemental Security Income (SSI); or Social Security Disability Income (SSDI); or a nonservice-connected veterans pension; or a service-connected veterans disability benefit with forty percent (40%) or more disability; or if a physician has certified any of the following - that a person has lost the use of one (1) or both lower extremities or both hands, or is unable to walk two hundred (200) feet or more unassisted by another person, or is unable to walk two hundred (200) feet or more without the aid of a walker, cane, crutches, braces, prosthetic device or a wheelchair, or is unable to walk two hundred (200) feet or more without great difficulty or discomfort due to the following impairments - neurological, orthopedic, respiratory, cardiac, arthritic disorder, blindness, or the loss of function or absence of a limb. (3-8-07)

056. **Eligible Applicant.** A physically disabled person certified by a physician licensed in the state in which the disabled person resides, as meeting one (1) or more of the criteria set forth in Section 36-1101(b), Idaho Code. (5-8-09)

067. **Eligible Property.** At least three hundred twenty (320) acres of land in one (1) controlled hunt unit determined by the Department to be valuable for habitat or propagation purposes for deer, elk, and/or pronghorn, whether owned by one (1) or more persons, a partnership, or corporation. It shall not include any government lands. (4-7-11)

08. Immediate Family Member. Spouse, parent, child, brother, sister, grandparent, aunt, uncle, niece, nephew, stepchild, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law and sister-in-law. ()

079. **Landowner.** Any person or corporation whose name appears on a deed as the owner of eligible property or whose name appears on a contract for sale of eligible property as the purchaser, and any affiliates, management companies, associated entities, wholly-owned subsidiaries, corporations, or limited liability corporations wherein fifty percent (50%) or more of the ownership or controlling interest is maintained by a single individual, partnership or corporation. (4-7-11)

0810. **Permanent Disability.** Permanent disability is defined as a medically determinable physical impairment, which a physician has certified that the condition has no expectation for a fundamental or marked change at any time in the future. (3-8-07)

0911. **Physician.** A person licensed to practice medicine pursuant to the Idaho Medical

Practice Act (Sections 54-1801 through 54-1820, Idaho Code), or equivalent state licensing authority if the person is not licensed to practice in Idaho. (5-8-09)

102. Qualified Organization. The term “Qualified Organization” is defined in Section 36-408(7), Idaho Code. (3-29-12)

113. Resident. The term “resident” is defined in Section 36-202(s), Idaho Code. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

400. LANDOWNER APPRECIATION PROGRAM.

01. Eligible Applicants. Eligible applicants must be registered with the Department and are limited to landowners. Landowners not complying with prohibitions listed in Subsection 400.08, of these rules, shall not be eligible to participate in the landowner appreciation program for three (3) years. (4-7-11)

02. Hunt Units. Landowner Appreciation Program controlled hunt tags shall be issued only for those controlled hunt units designated by the Director as eligible for such permits. (4-7-11)

03. Qualifying Property. Only property that is used by and provides significant habitat values for deer, elk or pronghorn qualifies for the Landowner Appreciation controlled hunt tag program. Landowners may receive Landowner Appreciation controlled hunt tags only for the species and sex that use the property. (4-7-11)

04. Applications for Landowner Appreciation Controlled Hunt Tags. Applications for landowner appreciation controlled hunt tag(s) shall be on a form prescribed by the Department. Applicants must be registered with the Department and shall sign the application. (4-7-11)

a. Applications from landowners with six hundred forty (640) acres or more will be accepted on or after June 15 of each year. Applications received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than July 15 of each year will be entered in the random drawing for tags. Each application will be entered in the random drawing one (1) time based upon each six hundred and forty (640) acres of eligible property registered by the landowner that are within the hunt area. For example, if a landowner has six thousand four hundred (6,400) eligible acres, the application will be entered into the random drawing ten (10) times. (4-7-11)

b. One (1) application may be submitted by a landowner with eligible property consisting of six hundred forty (640) acres to four thousand nine hundred ninety-nine (4,999) acres. A second application may be submitted for eligible property consisting of five thousand (5,000) acres or more. (4-7-11)

05. Left Over Tags. Landowners with three hundred twenty (320) acres or more may apply for left-over tags following the random draw. Written applications will be accepted after August 15 of each year on a first-come, first-served basis. Applications must be accompanied by the appropriate application fee as specified in Section 36-416, Idaho Code. (4-7-11)

06. Property and Applicant Registration. (5-15-95)

a. Prior to any eligible applicant applying for a Landowner Appreciation Program controlled hunt, the qualifying property and eligible applicant must be registered with the Department. Registering landowners must notify the Department of any changes in property or applicant eligibility. (4-7-11)

b. Registration of property and eligible applicant must be on a form prescribed by the Department. The landowner must submit the registration form and a copy of the deed(s), and the most recent tax assessment(s), describing the eligible property showing the name(s) of the owner(s), and a map of eligible property to the Department regional office. Department personnel will certify the registration and land description and return a copy to the landowner. (4-5-00)

c. If the person registering is an authorized corporate or partnership representative, he shall submit with his registration written verification from the board of directors, partnership, or an officer of the corporation, other than himself, verifying that he is authorized to register the property and eligible applicants. (4-5-00)

07. Issuance of Controlled Hunt Tag(s). (4-7-11)

a. Once the Department has determined the number of controlled hunt tags to be issued in any controlled hunt unit, an additional ten percent (10%) of the number of controlled hunt tags MAY be issued as Landowner Appreciation Program tags. ~~In subsequent years up to twenty-five percent (25%) of the number of controlled hunt tags MAY be issued only if the hunt is over subscribed by eligible Landowner Appreciation Program applicants.~~ (4-7-11)()

b. Where the number of landowner appreciation applicants exceeds the number of landowner appreciation controlled hunt tags available in a unit, successful applicants will be determined by drawing. All eligible landowners in the drawing will be considered for one (1) tag before any landowner is eligible for a second tag. (4-7-11)

c. No more than two (2) Landowner Appreciation Program controlled hunt tags may be issued to any eligible landowner. (4-7-11)

d. Only one (1) leftover Landowner Appreciation Program controlled hunt tag may be issued for eligible property consisting of between three hundred twenty (320) and six hundred thirty nine (639) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. Only one (1) landowner appreciation program controlled hunt tag may be issued for eligible property consisting of between six hundred forty (640) and four thousand nine hundred ninety-nine (4,999) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. One (1) additional controlled hunt tag may be issued to a landowner or designated agent(s) for eligible property in

excess of five thousand (5,000) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. No landowner or designated agent(s) is eligible to receive more than one (1) controlled hunt tag for one (1) species in a calendar year. (4-7-11)

e. A successful landowner, corporate or partnership representative drawing a landowner appreciation program controlled hunt tag may designate the controlled hunt tag to whom the controlled hunt tag will be issued pursuant to Subsection 400.08 of this rule. an eligible: ~~(4-7-11)~~()

i. Immediate family member; ()

ii. Youth who is younger than eighteen (18) years of age; ()

iii. Direct employee; or ()

iv. Disabled active, former, or retired member of the United States Armed Forces. ()

f. Designation of a landowner appreciation program controlled hunt tag is subject to Subsection 400.08 of this rule. ()

08. Prohibitions. Landowner Appreciation Program controlled hunt tags shall not be sold or marketed. (4-7-11)

09. Application of Controlled Hunt Restrictions. (7-1-93)

a. The restriction that applying for a moose, bighorn sheep, or mountain goat controlled hunt makes the applicant ineligible to apply for any other controlled hunt shall not apply to persons who are otherwise eligible to apply for a landowner appreciation program controlled hunt tag. (4-7-11)

b. Landowner appreciation program controlled hunt tags issued to non-residents shall not be considered as part of the non-resident quota. (4-7-11)

c. Landowner appreciation program controlled hunt tags are exempt from the one (1) year waiting periods applicable for ~~certain antlered deer, and elk and pronghorn permits tags;~~ EXCEPT: the one (1) year waiting period will apply in those landowner appreciation program controlled hunts where the number of eligible landowners exceed the number of tags equal to or more than a ratio of two to one (2:1). ~~(4-7-11)~~()

d. The one (1) year waiting period applicable for certain antlered deer and elk Landowner Appreciation Program tags does not apply to left-over tags. ()

10. Special Restrictions. Any person hunting with a Landowner appreciation program controlled hunt tag shall hunt only within the boundaries described in the hunt area designated by the Director. Only valid, current-year controlled hunt deer, elk, or pronghorn tags may be used in conjunction with a landowner appreciation program. No person shall kill more than one (1) deer,

elk or pronghorn during a calendar year EXCEPT: (4-7-11)

a. Depredation Hunts. In depredation hunts, one (1) additional deer, elk or pronghorn may be taken by persons holding tags for those hunts; EXCEPT: those depredation hunters who were selected for depredation hunts prior to the controlled hunt season for the unit(s) in which they hold a controlled hunt tag must include any animal they harvest within the restrictions imposed by the controlled hunt tag. (4-7-11)

b. Extra Tag Hunts. In extra tag hunts, one (1) additional deer, elk or pronghorn may be taken by persons holding tags for those hunts. (4-7-11)

c. Limits on Take - Deer, Elk, Pronghorn. In no event shall any person take more deer, elk or pronghorn in a calendar year than the number of tags the person legally possesses for each species. (4-7-11)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.07 - RULES GOVERNING THE TAKING OF UPLAND GAME ANIMALS

DOCKET NO. 13-0107-1201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

Rescind the Motorized Hunting Rule for these species.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 227 and 228](#).

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 W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) 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 24, 2012.

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 proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rescind the Motorized Hunting Rule for these species.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted because the Motorized Hunting Rule is controversial. Hunters who use an ATV are unlikely to reach a consensus with hunters opposed to ATVs.

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 Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0107-1201

~~**101. MOTORIZED VEHICLE USE RESTRICTIONS.**~~

~~The use of motorized vehicles by hunters as an aid to hunting upland game animals is restricted in certain areas. This use restriction is in addition to all federal, state and local laws, rules, regulations, ordinances and orders; including, but not limited to, any motorized vehicle licensing, registration, and permitting requirements and traffic laws. Hunters must comply with all motorized vehicle limits or prohibitions instituted by the landowner or land manager. Also, this use restriction rule is not an exception from, and is in addition to, the statutory prohibition against hunting from or by the use of any motorized vehicle set forth in Section 36-1101(b)(1), Idaho Code.~~ (4-6-05)

~~**01. Use Restriction.** In designated areas and hunts, hunters may only use motorized vehicles on established roadways which are open to motorized traffic and capable of being traveled by full-sized automobiles. Any other use by hunters is prohibited. All off-road use by hunters is prohibited.~~ (4-6-05)

~~**02. Exceptions.** This use restriction rule shall not apply to the following permissible motorized vehicle uses:~~ (4-6-05)

~~**a.** Holders of a valid Disabled Motor Vehicle Hunting Permit may use a motorized vehicle as allowed by the land owner or manager.~~ (5-8-09)

~~**b.** Hunters may use a motorized vehicle to retrieve downed game if such travel is allowed by the land owner or manager.~~ (4-6-05)

~~**c.** Hunters may use a motorized vehicle to pack camping equipment in or out if such travel is allowed by the land owner or manager; however, hunters shall not hunt while packing camping equipment.~~ (4-6-05)

~~**d.** Private landowners, their authorized agents and persons with written landowner permission may use a motorized vehicle on their private land; however, they may not hunt from or by the use of any motorized vehicle as prohibited by Section 36-1101(b)(1), Idaho Code.~~ (4-6-05)

~~**03. Restricted Areas and Hunts.** This motorized vehicle use restriction shall apply to identified areas and hunts in all Big Game Management Units. The hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Season Proclamation and Upland Game Season Proclamation, which are published in a brochure available at department offices and license vendors.~~ (4-6-05)

~~**04. Defined Terms.**~~ (4-6-05)

~~**a.** A full-sized automobile shall be defined as any motorized vehicle with a gross weight in excess of one thousand five hundred (1,500) pounds.~~ (4-6-05)

~~b. An established roadway shall be defined as any road that is established, built, maintained, approved or designated by any governmental entity or private landowner for the purpose of travel by full-sized automobiles. An established roadway shows evidence of repeated use by full-sized automobiles, and may include a traveled way of natural earth with depressed wheel tracks and little or no vegetation in the wheel tracks. (4-6-05)~~

~~e. A hunter shall be defined as a person engaged in the activity of hunting as defined in Section 36-202(j), Idaho Code. (4-6-05)~~

1021. -- 199. (RESERVED)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

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

DOCKET NO. 13-0108-1201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

Allow the use of a rimfire weapon to dispatch a wolf in a trap or snare, and allow that wolves may be dispatched in a trap or snare outside of big game hunting hours. Address what trap sets are legal for wolf trapping. Clean up some rules to allow consolidation of wolf trapping rules in another rules chapter.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 229 through 232](#).

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 W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

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

EFFECTIVE DATE: The effective date of the temporary rule is **July 16, 2012**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) 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 24, 2012.

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:

Allow the use of a rimfire weapon to dispatch a wolf in a trap or snare, and allow that wolves may be dispatched in a trap or snare outside of big game hunting hours. Address what trap sets are legal for wolf trapping. Clean up some rules to allow consolidation of wolf trapping rules in another rules chapter.

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

The temporary rule confers a benefit to certain hunters and trappers, and are needed for 2012 wolf hunting and trapping seasons.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because wolf hunting and trapping is a very divisive topic. There is a lack of identifiable representatives of the many affected interests, and the various affected interests are not likely to reach a consensus.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1201

~~**271. WOLF TRAPPING – MANDATORY WOLF TRAPPER EDUCATION CLASS.**~~
~~*Individuals interested in trapping wolves must purchase a trapping license and successfully complete a wolf trapping education class held by the Idaho Department of Fish and Game prior to trapping for wolves. A certificate of completion and trapping license will be required to purchase tags for wolf trapping. Trappers who complete the class will not be required to take the class again in the future.*~~ (3-29-12)

2721. -- 299. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

410. UNLAWFUL METHODS OF TAKE.

No person shall take big game animals as outlined in this section. (7-1-93)

01. Firearms. (7-1-93)

a. With any firearm that, in combination with a scope, sling, and/or any other attachments, weighs more than sixteen (16) pounds. (7-1-93)

b. With any shotgun using any shot smaller than double-aught (#00) buck. (7-1-93)

c. With any rimfire rifle, rimfire handgun or any muzzleloading handgun, EXCEPT

for mountain lion and trapped gray wolf. (~~7-1-93~~)()

- d.** With a fully automatic firearm. (10-26-94)
- e.** With any electronic device attached to, or incorporated in, the firearm (including handguns and shotguns) or scope; except scopes containing battery powered or tritium lighted reticles are allowed. (4-2-08)
- 02. Bows, Crossbows, Arrows, Bolts, Chemicals or Explosives.** (3-20-97)

 - a.** With arrows or bolts having broadheads measuring less than seven-eighths (7/8) inch in width and having a primary cutting edge less than fifteenth-thousandths (0.015) inch thick. (7-1-93)
 - b.** With any bow having a peak draw weight of less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of less than one hundred-fifty (150) pounds. (3-20-97)
 - c.** With any chemicals or explosives attached to the arrow or bolt. (7-1-93)
 - d.** With arrows or bolts having expanding broadheads. (7-1-93)
 - e.** With arrows or bolts having barbed broadheads. A barbed broadhead is a broadhead which has any portion of the rear edge of the broadhead forming an angle less than ninety (90) degrees with the shaft or ferrule. (7-1-93)
 - f.** With any electronic or tritium-powered device attached to, or incorporated into, an arrow, bolt, crossbow, or bow (except nonmagnifying scopes containing battery powered or tritium lighted reticles may be used by disabled archery permit holders). (5-8-09)
 - g.** With any bow capable of shooting more than one (1) arrow at a time. (7-1-93)
 - h.** With any compound bow with more than eighty-five percent (85%) let-off. (4-2-08)
 - i.** With an arrow and broadhead, or bolt and broadhead, with a combined total weight of less than three hundred (300) grains. (4-2-08)
 - j.** With an arrow less than twenty-four (24) inches or a crossbow bolt less than twelve (12) inches in length from the broadhead to the nock inclusive. (4-2-08)
 - k.** With an arrow wherein the broadhead does not proceed the shaft and nock. (3-30-01)
 - l.** During an *Archery Only* season, with any firearm, crossbow (except holders of handicapped archery permits), or other implement other than a longbow, compound bow, or recurve bow, or: (3-30-07)

- i. With any device attached that holds a bow at partial or full draw (except holders of handicapped archery permits). (3-30-07)
- ii. With any bow or crossbow equipped with magnifying sights. (3-20-97)
- m.** During a *Traditional Archery Only* season, with any firearm, crossbow, or other implement other than a longbow or recurve bow, or:
 - i. With an arrow not constructed of wood or fletched with non-natural material. (3-15-02)
 - ii. With any bow equipped with sights. (3-15-02)
- n.** With any crossbow pistol. (3-20-97)
- 03. Muzzleloaders.** (7-1-93)
 - a.** With a muzzleloading rifle or musket which is less than forty-five (.45) caliber for deer, pronghorn, mountain lion, or gray wolf, or which is less than fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (4-7-11)
 - b.** With any electronic device attached to, or incorporated in, the muzzleloader. (3-30-01)
 - c.** During a *Muzzleloader Only* season, with any firearm, muzzleloading pistol or other implement other than a muzzleloading rifle or musket which:
 - i. Is at least forty-five (.45) caliber for deer, pronghorn, mountain lion, or gray wolf, or at least fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat or black bear. (4-7-11)
 - ii. Is capable of being loaded only from the muzzle. (7-1-93)
 - iii. Is equipped only with open or peep sights. (7-1-93)
 - iv. Is loaded only with loose black powder or, loose Pyrodex or other loose synthetic black powder. Pelletized powders are prohibited. (4-2-08)
 - v. Is equipped with no more than two (2) barrels. (7-1-93)
 - vi. Is loaded only with a projectile with a diameter within one hundredth (.01) of an inch of the bore diameter. Sabots are prohibited. (4-2-08)
 - vii. Is equipped only with flint, musket cap, or percussion cap. 209 primers are prohibited. (4-2-08)
 - viii. Is equipped with an exposed ignition system. (5-8-09)
 - ix. Is loaded only with a patched round ball or conical non-jacketed projectile

comprised wholly of lead or lead alloy. Sabots are not allowed. (4-11-06)

04. Short-Range Weapon. During Short-Range Weapon ONLY seasons ONLY the following weapons may be used: (7-1-99)

- a. With any shotgun using any slug or double-aught (#00) or larger buckshot. (7-1-99)
- b. With any muzzleloader that is at least forty-five (0.45) caliber for deer, pronghorn, mountain lion, or gray wolf, or at least fifty (0.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (4-7-11)
- c. With any bow having a peak draw weight of not less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of not less than one hundred fifty (150) pounds. (7-1-99)
- d. With any handgun using straight wall centerfire cartridges not originally developed for rifles. (3-29-10)

05. Other. (7-1-93)

a. With electronic calls EXCEPT for the hunting of mountain lions, black bears, and wolves in seasons set by Idaho Fish and Game Commission proclamation. (4-7-11)

b. With any bait including grain, salt in any form (liquid or solid), or any other substance (not to include liquid scent) to constitute an attraction or enticement, with the exception of applicable rules for the black bear baiting permit **and gray wolf trapping**. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.17, "Rules Governing the Use of Bait **and Trapping** for Taking Big Game Animals"; ~~additionally with the exception that wolves may be trapped or taken near a big game animal that has died naturally and the carcass has not been repositioned for trapping or hunting purposes. Natural causes shall not include any man-caused mortality. Traps or snares may not be set or placed within thirty (30) feet of a carcass of a big game animal.~~ (3-29-12)()

c. With dogs, EXCEPT for mountain lion or black bear. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.15, "Rules Governing the Use of Dogs." (7-1-93)

d. With any net, snare, trap, chemical, deadfall or device other than legal firearm, archery or muzzleloader equipment; EXCEPT wolves may be trapped or snared in seasons set by Idaho Fish and Game Commission proclamation and subject to all trapping rules in IDAPA 13.01.167, ~~"The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals~~ **Rules Governing the Use of Bait and Trapping for Taking Big Game Animals.**" (4-7-11)()

e. Within an enclosure designed to prevent ingress or egress of big game animals, including fenced facilities defined as Domestic Cervidae Farms under Section 25-3501, Idaho Code, unless authorized by the director. This rule shall not apply to domestic cervidae which are lawfully privately owned elk, fallow deer, or reindeer. (4-6-05)

f. With radio telemetry or other electronic tracking devices used as an aid to locate big game animals. This rule does not affect the use of telemetry equipment on hounds or other sporting dogs. (4-7-11)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

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

DOCKET NO. 13-0108-1202

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b)2, 36-405(c)(2)(B), and 36-409(c), 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:

New laws (2012 House Bill 457 and House Bill 525) allow rules for controlled hunt tag designation to a minor child or grandchild, and for tag exemption for a disabled hunter companion assisting a disabled hunter with taking certain wildlife. These rules set the process for designating any controlled hunt tag to a minor child or grandchild, and exempt a disabled hunting companion from possessing a valid game tag when assisting a disabled hunter with a valid tag taking wildlife.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 233 through 240](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

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

EFFECTIVE DATE: The effective date of the temporary rule is **July 16, 2012**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b)2, 36-405(c)(2)(B), and 36-409(c), 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 24, 2012.

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:

New laws (2012 House Bill 457 and House Bill 525) allow rules for controlled hunt tag designation to a minor child or grandchild, and for tag exemption for a disabled hunter companion assisting a disabled hunter with taking certain wildlife. These rules set the process for designating any controlled hunt tag to a minor child or grandchild, and exempt a disabled hunting companion from possessing a valid game tag when assisting a disabled hunter with a valid tag taking wildlife.

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

The temporary rule is in compliance with amendments to governing law, and confers a benefit to certain hunters.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules implement statutory amendments. There are no identifiable representatives for the parties who may choose to participate in the designation of controlled hunt tags, disabled hunters or disabled hunter companions.

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

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1202

201. TAG EXCEPTION FOR COMPANION TO DISABLED HUNTER.

01. Assistance of Disabled Hunter by Designated Companion. Any disabled hunter possessing a valid disabled combination license or a disabled archery permit or a disabled hunt motor vehicle permit and who possesses a valid tag or who is a disabled veteran participating in a hunt as provided in Section 36-408(7), Idaho Code, may be accompanied, close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices, by a designated companion who may assist the disabled hunter with taking big game. ()

02. Valid License and Applicable Special Weapon Permit. A companion to a disabled hunter must have a valid license and applicable special weapon permit when assisting a disabled hunter with taking big game. ()

03. Excepted From Tag Possession. A companion assisting a disabled hunter is excepted from tag possession to take a big game animal wounded by a disabled hunter. All other applicable rules governing IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," shall apply. ()

04. Validation and Attachment of Tag. The companion to a disabled hunter may validate and attach the disabled hunter's tag on a big game animal per Subsection 320.01. ()

05. Accompanying the Disabled Hunter. The companion to a disabled hunter shall accompany the disabled hunter while hunting. Once the disabled hunter has wounded a big game animal, the companion does not need to be accompanied by the disabled hunter while taking an animal wounded by the disabled hunter or while tagging or retrieving a downed animal on behalf of the disabled hunter. ()

06. Written Statement of Designation. While taking a wounded big game animal to assist a disabled hunter, the companion to a disabled hunter shall possess a written statement of designation from the disabled hunter as their companion, signed by the disabled hunter including the disabled hunter's name, address, hunting license number, big game tag number, and the dates of designation as a companion. If a companion to a disabled hunter transports a big game animal on behalf of a disabled hunter, a proxy statement is required per Subsection 320.02. ()

07. Companion's Possession Limit. Big game animals killed, tagged, or retrieved by a designated companion on behalf of a disabled hunter do not count against the companion's possession limit. ()

08. Disabled Hunter Considered for Violation. The disabled hunter in possession of the valid tag shall be considered the hunter for violation of Section 351, waste of game meat. ()

~~2012~~. -- 249. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS).

260. TAGS FOR CONTROLLED HUNTS.

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

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

b. In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

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

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the

controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (4-7-11)

iv. Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

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

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (4-7-11)

iv. Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

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

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

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

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

f. Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

g. Any person who draws a fall controlled hunt tag may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag: EXCEPT; the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. (4-7-11)

h. Any resident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to a resident minor child or grandchild who is qualified to participate in the hunt. ()

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to a resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. ()

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

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

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

i. Any nonresident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to a nonresident minor child or grandchild who is qualified to participate in the hunt. ()

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to a resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. ()

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

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

iv. Designation of a controlled hunt tag shall be completed before the first opening

hunt date for the tag.

()

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

a. In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-7-11)

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

c. For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt tags; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

03. Eligibility. Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

a. Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt. (4-6-05)

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags nor Landowner Appreciation Program tags. EXCEPT all successful and unsuccessful pronghorn, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled pronghorn/deer/elk tags to hunt in any open general and/or controlled pronghorn, deer or elk hunt in the following hunting season. (4-7-11)

c. Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt

may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and pronghorn controlled hunt permit sales. (4-7-11)

d. Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Auction tag and lottery tag winners are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-7-11)

e. No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

f. Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (4-7-11)

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

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

i. Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

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

k. Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

l. Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

m. The Commission establishes youth only controlled hunts by proclamation. Only hunters twelve (12) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (5-8-09)

04. Applications. Individual applications or group applications for controlled hunts may be submitted electronically through the automated licensing system at any vendor location, through the Internet, over the telephone, or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be cancelled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. (4-7-11)

a. Spring black bear - Application period - January 15 - February 15. (4-6-05)

b. Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)

c. Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for first drawing - May 1 - June 5. (4-7-11)

d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)

e. Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for second drawing - August 5 - 15. (4-7-11)

05. Applicant Requirements. Applicants must comply with the following requirements: (7-1-93)

a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (4-7-11)

b. Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)

c. Several applications may be submitted in a single envelope so long as each

application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt tag hunts or controlled hunt extra tag hunts. (4-7-11)

d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, pronghorn, moose, bighorn sheep, mountain goat, black bear, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, pronghorn, black bear, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a tag in the mail. (4-7-11)

e. Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold by any Point-of-Sale vendor, through the Internet, or over the telephone on a first-come, first-served basis on the dates below UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt application and tag will be issued to successful controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. (4-7-11)

i. Spring Turkey and Spring Bear - April 1. (4-7-11)

ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)

iii. Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)

f. A "group application" for deer, elk, and pronghorn is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (4-7-11)

g. A "group application" for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)

h. If a group application exceeds the number of tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

i. Landowner permission hunt tags will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15. (4-7-11)

06. Refunds of Controlled Hunt Fees. (7-1-93)

a. Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise.

(3-20-97)

b. Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants.

(10-26-94)

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

(10-26-94)

d. Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department.

(7-1-93)

e. Application fees are nonrefundable.

(4-7-11)

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

()

07. Controlled Hunt Drawing. Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled.

(7-1-93)

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

(4-7-11)

09. Second Drawing Exclusion. The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt.

(3-29-10)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

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

DOCKET NO. 13-0108-1203

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b)(2) and 36-408(9), 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:

Rules are needed to govern use of new Governor's Wildlife Partnership Tags (auction controlled hunt tags) to describe control hunt use, eligibility, and other limitations.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 241 through 246](#).

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 W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

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

EFFECTIVE DATE: The effective date of the temporary rule is **August 27, 2012**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b)(2) and 36-408(9), 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 24, 2012.

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:

Rules are needed to govern use of new Governor's Wildlife Partnership Tags (auction controlled hunt tags) to describe control hunt use, eligibility, and other limitations.

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

The temporary rule complies with a statutory amendment (2012 Senate Bill 1256) and confers a benefit to certain hunters.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules implement a statutory amendment, and there are no identifiable representatives or interests affected by the eligibility and controlled hunt tag use rules.

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

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1203

260. TAGS FOR CONTROLLED HUNTS.

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

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

b. In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

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

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (4-7-11)

iv. Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

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

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (4-7-11)

iv. Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

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

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

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

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

f. Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

g. Any person who draws a fall controlled hunt tag may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag; EXCEPT; the hunter may choose not to purchase the controlled hunt tag by

the date set by Commission rule for the fall bear drawing. (4-7-11)

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

a. In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-7-11)

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

c. For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt tags; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

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

03. Eligibility. Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

a. Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt. (4-6-05)

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags, ~~not~~ Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. EXCEPT all successful and unsuccessful pronghorn, deer and elk hunters that comply with all Mandatory Report

requirements will be eligible to be randomly drawn for one (1) of ten (10) “Super” controlled pronghorn/deer/elk tags to hunt in any open general and/or controlled pronghorn, deer or elk hunt in the following hunting season. (4-7-11)()

c. Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and pronghorn controlled hunt permit sales. (4-7-11)

d. Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Bighorn sheep Auction tag recipients under IDAPA 13.01.08.700 and lottery tag winners recipients under IDAPA 13.01.08.800 are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-7-11)()

e. No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

f. Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (4-7-11)

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

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

i. Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner’s name and address on it along with the landowner’s signature. (7-1-98)

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

k. Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

l. Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

m. The Commission establishes youth only controlled hunts by proclamation. Only hunters twelve (12) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (5-8-09)

04. Applications. Individual applications or group applications for controlled hunts may be submitted electronically through the automated licensing system at any vendor location, through the Internet, over the telephone, or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be cancelled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. (4-7-11)

a. Spring black bear - Application period - January 15 - February 15. (4-6-05)

b. Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)

c. Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for first drawing - May 1 - June 5. (4-7-11)

d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)

e. Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for second drawing - August 5 - 15. (4-7-11)

05. Applicant Requirements. Applicants must comply with the following requirements: (7-1-93)

a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt extra tag for the same species. Additional applications for the same person or group for the same

species will result in all applicants being declared ineligible. (4-7-11)

b. Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)

c. Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt tag hunts or controlled hunt extra tag hunts. (4-7-11)

d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, pronghorn, moose, bighorn sheep, mountain goat, black bear, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, pronghorn, black bear, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a tag in the mail. (4-7-11)

e. Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold by any Point-of-Sale vendor, through the Internet, or over the telephone on a first-come, first-served basis on the dates below UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt application and tag will be issued to successful controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. (4-7-11)

i. Spring Turkey and Spring Bear - April 1. (4-7-11)

ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)

iii. Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)

f. A "group application" for deer, elk, and pronghorn is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (4-7-11)

g. A "group application" for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)

h. If a group application exceeds the number of tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

i. Landowner permission hunt tags will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15.

(4-7-11)

06. Refunds of Controlled Hunt Fees.

(7-1-93)

a. Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise.

(3-20-97)

b. Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants.

(10-26-94)

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

(10-26-94)

d. Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department.

(7-1-93)

e. Application fees are nonrefundable.

(4-7-11)

07. Controlled Hunt Drawing. Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled.

(7-1-93)

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

(4-7-11)

09. Second Drawing Exclusion. The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt.

(3-29-10)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

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

DOCKET NO. 13-0108-1204

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

Amendments to improve clarity and outreach to help both hunters and other motorized recreationalists understand the Motorized Hunting Rule. Definitions are clarified, and the rule provides for unit application rather than hunt designation.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 247 through 249](#).

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 W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) 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 24, 2012.

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 proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Amendments to improve clarity and outreach to help both hunters and other motorized recreationalists understand the Motorized Hunting Rule. Definitions are clarified, and the rule provides for unit application rather than hunt designation.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted because the Motorized Hunting Rule is controversial. Hunters who use an ATV are unlikely to reach a consensus with hunters opposed to ATVs.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written

comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1204

411. MOTORIZED ~~VEHICLE USE RESTRICTIONS~~ HUNTING RULE.

The use of motorized vehicles by hunters as an aid to hunting big game is restricted in certain areas. This use restriction is in addition to all federal, state and local laws, rules, regulations, ordinances and orders; including, but not limited to, any motorized vehicle licensing, registration, and permitting requirements and traffic laws. Hunters must comply with all motorized vehicle limits or prohibitions instituted by the landowner or land manager. Also, this use restriction rule is not an exception from, and is in addition to, the statutory prohibition against hunting from or by the use of any motorized vehicle set forth in Section 36-1101(b)(1), Idaho Code. (4-6-05)

01. Use Restriction. In designated ~~areas and hunts~~ **units from August 30 through December 31**, hunters may only use motorized vehicles on established roadways which are open to motorized traffic and capable of being traveled by full-sized automobiles. ~~Any other use by hunters is prohibited. All off-road use by hunters is prohibited.~~ (4-6-05)()

02. Exceptions. This use restriction rule shall not apply to the following permissible motorized vehicle uses **by hunters off of an established roadway**: (4-6-05)()

a. Holders of a valid Handicapped Persons Motor Vehicle Hunting Permit may use a motorized vehicle as allowed by the land owner or manager. (4-6-05)

b. Hunters may use a motorized vehicle to retrieve downed game if such travel is allowed by the land owner or manager. (4-6-05)

c. Hunters may use a motorized vehicle to pack camping equipment in or out if such travel is allowed by the land owner or manager; however, hunters shall not hunt while packing camping equipment. (4-6-05)

d. Private landowners **on their private land**, their authorized agents, and persons with written landowner permission ~~may use a motorized vehicle on their private land; however, they may not hunt from or by the use of any motorized vehicle as prohibited by Section 36-1101(b)(1), Idaho Code~~ **are excepted from the Motorized Hunting Rule use restriction.** (4-6-05)()

03. ~~Restricted Areas and Hunts.~~ ~~This motorized vehicle use restriction shall apply to identified areas and hunts in all Big Game Management Units. The hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Season Proclamation, which is published in a brochure available at department offices and license~~

~~vendors.~~

~~(4-6-05)~~

043. Defined Terms.

(4-6-05)

a. A motorized vehicle shall be defined as any water, land, or air vehicle propelled by means of steam, petroleum products, electricity, or any other mechanical power as set forth in Section 36-202, Idaho Code. ()

ab. A full-sized automobile shall be defined as any motorized vehicle with a gross weight in excess of one thousand five hundred (1,500) pounds. (4-6-05)

bc. An established roadway shall be defined as any road that is established, built, maintained, approved or designated by any governmental entity or private landowner for the purpose of travel by full-sized automobiles. An established roadway shows evidence of repeated use by full-sized automobiles, and may include a traveled way of natural earth with depressed wheel tracks and little or no vegetation in the wheel tracks. (4-6-05)

ed. A hunter shall be defined as a person engaged in the activity of ~~hunting~~ chasing, driving, flushing, attracting, pursuing, worrying, following after or on the trail of, shooting at, stalking, or lying in wait for, any wildlife whether or not such wildlife is then or subsequently captured, killed, taken, or wounded as ~~defined set forth~~ in Section 36-202(j), Idaho Code. ~~(4-6-05)~~()

412. DESIGNATED MOTORIZED ~~VEHICLE USE RESTRICTION~~ HUNTING RULE UNITS.

The motorized ~~vehicle~~ hunting use restriction applies to ~~areas and hunts in~~ units 29, 30, 30A, 32, 32A, 36A, 37, 37A, ~~39~~, 45, 47, 49, 50, 51, 52, 52A 53, 56, 58, 59, 59A, 66, 66A, 69, 70, 72 ~~(late season)~~, 73, 75, 76, 77, and 78. ~~The specific hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Season Proclamation, which is published in a brochure available at department offices and license vendors.~~ (4-7-11)()

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

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

DOCKET NO. 13-0108-1205

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

The Commission has received comments about the equitable distribution of Landowner Appreciation Tags. This proposed rule make the following change: implement a one year waiting period for antlered deer and elk LAP hunts oversubscribed by a ratio of 2:1 or greater.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 250 through 255](#).

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 W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) 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 24, 2012.

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 proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Commission has received comments about the equitable distribution of Landowner Appreciation Tags. This proposed rule make the following change: implement a one year waiting period for antlered deer and elk LAP hunts oversubscribed by a ratio of 2:1 or greater.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted because the Landowner Appreciation Program and the distribution of LAP tags are controversial. Landowners, hunters and sporting groups are unlikely to reach a consensus.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written

comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1205

260. TAGS FOR CONTROLLED HUNTS.

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

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

b. In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

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

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (4-7-11)

iv. Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (4-7-11)

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

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (4-7-11)

iv. Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt-archery, muzzleloader, general or controlled hunt. (4-7-11)

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

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

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

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

f. Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

g. Any person who draws a fall controlled hunt tag may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag; EXCEPT; the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. (4-7-11)

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

a. In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-7-11)

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

c. For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt tags; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

03. Eligibility. Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

a. Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt. (4-6-05)

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags, ~~nor~~ Landowner Appreciation Program tags hunts where the number of eligible landowners is less than twice the available tags, or left-over Landowner Appreciation Program tags. EXCEPT all successful and unsuccessful pronghorn, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled pronghorn/deer/elk tags to hunt in any open general and/or controlled pronghorn, deer or elk hunt in the following hunting season. (4-7-11)()

c. Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and pronghorn controlled hunt permit sales. (4-7-11)

d. Any person who has killed a California bighorn ram or a Rocky Mountain bighorn

ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Auction tag and lottery tag winners are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies.

(4-7-11)

e. No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year.

(7-1-93)

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

(4-7-11)

g. Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag.

(4-7-11)

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

(4-7-11)

i. Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature.

(7-1-98)

j. Any person may apply for both a controlled hunt tag and a controlled hunt extra tag.

(4-7-11)

k. Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs."

(7-1-99)

l. Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application.

(4-11-06)

m. The Commission establishes youth only controlled hunts by proclamation. Only hunters twelve (12) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come,

first-served leftover youth only controlled hunt permits. (5-8-09)

04. Applications. Individual applications or group applications for controlled hunts may be submitted electronically through the automated licensing system at any vendor location, through the Internet, over the telephone, or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be cancelled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. (4-7-11)

- a.** Spring black bear - Application period - January 15 - February 15. (4-6-05)
- b.** Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)
- c.** Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for first drawing - May 1 - June 5. (4-7-11)
- d.** Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)
- e.** Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for second drawing - August 5 - 15. (4-7-11)

05. Applicant Requirements. Applicants must comply with the following requirements: (7-1-93)

- a.** Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (4-7-11)
- b.** Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)
- c.** Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt tag hunts or controlled hunt extra tag hunts. (4-7-11)
- d.** Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, pronghorn, moose, bighorn sheep, mountain goat, black

bear, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, pronghorn, black bear, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a tag in the mail. (4-7-11)

e. Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold by any Point-of-Sale vendor, through the Internet, or over the telephone on a first-come, first-served basis on the dates below UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt application and tag will be issued to successful controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. (4-7-11)

i. Spring Turkey and Spring Bear - April 1. (4-7-11)

ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)

iii. Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)

f. A “group application” for deer, elk, and pronghorn is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (4-7-11)

g. A “group application” for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)

h. If a group application exceeds the number of tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

i. Landowner permission hunt tags will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15. (4-7-11)

06. Refunds of Controlled Hunt Fees. (7-1-93)

a. Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)

b. Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible

applicants. (10-26-94)

c. Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

d. Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. (7-1-93)

e. Application fees are nonrefundable. (4-7-11)

07. Controlled Hunt Drawing. Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)

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

09. Second Drawing Exclusion. The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt. (3-29-10)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b)2, 36-405(c)(2)(B), and 36-409(c), 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:

New laws (2012 House Bill 457 and House Bill 525) allow rules for controlled hunt tag designation to a minor child or grandchild, and for tag exemption for a disabled hunter companion assisting a disabled hunter with taking certain wildlife. These rules set the process for designating any controlled hunt tag to a minor child or grandchild, and exempt a disabled hunting companion from possessing a valid game tag when assisting a disabled hunter with a valid tag taking wildlife.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 256 to 259](#).

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 W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

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

EFFECTIVE DATE: The effective date of the temporary rule is **July 16, 2012**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b), 36-405(c)(2)(B), and 36-409(c), 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 24, 2012.

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:

New laws (2012 House Bill 457 and House Bill 525) allow rules for controlled hunt tag designation to a minor child or grandchild, and for tag exemption for a disabled hunter companion assisting a disabled hunter with taking certain wildlife. These rules set the process for designating any controlled hunt tag to a minor child or grandchild, and exempt a disabled hunting companion from possessing a valid game tag when assisting a disabled hunter with a valid tag taking wildlife.

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

The temporary rule confers a benefit to certain hunters, and complies with amendments to governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules implement statutory amendments. There are no identifiable representatives for the parties who may choose to participate in the designation of controlled hunt tags, disabled hunters or disabled hunter companions.

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

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0109-1201

100. TAGS, STAMPS, PERMITS, AND VALIDATIONS.

01. Sage Grouse or Sharp-Tailed Grouse. No person shall hunt sage or sharp-tailed grouse anywhere within the state, except licensed shooting preserves, without having in his or her possession the appropriate hunting license that has been validated for sage grouse and sharp-tailed grouse. The validation shall be valid from January 1 through December 31 of each year. (5-8-09)

02. Migratory Game Birds. No person shall hunt ducks, geese, brant, coots, Wilson's snipe, sandhill cranes, or mourning doves anywhere within the state, without having in his or her possession the appropriate hunting license that has been validated for the Federal Migratory Game Bird Harvest Information Program. The validation shall be valid from January 1 through December 31 of each year. (3-29-12)

03. Wild Turkey. No person shall hunt wild turkey without having in his or her possession the appropriate hunting license, tag, and controlled hunt permit. Persons obtaining and using tags, stamps, and permits must comply with the following requirements: (7-1-98)

a. There are three (3) turkey tags available each calendar year. These are the general tag, extra tag, and special unit tag. Only three (3) turkey tags of the following may be purchased each year; one (1) general and two (2) extra. In addition to the previously mentioned three (3) turkey tags, three (3) special unit tags may also be purchased. A hunter may use the general tag to

hunt in any spring general season or use the general tag with a controlled hunt permit to hunt in a controlled hunt. (3-29-12)

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

c. Nonresident permit limitations: On controlled hunts with ten (10) or fewer permits, not more than one (1) permit will be issued to nonresidents. On controlled hunts with more than ten (10) permits, not more than ten percent (10%) of the permits may be issued to nonresidents. (7-1-98)

d. Eligibility: The holders of valid hunting licenses are eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

i. Holders of a Type 208 Nongame Hunting License may not apply for any controlled hunt. (7-1-93)

ii. In the event a permit is issued based on erroneous information, the permit will be invalidated and the person will remain on the drawn list. (7-1-93)

e. Applications: Applications for spring and fall controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than February 15 for spring hunts and July 15 for fall hunts, annually. Applications must comply with the following requirements: (5-8-09)

i. Holders of a Duplicate License (Type 501) must use their original license number to apply for a controlled hunt. Duplicate license numbers will not be accepted. (7-1-93)

ii. Only one (1) application card per person or group will be accepted. Additional application cards will result in all applicants being declared ineligible. (7-1-93)

iii. Fees: All applicants for controlled hunts must submit a non-refundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. (5-8-09)

iv. A single payment (either cashier's check, money order, certified check, or personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. (2-7-95)

v. A "group application" is defined as two (2) hunters applying for the same controlled hunt on the same application. (2-7-95)

vi. Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (7-1-93)

vii. All spring wild turkey hunters may apply for a Fall turkey controlled hunt permit

during the same calendar year. (3-30-01)

f. Drawing information: Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing provided the second choice hunt applied for has not been filled. (7-1-93)

g. Tag validation and attachment: Immediately after any wild turkey is killed, the turkey tag must be validated and securely attached to the wild turkey. (7-1-93)

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

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

j. The Commission establishes youth-only controlled hunts by proclamation. Only hunters nine (9) to fifteen (15) years of age with a valid license may apply for youth-only controlled hunts, provided they are ten (10) to fifteen (15) years of age during the hunt for which they are applying, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth-only controlled hunt permits. Hunters nine (9) years of age with a valid license may apply for regular controlled hunts provided they are ten (10) years of age during the hunt for which they are applying. (4-7-11)

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

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

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

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

l. Any nonresident adult person who possesses a controlled hunt permit may designate the controlled hunt permit to a nonresident minor child or grandchild who is qualified to participate in the hunt. The designated child or grandchild shall possess the appropriate tag for the hunt. ()

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

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

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

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

101. TAG EXCEPTION FOR COMPANION TO DISABLED HUNTER.

01. Assistance of Disabled Hunter by Designated Companion. Any disabled hunter possessing a valid disabled combination license or a disabled hunt motor vehicle permit and who possesses a valid tag may be accompanied, close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices, by a designated companion who may assist the disabled hunter with taking a turkey or a sandhill crane. ()

02. Valid License. A companion to a disabled hunter must have a valid license when assisting a disabled hunter with taking turkey or sandhill crane. ()

03. Excepted From Tag or Control Hunt Permit Possession. A companion assisting a disabled hunter is excepted from tag or control hunt permit possession to take a turkey or sandhill crane wounded by a disabled hunter. All other applicable rules governing the taking of turkey and sandhill crane in this chapter shall apply to the companion assisting the disabled hunter. ()

04. Validation and Attachment of Tag. The companion to a disabled hunter may validate and attach the disabled hunter's tag on a turkey or sandhill crane per Subsections 100.02 and 100.03. ()

05. Accompanying the Disabled Hunter. The companion to a disabled hunter shall accompany the disabled hunter while hunting. Once the disabled hunter has wounded a turkey or sandhill crane, the companion does not need to be accompanied by the disabled hunter while taking a turkey or sandhill crane wounded by the disabled hunter or while tagging or retrieving a downed turkey or sandhill crane on behalf of the disabled hunter. ()

06. Written Statement of Designation. While taking a wounded turkey or sandhill crane to assist a disabled hunter, the companion to a disabled hunter shall possess a written statement of designation from the disabled hunter as their companion, signed by the disabled hunter including the disabled hunter's name, address, hunting license number, tag number and control hunt permit if applicable, and the dates of designation as a companion. If a companion to a disabled hunter transports a turkey or sandhill crane on behalf of a disabled hunter, a proxy statement is required per Section 36-502, Idaho Code. ()

07. Companion's Possession Limit. Turkey or sandhill crane killed, tagged, or retrieved by a designated companion on behalf of a disabled hunter do not count against the

companion's possession limit. ()

08. Disabled Hunter Considered for Violation. The disabled hunter in possession of the valid tag shall be considered the hunter for violation of IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in Idaho," Section 351, Waste of Game Meat. ()

10~~2~~. -- 199. (RESERVED)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1202

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

Specify that sandhill crane tags must be validated by removing the notches for month and day of kill (similar to the requirement for turkey tags).

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 260 through 262](#).

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 W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

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

EFFECTIVE DATE: The effective date of the temporary rule is **July 16, 2012**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b), 36-1101 and 36-1102(b), 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 24, 2012.

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:

Specify that sandhill crane tags must be validated by removing the notches for month and day of kill (similar to the requirement for turkey tags).

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

The temporary rule confers a benefit to certain hunters, and these rules are needed for the 2012 Sandhill Crane hunting season.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there is a lack of identifiable representatives of resident and nonresident Sandhill Crane hunters. Interested persons are unlikely to reach consensus on tagging and permit validation requirements.

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

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0109-1202

100. TAGS, STAMPS, PERMITS, AND VALIDATIONS.

01. Sage Grouse or Sharp-Tailed Grouse. No person shall hunt sage or sharp-tailed grouse anywhere within the state, except licensed shooting preserves, without having in his or her possession the appropriate hunting license that has been validated for sage grouse and sharp-tailed grouse. The validation shall be valid from January 1 through December 31 of each year. (5-8-09)

02. Migratory Game Birds. No person shall hunt ducks, geese, brant, coots, Wilson's snipe, sandhill cranes, or mourning doves anywhere within the state, without having in his or her possession the appropriate hunting license that has been validated for the Federal Migratory Game Bird Harvest Information Program. The validation shall be valid from January 1 through December 31 of each year. (3-29-12)

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

b. To validate the tag, the hunter must cut out and completely remove two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill. ()

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

03. Wild Turkey. No person shall hunt wild turkey without having in his or her possession the appropriate hunting license, tag, and controlled hunt permit. Persons obtaining and using tags, stamps, and permits must comply with the following requirements: (7-1-98)

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

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

c. Nonresident permit limitations: On controlled hunts with ten (10) or fewer permits, not more than one (1) permit will be issued to nonresidents. On controlled hunts with more than ten (10) permits, not more than ten percent (10%) of the permits may be issued to nonresidents. (7-1-98)

d. Eligibility: The holders of valid hunting licenses are eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

i. Holders of a Type 208 Nongame Hunting License may not apply for any controlled hunt. (7-1-93)

ii. In the event a permit is issued based on erroneous information, the permit will be invalidated and the person will remain on the drawn list. (7-1-93)

e. Applications: Applications for spring and fall controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than February 15 for spring hunts and July 15 for fall hunts, annually. Applications must comply with the following requirements: (5-8-09)

i. Holders of a Duplicate License (Type 501) must use their original license number to apply for a controlled hunt. Duplicate license numbers will not be accepted. (7-1-93)

ii. Only one (1) application card per person or group will be accepted. Additional application cards will result in all applicants being declared ineligible. (7-1-93)

iii. Fees: All applicants for controlled hunts must submit a non-refundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. (5-8-09)

iv. A single payment (either cashier's check, money order, certified check, or personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. (2-7-95)

v. A "group application" is defined as two (2) hunters applying for the same controlled hunt on the same application. (2-7-95)

- vi. Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (7-1-93)
- vii. All spring wild turkey hunters may apply for a Fall turkey controlled hunt permit during the same calendar year. (3-30-01)
- f. Drawing information: Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing provided the second choice hunt applied for has not been filled. (7-1-93)
- g. Tag validation and attachment: Immediately after any wild turkey is killed, the turkey tag must be validated and securely attached to the wild turkey. (7-1-93)
- h. To validate the tag, the hunter must cut out and completely remove two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill. (7-1-93)
- i. The tag must remain attached so long as the turkey is in transit or storage. (7-1-93)
- j. The Commission establishes youth-only controlled hunts by proclamation. Only hunters nine (9) to fifteen (15) years of age with a valid license may apply for youth-only controlled hunts, provided they are ten (10) to fifteen (15) years of age during the hunt for which they are applying, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth-only controlled hunt permits. Hunters nine (9) years of age with a valid license may apply for regular controlled hunts provided they are ten (10) years of age during the hunt for which they are applying. (4-7-11)
- 04. Early September Canada Goose Hunts.** Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (3-29-12)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1203

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

Change the WMA Permit marking requirement to require non-erasable ink and removal of notch on permits. Require that Eurasian collared doves be left unplucked while in the field or in transport to their final place of consumption to improve identification. Allow an exception to the Hagerman WMA hunting closure for Department sponsored waterfowl hunts.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 263 through 267](#).

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 W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) 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 24, 2012.

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:

Change the WMA Permit marking requirement to require non-erasable ink and removal of notch on permits. Require that Eurasian collared doves be left unplucked while in the field or in transport to their final place of consumption to improve identification. Allow an exception to the Hagerman WMA hunting closure for Department sponsored waterfowl hunts.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted because interested persons are unlikely to reach consensus on tagging and permit requirements, or on exceptions to hunting closures.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written

comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0109-1203

200. IDENTIFICATION OF SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

Any person in possession of or transporting or shipping any game birds must comply with the following requirements: (7-1-93)

01. Wild Turkey. The beard or leg of wild turkey must be left naturally attached to the carcass. (3-30-01)

02. All Other Game Birds and Eurasian-Collared Doves. One (1) fully-feathered wing or the head must be retained on all other dressed game birds to permit identification as to species and sex while being transported between the place where taken and the personal abode of the possessor OR between the place where taken and a commercial processing or storage facility. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

400. AREAS CLOSED TO HUNTING OF GAME BIRDS.

01. General. Hunting, killing, or molesting of any game bird is prohibited in the following areas: (7-1-93)

a. That area of Craters of the Moon National Monument in Blaine and Butte Counties prior to the November 2000 expansion of the Monument by Presidential decree. It is the hunter's responsibility to check with the Park Service to be able to identify the closed area. (4-6-05)

b. Hagerman Fossil Beds National Monument in Twin Falls County, EXCEPT that portion within an area fifty (50) feet in elevation above the high water level of the Snake River (the upslope area is marked by yellow fiberglass markers, and hunting is permitted downslope to the river). (3-20-97)

c. Harriman State Park Wildlife Refuge in Fremont County. (7-1-93)

d. Nez Perce National Historical Park in Clearwater, Idaho, and Nez Perce Counties. (7-1-93)

e. That portion of Ada County within Veterans Memorial Park and the area between State Highway 21, Warm Springs Avenue and the Boise City limits. (5-3-03)

f. Yellowstone National Park in Fremont County. (7-1-93)

g. Fort Boise Wildlife Management Area (WMA) in Canyon County from September 15 through the end of the waterfowl hunting season in the area enclosed by the following boundary: Beginning at the bridge across Sand Hollow Creek on Old Fort Boise Road approximately one hundred (100) yards west of the WMA headquarters, then north along the east bank of Sand Hollow Creek to its confluence with the Snake River, then north and northeast downstream along the east bank of the Snake River to the WMA boundary fence, then south and southeast along the WMA boundary fence to Old Fort Boise Road, then west on Old Fort Boise Road to the point of beginning. (3-20-97)

h. Roswell Marsh Wildlife Habitat Area in Canyon County on Sundays, Mondays, Tuesdays and Wednesdays from September 15 through the end of the waterfowl hunting season in the area south of Highway 18 and west of Pebble Lane (Roswell Marsh segment). (5-3-03)

i. On any of those portions of federal refuges, State game preserves, State wildlife management areas, bird preserves, bird refuges, and bird sanctuaries for which bird hunting closures have been declared by legislative or Commission action EXCEPT as otherwise expressly stated below in Section 410 under Game Preserves Open to Hunting of Game Birds. (7-1-93)

j. Mann's Lake in Nez Perce County and extending three hundred (300) yards beyond the Bureau of Reclamation property that encompasses the lake. (4-6-05)

02. Migratory Game Birds. In addition to the areas listed above, hunting, killing, or molesting of any migratory game bird EXCEPT mourning dove is prohibited in the following areas. Areas CLOSED to hunting of migratory game birds: (7-1-93)

a. Fort Hall Indian Reservation in Bingham, Bannock, and Power Counties within three hundred (300) yards each way of the Fort Hall Bluffs from Bigbend Boat Launch to the west boundary of the Fort Hall Indian Reservation, and within one hundred (100) yards of any improved roadway or inhabited dwelling any place within the reservation boundary. (7-1-93)

b. Hagerman Wildlife Management Area (WMA) in Gooding County in the area enclosed by the following boundary: Beginning at a point two hundred (200) yards west of the point at which U.S. Highway 30 crosses the south bank of Gridley Island, then northwest along a line two hundred (200) yards southwest of and parallel to U.S. Highway 30 to a point two hundred (200) yards west of the junction of U.S. Highway 30 and the WMA entrance, then west and north and east along a line two hundred (200) yards outside of the WMA boundary which is marked by a fence, to the point at which the fence meets U.S. Highway 30, then east and south along a line five hundred (500) yards outside of the WMA boundary to the Snake River, then downstream along the north bank of the Snake River and then along the south bank of Gridley Island to the point where U.S. Highway 30 crosses the south bank of Gridley Island, then two hundred (200) yards west of U.S. Highway 30 to the point of beginning. Exception: Department sponsored youth waterfowl hunts. (4-2-08)()

c. Hubbard Reservoir in Ada County including the shoreline area within two hundred (200) yards of the existing water line. (7-1-93)

d. Mann's Lake in Nez Perce County and extending three hundred (300) yards beyond the Bureau of Reclamation property line that encompasses the lake. (3-15-02)

e. Mormon Reservoir in Camas County including the shoreline area within two hundred (200) yards of the ordinary high water line. (7-1-93)

f. Pend Oreille River in Bonner County within two hundred (200) yards each way of the ordinary high water line two thousand sixty-two and one-half (2,062.5) feet above sea level from the U.S. Highway 95 long bridge at Sandpoint downstream to an imaginary line between Springy Point on the south side of the river and Dover Peninsula on the north side of the river. (7-1-93)

g. Spokane River in Kootenai County from the Post Falls Dam to Lake Coeur d'Alene at the orange pilings, within two hundred (200) yards of the ordinary high water line two thousand one hundred twenty-eight (2,128) feet above sea level. (7-1-98)

h. Thompson Lake in Kootenai County in the area enclosed by the following center-of-roadway boundary and in the additional area within one hundred (100) yards of the exterior side of said boundary: Beginning at the junction of State Highway 97 and Thompson Lake Road 317 north of the town of Harrison, then along Thompson Lake Road 317 to the junction of Blue Lake Road 318 east of Thompson Lake, then along Blue Lake Road 318 to the junction of Anderson Lake Road 319 at Springston, then along Anderson Lake Road 319 to the Union Pacific Railroad tracks, then west along the Union Pacific Railroad tracks to the junction of State Highway 97 west of Harrison, then along State Highway 97 to the point of beginning. (7-1-93)

03. Geese. Areas CLOSED to the hunting of geese. In addition to the areas listed in Section 301 and Subsection 301.01 above, the hunting, killing, or molesting of any species of geese is prohibited in the following areas: (7-1-93)

a. Canyon County in the area enclosed by the following roadway boundary and within one hundred fifty (150) feet of the exterior side of said boundary (except that the closure shall extend to one hundred (100) yards from the exterior side of said boundary along that section commencing at the junction of Lake Shore Drive and Rim Road, then south on Rim Road to west Lewis Lane, then east on west Lewis Lane to Lake Shore Drive, then along Lake Shore Drive to Emerald Road): Beginning approximately three fourths (3/4) of a mile south of the City of Nampa at the junction of State Highway 45 (12th Avenue Road) and Greenhurst Road, then west following Greenhurst Road to its junction with Middleton Road, then north following Middleton Road to its junction with Lake Lowell Avenue, then west following Lake Lowell Avenue to its junction with Lake Avenue, then north following Lake Avenue to its junction with West Roosevelt Avenue, then west following West Roosevelt Avenue to its junction with Indiana Avenue, then north following Indiana Avenue to its junction with State Highway 55 (Karcher Road), then west following State Highway 55 to its junction with Riverside Road, then south following Riverside Road to the Deer Flat National Wildlife Refuge boundary, then west along boundary fence below lower embankment as posted to Lake Shore Drive, then in a southeast direction following Lake

Shore Drive to its junction with Marsing Road, then east and south on Lake Shore Drive to Rim Drive, then south on Rim Drive to West Lewis Lane, then east on West Lewis Lane to Lake Shore Drive, then southeast on Lake Shore Drive to State Highway 45, then north on State Highway 45 to its junction with Greenhurst Road, the point of beginning. (7-1-93)

b. Hagerman Valley in Gooding and Twin Falls Counties in the area enclosed by the following boundary: Beginning at the Gridley Island Bridge on the Snake River, then south and east on U.S. Highway 30 to Miracle Hot Springs, then east on Twin Falls County 4800 North Road (River Road) to Banbury Hot Springs, then upstream approximately three hundred (300) yards to the Banbury Pipeline crossing the Snake River, then east across the Snake River at the Banbury Pipeline, continuing due east to a point two hundred (200) yards east of the east rim of the Snake River Canyon, then north along a line parallel to and two hundred (200) yards east of the Snake River Canyon rim to the Gooding County 3500 South Road (Camp Roach Road), then east on the 3500 South Road to the 1500 East Road, then north on the 1500 East Road to the 3200 South Road, then west on the 3200 South Road to the 1300 East Road, then north on the 1300 East Road to the 1200 East Road, then northwest and north on the 1200 East Road to the 3000 South Road, then west on the 3000 South Road to a point (which is five hundred (500) yards east of the intersection of the 3000 South Road and the Hagerman National Fish Hatchery Road) five hundred (500) yards east of the Hagerman Wildlife Management Area (WMA) boundary, then north and west five hundred (500) yards outside the Hagerman WMA boundary to U.S. Highway 30, then west and south two hundred (200) yards outside the Hagerman WMA boundary to the 2900 South Road, then west on the 2900 South Road to the 900 East Road, then due south to a point two hundred (200) yards north of the Snake River, then west and north two hundred (200) yards outside the high water line on the east bank of the Snake River to Lower Salmon Dam, then west across the Snake River, then south, southwest and east two hundred (200) yards outside the high water line on the west bank of the Snake River (including the Idaho Power Upper Salmon Dam diversion canal) to the Gridley Bridge on U.S. Highway 30, the point of beginning. (12-7-94)

c. Minidoka and Cassia Counties in the area enclosed by the following boundary: Within two hundred (200) yards of the high water line of the Snake River from Milner Dam upstream to Meridian Road (north side of the Snake River) and 650 East Road (south side of the Snake River), approximately six and one-half (6 1/2) miles east of the City of Burley. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

600. PHEASANT SEASONS, BAG AND POSSESSION LIMITS.

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

01. WMA Upland Game Permit. (4-2-08)

a. Permit Requirement. Any person seventeen (17) years of age or older hunting for or having a pheasant in his or her possession on Fort Boise, C.J. Strike, Montour, Payette River,

Sterling, Market Lake, Mud Lake, Cartier, or Niagara Springs Wildlife Management Areas must have a valid WMA Upland Game Bird Permit in his or her possession. (5-8-09)

b. Permit Limit. The WMA Upland Game Bird Permit limit is six (6) cocks. Additional permits may be purchased. (4-2-08)

c. Recording Harvest. Any person harvesting a pheasant on any of the Wildlife Management Areas listed in Subsection 600.01.a. must immediately ~~record their harvest, in writing, on the back of their permit~~ validate their permit upon reducing a pheasant to possession by entering the harvest date and location in Non-Erasable ink, and removing a notch from the permit for each pheasant taken. (~~3-29-12~~)()

02. Youth Pheasant Season. This season shall be open statewide. (7-1-99)

a. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

b. The Youth Pheasant Season shall be open for all licensed hunters fifteen (15) years of age or younger. All youth hunters must be accompanied by an adult eighteen (18) years or older. One (1) adult may take more than one (1) youth hunter. (5-3-03)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1204

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

Rescind the Motorized Hunting Rule for these species.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 268 and 269](#).

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 W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) 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 24, 2012.

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:

Rescind the Motorized Hunting Rule for these species.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), negotiated rulemaking was not conducted because the Motorized Hunting Rule is controversial. Hunters who use and ATV are unlikely to reach a consensus with hunters opposed to ATVs.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0109-1204

~~**302: MOTORIZED VEHICLE USE RESTRICTIONS:**~~

~~The use of motorized vehicles by hunters as an aid to hunting game birds is restricted in certain areas. This use restriction is in addition to all federal, state and local laws, rules, regulations, ordinances and orders, including, but not limited to, any motorized vehicle licensing, registration, and permitting requirements and traffic laws. Hunters must comply with all motorized vehicle limits or prohibitions instituted by the landowner or land manager. Also, this use restriction rule is not an exception from, and is in addition to, the statutory prohibition against hunting from or by the use of any motorized vehicle set forth in Section 36-1101(b)(1), Idaho Code.~~ (4-6-05)

~~**01: Use Restriction.** In designated areas and hunts, hunters may only use motorized vehicles on established roadways which are open to motorized traffic and capable of being traveled by full-sized automobiles. Any other use by hunters is prohibited. All off-road use by hunters is prohibited.~~ (4-6-05)

~~**02: Exceptions.** This use restriction rule shall not apply to the following permissible motorized vehicle uses:~~ (4-6-05)

~~**a:** Holders of a valid Handicapped Persons Motor Vehicle Hunting Permit may use a motorized vehicle as allowed by the land owner or manager.~~ (4-6-05)

~~**b:** Hunters may use a motorized vehicle to retrieve downed game if such travel is allowed by the land owner or manager.~~ (4-6-05)

~~**c:** Hunters may use a motorized vehicle to pack camping equipment in or out if such travel is allowed by the land owner or manager; however, hunters shall not hunt while packing camping equipment.~~ (4-6-05)

~~**d:** Private landowners, their authorized agents and persons with written landowner permission may use a motorized vehicle on their private land; however, they may not hunt from or by the use of any motorized vehicle as prohibited by Section 36-1101(b)(1), Idaho Code.~~ (4-6-05)

~~**03: Restricted Areas and Hunts.** This motorized vehicle use restriction shall apply to identified areas and hunts in all Big Game Management Units. The hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Season Proclamation and Upland Game Bird Season Proclamation, which are published in a brochure available at department offices and license vendors.~~ (4-6-05)

~~**04: Defined Terms.**~~ (4-6-05)

~~**a:** A full-sized automobile shall be defined as any motorized vehicle with a gross weight in excess of one thousand five hundred (1,500) pounds.~~ (4-6-05)

~~b. An established roadway shall be defined as any road that is established, built, maintained, approved or designated by any governmental entity or private landowner for the purpose of travel by full-sized automobiles. An established roadway shows evidence of repeated use by full-sized automobiles, and may include a traveled way of natural earth with depressed wheel tracks and little or no vegetation in the wheel tracks. (4-6-05)~~

~~e. A hunter shall be defined as a person engaged in the activity of hunting as defined in Section 36-202(j), Idaho Code. (4-6-05)~~

3032. -- 399. (RESERVED)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

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

DOCKET NO. 13-0116-1201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

Allow trapping on Wildlife Management Areas with number of trappers to be limited by Regional Supervisors. Clean up a rule to allow consolidation of wolf trapping rules in another rules chapter.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 270 through 273](#).

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 W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

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

EFFECTIVE DATE: The effective date of the temporary rule is **July 16, 2012**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) 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 24, 2012.

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:

Allow trapping on Wildlife Management Areas with number of trappers to be limited by Regional Supervisors. Clean up a rule to allow consolidation of wolf trapping rules in another rules chapter.

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

The temporary rule confers a benefit to certain trappers, and is needed for the 2012 Trapping Season.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because trapping and wolves are very divisive topics. Interested persons are not likely to reach a consensus.

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

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0116-1201

400. METHODS OF TAKE.

01. Furbearing Animals. No person shall take beaver, muskrat, mink, marten, or otter by any method other than trapping. In Valley County and portions of Adams County in the Little Salmon River drainage, red fox may be taken only by trapping. (5-3-03)

02. Hunting. No person hunting permissible furbearing animals or predatory or unprotected wildlife shall: (7-1-93)

a. Hunt with any weapon the possession of which is prohibited by state or federal law. (7-1-93)

b. Hunt with dogs unless they comply with IDAPA 13.01.15, "Rules Governing the Use of Dogs." (7-1-93)

c. Hunt any furbearing animal with or by the aid of artificial light. (4-7-11)

d. Persons may hunt raccoon with the aid of an artificial light without a permit from the Director but no person hunting raccoon at night shall: (4-7-11)

i. Hunt from a motorized vehicle. (7-1-93)

ii. Use any light attached to any motor vehicle. (7-1-93)

iii. Hunt on private land without obtaining written permission from the landowner or

lessee. (7-1-93)

03. Trapping. No person trapping furbearing animals or predatory or unprotected wildlife shall: (7-1-93)

a. Use for bait or scent, any part of a domestic or wild origin game bird, big game animal, upland game animal, game fish, or protected nongame wildlife. (4-7-11)

b. Use any set within thirty (30) feet of any visible bait. (4-6-05)

c. Use a dirt hole ground set with bait unless the person ensures that the bait remains covered at all times to protect raptors and other meat-eating birds from being caught accidentally. (4-7-11)

d. Use live animals as a bait or attractant. (4-6-05)

e. Place any ground, water, or other sets on, across, or within five (5) feet of center line of any maintained public trail. (4-7-11)

f. Place any ground set on, across, or within any public highway as defined in Section 36-202, Idaho Code; except ground sets may be placed underneath bridges and within and at culverts that are part of a public highway right-of-way. (4-7-11)

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

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

~~**i.** Place or set any wolf snare without a diverter; or without a break-away device or cable stop incorporated within the loop of the snare. (3-29-12)~~

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

(BREAK IN CONTINUITY OF SECTIONS)

600. TRAPPING ON GAME PRESERVES AND WILDLIFE MANAGEMENT AREAS.

01. Game Preserves and Wildlife Management Areas. All state game preserves and Department of Fish and Game Wildlife Management Areas are open to the taking of furbearing animals by licensed trappers during the open season declared for the areas in which they lie. ~~However, the Sterling Wildlife Management Areas are open to muskrat or mink trapping by~~

~~controlled trapping permit only.~~

~~(5-8-09)()~~

02. Contact or Registration Requirements. Trappers who ~~are~~ **desire to** trapping on any of the following Wildlife Management Areas must ~~contact or~~ register **in advance** either at the management **area** headquarters or the regional office: ~~(7-1-93)()~~

- a. Billingsley Creek. (7-1-93)
- b. Boise River. (7-1-93)
- c. Andrus. (7-1-99)
- d. Camas Prairie Centennial Marsh. (7-1-93)
- e. C.J. Strike. (7-1-93)
- f. Carey Lake. (7-1-93)
- g. Cartier Slough. (7-1-93)
- h. Coeur d'Alene River. (7-1-93)
- i. Craig Mountain. (7-1-93)
- j. Fort Boise. (7-1-93)
- k. Hagerman. (7-1-93)
- l. Market Lake. (7-1-93)
- m. McArthur Lake. (7-1-93)
- n. Montpelier. (7-1-93)
- o. Mud Lake. (7-1-93)
- p. Niagara Springs. (7-1-93)
- q. Payette. (7-1-93)
- r. Portneuf. (7-1-93)
- s. Sand Creek. (7-1-93)
- t. Snow Peak. (7-1-93)
- u. Sterling. (7-1-93)

- v. Tex Creek. (7-1-93)
- w. Georgetown Summit. (5-8-09)
- x. Blackfoot River. (5-8-09)
- y. Boundary Creek. ()
- z. Cottonwood. ()
- aa. Deer Parks. ()
- bb. Farragut. ()
- cc. Montour. ()
- dd. Pend Oreille. ()
- ee. Red River. ()
- ff. St. Maries. ()

03. Restrictions. The Regional Supervisor where a wildlife management area (WMA) is located may establish limits on the number of trappers allowed on the WMA, a method of equitable allocation of trapping opportunity on a WMA, the number and types of sets allowed, and posting and reporting requirements. ()

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.17 - RULES GOVERNING THE USE OF BAIT FOR TAKING BIG GAME ANIMALS

DOCKET NO. 13-0117-1201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

Consolidate bear baiting and wolf trapping rules into one rules chapter. Establish gray wolf trapping requirements and methods of take. Allow the use of legally salvaged road kill as bait for trapping wolves. Allow the use of a trapped wolf carcass without the hide attached as bait. Eliminate requirements in Units 10 and 12 to remove bear baits from the field between the summer dog training season and fall season.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 274 through 279](#).

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 W. Dallas Burkhalter (208) 334-3715.

DATED this 21st day of November, 2012.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

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

EFFECTIVE DATE: The effective date of the temporary rule is **July 16, 2012**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) 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 24, 2012.

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:

Consolidate bear baiting and wolf trapping rules into one rules chapter. Establish gray wolf trapping requirements and methods of take. Allow the use of legally salvaged road kill as bait for trapping wolves. Allow the use of a trapped wolf carcass without the hide attached as bait. Eliminate requirements in Units 10 and 12 to remove bear baits from the field between the summer dog training season and fall season.

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

The temporary rule confers a benefit to hunters, trappers, and outfitters. These rules are needed for the 2012 Trapping and Hunting seasons.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because trapping and wolves are very divisive topics. Bear baiting is a divisive topic. Interested persons are not likely to reach a consensus on these topics.

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

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule and how an electronic copy can be obtained or, if otherwise unavailable, where copyrighted or other proprietary materials may be obtained: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 30th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0117-1201

IDAPA 13
TITLE 01
CHAPTER 17

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

000. LEGAL AUTHORITY.

The Idaho Fish and Game Commission is authorized under Sections 36-104(b) and 36-1101(a), Idaho Code, to adopt rules concerning the use of bait and trapping for taking big game animals.
(~~3-30-01~~)()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 13.01.17.000, et seq., Idaho Fish and Game Commission Rules IDAPA 13.01.17, “Rules Governing the Use of Bait and Trapping for Taking Big Game Animals.”
(~~3-30-01~~)()

02. Scope. These rules establish the methods for using bait for taking and trapping big

game animals in the state of Idaho.

(3-30-01)()

(BREAK IN CONTINUITY OF SECTIONS)

100. USE OF BAIT FOR HUNTING.

Bait **for hunting** is defined as any substance placed to attract big game animals, except liquid scent for deer and elk. Bait may be used to hunt ONLY black bear and ONLY under the following conditions, EXCEPT ~~wolves~~ **gray wolf** may be taken incidentally to bear baiting. (4-7-11)()

01. Time. (7-1-93)

a. No bait or bait container may be placed for the purpose of attracting or taking black bear prior to the opening of black bear take season EXCEPT ~~in that portion of Unit 12 north of State Highway 12 southwest of the Doe Creek Road (Forest Service Road 566) and northeast of Cabin Creek and Forest Service Road 486, and~~ bait may be placed one (1) week prior to the opening of bear season in Units **10, 12, 16A**, 17, 19, 20, 20A, 26 and 27. (5-8-09)()

b. All bait, bait containers and materials must be removed and all excavations refilled no later than seven (7) days after the close of each season; (spring, fall, or black bear dog training); **EXCEPT bait, bait containers, and materials may remain in Units 10 and 12 between the dog training season and the fall hunt.** (5-8-09)()

02. Location. (7-1-93)

a. No bait site may be located within two hundred (200) feet of any water (lake, pond, reservoir, year round free flowing spring and year round free flowing stream), or within two hundred (200) yards from any maintained trail or any road. (3-30-01)

b. No bait site may be located within one-half (1/2) mile of any designated campground or picnic area, administrative site, or dwelling. (7-1-93)

03. Types. (7-1-93)

a. No person shall use any part of a domestic or wild origin game bird, big game animal, upland game animal, game fish, or protected nongame wildlife for bait or scent. (4-7-11)

b. The skin must be removed from any mammal parts or carcasses used as bait. (7-1-93)

c. No person shall use salt in any form (liquid or solid) for bait. (3-29-10)

04. Containers. (7-1-93)

a. No bait may be contained within paper, plastic, glass, metal, wood or other nonbiodegradable materials, except that a single, metal container with a maximum size of fifty-

five (55) gallons may be used if securely attached at the bait site. (7-1-93)

b. No bait may be contained in any excavated hole greater than four (4) feet in diameter. (7-1-93)

05. Establishment of Bait Sites. (7-1-93)

a. Any structures constructed at bait sites using nails, spikes, ropes, screws, or other materials must be removed by the permit holder within seven (7) days after the close of each season; spring, fall, or black bear dog training. (7-29-10)

b. All bait sites must be visibly marked at the nearest tree or on the bait container using a tag supplied by the Department. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

201. -- ~~9~~399. (RESERVED)

400. TRAPPING BIG GAME ANIMALS.

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

01. Defined Terms. ()

a. 'Bait' for trapping purposes is defined as any animal parts; except bleached bones or liquid scent. ()

b. 'Ground set' is defined as any foothold trap, body-gripping trap, or snare originally set in or on the land (soil, rock, etc.). This includes any traps elevated up to a maximum of thirty-six (36) inches above the natural ground level. ()

c. For trapping purposes, a 'public trail' is defined as any trail designated by any city, county, state, or federal transportation or land management agency on the most current official map of the agency. ()

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

a. Use any set, EXCEPT a ground set. ()

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

i. Gray wolves may be trapped near a big game animal that has died naturally and the carcass has not been repositioned for trapping purposes. Natural causes shall not include any man-caused mortality. ()

ii. Gray wolves may be trapped using a carcass of a legally taken gray wolf with the hide removed. ()

iii. Gray wolves may be trapped using the parts of accidentally killed wildlife salvaged in accordance with IDAPA 13.01.10, "Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife," Subsections 300.02.c. and 300.02.d. in Game Management Units as identified by the Commission's Big Game Season Proclamation. The Proclamation is published in a brochure available at department offices and license vendors. ()

c. Use any set within thirty (30) feet of any visible bait; including bait allowed in Subsection 400.02.b.i., 400.02.b.ii., and 400.02.b.iii. ()

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

e. Use live animals as a bait or attractant. ()

f. Place any ground set on, across, or within five (5) feet of center line of any maintained public trail. ()

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

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

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

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

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

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

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

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

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

401. -- 449. (RESERVED)

450. TRAPS.

01. Checking Traps. ()

a. No person shall place snares or traps for gray wolves, without visiting every trap or snare once every seventy-two (72) hours and removing any catch therein. ()

b. Trappers acting under authority of the U.S. Department of Agriculture, Animal Plant Health Inspection Service, Wildlife Services are exempt from this rule. ()

02. Removing Trapped Animals of Another. No person shall remove a gray wolf from the trap or snare of another person. ()

03. Release of Non-Target Catches. ()

a. All non-target species caught alive shall be released immediately. Non-target species are defined as any species caught for which the season is closed. ()

b. Any trapper who catches a non-target species that is dead shall: ()

i. Prior to removing the animal, record the date and species of animal caught. This information must be included in the mandatory furtaker harvest report. ()

ii. Remove the animal from the trap and take it into possession. ()

iii. Notify the Department of Fish and Game through the local Conservation Officer, Sub-Regional or Regional office within seventy-two (72) hours to make arrangements to transfer the animal to the Department. ()

iv. The Department will reimburse trappers ten dollars (\$10) for each bobcat, wolverine, otter, or fisher caught accidentally and turned in. ()

04. Identification Tags for Traps. All traps or snares shall have attached to the snare or the chain of every trap, a metal tag bearing: ()

a. Name and Address. In legible English, the name and current address of the trapper; or ()

b. Number. A six (6) digit number assigned by the Department. ()

i. Any person wishing to mark his traps and/or snares with a six (6) digit number

must make application to the Department at a Regional office, the McCall office, or the Headquarters office. ()

ii. Any person who has been assigned a six (6) digit number to mark his traps and/or snares must notify the Department in writing at a Sub-Regional office, Regional office, or the Headquarters office within thirty (30) days of any change of address. ()

451. -- 459. (RESERVED)

460. MANDATORY CHECK AND REPORT REQUIREMENTS.

01. Wolf Telephone Report. Any trapper taking a gray wolf must report the harvest within seventy-two (72) hours by calling the Wolf Reporting Number, a toll-free telephone number published in the Big Game Season Proclamation. The Proclamation is published in a brochure available at Department offices and license vendors. ()

02. Harvest Report and Presentation of Animal Parts. In addition to other reporting requirements, any trapper taking a gray wolf must, WITHIN TEN (10) DAYS OF DATE OF KILL, comply with the mandatory check and report requirements by: ()

a. Completing the relevant harvest report (big game mortality report or other report form as required) for the species taken. ()

b. Present the following animal parts so that Department personnel may collect biological data and mark the animal parts: ()

i. Gray Wolf: Skull and hide to be presented to a Conservation Officer or Regional Office for removal and retention of a premolar tooth, and to have the hide marked. No person who does not possess a fur buyer or taxidermist license and/or appropriate import documentation shall have in possession, except during the open season and for ten (10) days after the close of the season, any raw gray wolf pelt that does not have an official state export tag attached (either Idaho's or another state's official export documentation). ()

03. Trapping Report Completion. All trappers shall fill out the mandatory furtaking harvest report provided by the Department. Trappers shall return the completed mandatory report to the Department of Fish and Game, Box 25, Boise, Idaho 83707, by July 31. Any trapper failing to make such a report by July 31 shall be refused a license to trap animals for the following year. ()

461. MANDATORY WOLF TRAPPER EDUCATION CLASS.

Individuals interested in trapping wolves must purchase a trapping license and successfully complete a wolf trapping education class held by the Idaho Department of Fish and Game prior to trapping for wolves. A certificate of completion and trapping license will be required to purchase tags for wolf trapping. Trappers who complete the class will not be required to take the class again in the future. ()

462. -- 499. (RESERVED)

500. IDENTIFICATION OF ANIMALS THAT LEGALLY MAY BE TAKEN; TAG VALIDATION AND ATTACHMENT AND PROXY STATEMENT; IDENTIFICATION OF SEX, SIZE, AND/OR SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

Gray wolves may only be trapped and taken, and legally possessed in accordance with all rules outlined in Sections 300, 320, and 350 in IDAPA 13.01.08, “Rules Governing the Taking of Big Game Animals in the State of Idaho.” ()

501. -- 504. (RESERVED)

505. AREAS CLOSED TO HUNTING AND TRAPPING, AND TRAPPING ON GAME PRESERVES AND WILDLIFE MANAGEMENT AREAS.

Gray wolves may only be trapped and taken, and legally possessed in accordance with all rules outlined in IDAPA 13.01.08, “Rules Governing the Taking of Big Game Animals in the State of Idaho,” Section 500, and in accordance with all rules outlined in IDAPA 13.01.16, “The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals,” Sections 600 and 650. ()

506. -- 999. (RESERVED)

IDAPA 20 - DEPARTMENT OF LANDS

20.02.01 - RULES PERTAINING TO THE IDAHO FOREST PRACTICES ACT

DOCKET NO. 20-0201-1201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 58-104(6), 58-105 and 38-1304, Idaho Code.

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

A detailed summary of the reason for adopting the rule is set forth in the Negotiated Rulemaking published in the July 4, 2012, Idaho Administrative Bulletin, [Volume 12-7, pages 104 and 105](#). Rule changes are being made to clarify protective measures and sustainability standards set forth in the Forest Practices Act administrative rules. Needed rule amendments are determined by the Idaho Forest Practices Act Advisory Committee (FPAAC) and the Idaho Department of Lands following receipt of suggested changes from the Idaho Department of Environmental Quality and other forest-management and natural-resources agencies and interest groups.

After consideration of comments and information received during the public comment period, FPAAC voted to remove the proposed streamside retention (shade) rule verbiage (proposed Subparagraph 030.07.e.ii.) from the pending rule, and to move forward with the other proposed rule changes, allowing more time for in-depth analysis of this specific rule amendment. All proposed rule changes directly related to this proposed streamside retention subparagraph have also been removed from the pending rule.

Rulemaking documents and public comments can be accessed at http://www.idl.idaho.gov/adminrule/forest_practices_rulemaking.html or by contacting the undersigned.

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 October 3, 2012, Idaho Administrative Bulletin, [Vol. 12-10, pages 439 through 455](#).

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 the pending rule, contact Ara Andrea at (208) 769-1525 or aandrea@idl.idaho.gov.

DATED this 20th day of November, 2012.

Ara Andrea
Service & Regulatory Program Manager
Idaho Department of Lands
PO Box 83720
Boise, Idaho 83720
(208) 769-1525/Fax (208) 769-1524
aandrea@idl.idaho.gov

THE FOLLOWING NOTICE WAS 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(s) 58-104(6), 58-105 and 38-1304, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Thursday, October 11, 2012, 1:00 p.m. (MDT)	Monday, October 15, 2012, 1:00 p.m. (PDT)
Idaho Department of Lands Garnet Conference Room 300 N. 6th Street, Suite 103 Boise, Idaho	Idaho Department of Lands Sundance Conference Room 3284 West Industrial Loop Coeur d'Alene, Idaho

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 Forest Practices Act Advisory Committee (FPAAC) is comprised of nine voting members across the state of Idaho representing family forest owners, industrial forest owners,

fisheries biologists, citizens at large, and logging operators. This committee is statutorily charged with advising the Idaho State Board of Land Commissioners, in cooperation with the Idaho Department of Lands (IDL), in rulemaking matters associated with the Idaho Forest Practices Act. As a result of quadrennial water-quality audits conducted by the Idaho Department of Environmental Quality (IDEQ) in 2000 and 2004, FPAAC has been working over the last 10 years to develop a science-based shade/streamside retention rule that is based on Idaho forest riparian data. The proposed shade rule will allow forest landowners to select from two options which are meant to address both shade and large wood recruitment in streams. In addition to the shade rule, the FPAAC committee has identified and approved other minor FPA rule changes since 2006. Altogether, the proposed changes include:

- Recognition of all formal land-management agreements with US Fish & Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS)
- Increased flexibility of landowners and operators to perform timber-salvage operations following wildfire, insect infestations and wind events
- Protection of soils and riparian areas from any ground-based equipment usage in steep, unstable or stream-adjacent areas
- Assignment of reforestation responsibility to the landowner at the time of harvest
- Clearer definitions of wet areas and the associated equipment-exclusion areas
- Lower stocking minimums for drier, southern forest types
- New science-based streamside-tree-retention minima for Class I streams (shade rule) that allow forest landowners to select between two options

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: not applicable.

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: not applicable.

NEGOTIATED RULEMAKING: Pursuant to Sections 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 8, 2012 Idaho Administrative Bulletin, **Volume 12-6, pages 25 and 26**; and the July 4, 2012, Idaho Administrative Bulletin, **Volume 12-7, pages 104 and 105**. Members of the public participated in the negotiated rulemaking process by attending the advertised meetings and by submitting written comments. The negotiated rulemaking record, which includes the negotiated rule draft, written public comments received, and the negotiated rulemaking summary, is available at http://www.idl.idaho.gov/adminrule/forest_practices_rulemaking.html.

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.

INCORPORATION BY REFERENCE: For assistance on technical questions concerning the proposed rule, contact Ara Andrea at (208) 769-1525 or aandrea@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 October 24th, 2012.

DATED this 31st day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0201-1201

010. DEFINITIONS.

Unless otherwise required by context as used in these rules: (10-14-75)

- 01. Act.** The Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code. (7-1-96)
- 02 Acceptable Tree Species.** Any of the tree species normally marketable in the region, which are suitable to meet stocking requirements. Acceptable trees must be of sufficient health and vigor to assure growth and harvest. (7-1-96)
- 03. Additional Hazard.** The debris, slashings, and forest fuel resulting from a forest practice. (10-14-75)
- 04. Average DBH.** Average diameter in inches of trees cut or to be cut, measured at four and one-half (4.5) feet above mean ground level on standing trees. All trees to be cut that do not have a measurable DBH will fall in the one inch (1") class. (7-1-96)
- 05. Best Management Practice (BMP).** A practice or combination of practices determined by the board, in consultation with the department and the forest practices advisory committee, to be the most effective and practicable means of preventing or reducing the amount of nonpoint pollution generated by forest practices. BMPs shall include, but not be limited to, those management practices included in these rules. (9-11-90)
- 06. Board.** The Idaho State Board of Land Commissioners or its designee. (10-14-75)
- 07. Buffer Strip.** A protective area adjacent to an area requiring special attention or protection. (10-14-75)
- 08. Chemicals.** Substances applied to forest lands or timber to accomplish specific purposes and includes pesticides, as defined in the Idaho Pesticide Law, Title 22, Chapter 34, Idaho Code, fertilizers, soil amendments, road dust abatement products and other materials that may present hazards to the environment. (7-1-98)
- ~~**09. Clear Cut.** A harvest method where trees are removed and the residual stocking is below the minimum stocking levels of Subsection 050.04. (4-11-06)~~
- ~~**109. Constructed Skid Trail.** A skid trail created by the deliberate cut and fill action of~~

a dozer or skidder blade resulting in a road-type configuration. (7-1-96)

140. Commercial Products. Saleable forest products of sufficient value to cover cost of harvest and transportation to available markets. (4-11-06)

121. Condition of Adjoining Area. Those fuel conditions in adjoining areas that relate to spread of fire and to economic values of the adjoining area. (1-24-78)

132. Contaminate. To introduce into the atmosphere, soil, or water sufficient quantities of substances that are injurious to public health, safety, or welfare or to domestic, commercial, industrial, agricultural or recreational uses or to livestock, wildlife, fish or other aquatic life. (4-11-06)

143. Cross-Ditch. A diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation, duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion. (3-13-90)

154. Cull. Nonmerchantable, alive, standing trees of greater height than twenty (20) feet. (1-24-78)

165. Department. The Idaho Department of Lands. (10-14-75)

176. Deterioration Rate. Rate of natural decomposition and compaction of fuel debris which decreases the hazard and varies by site. (1-24-78)

187. Director. The Director of the Idaho Department of Lands or his designee. (10-14-75)

198. Emergency Forest Practice. A forest practice initiated during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event to minimize damage to forest lands, timber, or public resources. (10-14-75)

2019. Fertilizers. Any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment. (10-14-75)

240. Fire Trail. Access routes that are located and constructed in a manner to be either useful in fire control efforts or deterring the fire spread in the hazard area. (10-14-75)

221. Forest Land. Federal, state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term includes federal, state and private land from which forest tree species have been removed but have not yet been restocked. It does not include land affirmatively converted to uses other than the growing of forest tree species. (7-1-96)

232. Forest Practice. (10-14-75)

a. The harvesting of forest tree species including felling, bucking, yarding, decking, loading and hauling; road construction, improvement or maintenance including installation or

improvement of bridges, culverts or structures which convey stream flows within the operating area; also including the clearing of forest land for conversion to non-forest use when harvest occurs; (7-1-98)

b. Road construction, reconstruction or maintenance of existing roads including installation or improvement of bridges, culverts or structures which convey streams not within the operating area associated with harvesting of forest tree species; (7-1-98)

c. Reforestation; (10-14-75)

d. Use of chemicals for the purpose of managing forest tree species or forest land; (7-1-98)

e. The management of slash resulting from harvest, management or improvement of forest tree species or the use of prescribed fire on forest land. (7-1-98)

f. “Forest Practice” shall not include preparatory work such as tree marking, surveying, and road flagging or removal or harvesting of incidental vegetation from forest lands; such as berries, ferns, greenery, mistletoe, herbs, mushrooms, or other products which cannot normally be expected to result in damage to forest soils, timber, or public resources. (10-14-75)

243. Forest Regions. Two (2) regions of forest land: one (1) being north of the Salmon River and one (1) being south of the Salmon River. (7-1-96)

254. Fuel Quantity. The diameter, the number of stems and the predominate species to be cut or already cut, and the size of the continuous thinning block all of which determine quantity of fuel per unit of area. (1-24-78)

265. Ground Based Equipment. Mobile equipment such as tractors, dozers, skidders, ~~and excavators, loaders,~~ mechanized harvesters ~~and forwarders~~ used for harvesting, site preparation or hazard reduction. This does not include cable systems associated with stationary yarding equipment. (7-1-96)()

276. Habitat Types. Forest land capable of producing similar plant communities at climax. (7-1-96)

287. Harvesting. A commercial activity related to the cutting or removal of forest tree species to be used as a forest product. A commercial activity does not include the cutting or removal of forest tree species by a person for his own personal use. (10-14-75)

298. Hazard. Any vegetative residue resulting from a forest practice which constitutes fuel. (1-24-78)

3029. Hazard Offset. Improvements or a combination of practices which reduces the spread of fire and increases the ability to control fires. (10-14-75)

310. Hazard Points. The number of points assigned to certain hazardous conditions on an operating area, to actions designed to modify conditions on the same area or to actions by the

operator, timber owner or landowner to offset the hazardous conditions on the same area.
(1-24-78)

321. Hazard Reduction. The burning or physical reduction of slash by treatment in some manner which will reduce the risk from fire after treatment. (10-14-75)

332. Lake. A body of perennial standing open water, natural or human-made, larger than one (1) acre in size. Lakes include the beds, banks or wetlands below the ordinary high water mark. Lakes do not include drainage or irrigation ditches, farm or stock ponds, settling or gravel ponds. Any reference in these rules to Class I streams shall also apply to lakes. (7-1-96)

343. Landowner. A person, partnership, corporation, or association of whatever nature that holds an ownership interest in forest lands, including the state. (10-14-75)

354. Large Organic Debris (LOD). Live or dead trees and parts or pieces of trees that are large enough or long enough or sufficiently buried in the stream bank or bed to be stable during high flows. Pieces longer than the channel width or longer than twenty (20) feet are considered stable. LOD creates diverse fish habitat and stable stream channels by reducing water velocity, trapping stream gravel and allowing scour pools and side channels to form. (3-13-90)

365. Merchantable Material. That portion of forest tree species suitable for the manufacture of commercial products which can be merchandised under normal market conditions. (10-14-75)

376. Merchantable Stand of Timber. A stand of trees that will yield logs or fiber:
(7-1-96)

a. Suitable in size and quality for the production of lumber, plywood, pulp, or other forest products; (10-14-75)

b. Of sufficient value at least to cover all costs of harvest and transportation to available markets. (10-14-75)

387. Noncommercial Forest Land. Habitat types not capable of producing twenty (20) cubic feet per acre per year. (7-1-96)

398. Operator. A person who conducts or is required to conduct a forest practice.
(10-14-75)

4039. Operating Area. That area where a forest practice is taking place or will take place. (1-24-78)

410. Ordinary High Water Mark. That mark on all water courses, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter. (10-14-75)

421. Outstanding Resource Water. A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. ORW constitutes as outstanding national or state resource that requires protection from nonpoint activities, including forest practices, that may lower water quality. (7-1-96)

432. Partial Cutting. The well distributed removal of a portion of the merchantable volume in a stand of timber. This includes seed tree, shelterwood, or individual tree selection harvesting techniques. (10-14-75)

443. Prescribed Fire. The controlled application of fire to wildland fuels in either their natural or modified state, under such conditions of weather, fuel moisture and soil moisture, to allow the fire to be confined to a predetermined area and at the same time to produce the intensity of heat and rate of spread required to meet planned objectives. (7-1-96)

454. Present Condition of Area. The amount or degree of hazard present before a thinning operation commences. (1-24-78)

465. Public Resource. Water, fish, and wildlife, and in addition means capital improvements of the State or its political subdivisions. (10-14-75)

476. Reforestation. The establishment of an adequately stocked stand of trees of species acceptable to the department to replace the ones removed by a harvesting or a catastrophic event on commercial forest land. (10-14-75)

487. Relief Culvert. A structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity. (10-14-75)

498. Rules. Rules adopted by the Board pursuant to Section 38-1304, Idaho Code. (7-1-96)

5049. Slash. Any vegetative residue three inches (3") and under in diameter resulting from a forest practice or the clearing of land. (7-1-96)

510. Site. An area considered as to its ecological factors with reference to capacity to produce forest vegetation; the combination of biotic, climatic, and soil conditions of an area. (10-14-75)

521. Site Factor. A combination of percent of average ground slope and predominate aspect of the forest practice area which relate to rate of fire spread. (1-24-78)

532. Site Specific Best Management Practice. A BMP that is adapted to and takes account of the specific factors influencing water quality, water quality objectives, on-site conditions, and other factors applicable to the site where a forest practice occurs, and which has been approved by the Department, or by the Board in consultation with the Department and the Forest Practices Advisory Committee. (7-1-96)

543. Size of Thinning Block. Acres of continuous fuel creating an additional hazard

within a forest practice area. Distance between the perimeter of thinning blocks containing continuous fuel must be a minimum of six (6) chains apart to qualify as more than one (1) block. (1-24-78)

554. **Snags.** Dead, standing trees twenty (20) feet and greater in height. (1-24-78)

565. **Soil Erosion.** Movement of soils resulting from forest practices. (10-14-75)

576. **Soil Stabilization.** The minimizing of soil movement. (10-14-75)

587. **State.** The state of Idaho or other political subdivision thereof. (10-14-75)

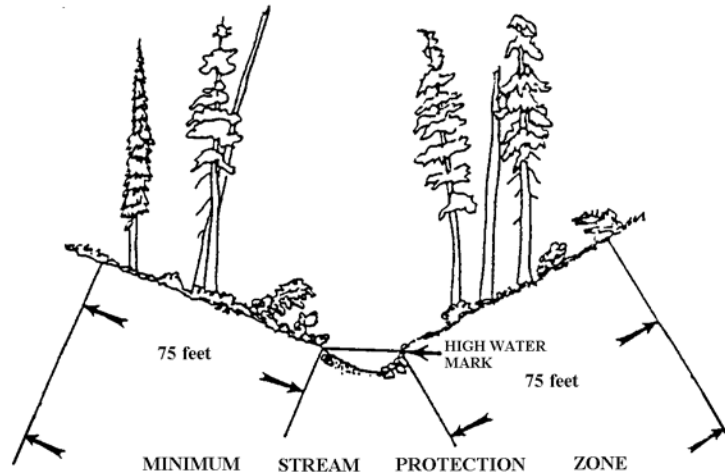
598. **Stream.** A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously or intermittently flowing water. Definite beds are defined as having a sandy or rocky bottom which results from the scouring action of water flow. Any reference in these rules to Class I streams shall also apply to lakes. (7-1-96)

a. Class I streams are used for domestic water supply or are important for the spawning, rearing or migration of fish. Such waters shall be considered to be Class I upstream from the point of domestic diversion for a minimum of one thousand three hundred and twenty (1,320) feet. (11-7-86)

b. Class II streams are usually headwater streams or minor drainages that are used by only a few, if any, fish for spawning or rearing. Where fish use is unknown, consider streams as Class II where the total upstream watershed is less than two hundred and forty (240) acres in the north forest region and four hundred and sixty (460) acres in the south forest region. Their principle value lies in their influence on water quality or quantity downstream in Class I streams. (7-1-96)

c. Class I Stream Protection Zone means the area encompassed by a slope distance of seventy-five (75) feet on each side of the ordinary high water marks. (Figure 1.)

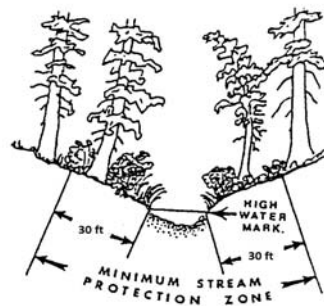
FIGURE 1
CLASS 1 STREAM PROTECTION ZONE



(7-1-96)

d. Class II Stream Protection Zone means the area encompassed by a minimum slope distance of thirty (30) feet on each side of the ordinary high water marks. (Figure 2.) For Class II streams that do not contribute surface flow into Class I streams, provide soil stabilization and water filtering effects by leaving undisturbed soils in widths sufficient to prevent washing of sediment. In no case shall this width be less than five (5) feet slope distance on each side of the ordinary high water marks.

FIGURE 2
CLASS II STREAM PROTECTION ZONE



(7-1-96)

~~6059~~ 610. Timber Owner. A person, partnership, corporation, or association of whatever nature, other than the landowner, that holds an ownership interest in forest tree species on forest land. (10-14-75)

~~610~~ 610. Time of Year of Forest Practice. Those combinations of months during which time the forest practice is taking place. Points assigned are: October through December - two (2) points; August through September - four (4) points; January through April - seven (7) points; May through July - ten (10) points. (1-24-78)

011. -- 019. (RESERVED)

020. GENERAL RULES.

01. Compliance. Practices contained within a rule shall be complied with to accomplish the purpose to which the rule is related. (8-13-85)

a. If conditions of sites or activities require the application of practices which differ from those prescribed by the rules, the operator shall obtain a variance according to the following procedure: (8-13-85)

i. The operator shall submit a request for variance to the department in writing. The request shall include a description of the site and particular conditions which necessitate a variance, and a description of proposed practices which, if applied, will result in a violation of the rules. (8-13-85)

ii. Within fourteen (14) calendar days the department shall evaluate the request and notify the operator in writing of the determination to allow or disallow the variance request. (7-1-96)

iii. All practices authorized under this procedure shall provide for equivalent or better results over the long term than the rules which are superseded to insure site productivity, water quality and fish and wildlife habitat. A variance can be applied only at approved sites. (8-13-85)

b. Practices shall also be in compliance with the Stream Channel Alteration Act (Title 42, Chapter 38, Idaho Code), Idaho Water Quality Standards and Waste Water Treatment Requirements (Title 39, Chapter 1, Idaho Code), the Idaho Pesticide Law (Title 22, Chapter 34, Idaho Code), and the Hazardous Waste Management Act of 1983 (Title 39, Chapter 44, Idaho Code), and rules and regulations pursuant thereto. (8-13-85)

c. Water may be diverted from a stream and used at any time to carry out Idaho forest practices and for forest road dust abatement, provided that: 1) The total daily volume diverted is no greater than two-tenths (0.2) acre-feet (65,170 gallons) from a single stream; and 2) The rate of diversion shall never exceed twenty-five (25) percent of the rate of flow then available in the stream at the point of diversion for these purposes. (5-8-09)

i. No person shall, under this Section 020, divert water from an irrigation canal, irrigation reservoir, or other irrigation facility while water is lawfully diverted, stored, captured, conveyed, used or otherwise physically controlled by an irrigator, irrigation district or canal

company. (5-8-09)

ii. If water is to be diverted from a stream within a water district, or from a stream from which an irrigation delivery entity diverts water, a person diverting water shall give notice to the watermaster of the intent to divert water for the purposes as authorized herein. (5-8-09)

iii. Water diversion intakes used for diversions under Subsection 020.01 shall be screened with a maximum screen mesh size as follows: 1) fish-bearing Class I streams: 3/32 inch, and 2) all other streams: 1/4 inch. (5-8-09)

d. Any alternative conservation measure having received a favorable Biological Opinion or Incidental Take Permit from the National Marine Fisheries Service or US Fish and Wildlife Service will be considered as complying with these rules. ()

02. Conversion of Forest Lands. Conversions require a notification be filed, and compliance with all rules except those relating to reforestation. On converted parcels larger than one (1) acre, plant acceptable vegetative cover sufficient to maintain soil productivity and minimize erosion. Cover shall be established within one (1) year of completion of the forest practice except that the director may grant an extension of time if weather or other conditions interfere. Within three (3) years of completion of the forest practice, the director shall determine if the conversion has been accomplished by: (7-1-96)

a. The presence or absence of improvements necessary for use of land for its intended purpose; (7-1-96)

b. Evidence of actual use of the land for the intended purpose. (10-14-75)

c. If the conversion has not been accomplished within three (3) years of the completion of harvest, supplemental reforestation Subsection 050.06 applies. (7-1-96)

03. Annual Review and Consultation. The director shall, at least once each year, meet with other state agencies and the Forest Practices Advisory Committee and review recommendations for amendments to rules, new rules, or repeal of rules. He shall then report to the board a summary of such meeting or meetings, together with recommendations for amendments to rules, new rules, or repeal of rules. (10-14-75)

04. Consultation. The director shall consult with other state agencies and departments concerned with the management of forest environment where expertise from such agencies or departments is desirable or necessary. (10-14-75)

a. The Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 58.01.02, (Title 39, Chapter 1, Idaho Code) reference the Forest Practice Rules as approved best management practices and describe a procedure of modifying the practices based on monitoring and surveillance. The director shall review petitions from Idaho Department of Environmental Quality for changes or additions to the rules according to Administrative Procedures Act (Title 67, Chapter 52, Idaho Code) and make recommendations for modification to the Board of Land Commissioners. (9-20-88)

05. Notification of Forest Practice. (10-14-75)

a. Before commencing a forest practice or a conversion of forest lands the department shall be notified as required in Subsection 020.05.b. The notice shall be given by the operator. However, the timber owner or landowner satisfies the responsibility of the operator under this subsection. When more than one forest practice is to be conducted in relation to harvesting of forest tree species, one notice including each forest practice to be conducted shall be filed with the department. (5-8-09)

b. The notification required by Subsection 020.05.a. shall be on forms prescribed and provided by the department and shall include the name and address of the operator, timber owner, and landowner; the legal description of the area in which the forest practice is to be conducted; whether the forest practice borders an outstanding resource water and other information the department considers necessary for the administration of the rules adopted by the board under Section 38-1304, Idaho Code. All notifications must be formally accepted by the department before any forest practice may begin. Promptly upon formal acceptance of the notice but not more than fourteen (14) calendar days from formal acceptance of the notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notification. The department shall make available to the operator, timber owner, and landowner a copy of the rules. (7-1-96)

c. An operator, timber owner, or landowner, whichever filed the original notification, shall notify the department of any subsequent change in the information contained in the notice within thirty (30) calendar days of the change. Promptly upon receipt of notice of change, but not to exceed fourteen (14) calendar days from receipt of notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notice of change. (7-1-96)

d. The notification is valid for the same period as set forth in the certificate of compliance under Section 38-122, Idaho Code. At the expiration of the notification, if the forest practice is continuing, the notification shall be renewed using the same procedures provided for in this section. (4-21-92)

e. If the notification required by Subsection 020.05.a. of this section indicates that at the expiration of the notification that the forest practice will be continuing, the operator, timber owner, or landowner, at least thirty (30) calendar days prior to the expiration of the notification, shall notify the department and obtain a renewal of the notification. Promptly upon receipt of the request for renewal, but not to exceed fourteen (14) calendar days from receipt of the request, the department shall mail a copy of the renewed notification to whichever of the operator, timber owner, or landowner that did not submit the request for renewal. (7-1-96)

06. Notification Exception. A notification of Forest Practice is required except for: (7-1-98)

a. Routine road maintenance, recreational uses, grazing by domestic livestock, cone picking, culture and harvest of Christmas trees on lands used solely for the production of Christmas trees, or harvesting of other minor forest products. (10-14-75)

b. Non-commercial cutting and removal of forest tree species by a person for his own personal use. (10-14-75)

c. Clearing forest land for conversion to surface mining or dredge and placer mining operations under a reclamation plan or dredge mining permit. (9-20-88)

07. Emergency Forest Practices. No prior notification shall be required for emergency forest practices necessitated by and commenced during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event. Within forty-eight (48) hours after commencement of such practice, the operator, timber owner, or landowner shall notify the director with an explanation of why emergency action was necessary. Such emergency forest practices are subject to the rules herein, except that the operator, timber owner, or landowner may take any reasonable action to minimize damage to forest lands, timber, or public resource from the direct or indirect effects of the catastrophic event. (7-1-96)

08. Duty of Purchaser. The initial purchaser of forest tree species which have been harvested from forest lands shall, before making such purchase or contract to purchase or accepting delivery of the same, receive and keep on file a copy of the notice required by Section 38-1306, Idaho Code relating to the harvesting practice for which the forest tree species are being acquired by the initial purchaser. Such notice shall be available for inspection upon request by the department at all reasonable times. (7-1-96)

09. State Divided into Regions. For the purpose of administering this Act, the State is divided into two (2) forest regions: one (1) north of the Salmon River and one (1) south of the Salmon River. (7-1-96)

10. Regions Divided into Forest Habitat Types. For the purpose of further refining the on-the-ground administration of the Act, the forest regions can be divided into Habitat Types. (7-1-96)

021. -- 029. (RESERVED)

030. TIMBER HARVESTING.

01. Purpose. Harvesting of forest tree species is a part of forest management by which wood for human use is obtained and by which forests are established and tended. It is recognized that during harvesting operations there will be a temporary disturbance to the forest environment. It is the purpose of these rules to establish minimum standards for forest practices that will maintain the productivity of the forest land and minimize soil and debris entering streams and protect wildlife and fish habitat. (10-14-75)

02. Quality of Residual Stocking. Reforestation is required if harvesting reduces stocking of acceptable trees below minimums of Subsection 050.04. (7-1-96)

03. Soil Protection. Select for each harvesting operation the logging method and type of equipment adapted to the given slope, landscape and soil properties in order to minimize soil erosion. (8-13-85)

a. An operation that uses ~~G~~ground-based skidding equipment shall not be conducted if it will cause rutting, deep soil disturbance, or accelerated erosion. On slopes exceeding forty-five percent (45%) gradient and which are immediately adjacent to a Class I or II stream, ground-based skidding equipment shall not be ~~conducted~~ used except with an approved variance. Where slopes in the area to be logged exceed forty-five percent (45%) gradient the operator, landowner or timber owner shall notify the department of these steep slopes upon filing the notification as provided for in Subsection 020.05. ~~(7-1-96)~~()

b. Limit the grade of constructed skid trails on geologically unstable, saturated, or highly erodible or easily compacted soils to a maximum of thirty percent (30%). (7-1-96)

c. In accordance with appropriate silvicultural prescriptions, skid trails shall be kept to the minimum feasible width and number. Tractors used for skidding shall be limited to the size appropriate for the job. (8-13-85)

d. Uphill cable yarding is preferred. Where downhill yarding is used, reasonable care shall be taken to lift the leading end of the log to minimize downhill movement of slash and soils. (8-13-85)

04. Location of Landings, Skid Trails, and Fire Trails. Locate landings, skid trails, and fire trails on stable areas to prevent the risk of material entering streams. (10-14-75)

a. All new or reconstructed landings, skid trails, and fire trails shall be located on stable areas outside the appropriate stream protection zones. Locate fire and skid trails where sidecasting is held to a minimum. (3-13-90)

b. Minimize the size of a landing to that necessary for safe economical operation. (8-13-85)

c. To prevent landslides, fill material used in landing construction shall be free of loose stumps and excessive accumulations of slash. On slopes where sidecasting is necessary, landings shall be stabilized by use of seeding, compaction, riprapping, benching, mulching or other suitable means. (8-13-85)

05. Drainage Systems. For each landing, skid trail or fire trail a drainage system shall be provided and maintained that will control the dispersal of surface water to minimize erosion. (4-21-92)

a. Stabilize skid trails and fire trails whenever they are subject to erosion, by water barring, cross draining, outsloping, scarifying, seeding or other suitable means. This work shall be kept current to prevent erosion prior to fall and spring runoff. (8-13-85)

b. Reshape landings as needed to facilitate drainage prior to fall and spring runoff. Stabilize all landings by establishing ground cover or by some other means within one (1) year after harvesting is completed. (8-13-85)

06. Treatment of Waste Materials. All debris, overburden, and other waste material associated with harvesting shall be left or placed in such a manner as to prevent their entry by

erosion, high water, or other means into streams. (10-14-75)

a. Wherever possible trees shall be felled, bucked, and limbed in such a manner that the tree or any part thereof will fall away from any Class I streams. Continuously remove slash that enters Class I streams as a result of harvesting operations. Continuously remove other debris that enters Class I streams as a result of harvesting operations whenever there is a potential for stream blockage or if the stream has the ability for transporting such debris. Place removed material five (5) feet slope distance above the ordinary high water mark. (8-13-90)

b. Remove slash and other debris that enters Class II streams whenever there is a potential for stream blockage or if the stream has the ability for transporting the debris immediately following skidding and place removed material above the ordinary high water mark or otherwise treat as prescribed by the department. No formal variance is required. (11-7-86)

c. Deposit waste material from construction or maintenance of landings and skid and fire trails in geologically stable locations outside of the appropriate Stream Protection Zone. (8-13-85)

07. Stream Protection. During and after forest practice operations, stream beds and streamside vegetation shall be protected to leave them in the most natural condition as possible to maintain water quality and aquatic habitat. (8-13-85)

a. Lakes require an approved site specific riparian management prescription prior to conducting forest practices within the stream protection zone. (7-1-96)

b. Operations that utilize ground-based skidding equipment that result in logs being skidded or forwarded in or through streams shall not be permitted. When streams must be crossed, adequate temporary structures to carry stream flow shall be installed. Cross the stream at right angles to its channel if at all possible. (Construction of hydraulic structures in stream channels is regulated by the Stream Channel Protection Act - Title 42, Chapter 38, Idaho Code). Remove all temporary crossings immediately after use and, where applicable, water bar the ends of the skid trails. ~~(7-1-96)~~()

c. Operation of ground based equipment shall not be allowed within the Stream Protection Zone except at approaches to stream crossings. (7-1-96)

d. When cable yarding is necessary, across or inside the Stream Protection Zones it shall be done in such a manner as to minimize stream bank vegetation and channel disturbance. (8-13-85)

e. Provide for large organic debris (LOD), shading, soil stabilization, wildlife cover and water filtering effects of vegetation along streams. (7-1-96)

i. Leave hardwood trees, shrubs, grasses, and rocks wherever they afford shade over a stream or maintain the integrity of the soil near a stream. (10-14-75)

ii. Leave seventy-five percent (75%) of the current shade over the Class I streams. Limit re-entry until shade recovers. (4-11-06)

iii. During harvesting, carefully remove timber from the Stream Protection Zone in such a way that large organic debris, shading and filtering effects are maintained and protected. When portions of felled trees fall into or over a Class I stream, leave the portion consistent with the LOD definition of Subsection 010.35. (4-11-06)

iv. When harvesting portions of trees that have fallen naturally into or over a Class I stream, leave the portion(s) over the stream consistent with the LOD definition of Subsection 010.35. Leaving the section with the root ball attached is preferred. (4-11-06)

v. During harvesting operations, portions of felled or bucked trees not meeting the LOD definition shall be removed, consistent with the slash removal requirements of Subsection 030.06. (4-11-06)

vi. Standing trees, including conifers, hardwoods and snags will be left within fifty (50) feet of the ordinary high water mark on each side of all Class I streams, and within thirty (30) feet on each side of those Class II streams that require thirty (30) feet stream protection zones, in the following minimum numbers per one thousand (1000) feet of stream:

Minimum Standing Trees Per One Thousand (1000) Feet Required (each side)

Tree Diameter (DBH)	-- STREAM WIDTH --			
	Class I			Class II*
	Over 20'	10'- 20'	Under 10'	
3 - 7.9"	200	200	200	140
8 - 11.9"	42	42	42	--
12 - 19.9"	21	21	--	--
20"+	4	--	--	--

*For those Class II streams that require a minimum five (5) foot stream protection zone, no standing trees are required. (4-11-06)

vii. Snags will be counted as standing trees in each diameter class if snag height exceeds one and one-half (1 ½) times the distance between the snag and the stream's ordinary high water mark. Not more than fifty percent (50%) of any class may consist of snags. (7-1-96)

viii. To obtain a variance from the standing tree and shade requirements, the operator must develop a site specific riparian management prescription and submit it to the department for approval. The prescription should consider stream characteristics and the need for large organic debris, stream shading and wildlife cover which will achieve the objective of these rules. (4-11-06)

ix. Where the opposite side of the stream does not currently meet the minimum standing tree requirements of the table, the department and the operator should consider a site specific riparian prescription that meets the large organic debris needs of the stream. (3-13-90)

- x. Stream width shall be measured as average between ordinary high water marks. (3-13-90)
- f. Direct ignition of prescribed burns will be limited to hand piles within stream protection zones (SPZ), all other direct ignitions shall occur outside of SPZs, so a backing (cooler) fire will more likely occur within the SPZ. (4-11-06)
- i. Hand piles shall be at least five (5) feet from the ordinary high water-mark of streams. (4-11-06)
- ii. No mechanical piling of slash or natural forest fuels is allowed in a SPZ (an exception is filter windrows for erosion control which shall not be ignited). (4-11-06)
- 08. Maintenance of Productivity and Related Values.** Harvesting practices will first be designed to assure the continuous growing and harvesting of forest tree species by suitable economic means and also to protect soil, air, water, and wildlife resources. (10-14-75)
- a. Where major scenic attractions, highways, recreation areas or other high-use areas are located within or traverse forest land, give special consideration to scenic values by prompt cleanup and regeneration. (10-14-75)
- b. Give special consideration to preserving any critical ~~wildlife or~~ aquatic or wildlife habitat, including snags, especially within stream protection zones. Wherever practical, preserve fruit, nut, and berry producing trees and shrubs. (~~10-14-75~~)()
- c. Avoid conducting operations along or through bogs, swamps, wet meadows, springs, seeps, wet draws or other ~~sources~~ locations where the presence of water is indicated, by associated vegetation; temporary crossings can be used as referred to in Paragraph 030.07.b. ~~Protect~~ Protect soil and vegetation from disturbance which would cause adverse affects on water quality, quantity and wildlife and aquatic habitat. (~~7-1-96~~)()
- d. ~~Clear-cutting~~ Harvesting operations within a single ownership, in which essentially all trees have been removed in one operation, shall be planned so that adequate wildlife escape cover (e.g. topography, vegetation, stream protection zones, etc.) is available within one-quarter (1/4) mile. (~~4-11-06~~)()

(BREAK IN CONTINUITY OF SECTIONS)

050. RESIDUAL STOCKING AND REFORESTATION.

01. Purpose. The purpose of these rules is to provide for residual stocking and reforestation that will maintain a continuous growing and harvesting of forest tree species by describing the conditions under which reforestation will be required, specifying the minimum number of acceptable trees per acre, the maximum period of time allowed after harvesting for

establishment of forest tree species, and for sites not requiring reforestation, to maintain soil productivity and minimize erosion. (7-1-96)

02. Quality of Residual Stocking. On any operation, trees left for future harvest shall be of acceptable species and adequately protected from harvest damage to enhance their survival and growth. This may be accomplished by locating roads and landings and by conducting felling, bucking, skidding, yarding, and decking operations so as to minimize damage to residual trees. Acceptable residual trees should have a minimum live crown ratio of thirty percent (30%), minimum basal scarring, and should not have dead or broken tops. When stands have a high percentage of unacceptable trees, consider stand replacement rather than intermediate cuttings. (7-1-96)

03. Sites Unpractical to Reforest. Sites unpractical to reforest, generally ponderosa pine and drier Douglas-fir habitat types, shall not be harvested below minimum stocking, unless the site is converted to some other *land* use, or in instances of wildfire, insects, disease or other natural causes where salvage of the damaged timber is planned. (7-1-96)()

a. When harvesting timber on these sites, one (1) of the following actions must be taken: ()

i. Establish a new stand by leaving seed trees on the site and inter-planting at least once within five (5) years of completing the harvest, if needed to meet minimum stocking. ()

ii. Establish a new stand of timber by planting the site with an acceptable tree species, and inter-planting at least once within five (5) years of the original planting, if needed to meet minimum stocking. ()

b. If the efforts listed in Subparagraphs 050.03.a.i. and 050.03.a.ii. fall short of meeting the minimum stocking level, the landowner will be encouraged, but not required, to meet the minimum stocking level through additional reforestation efforts. ()

04. Stocking. Stocking will be deemed *satisfactory* *adequate* immediately following harvest if the following number of acceptable trees per acre, within each specified region, for at least one (1) size class, are reasonably well-*spaced* *distributed* over the area affected by forest harvesting. (NOTE: (1) DBH = Average Diameter (outside of the bark) of a tree four and one half (4.5) feet above mean ground level):

MINIMUM STOCKING - ACCEPTABLE TREES

<i>Average-Size-Class DBH (1)-Inches</i>	<i>Average-Number Trees-Per-Acre</i>	<i>Average-Spacing In-Feet</i>
<i>2.0-and-smaller</i>	<i>170</i>	<i>16 x 16</i>
<i>3.0-and-greater</i>	<i>110</i>	<i>20 x 20</i>
<i>5.0-and-greater</i>	<i>60</i>	<i>27 x 27</i>
<i>8.0-and-greater</i>	<i>35</i>	<i>35 x 35</i>
<i>11.0-and-greater</i>	<i>20</i>	<i>47 x 47</i>

<u>Idaho Region</u>	<u>Size Class DBH (inches)</u>	<u>Average Number of Retained Trees Per Acre</u>	<u>Average Spacing (feet)</u>
<u>North</u>	<u>0" – 2.9"</u>	<u>170</u>	<u>16 x 16</u>
<u>South</u>	<u>0" – 2.9"</u>	<u>125</u>	<u>18 x 18</u>
<u>North</u>	<u>3.0" – 10.9"</u>	<u>110</u>	<u>19 x 19</u>
<u>South</u>	<u>3.0" – 10.9"</u>	<u>75</u>	<u>24 x 24</u>
<u>North</u>	<u>11.0" and greater</u>	<u>20</u>	<u>46 x 46</u>
<u>South</u>	<u>11.0" and greater</u>	<u>15</u>	<u>53 x 53</u>

If immediately following harvest, the stand consists of retained trees of mixed size classes that are reasonably well distributed over the harvested area, and none of the size classes individually equal or exceed the minimum trees per acre shown above, stocking will also be deemed adequate if the weighted total of all of the size classes of the retained trees exceeds a value of one hundred seventy (170) for a stand in the North Region and one hundred twenty-five (125) in the South Region. The weighted total is calculated by multiplying the number of retained trees per acre in each size class by the weighting factors below, and adding all of these size class totals together.

<u>Size Class</u>	<u>Weight</u>
<u>0" – 2.9"</u>	<u>1</u>
<u>3.0" – 10.9"</u>	<u>1.6</u>
<u>11.0" and greater</u>	<u>8.4</u>

Harvested stands which are not adequately stocked, as defined above, will be subject to supplemental reforestation requirements specified in Subsection 050.06. Minimum stocking requirements for Class I stream protection zones are specified in Subparagraphs 030.07.e.ii. and 030.07.e.vi. (7-1-96)()

- 05. Reforestation Exemptions.** (7-1-96)
- a.** Reforestation is not required for: (7-1-96)
- i. Noncommercial forest land; (7-1-96)
- ii. Land converted to another use. This may include land converted to roads used in a forest practice; (7-1-96)
- iii. A forest practice which will result in ten (10) acres or less below minimum stocking levels. (7-1-96)
- b.** On lands exempted under Subsection 050.03, where reforestation is not being planned, some form of grass or planted cover shall be established within one (1) year in order to

maintain soil productivity and minimize erosion. (7-1-96)

06. Supplemental Reforestation. Seeding and/or planting may be required if after three (3) growing seasons from the date of harvest, stocking levels do not meet the standards in Subsection 050.04. Required seeding and/or planting shall be completed before the end of the fifth growing season following the time of harvest, except that the director shall grant an extension of time if suitable seeds or seedlings are not available or if weather or other conditions interfere. (7-1-96)

a. Reforestation practices must insure seedlings become established. This can be accomplished by adequate site preparation, utilizing acceptable seed or seedlings, following accepted planting or sowing practices, or by other suitable means. (7-1-96)

b. The party responsible for reforestation is the ~~person, partnership, corporation, or association of whatever nature that directed the area be harvested below minimum~~ landowner during the harvest which reduced stand stocking below the minimum levels stated in Subsection 050.04. (~~7-1-96~~)()

IDAPA 20 - DEPARTMENT OF LANDS

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

DOCKET NO. 20-0314-1201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

The Department has drafted proposed changes to the current rule to be used as a starting point for negotiation. Key changes include:

- <•>Addition of requirements for management proposals per Senate Bill 1271 to Section 20.02.
- <•>Clarification of the appeals process procedures associated with conflicted lease applications in Section 20.02.
- <•>Rewording of Section 40.01 – Rental, to broaden language applicable to multiple lease activities.
- <•>Removal of Section 21 - Rights Reserved to the Department, which is addressed contractually through the Department's lease templates.
- <•>Removal of Section 54 - Cropland Lease Hardship Claims, which will be addressed programmatically.

A public hearing for the proposed rule was held at the Director's Office on Thursday, October 10, 2012; no verbal or written comments were submitted at the hearing. The written comment period for the proposed rule ran from October 3, 2012, through October 24, 2012; one (1) written comment on the proposed rule was received by the Department from the Legislative Services Office. Based on the letter, the Department made wording changes to Subsection 20.02.e. to be consistent with Idaho Code 58-302. On November 19, 2012, the Attorney General's office provided a comment to the Department with a recommended change to Subsection 001.02.

On November 20, 2012, the State Board of Land Commissioners directed the Department to submit the pending rule, complete with the November 19 recommended change, to the Office of the Administrative Rules Coordinator for the 2013 legislative session.

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 October 3, 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 456 through 465](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Neil Crescenti at (208) 334-0278 or ncrescenti@idl.idaho.gov.

DATED this 28th day of November, 2012.

Neil Crescenti
Program Manager, Grazing, Farming and Conservation
Idaho Department of Lands
300 N 6th Street, Suite 103
P.O. Box 83720
Boise, ID 83720
(208) 334-0278 / Fax (208) 334-3698
ncrescenti@idl.idaho.gov

THE FOLLOWING NOTICE WAS 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(s) 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Wednesday, October 10, 2012, 6:00 p.m.

**Idaho Department of Lands
300 N 6th Street, Suite 103, Boise**

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 Department has drafted proposed changes to the current rule to be used as a starting point for negotiation. Key changes include:

Addition of requirements for management proposals per Senate Bill 1271 to Subsection 020.02.

Clarification of the appeals process procedures associated with conflicted lease applications in Subsection 020.02.

Rewording of Subsection 040.01 – Rental, to broaden language applicable to multiple lease activities.

Removal of Section 021 - Rights Reserved to the Department, which is addressed contractually through the Department's lease templates.

Removal of Section 054 - Cropland Lease Hardship Claims, which will be addressed programmatically.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 in the June 6, 2012, Idaho Administrative Bulletin, [Volume 12-6, page 27](#); and the July 4, 2012, Idaho Administrative Bulletin, [Volume 12-7, page 106](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Neil Crescenti at (208) 334-0278 or ncrescenti@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 October 24, 2012.

DATED this 31st day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0314-12101

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 20.03.14, “Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases.” (3-12-10)

02. Scope. These rules constitute the Idaho Department of Lands’ administrative procedures for leasing of state endowment trust land for grazing, farming, conservation, noncommercial recreation, communication sites and other uses that are treated similarly under the provisions of Section 58-307, Idaho Code, regarding a lease term for no longer than ~~ten~~ twenty (~~120~~) years ~~lease term restriction~~, and under the provisions of Section 58-310, Idaho Code regarding lease auctions. These rules shall 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. (3-12-10)()

(BREAK IN CONTINUITY OF SECTIONS)

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. (3-13-02)

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. (3-12-10)

03. Assignment. The Department approved transfer of all, or a portion of, a lessee’s right to another person wherein the second person assumes the lease contract with the Department. (3-13-02)

04. Board. The Idaho State Board of Land Commissioners or such representatives as may be designated. (3-13-02)

05. Conflict Application. An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation or communication site use when one (1) or more applications have been submitted for the same parcel of state endowment trust land and for the same or an incompatible use. (3-12-10)

06. Department. The Idaho Department of Lands. (6-14-88)

07. Director. The Director of the Department of Lands, or such representative as may be designated by the Director. (3-13-02)

08. Extension. An approved delay in the due date of the rental owed on a farming lease without risk of loss of the lease. (3-12-10)

09. Improvement Valuation. The ~~Land Board approved~~ process or processes of estimating the value of Department authorized improvements associated with a lease, as defined in Section 102. (~~3-12-10~~)()

10. Lease. A written agreement between the Department and a person containing the terms and conditions upon which the person will be authorized to use state endowment trust land. (3-12-10)

11. Herd Stock. Livestock leased or managed, but not owned, by the lessee. (3-13-02)

12. Lease Application. An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation, or communication site purposes. (3-12-10)

13. Manageable Unit. A unit of state endowment trust land designated by the Department, geographically configured and sufficiently large to achieve the proposed use. (3-12-10)

14. Management Plan. The signed state endowment trust land lease for grazing, farming and conservation, and any referenced attachments such as annual operating plans or federal allotment management plans, shall be considered the management plan. ()

145. Mortgage Agreement. Department authorization for the lessee to obtain a mortgage on a state endowment trust land lease. (~~3-12-10~~)()

156. Person. An individual, partnership, association, corporation or any other entity qualified to do business in the state of Idaho and any federal, state, county, or local unit of government. (3-13-02)

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

168. Sublease. An agreement in which the state endowment trust land lease holder conveys the right of use and occupancy of the property to another party on a temporary basis. (~~3-13-02~~)()

(BREAK IN CONTINUITY OF SECTIONS)

020. APPLICATIONS AND PROCESSING.

01. Eligible Applicant. Any person legally competent to contract may submit an application to lease state ~~owned~~ endowment trust land provided ~~he has reached his eighteenth birthday, or if not eighteen (18) is married, is a citizen of the United States or has declared his intentions to become such, and is not indebted to the state of Idaho or delinquent on any payments to~~ such person is not then in default of any contract with the Department of Lands; provided further, that the Department may, in its discretion, exclude any person in breach of any contract with the state of Idaho or any department or agency thereof. ~~To be eligible for a grazing or cropland lease, an applicant must intend to use the land for domestic livestock grazing or for cropping purposes, and must certify such.~~ (3-13-02)()

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: (3-12-10)

a. Non-refundable Fee. Each application for a lease shall be accompanied by a non-refundable application fee in the amount specified by the Board. (3-13-02)

b. Application Deadline. The deadline to apply to lease a parcel of state endowment trust land already covered by a lease shall be 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. (3-12-10)

c. Proposed Management Plan. All applicants for state grazing, farming and conservation leases shall submit a proposed management plan with their application. Where current lessee is an applicant, the Department will recognize the existing management plan, as described by the existing lease provisions, as the proposed management plan required to complete the lease application. The Department may require amendments to the proposed management plan in accordance with Subsections 020.02.e. and 020.02.f. ()

ed. 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 shall be considered invalid. (3-12-10)

de. Nonconflicted Applications. (3-12-10)

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. (3-12-10)

ii. If the current lessee is the only applicant and the Department has concerns with the lessee's current management of the state endowment trust lands, ~~or if the only applicant is not the current lessee, the applicant shall meet with~~ the Department ~~to develop the terms and conditions~~

~~of a proposed lease specific to the applicant's~~ shall request in writing a new proposed ~~use~~
management plan and meet with the current lessee to develop terms and conditions of a proposed
lease. (3-12-10)()

ef. Conflicted Applications. (3-12-10)

i. All applicants submitting conflict applications shall meet with the Department to develop the terms and conditions of a proposed lease specific to each applicant's proposed ~~use~~
management plan. (3-12-10)()

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: (3-12-10)

(1) The applicant's proposed use and the compatibility of that use of the state endowment trust ~~parcel~~ 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. (3-12-10)()

(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. (3-12-10)

(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. (3-12-10)

(4) Potential environmental and land management constraints that may affect or be relevant to assessing the efficacy or viability of the proposed use. (3-12-10)

(5) Mitigation measures designed to address trust management concerns such as: (3-12-10)

(a) Construction of improvements at lessee's expense. (3-12-10)

(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. (3-12-10)

(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. (3-12-10)

(d) Bonding to ensure future rental payments due under the lease in cases where the lessee is determined by the Department to pose a significant financial risk because of lack of experience or uncertain financial resources. (3-12-10)

(6) Any other factors the Department deems relevant to the management of the state endowment trust parcel land for the proposed use. (3-12-10)()

fg. 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 shall be held until the Land Board resolves any such appeal. (3-12-10)()

03. Expiring Leases. Lease applications will be mailed by the Department to all holders of expiring leases no less than thirty (30) days prior to the application deadline. Signed applications and the application fee must be returned to the Department by the established deadline or postmarked no later than midnight of that date. It shall be the lessee's responsibility to ensure applications are delivered or postmarked by the deadline. (3-12-10)

04. Rental Deposit. (3-13-02)

a. Existing Lessee. If the existing lessee is the sole applicant, the lessee may submit the rental deposit at the normal due date. If a conflict application is also filed on the expiring lease and the existing lessee is awarded the lease by the Land Board, the lessee must deposit, with the Department, the estimated first year's rental for the lease at the time the lease is submitted to the Department with lessee's signature. (3-12-10)

b. New Applicants. (3-12-10)

i. Expiring Lease. New applicants for expiring leases must submit the estimated first year's rental to the Department at the time of the application's submission. (3-12-10)

ii. Unleased State Endowment Trust Land. All applicants for unleased state endowment trust land are deemed new applicants. If an applicant for unleased state endowment trust land is the sole applicant, the applicant may submit the rental deposit at the normal billing cycle, unless the time of application and desired time of use do not coincide with the normal billing cycle, in which case payment must be rendered at the direction of the Department. When more than one (1) application is received for unleased state endowment trust land, all applicants must deposit, with the Department, the estimated first year's rental for the lease prior to auction. (3-12-10)()

~~**021. RIGHTS RESERVED TO THE DEPARTMENT.**~~

~~The Department expressly reserves the right:~~ (3-13-02)

~~**01. Reservations.** To all mining rights, timber rights, water rights, easements and rights of way, and the fee title to the leased land.~~ (3-13-02)

~~**02. Other Leases.** To maintain present, and to issue future mineral, oil and gas, geothermal and other subsurface leases as provided by Title 47, Idaho Code. Annual rental may be adjusted to reflect any utility loss to the lessee from such activities. (3-13-02)~~

~~**03. Grazing Restrictions.** To restrict or prohibit grazing on all, or portions of, the leased land to accommodate other resource management objectives. The lessee will be given one hundred eighty (180) days written notice, prior to turn out of livestock on the lands leased, of any such restrictions or termination of grazing use together with a map of the restricted area. The Department will work with lessee to find alternate forage sources on endowment lands to minimize the financial impact to the endowment. Annual rental will be adjusted to reflect any utility loss to the lessee from such activities should alternate sources of forage not be found. (3-13-02)~~

~~**04. Seed Harvest.** To harvest seed from plants on land not under a cropland lease. The Department will coordinate harvesting activities with lessee to minimize impacts on livestock operations. If loss of use occurs from harvesting activities the rental will be adjusted in the amount of lost use. (3-13-02)~~

~~**05. Entry.** To enter upon and inspect the lands leased at any reasonable time to insure protection of the Department's interest. (3-13-02)~~

~~**06. Easements.** To grant easements and rights of way across or upon the lands leased. The Department shall coordinate with the lessee before processing any easement applications on the leased land. Annual rental will be adjusted to reflect any utility loss to the lessee from any such easements or rights of way. Acreage of the lands described within the lease may be adjusted to reflect any such easements or rights of way that permanently remove such lands from grazing use. (3-13-02)~~

~~**07. Public Access.** To exclusively regulate public access on state lands. Grazing or cropland leases will not be considered exclusive use leases as described under Title 36, Chapter 16, Idaho Code. These rules do not authorize or purport to authorize trespass on private lands to reach state owned lands. Use of state lands shall not be restricted without prior written approval of the Department. (3-13-02)~~

~~**08. Water Rights.** To all water rights appurtenant to state lands. Lessees may not appropriate any water rights that are appurtenant to state lands, including instream livestock use or stock watering rights. Any water right appropriated on state land shall be appropriated in the name of the state of Idaho. (3-13-02)~~

~~**09. Road Closures.** To close roads for road protection, wildlife protection or administrative purposes. Planned road closures will be reviewed with the lessee prior to action. The lessee will have the right of due process when decisions affect the lessee's use of the lease. (3-13-02)~~

~~**10. Special Leases.** To grant special leases upon the lands described in the grazing lease. If the special lease conflicts with the grazing use or makes consumptive use of forages, the grazing rental will be adjusted to reflect such loss of use. (6-14-88)~~

~~11. **Permanent Improvements.** To claim all permanent improvements placed upon the land remaining after six (6) months in cases of abandonment by the lessee or to take possession immediately in cases of cancellation upon breach of any of the conditions of the lease. No improvements will be disposed of by the Department until all appeals have been exhausted.~~

~~(3-13-02)~~

0221. LENGTH OF LEASE.

The Department may issue a lease for any period of time up to the maximum term provided by law. (3-12-10)

0232. -- 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. (3-12-10)

~~01. **Termination of Existing Lease.** In case of a change in land use to a use other than provided for under these rules, the existing lease may be terminated, in whole or in part, upon one hundred eighty (180) days written notice to the lessee. If a lease is terminated due to a change in land use, improvement credit will be addressed in accordance with these rules.~~ (3-12-10)

031. -- 039. (RESERVED)

040. RENTAL.

01. Rental Rates. ~~Rental rates shall be~~ **The methodology used to calculate rental rates shall be** determined by the Board. ~~The rental rate for livestock grazing leases shall be based on the number of allowable AUMs. The rental rate for cropland leases shall be based on the number of acres used for crop production.~~ (3-13-02)()

02. Special Uses. Fees for special uses requested by the lessee and approved by the Department, ~~including, but not limited to, concentrated feeding areas or structures/buildings enhancing management of the land,~~ shall be determined by the Department. (3-13-02)()

03. Rental Due Date. Lease rentals are due in accordance with the terms of the lease. (3-12-10)

(BREAK IN CONTINUITY OF SECTIONS)

050. LEASE CANCELLATION.

Leases may be cancelled by the Director for the following reasons: (3-13-02)

01. Non-Compliance. If the lessee is not complying with the lease provisions or ~~management plan provisions or~~ if resource damage attributable to the lessee's management is

occurring to state **endowment trust** land within a lease, the lessee shall be provided written notification of the violation by regular and certified mail. The letter shall set forth the reasons for the Department's cancellation of the lease and shall provide the lessee thirty (30) days notice of the cancellation. ~~(3-13-02)~~()

02. Change in Land Use. A lease may be cancelled in whole or in part upon one hundred eighty (180) days written notice by the Department if the state endowment trust lands are to be leased for any other use as designated by the Board or the Department and the new use is incompatible with the existing lease. In the event of early cancellation due to a change in land use, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. (3-12-10)

03. Land Sale. The Department reserves the right to sell state endowment trust lands covered under the lease. The lessee will be notified that the state endowment trust lands are being considered for sale prior to submitting the sales plan to the Board for approval. The lessee will also be notified of a scheduled sale at least thirty (30) days prior to sale. In the event of early cancellation due to land sale, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. (3-12-10)

04. Mutual Agreement. Leases may be cancelled by mutual agreement between the Department and the lessee. (3-13-02)

(BREAK IN CONTINUITY OF SECTIONS)

053. EXTENSIONS OF ANNUAL FARMING LEASE PAYMENT.

01. Farming Lease Extensions. An extension of the annual lease payment may be approved for farming leases only. Each lease is limited to no more than two (2) successive or five (5) total extensions during any ten (10) year lease period. Requests for extensions must be submitted in writing and must include the extension fee determined by the Board. The lessee must provide a written statement from a financial institution verifying that money is not available for the current year's farming operations. (3-12-10)

02. Liens. When an extension is approved, the Department will file a lien on the lessee's pertinent crop in a manner provided by Idaho Code. ~~If the subject state endowment trust land is covered under a Conservation Reserve Program contract with the federal government, the lessee must sign a transfer of payment, or a similar form provided by the federal government, transferring the federal payment to the Department if the rental payment is not received by the newly established deadline.~~ (3-12-10)()

03. Due Date. Rental plus interest at a rate established by the Board will be due not later than November 1 of the year the extension is granted. (3-13-02)

~~**054. CROPLAND LEASE HARDSHIP CLAIMS.**~~

~~**01. Crop Loss.** Adjustments in rental may be made because of unusual crop loss that~~

~~occurs through no fault of the lessee. Such loss must be thoroughly substantiated by the lessee.~~ (3-13-02)

~~02. **Conditions to Meet.** To qualify for a hardship claim the following conditions must be met:~~ (3-13-02)

~~a. All requests for hardship claims must be submitted to the Department in writing immediately after the damage has occurred.~~ (3-13-02)

~~b. Claims will be considered for the current growing season only.~~ (6-14-88)

~~c. Any adjustments will be credited to next year's rental.~~ (3-13-02)

~~d. Claims will only be approved for losses beyond the control of the lessee.~~ (3-13-02)

~~e. The lessee will only receive a reduction in rental for yield losses that occur beyond the normal variation expected for similar land in the situated county. Normal variation will be calculated from the Idaho Statistical Reporting Service records.~~ (3-13-02)

~~f. Average yields used to calculate the rental on the subject lands will be used to determine any lease rental adjustments for this purpose. The lease rental will only be adjusted for losses that exceed thirty-five percent (35%) of the average crop yield.~~ (3-13-02)

~~g. Adjustments will not be made for losses if lessee is compensated through another government program or crop insurance.~~ (6-14-88)

0554. -- 059. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

080. ~~GRAZING~~ MANAGEMENT PLANS.

~~Prior to issuance of a lease, the lessee and the Department must agree to a written grazing management plan.~~ (3-13-02)

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, ~~to satisfy the requirements of a~~ the management plan. (3-13-02)()

02. Modification of Plan. The Department may review and modify any grazing management plan upon changes in conditions, laws, or regulations, provided that the Department shall give the lessee thirty (30) days notice of any such modifications prior to the effective date thereof. Modifications mutually agreeable to both the Department and lessee may be made at any time and may be initiated by lessee's request. (3-13-02)()

081. -- 089. (RESERVED)

090. TRESPASS.

01. Loss or Waste. The lessee shall use the property within the lease in such manner as will best protect the state of Idaho against loss or waste. Unauthorized activities occurring on state endowment trust land shall be considered trespass; these include dumping of garbage, constructing improvements without a permit, and other unauthorized actions. ~~(3-13-02)~~()

02. Civil Action by Lessee. The lessee is encouraged to take civil action against owners of trespass livestock on state endowment trust lands to recover damages to the lessee for lost forage or other values incurred by the lessee. ~~(3-13-02)~~()

03. Continuing Trespass. When continued trespass causes resource damage, the Department will initiate proceedings to restrict further trespass and recover damages as necessary. (3-13-02)

04. Trespass Claims. Trespass claims initiated by the Department will be assessed as triple the current State AUM rate for forage taken. (3-13-02)

(BREAK IN CONTINUITY OF SECTIONS)

105. CONFLICT AUCTIONS.

01. Two or More Applicants. When two (2) or more eligible applicants apply to lease the same state endowment trust land for grazing, farming conservation, noncommercial recreation, or communication site purposes and the Department determines the proposed uses are not compatible, the Department shall hold an auction. (3-12-10)

02. Applicant Notification. At least fourteen (14) days prior to the date of such auction, the Department shall give notice by letter, which notice shall be sent in the course of certified mail to each of the applicants for the lease, notifying them of the time and place such auction is to be held. The notice shall be sent to the name and address as it is given in the application. (3-13-02)

03. Minimum Bid. Bidding shall begin at two hundred fifty dollars (\$250) or the cost of preparing any required improvement valuation in connection with the expiring lease, whichever is greater. (3-12-10)

04. Auction Bidding. Each applicant who appears in person or by proxy at the time and place so designated in said notice and bids for the lease shall be 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. (3-13-02)

05. Withdrawal Prior to or Failure to Participate in an Auction. Applicants who either withdraw their applications after accepting the Department offered lease per Subsection

020.02 of this rule and prior to the auction which 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, shall forfeit an amount equal to the lesser of the following: ~~(3-12-10)~~()

- a. The Department's cost of making any required improvement credit valuation; (3-12-10)
 - b. For existing lessee applicants, any improvement credit payment that would otherwise be due if not awarded the lease; or (3-12-10)
 - c. For conflict applicants, the rental deposit made. (3-12-10)
- 06. High Bid Deposit.** The high bidder is required to submit payment in the amount of the high bid at the conclusion of the auction. (3-12-10)
- 07. Auction Procedures.** The Department shall prescribe the procedures for conducting conflicted lease auctions. (3-12-10)
- 08. Withdrawal After Auction.** (3-12-10)
- a. If the high bidder withdraws or refuses to accept the lease, the high bid payment will be retained by the Department. (3-12-10)
 - i. If the auction involved only two (2) participants, the second high bidder shall be awarded the lease. (3-12-10)
 - ii. If the auction involved more than two (2) participants, the lease will be reauctioned. (3-12-10)
 - 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. (3-12-10)

(BREAK IN CONTINUITY OF SECTIONS)

111. NOXIOUS WEED CONTROL.

01. Weed Control. The lessee shall 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 shall take measures to control noxious weeds on the leased state endowment trust land in accordance with Title 22, Chapter 24, Idaho Code. ~~(3-12-10)~~()

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 shall be shared by the lessee and Department, with the Department's share subject to funds appropriated for that purpose. (3-13-02)

(BREAK IN CONTINUITY OF SECTIONS)

114. LIABILITY (INDEMNITY).

The lessee shall 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 ~~parcel~~ 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. (~~3-12-10~~)()

IDAPA 20 - DEPARTMENT OF LANDS

20.03.15 - THE ISSUANCE OF GEOTHERMAL RESOURCE LEASES

DOCKET NO. 20-0315-1201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 58-104(6), 58-105, and 47-1603, 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 Department drafted and negotiated changes to the current rule. Key changes included deletion of the following three sections which were the focus of industry's concerns in 2011:

- <•>Section 55.06 – Shut Downs
- <•>Section 55.08 – Sampling
- <•>Section 56.04 – By-products

Other deletions related to “contract” language more appropriately addressed in the lease template. Site and condition-specific language shall be negotiated with applicants on a case-by-case basis. Another change included clarifying the requirements and process for lease assignments (Section 075).

A public hearing for the proposed rule was held at the Director's Office on Thursday, October 11, 2012; no verbal or written comments were submitted at the hearing. The written comment period for the proposed rule ran from October 3, 2012 through October 24, 2012; no written comments on the proposed rule were received by the Department.

As a result of the Supreme Court Decision (Wasden v. State Board of Land Commissioners) regarding the constitutionality of Section 58-310A, Idaho Code, the Department proposed deleting Section 022, Lease Award Through Auction. On November 19, 2012, the Attorney General's office provided comments to the Department with recommended changes for Sections 022, now Section 021, and 070.

On November 20, 2012, the State Board of Land Commissioners directed the Department to submit the pending rule, complete with the November 19 recommended changes, to the Office of the Administrative Rules Coordinator for the 2013 legislative session.

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 October 3, 2012, Idaho Administrative Bulletin, **Vol. 10-12, pages 466 through 482.**

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Bob Pietras at (208) 334-0279 or bpietras@idl.idaho.gov.

DATED this 28th day of November, 2012.

Bob Pietras
Program Manager, Commercial-Energy Resources
Idaho Department of Lands
300 N 6th Street, Suite 103
Boise, Idaho 83720
(208) 334-0279/ Fax (208) 334-3698
bpietras@idl.idaho.gov

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6), 58-105, and 47-1603, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Thursday, October 11, 2012, 6:00 p.m.

**Idaho Department of Lands
300 N 6th Street, Suite 103, Boise**

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 statement in nontechnical language of the

substance and purpose of the intended rulemaking and the principle issues involved:

The Department has drafted and negotiated proposed changes to the current rule. Key changes include deletion of the following three sections which were the focus of industry's concerns.

- Section 055.06 – Shut Downs
- Section 55.08 – Sampling
- Section 056.04 – By-products

As a result of the recent Supreme Court Decision (Wasden v. State Board of Land Commissioners) regarding the constitutionality of Section 58-310A, Idaho Code, the Department is proposing the deletion of Section 022, Lease Award Through Auction. Other proposed deletions relate to “contract” language that is more appropriately addressed in the lease template. Site and condition-specific language will be negotiated with applicants on a case-by-case basis. Another proposed change includes clarifying the requirements and process for lease assignments (Section 075).

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 **July 4, 2012 Idaho Administrative Bulletin, Volume No. 12-7, page 107.**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Bob Pietras at (208) 334-0279 or bpietras@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 October 24, 2012.

DATED this 31st day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0315-1201

001. TITLE AND SCOPE.

01. Title. These rules will be cited as IDAPA 20.03.15, “Rules Governing Geothermal

Leasing on Idaho State Lands.” (3-21-12)

02. Scope. These rules apply to the exploration and extraction of any and all geothermal resources situated in state-owned mineral lands. (3-21-12)

03. Other Laws. ~~Operators engaged in the leasing, exploration, and extraction of state owned geothermal resources must~~ **In addition to these rules, the Lessee shall** comply with all applicable federal, state and local laws, ~~and rules of the State of Idaho including, but not limited to, the following:~~ **and regulations. The violation of any applicable law, rule or regulation shall constitute a breach of any lease issued in accordance with these rules.** (3-21-12)()

~~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 and Wastewater Treatment Requirements”; and IDAPA 58.01.11, “Ground Water Quality Rule,” administered by the IDEQ.~~ (3-21-12)

~~b. Requirements and procedures for hazardous and solid waste management, as established in Title 39, Chapter 44, Idaho Code, and rules promulgated thereunder including, IDAPA 58.01.05, “Rules and Standards for Hazardous Waste” and IDAPA 58.01.06, “Solid Waste Management Rules,” administered by the IDEQ.~~ (3-21-12)

~~c. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the IDWR.~~ (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Associated By-Products or By-Product: (3-21-12)

a. Any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium), which are found in solution or developed in association with geothermal resources; or (3-21-12)

b. Demineralized or mineralized water. (3-21-12)

02. Available State Lands. All state lands except those state lands already leased. (3-21-12)

03. Board. The Idaho State Board of Land Commissioners or its designee. (3-21-12)

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

045. 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. (3-21-12)

056. Department. The Idaho Department of Lands or its designee. (3-21-12)

067. Director. The head of the Idaho Department of Lands or his designee. (3-21-12)

078. 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. (~~3-21-12~~)()

089. Electrical Generation. The use of geothermal resources to either directly generate electricity or to heat a secondary fluid and use it to generate electricity. (3-21-12)

~~0910.~~ **Field.** A geographic area overlying a geothermal system with one (1) or more geothermal reservoirs or pool, including any porous, permeable geologic layer, which may be formed along one (1) fault or fracture, or a series of connected faults or fractures.(~~3-21-12~~)()

101. Geothermal Resources. The natural heat energy of the earth, the energy, in whatever form, which may be found in any position and at any depth below the surface of the earth present in, resulting from, or created by, or which may be extracted from, such natural heat, and all minerals in solution or other products obtained from the material medium of any geothermal resource. When used without restriction, it includes associated by-products. (9-3-91)

~~112.~~ **Lease.** A lease covering the geothermal resources and associated by-products in state lands. (9-3-91)

~~123.~~ **Lessee.** The person to whom a geothermal lease has been issued and his successor in interest or assignee. It also means any agent of the lessee or an operator holding authority by or through the lessee. (9-3-91)

134. 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. (3-21-12)

145. Motorized Earth-Moving Equipment. Backhoes, bulldozers, front-loaders, trenchers, core drills, drill rigs, power augers, and other similar equipment. (3-21-12)

16. Navigable Water Courses. The state owned beds of active lakes, rivers and streams which do not include formerly submerged lands where the state retains ownership.()

157. Operator. The person having control or management of operations on the leased

lands or a portion thereof. The operator may be the lessee, designated operator, or agent of the lessee, or holder of rights under an approved operating agreement. (9-3-91)

168. Overriding Royalty. An interest in the geothermal resource produced at the surface free of any cost of production. It is a royalty in addition to the royalty reserved to the state. (9-3-91)

179. 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. (~~3-21-12~~)()

1820. Record Title. The publicly recorded lease which is the evidence of right that a person has to the possession of the leased property. (9-3-91)

1921. Reservoir or Pool. A porous, permeable geologic layer containing geothermal resources. (3-21-12)

202. 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. (3-21-12)

213. State Lands. Without limitation, lands in which the title to the mineral rights are owned by the state of Idaho and are under the jurisdiction and control of the Board or under the jurisdiction and control of any other state body or agency, having been obtained from any source and by any means whatsoever, including the beds of navigable waters of the state of Idaho. (9-3-91)

224. Waste. Any physical loss of geothermal resources including, but not limited to: (3-21-12)

a. Underground loss of geothermal resources resulting from inefficient, excessive, or improper use, or dissipation of geothermal energy, or of any geothermal resource pool, reservoir, or other source; or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner which results, or tends to result in reducing the quantity of geothermal energy to be recovered from any geothermal area in the state; (3-21-12)

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. (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

~~020. APPLICABILITY.~~

~~01. Other Geothermal Resources. These rules apply to all geothermal resources where other rules and regulations are silent or where the geothermal resource is otherwise regulated. (9-3-91)~~

~~02. Exclusions. These rules do not apply to the application and leasing of other mineral resources covered by Title 47, Chapter 7, Idaho Code, nor the application and leasing of oil and gas resources covered by Title 47, Chapter 8, Idaho Code. (9-3-91)~~

0210. QUALIFIED APPLICANTS AND LESSEES.

~~Any person as defined in Subsection 010.17 of this rule, is qualified to lease the geothermal resources in state lands or take or hold an interest therein unless the Board first determines, after notice and hearing, for good cause shown, that a person is disqualified from leasing or taking or holding an interest in geothermal resources in state lands. No member of the Board, the director, or employee of the department may take or hold any such lease or interest in state lands. Any person legally competent to contract may submit an application to lease state land provided such person is not then in default of any contract with the state of Idaho or any department or agency thereof. (3-21-12)()~~

0221. LEASE AWARD THROUGH AUCTION.

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

~~01. Auctions Required. Except for requests to the Board as described in Subsection 022.02 of these rules, all leases must be awarded through a public action. Collusion between bidders is a violation of these rules and may result in the Department voiding the auction results and cancelling any leases that were issued. (3-21-12)~~

~~02. Leasing Additional Lands. Leases may be issued without going to auction in any of the following situations: (3-21-12)~~

~~a. A tract that was offered at auction but not awarded is available for application and leasing for one (1) year following the auction. (3-21-12)~~

~~b. An existing geothermal lessee who is in production and paying royalties to the state may request that the board issue them additional geothermal leases for unleased state lands located adjacent to the producing leases and in the same geothermal field as the leased lands. (3-21-12)~~

~~c. A person who has leased private and federal lands that adjoin or encompass state lands may request that the board issue them geothermal leases for any unleased and adjoining state lands located in the same geothermal field. The request will not be unreasonably denied. (3-21-12)~~

0232. -- 029. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

035. RENTALS.

01. **Advance Annual Rental.** Lessee will pay to the ~~state of Idaho~~ Department in advance each year an annual rental. The annual rental for the first year of the term will be due and payable and will be received ~~in the offices of the department in Boise~~ by the Department, together with a lease agreement executed by lessee within thirty (30) days of the date of notice of approval or award. ~~The department will notify the applicant or his representative designated in the application to lease by certified or registered mail of the Board's approval of a lease and specify the exact amount of rental due thereon. Failure to return an executed lease together with the first year rental within thirty (30) days will result in automatic rejection of the application without further action of the Department or Board.~~ Second year and subsequent rental payments must be received ~~in the office of the department in Boise~~ by the Department on or before the anniversary date of the lease. (3-21-12)()

02. **Amount.** Annual rentals will be set by the Board through competitive bidding, negotiation, fixed amounts, formulas, or some other method of valuation which a prudent investor might reasonably apply to establish such rental amounts. (3-21-12)()

036. ROYALTIES.

01. **Royalty Payments.** The lessee will cause to be paid to the ~~state of Idaho~~ Department royalties on the value of geothermal production from the leased premises. The royalty rate will be established by the Board based on the market value of the geothermal resources produced from the lands under lease. The royalties specified in geothermal leases will be fixed in any manner by the ~~state Board of land commissioners~~, including but not limited to competitive bidding, negotiation, fixed amounts, or formulas. Royalty rates may be adjusted through the term of the lease in order to keep pace with market values. When leases are issued, the following guidelines will be used for royalty rates not subject to competitive bidding: (3-21-12)()

a. A royalty of between five percent (5%) and twenty percent (20%) of the amount or value of geothermal resources, or any other form of heat or energy excluding electrical power generation, derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee; (3-21-12)

b. A royalty of between two percent (2%) and fifteen percent (15%) of the amount or value of any associated by-product derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, including commercially demineralized water. (3-21-12)

c. A royalty of between two percent (2%) and five percent (5%) of gross receipts for sale of electrical power. (3-21-12)

02. **Calculation of Value.** The value of geothermal production from the leased premises for the purpose of computing royalties shall be based on a total of the following: (9-3-91)()

a. The total consideration accruing to the lessee from the sale ~~thereof in cases where~~ of geothermal resources ~~are sold by the lessee~~ to another party in an arms-length transaction; ~~or~~ and (9-3-91)()

b. The value of the end product attributable to the geothermal resource produced from a particular lease where geothermal resources are not sold by the lessee before being utilized, but are instead directly used in manufacturing power production, or other industrial activity; ~~or~~ and (9-3-91)()

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. (3-21-12)

~~d. When a part of the resource only is utilized by the lessee and the remainder sold, the sum of Paragraphs 036.02.a. through 036.02.c. of this rule. (3-21-12)~~

03. Due Date. Royalties will be due and payable monthly ~~in the office of~~ to the ~~d~~Department ~~in Boise~~ on or before the last day of the calendar month following the month in which the geothermal resources and/or their associated by-products are produced and utilized or sold. (9-3-91)()

04. Utilization of Geothermal Resources. The lessee must file with the Department within thirty (30) days after execution a copy of any contract for the utilization of geothermal resources from the lease. Reports of sales or utilization by lessee and royalty for each productive lease must be filed each month once production begins, even though production may be intermittent, unless otherwise authorized by the Department. Total volumes of geothermal resources produced and utilized or sold, including associated by-products, the value of production, and the royalty due the state of Idaho must be shown. This report is due on or before the last day of the month following the month in which production was obtained and sold or utilized, together with the royalties due the state of Idaho. (3-21-12)

05. Measurement. The lessee will measure or gauge all production in accordance with methods approved by the Department. The quantity and quality of all production will be determined in accordance with the standard practices, procedures and specifications generally used in industry. All measuring equipment must be tested consistent with industry practice and, if found defective, the Department will determine the quantity and quality of production from the best evidence available. (3-21-12)

06. By-Product Testing. The lessee will periodically furnish the Department the results of periodic tests showing the content of by-products in the produced geothermal resources. Such tests will be taken as specified by the Department and by the method of testing approved by him, except that tests not consistent with industry practices will be conducted ~~at the expense of the~~ state of Idaho Department. (3-21-12)()

07. Commingling. The Department may authorize a lessee to commingle production from wells on his State lease(s) with production from non-state lands. Department approval of commingling will not be unreasonably withheld, and will consider the following: (3-21-12)

- a. The operator’s economic necessity of commingling; (3-21-12)
- b. The type of geothermal use proposed for the commingled waters; and (3-21-12)
- c. Sufficient measurement and accounting of all the commingled waters to ensure that the Department is appropriately compensated by royalties. (3-21-12)

037. -- 039. (RESERVED)

040. SIZE OF A LEASABLE TRACT.

01. Surface Area. Geothermal leases are not limited in surface area. The Board will determine the surface area of a lease after consultation with other state agencies and prospective lessees. The probable extent of a geothermal reservoir, the surface area needed for a viable project, and other relevant factors will be used to help determine lease surface area. (3-21-12)

02. Navigable Water Courses. Geothermal resources leases may be issued for state lands underlying navigable water courses in Idaho. Such lands are considered “state lands” and will be leased in accordance with these rules. Operations in the beds of navigable water courses will not be authorized except in *extraordinary necessary* circumstances and then only with express written approval of the Board upon such conditions and security as the Department deems appropriate. (~~3-21-12~~)()

~~041. — 044. (RESERVED)~~

~~045. LESSEE DESIGNATION OF OPERATOR OR AGENT.~~

~~01. Designation of Operator. In all cases where exploration, development, or production operations are not conducted by the lessee but are to be conducted under authority of an unapproved operating agreement or other arrangement, a designation of operator will be submitted to the department prior to commencement of such operations. Such a designation will be accepted as authority of the operator or his local representative to act for the lessee and to sign any papers or reports required under these rules. All changes of address and any termination of the authority of the operator will be immediately reported, in writing, to the department.~~ (3-21-12)

~~02. Agent for Service. When required by the department, lessee will designate a local representative empowered to receive service of civil or criminal process, and notices and orders of the department issued pursuant to these rules.~~ (3-21-12)

~~046~~**1. -- 049. (RESERVED)**

050. LAND SURFACE USE RIGHTS AND OBLIGATIONS.

- 01. Use and Occupancy.** (3-21-12)
 - 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 of geothermal resources and associated by-products produced from the leased lands, including the right to construct and maintain thereon all works, buildings, plants, waterway, roads, communication lines, pipelines, reservoirs, tanks, pumping stations or other structures necessary to the full enjoyment and development thereof, consistent with a plan of operations and amendments thereto, as approved by the Department. (3-21-12)

b. Uses occurring on the leased area related to exploration, development, production, or marketing of geothermal resources and associated by-products produced from off-lease lands may require the lessee to pay additional rent. (3-21-12)

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. (3-21-12)

~~**03. Entry by Department.** The Department will be permitted at all reasonable times to go in and upon the leased lands and premises, during the term of a lease, to inspect the operations and the products obtained from the leased premises and to post any notice that the Department may deem fit and proper. (3-21-12)~~

~~**04. Public Access.** During operations, the lessee will regulate public access and vehicular traffic to protect human life, wildlife, livestock and property from hazards associated with the operations. For this purpose, the lessee will provide warning, fencing, flagmen, barricades, well and hole coverings and other safety measures as appropriate. Restrictions on access must be approved by the Department as part of a plan of operations under Section 055. (3-21-12)~~

~~**05. Other Uses.** Operations under other leases or uses on the same lands shall not unreasonably interfere with or endanger operations under leases issued under these rules nor shall operations under these rules unreasonably interfere with or endanger operations under any lease, license, claim, permit or other authorized use pursuant to the provisions of any other Idaho law. (9-3-91)~~

063. Distance from Residence. No well may be drilled within two hundred (200) feet of any house or barn on the premises, without the written consent of the Department and its surface lessees, grantees or contract purchasers. (3-21-12)

~~**07. Fences.** Lessee will not at any time fence any watering place upon leased lands where the same 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 Department. (3-21-12)~~

~~**08. Timber Removal.** Lessee must not unreasonably interfere with the removal of timber purchased prior to or subsequent to the issuance of a lease. Lessee may remove any timber required for ingress or egress or necessary for operations. Any timber cut or removed by lessee must be paid for by lessee on a current stumpage price basis as determined by the Department. (3-21-12)~~

~~**09. Grazing.** A geothermal resources lease shall not be construed to prohibit the~~

~~leasing of the leased lands by the Board to other persons for grazing and agricultural purposes, or for the mining of minerals or for oil and gas development; provided, however, that the lessee under a geothermal resources lease shall have paramount right as against grazing and agricultural lessees to the use of so much of the surface of the land as shall be necessary for the purposes of the lease. All lessees shall have the right of ingress and egress at all times during the term of the lease.~~ (9-3-91)

~~104.~~ **104. Disposal of Leased Land.** The Board reserves the right to sell or otherwise dispose of the surface of the lands embraced with a lease, insofar as said surface is not necessary for the use of the lessee in the exploration, development and production of the geothermal resources and associated by-products, but any sale of surface rights made subsequent to execution of a lease will be subject to all the terms and provisions of that lease during the life thereof. (3-21-12)

~~105.~~ **105. Damage.** Lessee shall 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. (9-3-91)

051. -- 053. (RESERVED)

054. EXPLORATION UNDER THE LEASE.

01. Diligent Exploration. Lessees must perform diligent exploration and development activities in the first five (5) years of the initial lease term or as otherwise extended by lease provision. Diligent exploration includes seismic, gravity, and other geophysical surveys, geothermometry studies, drilling temperature gradient wells, or similar activities that seek to determine the presence or extent of geothermal resources. This exploration may occur off-lease if it is being done on the same geothermal field. Failure to perform diligent exploration as described may result in lease cancellation. (3-21-12)()

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. (3-21-12)

03. Plan Required. Lessee must submit a Research and Analysis plan of operations to the Department before any exploration using motorized equipment or before otherwise engaging in operations which may lead to an appreciable disturbance or damage to lands, timber, other resources, or improvements on or adjacent to the leased lands. The proposed activities may not start until the Department approves the plan and the applicable preconditions in Sections 100 and 101 of these rules have been satisfied. The plan of operations may be amended as needed with department approval. The plan ~~must~~ shall include all items which the Department deems necessary or useful in managing the geothermal resources, including, but not limited to, the following: (3-21-12)()

~~a. Well drilling information such as the proposed location of each well including a layout showing the position of the mud tanks, reserve pits, etc.;~~ (3-21-12)

- ~~b.~~ Existing and planned access, access controls, and lateral roads; (3-21-12)
- ~~c.~~ Location and source of water supply (if needed) and road building material; (3-21-12)
- ~~d.~~ Location of camp sites, air strips, buildings, pipelines, and other supporting facilities; (3-21-12)
- ~~e.~~ Other areas of potential surface disturbance; (3-21-12)
- ~~f.~~ The topographic features of the land and the drainage patterns; (3-21-12)
- ~~g.~~ Methods for disposing of waste material; (3-21-12)
- ~~h.~~
 - ~~a.~~ A narrative statement describing the proposed measures to be taken for protection of the environment, including, but not limited to the prevention or control of: (3-21-12)
 - i. Fires; (3-21-12)
 - ii. Soil loss and erosion; (3-21-12)
 - iii. Pollution of surface and ground waters; (3-21-12)
 - iv. Damage to fish and wildlife or other natural resources; (3-21-12)
 - v. Air and noise pollution; and (3-21-12)
 - vi. Hazards to public health and safety during lease activities. (3-21-12)
 - ~~b.~~ All pertinent information or data which the department may require to support the plan of operations for the utilization of geothermal resources and the protection of the environment; (3-21-12)
- ~~j.~~ An estimate of reasonable reclamation costs for reclamation performed by an outside party. This estimate will form the basis for the bond required in Section 100 of these rules; and (3-21-12)
- ~~k.~~ A map or maps of sufficient scale to depict the information required in Paragraphs a. through j. of this Subsection. (3-21-12)

055. DEVELOPMENT AND PRODUCTION UNDER THE LEASE.

01. Diligent Development of Lease and Production. Lessee must develop the geothermal resources on their lease area **and start production** within the first ten (10) years of the initial lease term ~~and start production~~ **or as otherwise extended by lease provision**. Development of the lease area requires wells to be drilled and other necessary infrastructure to be built. Production on the lease area means that geothermal fluids are being used and royalties are being

paid to the state. Failure to develop the lease and start production as described may result in lease cancellation unless the lessee applies to the Department for an extension and the extension is granted. (3-21-12)()

02. Best Practices. All operations will conform to the best practice and engineering principles in use in the industry. Operations must be conducted in such a manner as to protect the natural resources on the leased lands, including without limitation geothermal resources, and to result in the maximum ultimate recovery of geothermal resources with a minimum of waste, and be consistent with the principles of the use of the land for other purposes and of the protection of the environment. Lessee must promptly remove from the leased lands or store, in an orderly manner, all scraps or other materials not in use and not reasonably incident to the operation. (3-21-12)

03. Reclamation. ~~Lessee must reclaim all leased lands disturbed by exploration, development, operation and marketing of geothermal resources in accordance with applicable reclamation procedures contained in Sections 47-1509 and 47-1510, Idaho Code, as now existing and hereafter amended. Lessee must conserve, stockpile, and protect topsoil to enhance reclamation. Lessee must take all necessary steps in the exploration, development, operation, and marketing of geothermal resources to avoid a threat to life or property or an unreasonable risk to subsurface, surface, or atmospheric resources.~~ **Plans Required.** Prior to development, Lessee shall submit a Development Plan, Operating Plan, and Decommissioning and Reclamation Plan for the leased lands. All plans shall be approved by the Department, in writing, prior to Lessee beginning a phase of the lease in which those plans are performed or as otherwise required by the lease. All required plans shall include all items which the Department deems necessary or useful in managing the geothermal resources, including, but not limited to, those items referred to in Paragraphs 054.03.a. and 054.03.b. of this rule. (3-21-12)()

04. Waste and Damage. (3-21-12)

- a.** Lessee must take all reasonable precautions to prevent the following: (3-21-12)
- i.** Waste; (3-21-12)
 - ii.** Damage to other natural resources; (3-21-12)
 - iii.** Injury or damage to persons, real or personal property; and (3-21-12)
 - iv.** Any environmental pollution or damages that may constitute a violation of state or federal laws. (3-21-12)

b. The Department may inspect lessee's operations and issue such orders as are necessary to accomplish the purposes in Paragraph 055.04.a. Any significant effect on the environment created by the lessee's operations or failure to comply with environmental standards must be reported to the Department by lessee within twenty-four (24) hours and confirmed in writing within thirty (30) days. (3-21-12)

05. Notice of Production. Lessee must notify the department within sixty (60) days before any geothermal resources are used or removed for commercial purposes. (3-21-12)

~~06. **Shut Downs.** The Department is authorized to shut down any operations which it determines are causing, or may imminently cause, pollution of the natural environment or waste of geothermal resources upon failure by lessee to take timely, corrective measures. (3-21-12)~~

076. Amendments. The plan of operations must be amended by the lessee for the Department's approval to reflect changes in operations on the leased lands, including the installation of works, buildings, plants or structures for the production, marketing or utilization of geothermal resources. (3-21-12)

~~08. **Sampling.** When necessary or advisable, the Department will require that adequate samples be taken and tests or surveys be made using techniques consistent with industry practice, without cost to the state of Idaho, to determine the identity and character of formations; the presence of geothermal resources, water or reservoir energy; the quantity and quality of geothermal, water or reservoir energy; the amount and direction of deviation of any well from the vertical; formation, casing and tubing pressures, temperatures, rate of heat and fluid flow, and whether operations are conducted in a manner looking to the protection of the interest of the state of Idaho. Lessee will forward a copy of the results obtained from all geochemical, hydrologic, geologic, and other tests or surveys to the department within thirty (30) days of receiving the results. (3-21-12)~~

056. WASTE PREVENTION, DRILLING AND PRODUCTION OBLIGATIONS.

01. Waste. All leases shall be subject to the condition that the lessee will, in conducting his exploration, development and producing operations, use all reasonable precautions to prevent waste of geothermal resources and other natural resources found or developed in the leased lands. (9-3-91)

02. Diligence. The lessee must, subject to the right to surrender the lease, diligently drill and produce, or unitize such wells as are necessary to protect the Board from loss by reason of production on other properties. (3-21-12)

03. Prevention of Waste Through Reinjection. Geothermal lessees must return geothermal waters to the geothermal aquifer in a manner that supports geothermal development. (3-21-12)

~~04. **By-Products.** Subject to lessee's right to surrender the lease, where the Department determines that production, use or conversion of geothermal resources under a geothermal lease is capable of producing a valuable by-product or by-products, including commercially demineralized or mineralized water contained in or derived from such geothermal resources for beneficial use in accordance with applicable state water laws, the Department may require substantial beneficial production or use thereof, except where the Department, in consultation with the lessee, determines that: (3-21-12)~~

~~a. Beneficial production or use of by-products is not in the interest of conservation of natural resources; or (3-21-12)~~

~~b. Beneficial production or use of by-products would not be economically feasible for~~

~~the lessee; or~~

~~(3-21-12)~~

~~e. Beneficial production or use of by-products should not be required for other satisfactory reasons.~~

~~(3-21-12)~~

054. 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:

(3-21-12)

- a. Take all necessary precautions to keep all wells under control at all times; (3-21-12)
- b. Utilize trained and competent personnel; (3-21-12)
- c. Utilize properly maintained equipment and materials; and (3-21-12)
- d. Use operating practices which insure the safety of life and property. (3-21-12)

065. Unused Wells. Except as provided in Subsection 070.02 of these rules, the lessee must promptly plug and abandon any well on the leased land that is not used or useful in conformity with regulations promulgated by the IDWR or its successor agency. No production well will be abandoned until its lack of capacity for further profitable production of geothermal resources has been demonstrated to the satisfaction of the Department and the Department has been given an opportunity to either acquire the well permit or assign it to another party. A producible well may be abandoned only after receipt of written approval by the Department. Equipment will be removed, and premises at the well site will be restored as near as reasonably possible to its original condition immediately after plugging operations are completed on any well except as otherwise authorized by the Department. Drilling equipment must not be removed from any suspended drilling well without taking adequate measures to close the well and protect subsurface resources. Upon failure of lessee to comply with any requirements under this rule, the Department is authorized to cause the work to be performed at the expense of the lessee and the surety. (3-21-12)

057. -- 059. (RESERVED)

060. EXPLORATION AND OPERATION RECORDS, CONFIDENTIALITY.

01. Drilling Records. Lessee must keep or cause to be kept and to be filed with the IDWR such careful and accurate well drilling records as are now or may hereafter be required by that Department. Lessee must file with the Department, such production records and exploration evidence as required by Sections 030, 036, and 055 of these rules, which records will be subject to inspection by the public at the offices of the Department during regular business hours under such conditions as the Department deems appropriate, subject, however, to exemptions from disclosure as set forth in Section 9-340, 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. (3-21-12)

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

~~(3-21-12)~~()

03. Well Logs. The confidentiality of well logs is limited to one year from well completion as stated in Section 42-4010(b), Idaho Code. (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

070. WATER RIGHTS.

01. Water Rights. ~~Lessee must comply with all laws of the state of Idaho, including the rules and regulations of the IDWR, regulating the appropriation of the public waters of Idaho to beneficial uses.~~ Lessee shall comply with all applicable federal and state laws, rules and regulations regarding the appropriation of public waters of Idaho to beneficial uses. ~~No water right developed or obtained by lessee in conjunction with operations under this lease will be sold, assigned or otherwise transferred without written approval of the Department. Upon surrender, termination or expiration of the lease, lessee must take all actions required by the Department to assign to the Board all water rights, including applications, permits and licenses. Lessee will enjoy the right of use of any private waters upon the leased lands during the term of the lease, but not thereafter.~~ The establishment of any new water rights on state lands shall be by and for Lessor and no claim thereto shall be made by Lessee. Such water rights shall attach to and become appurtenant to the state lands, and the Lessor shall be the owner thereof. (3-21-12)()

02. Potable Water Discovery. All leases issued under these rules will be subject to the condition that, where the lessee finds only potable water of no commercial value as a geothermal resource in any well drilled for exploration or production of geothermal resources, and when the water is of such quality and quantity as to be valuable and usable for agricultural, domestic, or other purpose, the Board, or where appropriate, the surface lessee, grantee or contract purchaser, will have the right to acquire the well with whatever casing is installed in the well at the fair market value of the casing, and upon the assumption of all future liabilities and responsibilities for the well, with the approval of the director of the IDWR. (3-21-12)

071. -- 074. (RESERVED)

075. ASSIGNMENTS.

01. Prior Written Approval. ~~A total or partial assignment of a lease must be approved in writing by the department. Approval will not be unreasonably withheld and will only be effective after written approval is given. An assignee must accept, and the assignor must release, all responsibility for improvements, operations, and obligations under the lease before the department approves the assignment. An assignment will take effect immediately upon approval of the assignment.~~ In order for lessee to effect an assignment, lessee shall, prior to the consummation of an effective sale, transfer or assignment of the lease between lessee and its proposed assignee, provide to the Department certain information about the proposed assignment, including identification of the proposed assignee and general terms of the proposed assignment on assignment application forms provided by the Department. Any proposed total or partial assignment of a lease must be preapproved in writing by the Department prior to any proposed sale, transfer or assignment of the lease is consummated between lessee and the proposed assignee. Approval will not be unreasonably withheld. Following the Department's written preapproval of the proposed assignee and general terms of the proposed assignment, lessee and assignee may consummate any such sale, transfer or assignment of lessee's leasehold interest in the lease. The consummation of any assignment agreement by the lessee without the Department's prior written preapproval shall constitute a default of the lease, and such sale, transfer or assignment may be rejected in the Department's sole discretion; and, such assignment will only be effective if the default is expressly waived in writing by the Department. In order for an assignment of lessee's interest in the lease to be acceptable for approval by the Department, the consummated sale, transfer or assignment must include provisions wherein lessee has sold, transferred or assigned to the assignee any and all interest that lessee has in the lease together with any and all interest lessee has in any and all improvements located upon the leased premises, and assignee must assume all liabilities of lessee under the lease together with ownership of all improvements owned by lessee. An assignment between lessee and its assignee will only take effect following the Department's final written approval of the assignment following receipt of copies of the final, consummated sale, transfer or assignment agreement between lessee and assignee. (3-21-12)()

02. Full or Partial. A lease may be assigned as to all or part of the acreage included therein to any person qualified to hold a state lease, provided that neither the assigned nor the retained part created by the assignment shall contain less than forty (40) acres. No undivided interest in a lease of less than ten percent (10%) shall be created by assignment. (9-3-91)

03. Overriding Royalty Disclosure. Overriding royalty interests created by an assignment are subject to the requirements in Section 080 of these rules. (3-21-12)

04. Responsibility. In an assignment of ~~the~~ a partial or complete interest in all of the lands in a lease the assignor and ~~his~~ its surety shall continue to be responsible for performance of any and all obligations under the lease until ~~the effective date of the assignment~~ such time as the Department shall, in writing, release lessee and its surety from obligations arising under the lease after the Department accepts any such assignment and provides a release of any or all obligations in writing. After the effective date of any assignment, the assignee and ~~his~~ its surety shall 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. (9-3-91)()

05. Segregation of Assignment. An assignment of ~~the~~ all or any portion of lessee's record title of the complete interest in a portion of the lands in a lease shall clearly identify and

segregate the assigned and retained portions. After the effective date, the assignor ~~is~~ will be released and discharged from any obligations thereafter accruing with respect to the assigned portion of the leased lands. Such segregated leases shall 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.

~~(9-3-91)~~()

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

(9-3-91)

~~**07. Form of Assignment.** An assignment must be a good and sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the serial number of the lease, 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. An assignment must effect or concern only one (1) lease or a portion thereof, except for good cause shown.~~

~~(9-3-91)~~

~~**087. Application.** The application for approval of an assignment must be on forms provided approved by the Department ~~or exact copies thereof. It must be accompanied by a signed statement by the assignee either (1) that he is the sole party in interest in the assignment, or (2) setting forth the names and qualifications of the other parties taking an interest in the lease. Where the assignee is not the sole party in interest, separate statements must be signed by each of the other parties and by the assignee setting forth the nature and extent of the interest of each party and the nature of the agreement between them. In addition, it shall be declared which party in interest will be the party of record for purpose of receiving all communications and other notices from the lessor. If payments out of production are reserved, a statement must be submitted stating the details as to the amount, method of payment, and other pertinent items. These separate statements must be filed in the office of the department in Boise, not later than fifteen (15) days after the filing of the application for approval.~~~~

~~(9-3-91)~~()

~~**098. Denial.** Unless the lease account is in good standing at the time the assignment is reached for action, the request for approval of the assignment will be denied, and the lease shall be subject to termination in accordance with these rules. If the lessee is in default of the lease at the time of a request for assignment approval, the Department may, at its sole discretion, reject any proposed assignment until the lease is brought into full compliance. The approval of an assignment of lease in good standing shall not be unreasonably withheld provided such consent of the Department is requested and obtained prior to any assignment.~~

~~(9-3-91)~~()

(BREAK IN CONTINUITY OF SECTIONS)

085. UNIT OR COOPERATIVE PLANS OF DEVELOPMENT OR OPERATION.

01. IDWR Approval. Nothing in this rule will excuse the parties to a unit agreement

from procuring the approval of the IDWR pursuant to Section 42-4013, Idaho Code, if approval is required. (3-21-12)

02. Unit Plan. For the purpose of conserving the natural resources of any geothermal pool, field or like area, lessees under lease issued by the Board are authorized, with the written consent of the Department, to commit the state lands to unit, cooperative or other plans of development or operation with other state lands, federal lands, privately-owned lands or Indian lands. Departmental consent will not be unreasonably withheld. Applications to unitize, or a copy of the application filed with IDWR, will be filed with the Department who will certify whether such plan is necessary or advisable in the public interest. The Department may require whatever documents or data ~~he or she~~ **which the Department** deems necessary **in its reasonable discretion**. To implement such unitization, the Board may with the consent of its lessees modify and change any and all terms of leases issued by it which are committed to such unit, cooperative or other plans of development or operations. (3-21-12)()

03. Contents. The agreement must describe the separate tracts comprising the unit, disclose the apportionment of the production of royalties and costs to the several parties, and the name of the operator, and must contain adequate provisions for the protection of the interests of all parties, including the state of Idaho. The agreement should be signed by or in behalf of all interested necessary parties before being submitted to the Department. It will be effective only after approval by the Department. The unit operator must be a person as defined by these rules and ~~he~~ must be approved by the Department. (3-21-12)()

04. Lease Modification. Any modification of an approved agreement will require approval of the Department under procedures similar to those cited in Subsection 085.02 of these rules. (3-21-12)

05. Term. ~~At the sole discretion of the Department,~~ ~~the~~ term of ~~all~~ **any** leases included in any cooperative or unit plan of development or operation ~~will~~ **may** be extended ~~automatically~~ for the term of such unit or cooperative agreement, but in no event beyond that time provided in Subsection 030.01 of these rules. Rentals or royalties on leases so extended ~~will be at the rate specified in the lease~~ **may be reassessed for such extended term of the lease**. (3-21-12)()

06. Continuation of Lease. Any lease which will be eliminated from any such cooperative or unit plan of development or operation, or any lease which 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. (3-21-12)

07. Evidence of Agreement. Before issuance of a lease for lands within an approved unit agreement, the lease applicant or successful bidder will be required to file evidence that ~~he~~ ~~has~~ **they have** entered into an agreement with the unit operator for the development and operation of the lands in a lease if issued to him under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, ~~he~~ **the lease applicant or successful bidder** will be permitted to operate independently, but will be required to perform his operations in a manner which the Department deems to be consistent with the unit operations. (3-21-12)()

~~08. Department of Water Resources. Nothing in this rule shall excuse the parties to a unit agreement from procuring the approval of the department of water resources pursuant to Section 42-4013, Idaho Code, if approval is required. (9-3-91)~~

(BREAK IN CONTINUITY OF SECTIONS)

095. SURRENDER, TERMINATION, EXPIRATION OF LEASE.

01. Procedure. A lease, or any surveyed subdivision of the area covered by such lease, may be surrendered by the record title holder by filing a written relinquishment in the office of the Department ~~in Boise~~, on a form furnished by the Department, provided that a partial relinquishment does not reduce the remaining acreage in the lease to less than forty (40) acres. The minimum acreage provision of this section may be waived by the Department where ~~he~~ **the Department** finds such exception is justified on the basis of exploratory and development data derived from activity on the leasehold. The relinquishment must: (3-21-12)()

- a. Describe the lands to be relinquished; (9-3-91)
- b. Include a statement as to whether the relinquished lands had been disturbed and, if so, whether they were restored as prescribed by the terms of the lease; (9-3-91)
- c. State whether wells had been drilled on the lands and, if so, whether they have been plugged and abandoned pursuant to the rules of the IDWR; and (3-21-12)
- d. Furnish a sworn statement that all monies due and payable to workers employed by the record title holder of the interest on the leased premises have been paid. (9-3-91)

02. Continuing Obligations. A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and his surety: (9-3-91)

- a. To make payments of all accrued rentals and royalties; (9-3-91)
- b. To place all wells on the land to be relinquished in condition for suspension of operations or abandonment; (9-3-91)
- c. To restore the surface resources in accordance with these rules and the terms of the lease; and (9-3-91)
- d. To comply with all other environmental stipulations provided for by these rules or lease. (9-3-91)

03. Failure to Pay Rental or Royalty. The Director may terminate a lease for failure to pay rentals or royalties thirty (30) days after mailing a notice of delinquent payment. However, if the time for payment falls upon any day in which the office of the Department ~~in Boise~~ is not open, payment received on the next official working day will be deemed to be timely. The termination of the lease for failure to pay the rental will be noted on the official records of the

Department. Upon termination the lands included in such lease may become subject to leasing as provided by these rules. ~~(3-21-12)~~()

04. Termination for Cause. A lease may be terminated by the Department for any violation of these rules, or the lease terms, sixty (60) days after notice of the violation has been given to lessee by personal service or certified mail, return receipt requested, to the address of record last appearing in the files of the Department, unless: (3-21-12)

a. The violation has been corrected; or (9-3-91)

b. The violation is one that cannot be corrected within the notice period and the lessee has in good faith commenced within the notice period to correct the violation and thereafter proceeds diligently to complete the correction. (9-3-91)

05. Equipment Removal. ~~Upon~~ Prior to the expiration of the lease, or the earlier termination or surrender thereof pursuant to this rule, and provided the lessee is not in default, the lessee will have the privilege at any time ~~within a period of ninety (90) days thereafter of~~ during the term of the lease to ~~remov~~ing from the leased premises any materials, tools, appliances, machinery, structures, and equipment other than improvements needed for producing wells. Any materials, tools, appliances, machinery, structures and equipment subject to removal, but not removed ~~within the ninety (90) day period~~, prior to any termination of the lease or any extension thereof that may be granted because of adverse climatic conditions during that period, will, at the option of the Department, become property of the state of Idaho, but the lessee must remove any or all such property where so directed by the Department. ~~(3-21-12)~~()

06. Surrender After Termination. Upon the expiration or termination of a lease, the lessee will quietly and peaceably surrender possession of the premises to the state, and if the lessee is surrendering the leased premises or any portion thereof, the lessee shall deliver to the state a good and sufficient release on a form furnished by the Department. ~~(3-21-12)~~()

096. -- 099. (RESERVED)

100. BOND REQUIREMENTS.

01. Minimum Bond. Prior to initiation of operations using motorized earth-moving equipment lessee must furnish a bond. This bond will be in favor of the state of Idaho, conditioned on the payment of all damages to the land surface and all improvements thereon, including without limitation crops on the lands, whether or not the lands under this lease have been sold or leased by the Board for any other purpose; conditioned also upon compliance by lessee of his obligations under this lease and these rules. The Department may require a new bond in a greater amount at any time after operations have begun, upon a finding that such action is reasonably necessary to protect state resources. (3-21-12)

02. Statewide Bond. In lieu of the aforementioned bonds, lessee may furnish a good and sufficient "statewide" bond conditioned as in Subsection 100.01. This bond will cover all lessee's leases and operations carried on under all geothermal resource leases issued and outstanding to lessee by the Board at any given time during the period when the "statewide" bond is in effect. The amount of such bond will be equal to the total of the requirements of the separate

bonds being combined into a single bond. (3-21-12)

03. Period of Liability. The period of liability of any bond will not be terminated until all lease terms and conditions have been fulfilled and the bond is released in writing by the Department. (3-21-12)

04. Operator Bond. ~~Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond. In the event suit is filed to enforce the terms of any bond furnished by an operator in which the lessee (if a different person) is not a named party, the Department may, in its sole discretion, join the lessee as a party to such suit.~~ (9-3-91)()

If the event suit is filed to enforce the terms of any bond furnished by an operator in which the lessee (if a different person) is not a named party, the Department may, in its sole discretion, join the lessee as a party to such suit.

(BREAK IN CONTINUITY OF SECTIONS)

~~102. INDEMNITY.~~

~~Lessee will expressly agree to indemnify, defend and save harmless the state of Idaho, state Board of land commissioners, the Department of the department of lands, the department of 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 and every of the foregoing, from and against any and all claims, liability, costs, damages, or expenses including any claims, by the federal government or other damages to the environment or for loss, injury, or damage to persons or property including claims of the employees of the lessee or lessee's agent, operator or contractor which may arise out of the activities conducted on the leased premises by the lessee, its agent, operator, contractor, or employees.~~ (3-21-12)

~~103~~2. -- 104. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

106. -- ~~109~~10. (RESERVED)

~~110. IMPOSSIBILITY OF PERFORMANCE.~~

~~Whenever, as a result of any cause beyond lessee's control, including without limitation, fire, flood, windstorms, or other act of God; law, order or regulation of any governmental agency, or inability to secure men, material or transportation, it becomes impossible for lessee to perform or to comply with any obligation under a lease other than payment of rentals, the Department may by written order excuse lessee from damages or forfeiture of the lease and lessee's obligations will be suspended so long as the Department finds that good cause exists; provided, however, that nothing herein will extend the term of the lease.~~ (3-21-12)

IDAPA 25 - IDAHO OUTFITTERS AND GUIDES LICENSING BOARD

25.01.01 - RULES OF THE IDAHO OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 25-0101-1202

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-2107 (b), (d); 36-2110 and 36-2119, 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:

Trapping wolves is relatively new to Idaho. There has been a need determined for licensing outfitters to help the State of Idaho and the Idaho Department of Fish and Game properly manage Idaho's wolf population. Therefore, the purpose of this rule is to allow outfitters and their guides to trap wolves during hunting trips and to allow hunting clients to accompany them.

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 3rd 2012 Idaho Administrative Bulletin, [Vol. 12-10, pages 617 through 620](#).

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 the Idaho Outfitters and Guides Licensing Board at 208-327-7380.

DATED this Nov 10, 2012.

Jake Howard
Executive Director
Idaho Outfitters and Guides Licensing Board
1365 North Orchard, Room 172
Boise, Idaho 83706
Phone: 208-327-7380; Fax 208-327-7382

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

EFFECTIVE DATE: The effective date of the temporary rule is **September 5, 2012**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-2107 (b) and (d); 36-2110 and 36-2119, 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 and not later than October 17, 2012.

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:

Trapping wolves is relatively new to Idaho. There has been a need determined for licensing outfitters to help the State of Idaho and the Idaho Department of Fish and Game properly manage Idaho's wolf population. Therefore, the purpose of this rule is to allow outfitters and their guides to trap wolves during hunting trips and to allow hunting clients to accompany them.

Expanding existing rule IDAPA 25.01.01, Section 051, to allow outfitters licensed for big game hunting to provide wolf trapping as a hazardous excursion as defined under IDAPA 25.01.01, Subsection 002.20 and which would be conducted as a minor (incidental) activity as defined in 25.01.01, Subsections 002.23 and 002.28 during the course of big game hunting during any open wolf trapping season. The outfitter or designated agent must have wolf hunting and wolf trapping properly amended to their outfitter license prior to providing services to the public by submitting a major amendment along with certification of completion of the mandatory wolf trapping education class. Guides must be properly employed by and licensed as a guide to a specific outfitter responsible for big game hunts and incidental wolf trapping. In addition to other training requirements hunting guides must have completed the mandatory wolf trapping education class and have a certificate of completion on file with the outfitter prior to the activity taking place and available for inspection by the Board. Clients must possess the appropriate tags to participate in a hunt. Clients may hunt and kill any free ranging animal for which they have an appropriate license and tag, but cannot kill an animal in or within 200 yards of their outfitter's or the guide's trap line. A trapped animal must be killed quickly and humanely. Animals cannot be released and then "hunted" and then killed. Clients may accompany a properly licensed guide

who is checking his outfitter's traps and must be directly accompanied by that guide at all times. Clients may not handle or be involved with handling traps or trapped animals. Clients may only observe the handling of trapped animals by properly licensed guides.

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

This temporary rule confers a benefit to licensed outfitters and their designated agents and guides who must have wolf hunting and wolf trapping properly amended to their licenses prior to providing that service to the public. This rule allows incidental trapping of wolves during guided big game hunts by properly licensed outfitters and guides.

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

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

No fiscal impact will occur as a result of changes that are being made.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because most wolf trapping where outfitters are involved is conducted on federal land administered by the United States Forest Service. This rule is the result of a "negotiated compromise" involving representatives of the Idaho Outfitters and Guides Licensing Board, the Idaho Department of Fish and Game and industry representatives with the USFS. It represents what is currently allowable by the USFS and is simply an extension of operating privileges provided to currently licensed outfitters and guides. The Board would modify this rule should the United States Forest Service modify their position.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact the Idaho Outfitters and Guides Licensing Board at 208-327-7380.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 24th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 25-0101-1202

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

01. Hot Pursuit of Bear and Cougar With Hounds and Hot Pursuit Agreements.

With prior Board approval, an outfitter may enter into an adjacent area with a client for hot pursuit of bear and cougar hunting when hunting with hounds. The pursuit may not be started outside of the outfitter's licensed area. Outfitters may negotiate agreements with adjoining outfitters for hot pursuit of bear and cougar when hunting with hounds. Such agreements constitute a minor amendment. A copy of the amended agreement must be filed with the Board annually. An outfitter wishing to conduct a hot pursuit hunt outside his licensed area with a client must:

(3-20-04)

a. Obtain written permission from all outfitters whose licensed area(s) will be directly involved in the hunt; (3-20-04)

b. Obtain written permission from all applicable landowners or land managers; (3-20-04)

c. Obtain approval from the Outfitters and Guides Licensing Board to conduct the hunt by satisfying the following criteria: (3-20-04)

i. Must be licensed for bear and cougar hunting; and (3-20-04)

ii. Submit an incidental amendment fee. (3-20-04)

d. With prior Board approval, on a case by case basis and under special circumstances, the Board may waive the requirement for approval from the adjacent outfitter. (3-20-04)

02. Camps. A hunting outfitter shall not place a camp, nor cause one to be placed, in an area for which he is not licensed, except as identified in his approved operating plan. Whenever possible, camps used for big game hunting shall be placed well within the operating area and not near the boundary line. (3-20-04)

03. Guide Services to Clients Outside Outfitter's Operating Area. Clients may not be provided guided services when outside the outfitters area, including any drop camp situation except as provided in Subsection 051.01. Outfitters providing unguided hunts may be subject to Board action for clients hunting outside their operating area. (3-20-04)

04. Wolf Trapping Incidental to Big Game Hunts. Only Outfitters licensed for big game hunting and for hunting wolves specifically may qualify to provide wolf trapping. ()

a. Outfitters licensed for big game hunting and for hunting wolves may provide wolf trapping as a hazardous excursion as defined in Subsection 002.20 and which would be conducted as a minor (incidental) activity as defined in Subsections 002.23 and 002.28 during the course of big game hunting during any open wolf trapping season as follows: ()

i. The Outfitter or Designated Agent must have wolf hunting and wolf trapping properly amended to their outfitter license by submitting a major amendment along with certification of completion of the mandatory wolf trapping education class. ()

ii. The Outfitter or Designated Agent must complete the mandatory wolf trapping education class provided by the IDFG prior to allowing this activity to occur. ()

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

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

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

vi. Outfitters may not directly engage a client in trapping activities. (see Subsections 051.04.c.i. through 051.04.c.v. for direction on activities clients may be engaged in). ()

b. Guides: ()

i. Must be properly employed by and licensed as a guide to a specific outfitter responsible for big game hunts and incidental wolf trapping. ()

ii. Must, in addition to other training requirements of hunting guides, have completed the mandatory wolf trapping education class and have a certificate of completion on file with the employing outfitter prior to the activity taking place and available for inspection by the Board. ()

iii. Guides may check their employing outfitter’s or their own wolf traps as per state requirements as part of outfitted, big game hunts. ()

iv. May not provide services to the same client for two (2) different outfitters within a five (5) day period. ()

v. May not advertise or act as an independent booking agent. ()

vi. All traps and other equipment used for trapping must be provided by the licensed outfitter or may be leased from the guide with a copy of the lease put on file with the Board at the time the guide is licensed to the outfitter or two days prior to the excursion. ()

c. Clients: ()

i. Must possess the appropriate tags to participate in a hunt. ()

ii. May hunt and kill any free ranging animal for which they have an appropriate

license and tag, but cannot kill an animal in or within two hundred (200) yards of their Outfitter's or guide's trap line. A trapped animal cannot be released and then hunted or killed. ()

iii. May accompany a properly licensed guide who is checking his outfitter's traps and must be directly accompanied by that guide at all times. ()

iv. May not handle or be involved with handling traps or trapped animals. ()

v. May only observe the handling of trapped animals by properly licensed guides. ()

IDAPA 26 - IDAHO DEPARTMENT OF PARKS AND RECREATION

26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-1201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-4223 Idaho Code.

DESCRIPTIVE SUMMARY: The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 1, 2012 Idaho Administrative Bulletin, [Vol. 12-8, pages 64 through 72](#).

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:

It is anticipated that the enforcement of existing rules for parking violations will generate approximately \$15,000 in fee revenue to state dedicated funds. The impact on local jurisdiction may be an increase in activity for the courts and law enforcement agencies (county revenues and expenditures).

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Tamara Humiston, IDPR Deputy Director, 208.514.2450.

DATED this 8th day of November, 2012.

Tamara Humiston, Deputy Director
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, ID 83716-8700
PO Box 83720
Boise, ID 83720-0065
P: 208.514.2450; F: 208.334.3741

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

EFFECTIVE DATE: The effective date of the temporary rule is **May 9, 2012**.

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 15, 2012.

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

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

The Department has identified changes needed to enhance the governing of the parks through explicit language to carry out enforcement (parking violations and overnight use) and language to encompass additional winter use activities on park trails and clarify the language that involves Reservation Cancellations.

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

These changes address enforcement issues of existing fee rules that are critical to the parks' coming season enabling parks to provide for the safety and welfare of recreational users. The changes enhance the definition of winter use on park trails to provide safety for all recreational trail users. It clarifies the parameters of Reservation Cancellation.

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:

It is anticipated that the enforcement of existing rules for parking violations will generate approximately \$15,000 in fee revenue to state dedicated funds. The impact on local jurisdiction may be an increase in activity for the courts and law enforcement agencies (county revenues and expenditures).

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the lack of identifiable representatives, the affected interests are varied.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tamara Humiston, IDPR Deputy Director, 208.514.2450.

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 August 22, 2012.

DATED this 21st day of June, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0120-1201

010. DEFINITIONS.

As used in this chapter: (1-1-94)

01. ADA Campsites and Facilities. (3-30-06)

a. ADA Designated Campsites. A reservable ADA campsite may only be reserved and occupied by a party that can provide proof of disability upon arrival. If not reserved after 6:00 p.m. and no other non-ADA designated sites of the same site type are available, the site would be available for one (1) night. (3-30-06)

b. ADA Accessible Facilities. IDPR offers some facilities that provide for ADA accessibility. These facilities are not managed exclusively for ADA use. (3-30-06)

02. Board. The Idaho Park and Recreation Board, a bipartisan, six (6) member Board, appointed by the Governor. (3-13-97)

03. Camping Unit. A camping unit is the combined equipment and people capacity that a site or facility will accommodate. (3-30-06)

a. Campsites. Maximum capacity limits on each campsite are subject to each site's design and size. Unless otherwise specified, the maximum capacity will be one (1) family unit or a party of no more than eight (8) persons, ~~one two~~ ~~(+2)~~ ~~motor~~ ~~vehicles~~ or ~~one (1) RV or two (2) motorcycles~~, and up to two (2) tents, provided the combined equipment and people fit within the

designated camping area of the site selected.

~~(4-2-08)~~()

b. Facilities. Maximum capacity limits on each facility are subject to each facility's design and size. The combined equipment and people occupying a facility must fit within the designated areas of the facility selected. (3-30-06)

04. Camping Day. (3-30-06)

a. For individual and group campsites the period between 2:00 p.m. of one (1) calendar day and 1:00 p.m. of the following calendar day. (3-30-06)

b. For individual and group camping facilities, the period between 3:00 p.m. of one (1) calendar day and 12:00 p.m. (noon) of the following calendar day. (3-30-06)

05. Campsite. (3-30-06)

a. Individual. An area within an IDPR managed campground designated for camping use by an individual camping unit or camping party. (3-30-06)

b. Group. An area within an IDPR managed campground designated for group camping use or a block of individual campsites designated for group use within a campground primarily managed for individual use. (3-30-06)

c. Facility, Individual. A camping structure within an IDPR managed campground or area designated for camping use by an individual camping party. (3-30-06)

d. Facility, Group. A camping structure within an IDPR managed campground or area designated for group use. (3-30-06)

06. Day Use. Use of any non-camping lands and/or facilities between the hours of 7 a.m. and 10 p.m. unless otherwise posted. (3-30-06)

07. Day Use Fee. A fee charged for entry to a designated area. (3-30-06)

08. Department. The Idaho Department of Parks and Recreation. (1-1-94)

09. Designated Beach. Waterfront areas designated by the park manager or designee for water-based recreation activities. The length and width of each designated beach shall be visibly identified with signs. (3-30-06)

10. Designated Roads and Trails. Facilities recognizable by reasonable formal development, signing, or posted rules. (3-7-03)

11. Director. The Director and chief administrator of the Department, or the designee of the Director. (1-1-94)

12. Dock and Boating Facility. Floats, piers and mooring buoys owned or operated by the Department. (3-13-97)

13. Encroachments. Non-recreational uses of lands under the control of the Board including any utilization for personal, commercial, or governmental use by a non-Department entity. ()

134. Extra Vehicle. An additional motorized vehicle (not in tow at time of entry) without built in sleeping accommodations registered to a camp site. (3-13-97)

145. Facilities. (3-30-06)

a. Individual. A camping structure within an IDPR managed campground or area designated for camping use by an individual camping party. (3-30-06)

b. Group. A camping structure within an IDPR managed campground or area designated for group use. (3-30-06)

156. Group Use. Twenty-five (25) or more people, or any group needing special considerations or deviations from normal Department rules or activities. (1-1-94)

167. Motorized Vehicle. Every vehicle that is self-propelled except for vehicles moved solely by human power and motorized wheelchairs as defined in Section 49-123(g), Idaho Code. (3-7-03)

18. Overnight Use. Use of any non-camping lands for the parking of motor vehicles or trailers not associated with a campsite between the hours of 10 p.m. and 7 a.m. unless otherwise posted. ()

19. Overnight Use Fee. A fee charged for overnight use of non-camping lands between the hours of 10 p.m. and 7 a.m. ()

1720. Park or Program Manager. The person, designated by the Director, responsible for administering and supervising particular lands, facilities, and staff that are under the jurisdiction of the Department. (3-7-03)

1821. Standard Amenities. Campsite with no serviced amenities. (3-30-06)

1922. Serviced Amenities. Serviced campsite amenities includes water, electricity, or sewer. (3-30-06)

203. Primary Season. The time of the year when the majority of use occurs at a park facility. (3-7-03)

214. Vessel. Every description of watercraft, including a seaplane on the water, used or capable of being used as a means of transportation on water, but not including float houses, diver's aids operated and designed primarily to propel a diver below the surface of the water, and nonmotorized devices not designed or modified to be used as a means of transportation on the water such as inflatable air mattresses, single inner tubes, and beach and water toys as defined in Section 67-7003(22), Idaho Code. (3-7-03)

225. Vessel Length. The distance measured at the centerline at the highest point above the waterline from the fore-part of the outer hull at the bow to the aft-part of the outer hull at the stern, excepting any bowsprits, railings or extraneous or additional equipment. (3-13-97)

(BREAK IN CONTINUITY OF SECTIONS)

151. PARKING VIOLATIONS.

01. Land or Facilities Administered by the Department. No person shall stop, stand, or park a motor vehicle or trailer anywhere within land or facilities administered by the Department unless proof of payment of all required fees or other lawful authorization for entry is plainly visible and properly displayed. ()

02. Designated Campgrounds. No person shall stop, stand, or park a motor vehicle within designated campgrounds unless proof of payment of the applicable campsite fees as set forth in Section 250 of this chapter is plainly visible and properly displayed on either the lower windshield or dashboard of the driver's side of the vehicle. ()

03. Designated Overnight Use Area. Except for authorized campers, no person shall stop, stand, park, or leave a motor vehicle or trailer unattended outside day use hours unless the motor vehicle or trailer is in a designated overnight use area and proof of payment of the overnight-use fee is plainly visible and properly displayed. ()

04. Fee Collection Surcharge. Any person stopping, standing, or parking a motor vehicle or trailer without payment of all required fees is subject to the fee collection surcharge as provided in Subsection 225.06 of this chapter. ()

05. Citations for Violations. Citations for violations of this Section may be issued to the operator of the motor vehicle. If the operator cannot be readily identified, the citation may be issued to the registered owner or lessee of the motor vehicle, subject to the provisions of Section 67-4237, Idaho Code. ()

151.2. -- 174. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

202. OVERNIGHT USE.

01. Occupancy. Overnight use shall be permitted only in designated areas. Overnight use is only allowed after all required fees have been paid, registration information completed, and all permits properly displayed. ()

02. Overnight Use Fees. Motor vehicles or trailers not associated with campers between 10:00 p.m. and 7:00 a.m. at designated facilities shall be charged an overnight use fee. ()

03. Self Registration. In those areas so posted, overnight users shall register themselves for the use of overnight use areas, paying the appropriate fees as provided for herein and in accordance with all posted instructions. ()

04. Length of Stay. Except as provided herein, no person, party, or organization may be permitted to utilize overnight use areas on any lands administered by the Department for more than fifteen (15) days in any thirty (30) consecutive-day period. This applies to both reservation and “first come first served” customers. The IDPR Director or designee may authorize shorter or longer periods for any individual area. ()

05. Registration Required. All required fees must be paid, registration information completed, and all permits properly displayed prior to occupying an overnight use area. ()

06. Check Out. Overnight users are required to check out by 1 p.m. of the day following the last paid overnight of use. ()

07. Responsible Party. The individual purchasing an overnight use permit or the registered owner of the motor vehicle or trailer is responsible for ensuring compliance with the rules within this chapter. ()

08. Overnight Use Prohibited. Overnight use is prohibited except in areas specifically designated for overnight use or by authorization of the park manager or designee. ()

2023. -- 224. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

250. FEE SCHEDULE: CAMPSITES.

01. Campsites.

CAMPSITE FEE TABLE	
Primitive Campsite No amenities at site, camping area not defined	\$13/day
Standard Campsite Any defined campsite, either tent pad or RV pad/area (may include: table and/or grill)	\$16/day

CAMPSITE FEE TABLE	
Serviced Campsite/ W Any defined campsite, either tent pad or RV pad/area, with water at site (may include: table and/or grill)	\$20/day
Serviced Campsite/ E Any defined campsite, either tent pad or RV pad/area, with electricity at site (may include: table and/or grill)	\$20/day
Serviced Campsite/ W, E Any defined campsite, either tent pad or RV pad/area, with water and electricity at site (may include table and/or grill)	\$24/day
Serviced Campsite/ W, E, SWR Any defined campsite, either tent pad or RV pad/area, with water, electricity, and sewer at site (may include table and/or grill)	\$26/day
Companion Campsite May be any campsite type, regardless of amenities, that has greater equipment/people capacity (may include table and/or grill) Fee determined by actual site type.	Site type multiplied by two (2)
Amenity Fee for Central Water Applies to "Standard" campsites in campgrounds with a central water supply. The Amenity Fee is charged in addition to the Standard Campsite fee.	\$2/night
Amenity Fee for Flush-Toilets/Showers Applies to "Standard" campsites in campgrounds with Flush-Toilets/Showers. The Amenity Fee is charged in addition to the Standard Campsite fee.	\$2/night
Use of Campground Showers by Non-campers	\$3/person
Overnight Use Fee Applies to non-campers leaving a vehicle unattended on park property overnight.	\$10/night
Limited Income Discount - Idaho residents showing proof of limited income (Medicaid card or other evidence approved by the Board) may receive a camping fee discount of:	\$4/day
Resident Disabled Idaho Veterans - Campsite fees are waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability	
Senior Citizen Discount - Pursuant to Section 67-4223, Idaho Code, and at the discretion of the Director, IDPR may provide, at selected under-utilized locations and times, a senior citizen discount.	Maximum 50% of RV camping fee
Extra Vehicle Charge	\$8/day
Camping Cabins and Yurts	\$150/night
Each additional person above the sleeping capacity of camping cabin or yurt	\$12/night

(4-7-11)

02. Reservation Service Fees, Individual Campsite or Facility. A non-refundable non-transferable (from one (1) party to another) service charge of ten dollars (\$10) may be assessed for each individual campsite or facility reserved. This fee will be waived for campers

with a current Idaho RV registration sticker and reimbursed to the Department by the RV Program. A service charge of ten dollars (\$10) or the first night's fee, whichever is less, will be assessed for the cancellation or modification of each individual campsite or facility reserved that involves reducing the planned length of stay or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window) if notice is received more than twenty-four (24) hours in advance of the scheduled arrival time. Cancellations or modifications made less than twenty-four (24) hours in advance of the scheduled arrival time shall result in assessment of a ten dollar (\$10) service charge and may require the forfeiture of the first night's camping fee. Modifications that change the original stay so that no part of the new stay includes part of the original stay are to be considered a cancellation and a re-book will be required.

(3-30-06)

251. (RESERVED)

252. FEE SCHEDULE: DAY USE.

~~03.~~ **Day Use Fee.**

DAY USE FEE TABLE.	
Daily charge per motorized vehicle - The day use fee expires at 10:00 p.m. on date of purchase or as posted Overnight camping guests are exempt from this fee.	\$5
Daily charge per commercial motor coach (no annual pass available)	\$25
Statewide Annual State Park Passport per motorized vehicle	\$40
Disabled Idaho Resident Veterans - The day use fee is waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability	
Second Vehicle Annual Passport.	\$15

(4-7-11)

~~04. Special Charges. The cost to the agency for returned checks will be passed on to the issuer of the insufficient funds check.~~ (3-7-03)

253. (RESERVED)

254. FEE SCHEDULE: GROUP FACILITY.

~~05.~~ **Group Facility Fees.** Reservation service fee, designated group campground or facility. (3-30-06)

~~a01.~~ **Non-Refundable, Non-Transferable.** A non-refundable, non-transferable (from one (1) party to another) service charge of twenty-five dollars (\$25) will be assessed per designated group area or facility reserved. This fee will be charged in addition to the usage fees for each group or campsite or facility. (3-30-06)()

~~b02.~~ **Individual Fees.** Groups using overnight facilities shall be charged three dollars (\$3) per person per night camping fees for each individual above the authorized base occupancy

rate for the specific site or facility.

(3-30-06)()

e03. Cleaning and Damage Deposits. Cleaning/damage deposits may be required for certain facilities. Where cleaning/damage deposits are required, they shall be paid prior to check-in. Cleaning/damage deposits shall be fully refunded if the facility is left in the same condition in which it was accepted.

(3-30-06)()

#04. Day Use. Group use fees for day use facilities may be negotiated by the park manager or designee and will generally not fall below the cost of providing services.

(3-30-06)()

255. (RESERVED)

256. FEE SCHEDULE: BOATING FACILITIES.

~~06.~~ Boating Facilities.

BOATING FACILITIES FEE TABLE	
Vessel launching (per vessel/per day) (Annual park passport or day use fee apply toward vessel launching fees)	\$5/ day
Overnight moorage - any length of vessel. (Applicable to persons who have paid for a park campsite and are not camping on the vessel)	\$9/night
Overnight moorage - persons camping on vessel	\$10/night
Any length vessel	\$9/night
Any length vessel moored at buoy	\$9/night

(4-7-11)

257. (RESERVED)

258. FEE SCHEDULE: SPECIAL FEES.

071. Modification of Fees. Additional fees or deposits may be required for certain uses or for the reservation of certain facilities. The Department reserves the right to waive or reduce fees and charges for Department sponsored promotions.

(7-1-93)

082. Sales Tax. Applicable sales tax may be added to all sales excluding the day use fee.

(3-30-06)

03. Special Charges. The cost to the agency for returned checks will be passed on to the issuer of the insufficient funds check.

()

094. Length of Stay. Fifteen (15) days in any consecutive thirty (30) day period.

(3-30-06)

105. Nordic Ski Grooming Winter Access Program Fee. A fee of four dollars (\$4) per person per day and thirty-five dollars (\$35) per family per season will be required at Board-

approved premium ~~Nordic-ski-grooming-program~~ **winter access** locations. These programs may include: maintained parking areas, warming facilities, winter accessible restroom facilities, regularly groomed ~~ski~~ trails, extensive signing, trail mapping and ski patrol services.

~~(3-16-04)~~()

2519. -- 274. (RESERVED)

275. CRITERIA FOR INDIVIDUAL CAMPSITE, CAMPING CABIN, AND YURT RESERVATIONS.

01. Confirmation Requirements. (3-30-06)

a. Confirmation of an Individual Campsite or Facility Reservation. Full payment of all appropriate camping and related service fees shall be made before a reservation is confirmed. (3-30-06)

b. Confirmation of a Designated Group Campground or Facility Reservation. (3-30-06)

i. Payment of the first night or daily base rate fee for a group facility and all related service fees shall be made before a reservation is confirmed. (3-30-06)

ii. Payment of all camping and related service fees applicable for each campsite or facility reserved within a group campground must be paid at the time of booking before a reservation is confirmed. (3-30-06)

02. Individual Campsite and Facility Reservations. Reservations for individual campsites, and facilities shall be managed in accordance with rules promulgated by the Idaho Park and Recreation Board. (4-7-11)

03. Reservation Modifications. Individual and group campsite(s) or facilities. A reservation service fee will be assessed for any modification to a previously made reservation that involves reducing the planned length of stay, or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window). With the exception of the reservation service fees as defined in Subsection 250.02, any overpaid fees will be reimbursed at the time the reservation is modified. (3-30-06)

04. Reservation Cancellations. (3-7-03)

a. Individual Site or Facility. A reservation service fee will be assessed for the cancellation of a reservation. This service fee will be assessed for each campsite or facility involved. If the customer cancels after the scheduled arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day's usage fees for the campsite or facility. At no time shall the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation service provider may cancel a customer's reservation for insufficient payment of fees due. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. (3-30-06)

b. **Park Board** Designated ~~Group Campsite or Facility~~ **Special Use Campsites and Facilities**. A reservation service fee will be assessed for the cancellation of a reservation. If a cancellation for a group facility occurs ~~fewer than~~ twenty-one (21) ~~or fewer~~ calendar days prior to arrival, the customer forfeits the first night or daily facility usage fees (base rate). If a cancellation for a group facility occurs more than twenty-one (21) calendar days prior to arrival, a cancellation charge of fifty dollars (\$50) will be assessed. If the customer cancels after the arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day's usage fees for the campsite or facility. At no time shall the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation service provider may cancel a customer's reservation for insufficient payment of fees due. An individual site cancellation fee applies to each campsite in a group campground. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. ~~(3-30-06)~~()

05. Park Manager Authority. The park manager or designee may deny entry to, or reservation of, any Department unit, campsite, or facility, to any individual whose prior documented behavior has violated Department rules or whose in-park activities are incompatible with the park's operation. (3-30-06)

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

37.03.03 - RULES AND MINIMUM STANDARDS FOR THE CONSTRUCTION AND USE OF INJECTION WELLS

DOCKET NO. 37-0303-1201

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 42-3913, Idaho Code.

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

Existing portions of IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells”, specific to Class V injection wells have been revised to be made consistent with Idaho Code Title 42, Chapter 39 “Injection Wells” and the Code of Federal Regulations Parts 144 through 148. Definitions have been added or updated, existing exemptions for certain shallow injection wells have been removed, and permitting and advertising requirements for low-flow domestic heat pump return injection wells have been reduced. New rules specific to Class II injection wells used in association with oil and gas production have been added.

Due to public comment Section 006 is being published in this Bulletin. During the comment period numerous changes were suggested and have been made, only those sections are being printed in this bulletin.

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 October 3, 2012, Idaho Administrative Bulletin, **Vol. 12-10, pages 826 through 890**.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Brian Ragan, P.G. at (208) 287-4934, brian.ragan@idwr.idaho.gov.

DATED this 30th day of November, 2012.

Brian Ragan, P.G.
Underground Injection Control Program
Idaho Department of Water Resources
322 East Front Street

P.O. Box 83720
Boise, Idaho 83720
Phone: (208) 287-4934
Fax: (208) 287-6700

THE FOLLOWING NOTICE WAS 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 42-3913, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Wednesday, October 24, 2012 9:00 a.m. to 4:00 p.m.
Conference Rooms 602C and 602D Idaho Water Center, 322 East Front Street, Boise, Idaho 83720

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:

Existing portions of IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells", specific to Class V injection wells have been revised to be made consistent with Idaho Code Title 42, Chapter 39 "Injection Wells" and the Code of Federal Regulations Parts 144 through 148. Definitions have been added or updated, existing exemptions for certain shallow injection wells have been removed, and permitting and advertising requirements for low-flow domestic heat pump return injection wells have been reduced. New rules specific to Class II injection wells used in association with oil and gas production have been added.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 4, 2012 Idaho Administrative Bulletin, [Volume 12-4, page 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 Brian Ragan, P.G. at (208) 287-4934, brian.ragan@idwr.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 24, 2012.

DATED this 28th day of August, 2012.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 37-0303-1201

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules will be cited as IDAPA 37.03.03 “Rules and Minimum Standards for the Construction and Use of Injection Wells.” (5-3-03)

02. Scope. These rules and minimum standards are for construction and use of injection wells in the state of Idaho. Upon promulgation, these rules apply to all injection wells (see Rule Subsection ~~023~~5.01). The construction and use of Class I, ~~H~~, III, ~~or~~ 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 shall apply to all injection wells in the state of Idaho, including except in Indian lands ~~to the extent not otherwise preempted by federal law administered by the United States Environmental Protection Agency (EPA). 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.~~ (5-3-03)()

03. Rule Coverage. In the event that a portion of these rules is less stringent than the minimum requirements for injection wells as established by Federal regulations, the correlative

Federal requirement will be used to regulate the injection well. ()

04. Variance of Methods. The Director may approve the use of a different testing method or technology if it is no less protective of human health and the environment, will not allow the migration of injected fluids into a USDW, meets the intent of the rule and yields information or data consistent with the original method or technology required. A request for review by the Director must be submitted in writing by the applicant, permit holder, or operator and be included with all pertinent information necessary for the Director to evaluate the proposed testing method or technology. ()

(BREAK IN CONTINUITY OF SECTIONS)

006. PUBLIC RECORDS ACT COMPLIANCE (RULE 6).

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. Unless provided otherwise by statute, all records associated with these rules are open for inspection including the name and address of any applicant or permittee and information pertaining to the existence, absence, or level of contaminants in drinking water. (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS ~~(RULE 10)~~.

01. Abandonment. ~~The discontinuance of the use of an injection well. See “permanent abandonment,” “temporary abandonment,” and “unauthorized abandonment.” See “permanent decommission.~~ (7-1-93)()

02. Abandoned Well. See “permanent decommission”. ()

03. Agricultural Runoff Waste. Excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tail water, as well as natural drainage resulting from precipitation, snowmelt, and floodwaters, and is identical to the statutory phrase “irrigation waste water” found in Idaho Code 42-3902. ()

024. 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. (7-1-93)

05. Application. The standard Department forms for applying for a permit, including any additions, revisions or modifications to the forms. ()

036. 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. (5-3-03)

07. Area of Review. The area surrounding an injection well described according to the criteria set forth in Subsection 045.07 of these rules. ()

048. **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. (5-3-03)

059. **Best Management Practice (BMP).** A practice or combination of practices ~~determined to be the most~~ that are more effective ~~and practicable means of~~ than other techniques at preventing or reducing contamination of ground water and surface water by injection well operation, ~~to achieve water quality goals and protect beneficial uses of ground water.~~ (7-1-93)()

0610. **Casing.** ~~A conduit required by these rules and Well Construction Standards Rules to maintain the well opening and prevent contamination of ground water.~~ 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 mudfluid into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole. (7-1-93)()

11. **Cementing.** The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing. ()

0712. **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. (5-3-03)()

0813. **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. (7-1-93)

14. **Confining Bed.** A body of impermeable or distinctly less permeable material stratigraphically adjacent to one (1) or more aquifers. ()

15. **Confining Zone.** A geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone. ()

0916. **Construct.** To create a new injection well or to convert any structure into an injection well. (7-1-93)

~~107.~~ **Contaminant.** Any physical, chemical, ~~ion, radionuclide, synthetic organic compound, micro-organism, waste or other substance which does not occur naturally in ground water or which naturally occurs at a lower concentration~~ biological, or radiological substance or matter. (7-1-93)()

~~118.~~ **Contamination.** The ~~direct or indirect introduction of any contaminant into ground water, caused in whole or in part by human activity.~~ introduction into the natural ground water of any physical, chemical, biological, or radioactive material that may: (7-1-93)()

a. Cause a violation of Idaho Ground Water Quality Standards found in IDAPA 58.01.11 "Ground Water Quality Rule" or the federal ground water quality standards, whichever is more stringent; or ()

b. Adversely affect the health of the public; or ()

c. Adversely affect a designated or beneficial use of the State's ground water. Contamination includes the introduction of heated or cooled water into the subsurface that will alter the ground water temperature and render the local ground water less suitable for beneficial use. ()

~~19.~~ **Conventional Mine.** An open pit or underground excavation for the production of minerals. ()

~~20.~~ **Decommission.** To remove a well from operation such that injection through the well is not possible. See "permanent decommission" and "unauthorized decommission". ()

~~21.~~ **DEQ.** The Idaho Department of Environmental Quality. (5-3-03)

~~1322.~~ **Deep Injection Well.** An injection well which is more than eighteen (18) feet in vertical depth below land surface, ~~and is identical to the statutory phrase, "waste disposal and injection well."~~ (7-1-93)()

~~1423.~~ **Department.** The Idaho Department of Water Resources. (7-1-93)

~~1524.~~ **Director.** The Director of the Idaho Department of Water Resources. (7-1-93)

~~25.~~ **Disposal Well.** A well used for the disposal of waste into a subsurface stratum. ()

~~126.~~ **Draft Permit.** ~~The completed Application for Permit with permit conditions, compliance schedules and monitoring requirements attached.~~ 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." (7-1-93)()

~~27.~~ **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. ()

~~17.~~ Drinking Water Source. ~~An aquifer which contains water having less than ten thousand (10,000) mg/l total dissolved solids and has not been exempted from this designation by the Director of the Department of Water Resources pursuant to Rule 75.~~ (7-1-93)

~~128.~~ **Drywell.** An injection well completed above the water table so that its bottom and sides are typically dry except when receiving fluids. (5-3-03)

~~29.~~ **Emergency Permit.** A UIC “permit” issued in accordance with Subsection 045.09 of these rules. ()

~~1930.~~ **EPA.** The United States Environmental Protection Agency. (5-3-03)

~~2031.~~ **Endangerment.** Injection of any fluid which exceeds Idaho ground water quality standards, or federal ground 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. (5-3-03)()

~~32.~~ **Exempted Aquifer.** An “aquifer” or its portion that meets the criteria in the definition of “underground source of drinking water” but which has been exempted according to the procedures in Section 025 of these rules and been recategorized as “other” according to the procedures in IDAPA 58.01.11 “Ground Water Quality Rule”. ()

~~33.~~ **Existing Injection Well.** An “injection well” other than a “new injection well.” ()

~~34.~~ **Experimental Technology.** A technology which has not been proven feasible under the conditions in which it is being tested. ()

~~35.~~ **Facility or Activity.** Any UIC “injection well,” or another facility or activity that is subject to regulation under the UIC program. ()

~~36.~~ **Fault.** A surface or zone of rock fracture along which there has been displacement. ()

~~37.~~ **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. ()

~~2138.~~ **Fluid.** Any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gaseous or any other form or state. (7-1-93)

~~2239.~~ **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 ~~at the~~ on the earth's surface or traceable in the subsurface. (7-1-93)()

40. Formation Fluid. Fluid present in a "formation" under natural conditions as opposed to introduced fluids. ()

41. Generator. Any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR part 261. ()

2342. Ground Water. Any water that occurs beneath the surface of the earth in a saturated formation of rock or soil. (5-3-03)

243. Ground Water Quality Standards. Standards found in IDAPA 58.01.11, "Ground Water Quality Rule," Section 200. (5-3-03)

2544. Hazardous Waste. Any substance defined by IDAPA 58.01.05, "Rules and Standards for Hazardous Waste,". (5-3-03)

45. Indian Lands. "Indian Country" as defined in 18 U.S.C. 1151. That section defines Indian Country as: ()

a. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; ()

b. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and ()

c. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. ()

46. Individual Subsurface Sewage Disposal System. For the purpose of these rules, any standard or alternative disposal system which injects sanitary waste from single family residential septic systems, or non-residential septic systems which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than twenty (20) people a day. ()

47. Improved Sinkhole. A naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface. ()

2748. Injection. The subsurface emplacement of fluids: through an injection well, but excludes the following: The purpose of injection by Class V wells is the temporary or permanent disposal or storage of fluids into subsurface formations. (5-3-03)()

a. The underground injection of natural gas for purposes of storage; ()

b. The underground injection of fluids or propping agents, other than diesel fuels, ()

pursuant to hydraulic fracturing operations related to oil, gas, or geothermal activities. ()

2849. Injection Well. Any ~~excavation or artificial opening into the ground which meets the following three (3)~~ feature that is operated to allow injection which also meets at least one (1) of the following criteria: (7-1-93)()

a. ~~It is a~~ **A** bored, ~~drilled or dug hole,~~ or ~~is a~~ driven mine shaft ~~or a driven well point~~ whose depth is greater than the largest surface dimension; and (7-1-93)()

b. ~~It is deeper than its largest straight line surface dimension~~ **A dug hole** whose depth is greater than the largest surface dimension; and (7-1-93)()

c. ~~It is used for or intended to be used for injection.~~ **An improved sinkhole; or** (7-1-93)()

d. A subsurface fluid distribution system. ()

e. Provided however, that “injection well” does not mean or include any well drilled for oil, gas, or geothermal production activities, other than one into which diesel fuels are injected pursuant to hydraulic fracturing operations ()

50. Injection Zone. A geological “formation”, or those sections of a formation receiving fluids through an “injection well.” ()

~~29. Irrigation Waste Water. Water diverted for irrigation but not applied to crops, or runoff of irrigation tail water from the cropland as a result of irrigation.~~ (7-1-93)

2651. IWRB. Idaho Water Resource Board. (5-3-03)

3052. 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). (5-3-03)

53. 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. ()

54. Lithology. The description of rocks on the basis of their physical and chemical characteristics. ()

3155. 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 ~~abandoned permanently decommissioned~~ pursuant to the criteria contained in these rules it is considered to be capable of accepting fluids. (7-1-93)()

56. Mechanical Integrity. The condition or status of an injection well and its physical

components as they relate to the flow of fluids inside or outside the injection well. A well is said to have mechanical integrity if there is no significant leak in the casing, tubing, or packer, and there is no significant fluid movement into a underground source of drinking water through vertical channels adjacent to the wellbore. ()

3257. 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. (7-1-93)

3358. 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. (5-3-03)

59. 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. ()

60. 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. ()

3461. Operate. To allow fluids to enter an injection well by action or inaction of the operator. (7-1-93)

3562. 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. (7-1-93)

363. Owner. Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity owning land on which any injection well exists or is proposed to be constructed. (7-1-93)

64. Packer. A device lowered into a well to produce a fluid-tight seal. ()

3765. Perched Aquifer. Ground water separated from an underlying main body of ground water by an unsaturated zone. (7-1-93)

3866. Permanent ~~Abandonment~~ Decommission. The discontinuance of use of an injection well in ~~accordance with current IDAPA 37.03.09, “Well Construction Standards 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.”~~ Permanent abandonment requires plugging the well bore with bentonite grout, cement grout, concrete, or other impermeable material to prevent the upward or downward migration of fluids. 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. (5-3-03)()

67. Permit. An authorization, license, or equivalent control document issued by the

Department. ()

~~3968.~~ **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 ~~as the subject of right and duties (Idaho Code 30-101-EPHA)~~ (7-1-93)()

69. Plugging. The act or process of stopping the flow of water, oil or, gas, or other fluids into or out of a formation through a borehole or well penetrating that formation. ()

70. Plugging Record. A systematic listing of permanent or temporary decommissioning of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures. ()

~~4071.~~ **Point of Beneficial Use.** The top or surface of a ~~drinking water source~~ USDW, directly below an injection well, where water is available for a beneficial use. (5-3-03)()

~~4172.~~ **Point of Diversion for Beneficial Use.** A location such as a producing well or spring where ground water is taken under control and diverted for a beneficial use. (7-1-93)

~~4273.~~ **Point of Injection.** The last accessible sampling point prior to waste being released into the subsurface environment through an ~~Class V~~ 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. (5-3-03)()

74. Pressure. The total load or force per unit area acting on a surface. ()

75. Project. A group of wells in a single operation. ()

~~4376.~~ **Radioactive Material.** Any material, solid, liquid or gas which emits radiation spontaneously. Radioactive geologic materials occurring in their natural state are not included. (7-1-93)

~~4477.~~ **Radioactive Waste.** Any fluid which contains radioactive material in concentrations which exceed those established for discharges to water in an unrestricted area by 10 CFR 20.1302.(b)(2)(i) and Table 2 in Appendix B of 10 CFR 20. (5-3-03)

78. RCRA. The Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976. ()

~~4579.~~ **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. (5-3-03)()

80. Residential (Domestic) Activities. Human activities that generate liquid or solid waste in any public, private, industrial, commercial, municipal, or other facility. ()

~~46. **Replacement Well.** An injection well constructed to replace an existing injection well, authorized for use under these rules, that meets the following criteria: (7-1-93)~~

~~a. The replacement well is located within two hundred (200) feet of the existing injection well. (7-1-93)~~

~~b. The injected fluids are from the same source as the fluids injected through the existing injection well. (7-1-93)~~

~~c. The injected fluids are of equal or better quality than the fluids injected through the existing well. (7-1-93)~~

~~d. Construction features of the replacement well are similar to the features of the existing well and meet or exceed minimum well construction standards. (7-1-93)~~

~~e. The distance between the point of injection and the nearest boundary of the receiving aquifer is at least as great as that distance for the existing injection well. (7-1-93)~~

~~f. The existing injection well is abandoned by an approved method within thirty (30) days of completion of construction of the replacement well. (7-1-93)~~

~~**4781. Sanitary Waste.** Any liquid or solid waste originating from humans and human activities, such as wastes collected from toilets, showers, wash basins, floor drains, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. 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. (5-3-03)()~~

~~**482. Schedule of Compliance.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the standards. (7-1-93)~~

~~**4983. 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. (5-3-03)~~

~~**5084. Shallow Injection Well.** An injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface. (7-1-93)~~

~~**85. 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. ()~~

~~**5186. State.** The state of Idaho. (7-1-93)~~

~~**87. Stratum (plural strata).** A single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material. ()~~

88. **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. ()

~~5289.~~ **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; *usually part of a septic system.* (5-3-03)()

90. **Surface Casing.** The largest diameter permanent pipe string set and sealed following setting of the conductor pipe. ()

~~53.~~ **Surface Runoff Water.** *Runoff water from the natural ground surface and cropland. Runoff from urbanized areas such as streets, parking lots, airports, and runoff from animal feedlots, agricultural processing facilities and similar facilities is not included within the scope of this phrase.* (7-1-93)

91. **Total Dissolved Solids.** The total dissolved (filterable) solids as determined by the use of the method specified in 40 CFR part 136. ()

92. **Transferor.** The owner or operator transferring ownership and/or operational control of the well. ()

93. **UIC.** The Underground Injection Control program under Part C of the Safe Drinking Water Act, including an "approved State program." ()

~~54.~~ **Temporary Abandonment.** *The prevention of injection by use of a removable or retrievable device, such as a packer or cap.* (7-1-93)

~~5594.~~ **Unauthorized ~~Abandonment~~ Decommission.** The ~~permanent abandonment~~ decommissioning of any injection well that has not received the approval of the Department prior to ~~abandonment~~ decommissioning, or was not ~~abandoned~~ 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. (7-1-93)()

95. **Underground Injection.** See "injection." ()

96. **Underground Source of Drinking Water (USDW).** An aquifer or its portion: ()

a. Which: ()

i. Supplies any public water system; or ()

ii. Contains a sufficient quantity of ground water to supply a public water system; or ()

(1) Currently supplies drinking water for human consumption; or ()

(2) Contains fewer than ten thousand (10,000) mg/l total dissolved solids; and ()

b. Which is not an exempted aquifer. ()

5697. Unreasonable Contamination. Endangerment of a ~~drinking water source~~ USDW or the health of persons or other beneficial uses by injection. See “endangerment.” ~~(7-1-93)~~()

98. USDW. Underground Source of Drinking Water. ()

5799. 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.” (5-3-03)

58100. Well. For the purposes of these rules, “well” means “injection well.” (5-3-03)

101. Well Monitoring. The measurement, by on-site instruments or laboratory methods, of the quality of water in a well. ()

011. -- ~~0214.~~ (RESERVED)

[Moved from Section 065]

0615. VIOLATIONS, FORMAL NOTIFICATION AND ENFORCEMENT ~~(RULE 65).~~

01. Violations. It shall be a violation of these rules for any owner or operator to: (7-1-93)

a. Fail to comply with a permit or authorization, or terms or conditions thereof; (5-3-03)

b. Fail to comply with applicable standards for water quality; (7-1-93)

c. Fail to comply with any permit application notification or filing requirement; (7-1-93)

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; (7-1-93)

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; (7-1-93)

f. Fail to respond to any formal notification of a violation when a response is

required; or (5-3-03)

- g. ~~Abandon~~ Decommission a well in an unauthorized manner. (~~7-1-93~~)()

02. Additional. It shall be a violation of these rules for any person to construct, operate, maintain, convert, plug, ~~abandon~~ 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. (~~7-1-93~~)()

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. (7-1-93)

04. Enforcement. Violation of any of the provisions of the ~~Waste Disposal and~~ Injection Well Act (Chapter 39, Title 42, Idaho Code) or of any rule, regulation, standard or criteria pertaining to the ~~Waste Disposal and~~ Injection Well Act may result in the Director initiating an administrative enforcement action as provided under Chapters 17 and 39, Title 42, Idaho Code. (~~5-3-03~~)()

016. -- 019. (RESERVED)

[Moved from Section 070]

0720. HEARING BEFORE THE WATER RESOURCE BOARD (~~RULE 70~~).

01. General. All hearings before the Idaho Water Resource Board shall 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 Idaho Water Resource Board 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 Idaho Water Resource Board 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 Idaho Water Resource Board and upon the Attorney General. (7-1-93)

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 Rule ~~725~~ of these rules, shall be afforded an opportunity for a hearing before the Idaho Water Resource Board 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.

(7-1-93)()

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 Water Resource Board 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. (7-1-93)

021. -- 024. (RESERVED)

[Moved from Section 075]

0725. EXEMPTION FROM DRINKING WATER SOURCE DESIGNATION~~(RULE 75).~~

01. General. Most aquifers in Idaho are likely to fit within the definition of "~~drinking water source~~ underground source of drinking water." ~~(Rule Subsection 010.15).~~ Some portions of these aquifers, however, may be isolated or contain water of such quality that they will not be utilized as drinking water sources. Other deep ground water systems may contain water of such poor quality that they will not be used for drinking water. Under the authorities of section 1805, Title 42, Idaho Code, the Director may determine "the most effective means by which these water resources may be applied for the benefit of the people of this state." As such, ~~These~~ aquifers, portions of aquifers and deep ground water systems may be employed in the best interests of Idaho as disposal sites for certain contaminants, as authorized for disposal under these rules. However, injection must be consistent with the requirements of the Ground Water Quality Act of 1989 and the Idaho Ground Water Quality Plan. (7-1-93)()

02. ~~Most Effective Means.~~ ~~Under the authorities of Section 1805, Title 42, Idaho Code, the Director may determine, "the most effective means by which these water resources may be applied for the benefit of the people of this state." The Director may exempt an aquifer or portion thereof from a drinking water source designation if:~~ **Petition Process for Aquifer Exemptions.** The Department or any other person or entity may petition to exempt an aquifer from the designation as a drinking water source. The Department and the Idaho Department of Environmental Quality have jurisdictional responsibilities for processing a petition for aquifer exemption. Once the Department has processed and approved the aquifer exemption, and the Idaho Department of Environmental Quality has processed and approved the aquifer re-categorization, the U.S. Environmental Protection Agency must also approve the exemption for the process to be considered complete. The applicant must submit information to the Department and to the Idaho Department of Environmental Quality and may do so at the same time so each agency's process occurs concurrently. The petition process is broken down into the following

general steps: ()

a. ~~It is not currently a drinking water source; and~~ The petition for aquifer exemption shall be submitted to the Department and must contain the general information found in Subsection 025.05 and the pertinent specific information found in Subsection 025.06 of these rules. To be considered for exemption by the Department, an aquifer must meet the criteria set forth in Subsection 025.04 of these rules. Once the petition has been reviewed by the Department, the applicant and the Idaho Department of Environmental Quality will be notified as to whether or not the aquifer meets the criteria for exemption. If the aquifer does not meet the criteria, the petition will be denied and the applicant will be informed of the reasons for the denial. If the aquifer meets the criteria for exemption, the Department will review the information submitted and determine if the geologic and hydrogeologic characteristics will allow for the proposed injection activities while preventing degradation to adjacent USDW's. If the geologic and hydrogeologic characteristics are not conducive to preventing degradation to adjacent USDW's, the petition will be denied and the applicant and IDEQ will be informed of the reason for denial, thereby terminating the process for both agencies. If the Department intends to approve a petition for exemption, an opportunity for public input will be provided. If, after the public input period, the Department does not intend to approve the petition, the Department will deny the petition and inform the applicant and IDEQ of the reasons for denial, thereby terminating the process for both agencies. If, after the public input period, the Department intends to approve the petition, the Department will hold approval of the exemption pending the outcome of IDEQ's aquifer re-categorization process. If the aquifer re-categorization process fails, the Department will deny the petition for exemption. (7-1-93)()

b. The petition for aquifer re-categorization shall be submitted to the Idaho Department of Environmental Quality and must contain the information found in the petition process of IDAPA 58.01.11 "Ground Water Quality Rule". The Idaho Department of Environmental Quality will determine if the information submitted is sufficient enough to be submitted to their Environmental Quality Board for review. If the information submitted is not sufficient, IDEQ will deny the petition and inform the applicant and the Department of the reasons for denial, thereby terminating the process for both agencies. If the information submitted is sufficient but the Environmental Quality Board does not approve the petition and does not instruct staff to initiate negotiated rulemaking, IDEQ will deny the petition and inform the applicant and the Department of the reason for denial, thereby terminating the process for both agencies. If the Environmental Quality Board approves the petition, IDEQ staff will initiate the negotiated rulemaking process with opportunity for public input. ()

bc. ~~It will not be utilized as a drinking water source in the future because:~~ Upon a successful aquifer re-categorization by IDEQ and an issuance of an intent to approve the exemption by the Department, the Department will submit its approval recommendation to the U.S. EPA, which will include information regarding the successful aquifer re-categorization, a description of the aquifer to be exempted as per section 025.03 of these rules, and information submitted by the applicant for review and final approval. Upon U.S. EPA approval, the Department will notify the applicant and IDEQ of the approved aquifer exemption. (7-1-93)()

i. ~~It is situated at such a depth or location that recovery for drinking water purposes is economically or technologically impractical; or~~ (7-1-93)

~~ii. Is so contaminated that it would be economically or technologically impractical to render the water fit for human consumption; or (7-1-93)~~

~~iii. The total dissolved solids content of the ground water is greater than three thousand (3,000) mg/l and it is not reasonably expected to supply a public water system. (7-1-93)~~

~~e. The Director shall not provide an exemption for any aquifer categorized as "Sensitive Resource" or "General Resource" by the Department of Environmental Quality. Procedures for Recategorizing an Aquifer to "Other Resource," (IDAPA 58.01.11, "Ground Water Quality Rule," Section 350), may need to be completed prior to any petition for exemption. (5-3-03)~~

03. Petition for Exemption Identification of Underground Sources of Drinking Water and Exempted Aquifers. Any owner or operator proposing to inject contaminants authorized under Rule Subsection 025.03 into an aquifer or portion thereof that is within the definition of a drinking water source, but is not currently used in that manner, and is not likely to be used as such in the future, may petition the Director for an exemption to that designation. The petition for exemption shall contain: (7-1-93)()

a. Reason or reasons for the exemption; The Director may identify (by narrative description, illustrations, maps, or other means) and shall protect as underground sources of drinking water, all aquifers and parts of aquifers which meet the definition of "underground source of drinking water" in Section 010 of these rules, except to the extent there is an applicable aquifer exemption under Paragraph 025.03.b. of this rule. If an aquifer has not been specifically identified by the Director, it is an underground source of drinking water if it meets the definition in Section 010 of these rules. (7-1-93)()

b. A description of the aquifer or part thereof proposed for exemption, to include the vertical and lateral limits of the aquifer and water table gradient or potentiometric surface; The Director may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite, all aquifers or parts thereof which the Director proposes to designate as exempted aquifers using the criteria in Subsection 025.04 of these rules. (7-1-93)()

~~e. The expected direction and rate of movement of the contaminants; (7-1-93)~~

~~dc. A description of the geology to include all aquifers or ground water systems, lithologies and controlling features;~~ Subsequent to program approval or promulgation, the Director may, after notice and opportunity for a public hearing, identify additional exempted aquifers. For approved State programs exemption of aquifers identified: (7-1-93)()

i. Under Paragraph 025.04.b. shall be treated as a program revision under Section 40 CFR 145.32; ()

ii. Under Paragraph 025.04.c. shall become final if the Director submits the exemption in writing to the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency has not disapproved the designation within the timeframe set forth in 40 CFR 144.7.b.3. Any disapproval by the U.S. Environmental Protection Agency shall state the reasons

and shall constitute final Agency action for purposes of judicial review. ()

- ~~e.~~ Ground water resources in the area overlying the aquifer proposed for exemption; (7-1-93)
- ~~f.~~ Any other information that the Director may deem necessary to make a decision. (7-1-93)
- ~~g.~~ Confirmation that the aquifer has been designated "Other Resource" by the DEQ. (5-3-03)

04. ~~Director's Action.~~ ~~The Director shall provide legal notice of the proposed exemption in a newspaper or newspapers of general circulation in the area that may be affected by the exemption. The notice shall provide locations where the petition for exemption may be reviewed and shall provide for a comment period of thirty (30) days.~~ **Criteria for Exempted Aquifers.** An aquifer or a portion thereof which meets the criteria for an "underground source of drinking water" in Section 010 may be determined under Subsection 025.03 of these rules to be an "exempted aquifer" for Class II wells if it meets the criteria in Paragraphs 025.04.a. through 025.04.c. of these rules. (7-1-93)()

~~a.~~ A fact finding hearing may be requested by any person or persons that could be affected by the exemption. All hearings shall be conducted in accordance with the procedures set forth in Rule Subsection 040.02 of these rules. It does not currently serve as a source of drinking water; and (7-1-93)()

~~b.~~ A copy of the petition for exemption will be submitted to the Director of the Department of Environmental Quality for recommendations. A written notice of the recommendations shall be provided to the Director of the Department of Water Resources within thirty (30) days of receipt, or within fifteen (15) days of any hearing pertaining to the petition. It cannot now and will not in the future serve as a source of drinking water because: (7-1-93)()

~~i.~~ It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible. ()

~~ii.~~ It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; ()

~~iii.~~ It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or ()

~~c.~~ The total dissolved solids content of the ground water is more than three thousand (3,000) and less than ten thousand (10,000) mg/l and it is not reasonably expected to supply a public water system. ()

~~e.~~ After due consideration of the petition and upon receipt of the recommendation of the Director of the Department of Environmental Quality, the Director shall either approve or

~~disapprove the petition for exemption.~~

(7-1-93)

~~05. Hearing Before the Idaho Water Resource Board. Any person aggrieved by the Director's decision shall have the right to a hearing before the Idaho Water Resource Board pursuant to Rule Subsection 070.01 of these rules. **General Information to be Submitted with a Petition for Exemption.** Applicants requesting exemptions must provide the following general information:~~ (7-1-93)()

~~a. A map of the proposed exempted area in a format acceptable to the director. The map must show the boundaries of the area to be exempted, the topography, and other natural surface features and surface water locations. Any map which precisely delineates the proposed exempted area is acceptable. ()~~

~~b. A written description of the proposed exempted aquifer including: ()~~

~~i. Name of formation of aquifer. ()~~

~~ii. Subsurface depth or elevation of zone. ()~~

~~iii. Vertical confinement from other underground sources of drinking water. ()~~

~~iv. Thickness of proposed exempted aquifer. ()~~

~~v. Area of exemption (e.g., acres, square miles, etc.). ()~~

~~vi. A water quality analysis of the horizon to be exempted. ()~~

~~c. In addition to the above descriptive information concerning the aquifer, all exemption requests must demonstrate that the aquifer ". . . does not currently serve as a source of drinking water." as per Paragraph 025.04.a. of these rules. To demonstrate this, the applicant must survey the proposed exempted area to identify any water supply wells which tap the proposed exempted aquifer. The area to be surveyed should cover the exempted zone and a buffer zone outside the exempted area. The buffer zone should extend a minimum of a one-quarter (1/4) mile from the boundary of the exempted area. Any water supply wells located should be identified on the map showing the proposed exempted area. If no water supply wells would be affected by the exemption, the request should state that a survey was conducted and no water supply wells are located which tap the aquifer to be exempted within the proposed area. If the exemption pertains to only a portion of an aquifer, a demonstration must be made that the waste will remain in the exempted portion. Such a demonstration should consider among other factors, the pressure in the injection zone, the waste volume, injected waste characteristics (i.e., specific gravity, persistence, etc.) in the life of the facility. The model described in Subparagraph 045.07.a.ii. of these rules or a comparable aquifer model acceptable to the Director shall be used in this demonstration. ()~~

~~06. **Specific Information to be Submitted with a Petition for Exemption.** ()~~

~~a. The following information shall be submitted with a petition for exemption for an~~

aquifer meeting the criteria in Subparagraph 025.04.b.i. of these rules. If the proposed exemption is to allow a Class II enhanced oil recovery well operation to continue, the fact that it has a history of hydrocarbon or mineral production will be sufficient proof that this standard is met. Many times it may be necessary to slightly expand an existing well field to recover minerals or hydrocarbons. In this case, the applicant must show only that the exemption request is for expanding the previously exempted aquifer and state his reasons for believing that there are commercially producible quantities of minerals within the expanded area. ()

i. For Class II wells, a demonstration of commercial producibility shall be made as follows: ()

(1) For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Director upon a demonstration by the applicant of historical production having occurred in the project area or field. ()

(2) For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, information such as logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Director, to the extent such information is available. ()

ii. Exemptions relating to any new Class II wells which will be injecting into a producing or previously produced horizon should include the following types of information: ()

(1) Production history of the well if it is a former production well which is being converted. ()

(2) Description of any drill stem tests run on the horizon in question. This should include information on the amount of oil and water produced during the test. ()

(3) Production history of other wells in the vicinity which produce from the horizon in question. ()

(4) Description of the project, if it is an enhanced recovery operation including the number of wells and their location. ()

b. The following information shall be submitted with a petition for exemption for an aquifer meeting the criteria in Subparagraph 025.04.b.ii. of these rules. Consideration of an aquifer exemption request under this provision would depend on the availability of alternative supplies, the adequacy of alternatives to meet present and future needs, and a demonstration that there are major costs for treatment and or development associated with the use of the aquifer. The economic evaluation, submitted by the applicant, should consider the above factors, and these that follow: ()

i. Distance from the proposed exempted aquifer to public water supplies. ()

- ii. Current sources of water supply for potential users of the proposed exempted aquifer. ()
- iii. Availability and quality of alternative water supply sources. ()
- iv. Analysis of future water supply needs within the general area. ()
- v. Depth of proposed exempted aquifer. ()
- vi. Quality of the water in the proposed exempted aquifer. ()
- vii. Costs to develop the proposed exempted aquifer as a water supply source including any treatment costs and costs to develop alternative water supplies. This should include costs for well construction, transportation, and water treatment for each source. ()

c. The following information shall be submitted with a petition for exemption for an aquifer meeting the criteria in Subparagraph 025.04.b.iii. of these rules. Economic considerations will factor into the Director's decision on aquifer exemption requests under this section. Unlike the previous section, the economics involved are controlled by the cost of technology to render water fit for human consumption. Treatment methods can usually be found to render water potable. However, costs of that treatment may often be prohibitive either in absolute terms or compared to the cost to develop alternative water supplies. The Directors evaluation of aquifer exemption requests under this section will consider the following information submitted by the applicant: ()

- i. Concentrations and types of contaminants in the aquifer. ()
- ii. Source of contamination. ()
- iii. Whether contamination source has been abated. ()
- iv. Extent of contaminated area. ()
- v. Probability that the contaminant plume will pass the through proposed exempted area. ()
- vi. Ability of treatment to remove contaminants from ground water. ()
- vii. Chemical content of proposed injected fluids. ()
- viii. Current water supply in the area. ()
- ix. Alternative water supplies. ()
- x. Costs to develop current and probable future water supplies, cost to develop water supply from proposed exempted aquifer. This should include well construction costs, transportation costs, water treatment costs, etc. ()

xi. Projections on future use of the proposed aquifer. ()

d. The following information shall be submitted with a petition for exemption for an aquifer meeting the criteria in Paragraph 025.04.c. of these rules. An application under this provision must include information about the quality and availability of water from the aquifer proposed for exemption. Also, the exemption request must analyze the potential for public water supply use of the aquifer. This may include: a description of current sources of public water supply in the area, a discussion of the adequacy of current water supply sources to supply future needs, population projections, economy, future technology, and a discussion of other available water supply sources within the area. ()

026. -- 029. (RESERVED)

[Moved from Section 076]

07630. SEVERABILITY.

The provisions of these rules are severable. If any provisions or the application of such provisions to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity or remaining portions of these rules. (7-1-93)

031. -- 034. (RESERVED)

[Moved from Section 025]

0235. CLASSIFICATION OF INJECTION WELLS ~~AUTHORIZATIONS, PROHIBITIONS AND EXEMPTIONS (RULE 25).~~

01. Classification of Injection Wells. For the purposes of these rules, injection wells are classified as follows: (7-1-93)

a. Class I: ~~Wells used to inject hazardous, radioactive, industrial, or municipal wastes beneath the lowermost formation containing a drinking water source.~~ (5-3-03)()

i. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water. ()

ii. Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water. ()

iii. Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within one-quarter (1/4) mile of the well bore. ()

b. ~~Class II—Wells used to inject fluids which are brought to the surface with conventional oil and gas production, utilized for enhanced recovery of oil or gas, or stored as liquid hydrocarbons at standard temperature and pressure in the injection formation.~~ Wells used to inject fluids: (7-1-93)()

i. Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants, dehydration stations, or compressor stations which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection. ()

ii. For enhanced recovery of oil or natural gas; and ()

ii. For storage of hydrocarbons which are liquid at standard temperature and pressure. ()

c. ~~Class III—Wells which inject for the extraction of minerals unless used for solution mining in conventional mines.~~ Wells used to inject fluids for extraction of minerals including: (7-1-93)()

i. Mining of sulfur by the Frasch process; ()

ii. In situ production of uranium or other metals; this category includes only in-situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V. ()

iii. Solution mining of salts or potash. ()

d. ~~Class IV: —Wells used to inject hazardous or radioactive wastes into or above a formation which contains a drinking water source.~~ (7-1-93)()

i. Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one-quarter (1/4) mile of the well contains an underground source of drinking water.()

ii. Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one-quarter (1/4) mile of the well contains an underground source of drinking water.()

iii. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under Subparagraphs 035.01.a.i. or 035.01.d.i. or 035.01.d.ii. of this rule (e.g., wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to Section 025 of these rules). ()

e. Class V -- All injection wells not included in Classes I, II, III, ~~or~~ IV, or VI.

~~(7-1-93)~~()

f. Class VI. ()

i. Wells that are not experimental in nature that are used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW; or ()

ii. Wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to requirements at 40 CFR Section 146.95; or ()

iii. Wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to Section 025 of these rules. ()

02. Subclassification. Class V wells are subclassified as follows: (7-1-93)

a. *5A5-Electric Power Generation. (7-1-93)

b. *5A6-Geothermal Heat. (7-1-93)

c. *5A7-Heat Pump Return. (7-1-93)

d. 5A8-Aquaculture Return Flow. (7-1-93)

e. *5A19-Cooling Water Return. (7-1-93)

f. 5B22-Saline Water Intrusion Barrier. (7-1-93)

g. *5D2-Storm Runoff. (7-1-93)

h. 5D3-Improved Sinkholes. (7-1-93)

i. *5D4-Industrial Storm Runoff. (7-1-93)

j. *5F1-Agricultural Runoff Waste. (7-1-93)

k. *5G30-Special Drainage Water. (7-1-93)

l. 5N24¹-Radioactive Waste Disposal. ~~(5-3-03)~~()

m. *5R21-Aquifer Recharge. (7-1-93)

n. 5S23-Subsidence Control. (7-1-93)

o. 5W9-Untreated Sewage. (7-1-93)

p. 5W10-Cesspools. (7-1-93)

- q. *5W11-Septic Systems (General). (7-1-93)
- r. *5W12-~~Waste~~ Water Treatment Plant Effluent. (~~7-1-93~~)()
- s. *5W20-Industrial Process Water. (7-1-93)
- t. 5W31-Septic Systems (Well Disposal). (7-1-93)
- u. *5W32-Septic System (Drainfield). (7-1-93)
- v. *5X13-Mine Tailings Backfill. (7-1-93)
- w. 5X14-Solution Mining. (7-1-93)
- x. 5X15-In-Situ Fossil Fuel Recovery. (7-1-93)
- y. 5X16-Spent Brine Return Flow. (7-1-93)
- z. *5X25-Experimental Technology. (7-1-93)
- aa. *5X26-Aquifer Remediation. (7-1-93)
- bb. *5X27-Other Wells. (7-1-93)
- cc. *5X28¹-Motor Vehicle Waste Disposal Wells. (~~5-3-03~~)()
- dd. 5X29-Abandoned Water Wells. (5-3-03)

*¹ The construction and operation of Wwells in these subclasses ~~are~~ is currently ~~inventoried~~ illegal in Idaho.

~~035. APPLICATION FOR PERMIT TO CONSTRUCT, MODIFY OR MAINTAIN AN INJECTION WELL (RULE 35).~~

~~01. Application Requirements for All Class V Wells, Except Those Class V Wells Authorized Without Permit. (7-1-93)~~

~~a. 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 Rule 25 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. (5-3-03)~~

~~b. 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. (5-3-03)~~

~~**02. 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: (5-3-03)~~

- ~~**a.** Facility name and location; (7-1-93)~~
- ~~**b.** Name, address and phone number of the well operator; (7-1-93)~~
- ~~**c.** Class, subclass and function of the injection well (see Rule 25); (7-1-93)~~
- ~~**d.** Latitude/longitude or legal description of the well location to the nearest ten (10) acre tract; (5-3-03)~~
- ~~**e.** Ownership of the well; (7-1-93)~~
- ~~**f.** County in which the injection well is located; (7-1-93)~~
- ~~**g.** Construction information for the well; (7-1-93)~~
- ~~**h.** Quantity and general character of the injected fluids; (7-1-93)~~
- ~~**i.** Status of the well (to be constructed, active, temporarily abandoned, etc.); (7-1-93)~~
- ~~**j.** A topographic map or aerial photograph extending one (1) mile beyond property boundaries, depicting: (7-1-93)~~
 - ~~i. Location of the injection well and associated facilities described in the application; (7-1-93)~~
 - ~~ii. Locations of other injection wells; (7-1-93)~~
 - ~~iii. Approximate drainage area, if applicable; (7-1-93)~~
 - ~~iv. Hazardous waste facilities, if applicable; (7-1-93)~~
 - ~~v. All wells used to withdraw drinking water; (7-1-93)~~
 - ~~vi. All other wells, springs and surface waters. (7-1-93)~~
- ~~**k.** Distance and direction to nearest domestic well; (7-1-93)~~
- ~~**l.** Depth to ground water; and (5-3-03)~~

- ~~m. Alternative methods of waste disposal. (7-1-93)~~
- ~~03. **Additional Information.** The Director may require the following additional information for Class V injection wells to assess potential effects of injection: (5-3-03)~~
- ~~a. A topographic map showing locations of the following within a two (2) mile radius of the injection well: (5-3-03)~~
- ~~i. All wells producing water; (7-1-93)~~
 - ~~ii. All exploratory and test wells; (7-1-93)~~
 - ~~iii. All other injection wells; (7-1-93)~~
 - ~~iv. Surface waters (including man-made impoundments, canals and ditches); (7-1-93)~~
 - ~~v. Mines and quarries; (7-1-93)~~
 - ~~vi. Residences; (7-1-93)~~
 - ~~vii. Roads; (7-1-93)~~
 - ~~viii. Bedrock outcrops; and (5-3-03)~~
 - ~~ix. Faults and fractures. (7-1-93)~~
- ~~b. Additional maps or aerial photographs of suitable scale to accurately depict the following: (7-1-93)~~
- ~~i. Location and surface elevation of the injection well described in this permit; (7-1-93)~~
 - ~~ii. Location and identification of all facilities within the property boundaries; (7-1-93)~~
 - ~~iii. Locations of all wells penetrating the proposed injection zone or within a one-quarter (1/4) mile radius of the injection well; (7-1-93)~~
 - ~~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. (7-1-93)~~
- ~~e. A comprehensive report of the following information: (7-1-93)~~
- ~~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; (7-1-93)~~
- ~~ii. Description of the quality and quantity of fluids to be injected; (7-1-93)~~
 - ~~iii. Geologic, hydrogeologic, and physical characteristics of the injection zone and confining beds; (5-3-03)~~
 - ~~iv. Engineering data for the proposed injection well; (7-1-93)~~
 - ~~v. Proposed operating pressure; (7-1-93)~~
 - ~~vi. A detailed evaluation of alternative disposal practices; (7-1-93)~~
 - ~~vii. A plan of corrective action for wells penetrating the zone of injection, but not properly sealed or abandoned; and (5-3-03)~~
 - ~~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. (7-1-93)~~
- ~~d. Name, address and phone number of person(s) or firm(s) supplying the technical information and/or designing the injection well; (7-1-93)~~
 - ~~e. Proof that the applicant is financially responsible, through a performance bond or other appropriate means, to abandon the injection well in accordance with the conditions of the permit. (5-3-03)~~

~~**04. 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 drinking water sources. 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. (7-1-93)~~

036. -- 039. (RESERVED)

0340. AUTHORIZATIONS, PROHIBITIONS AND EXEMPTIONS.

01. Authorizations. Construction and use of Class V deep injection wells may be authorized by permit as approved by the Director in accordance with these rules. ()

02. Prohibitions. ()

a. These rules prohibit the permitting, construction, or use of any Class I, ~~H,~~ III ~~or~~ IV, or VI injection well. (7-1-93)()

~~**b.** Prohibition of injection of hazardous and of radioactive wastes (Class IV) — Construction of a well to be used for injection of hazardous wastes or of radioactive wastes into or above a drinking water source, or injection of hazardous wastes or of radioactive wastes~~

~~through an existing injection well into or above a drinking water source is prohibited. (7-1-93)~~

~~e. Construction and use of Class V deep injection wells may be authorized by permit as approved by the Director in accordance with these rules. (5-3-03)~~

~~d. Construction of large capacity cesspools or motor vehicle waste disposal wells is prohibited. Construction and use of other Class V shallow injection wells are authorized by these rules without permit provided that: (5-3-03)~~

~~i. Required inventory information is submitted to the Director pursuant to Rule 30. (7-1-93)~~

~~ii. Use of the shallow injection well shall not result in unreasonable contamination of a drinking water source or cause a violation of surface or ground water quality standards that would affect a beneficial use. (5-3-03)~~

~~e. Class V shallow injection wells used for the disposal of waste water as defined in Idaho Department of Environmental Quality Rule, IDAPA 58, Title 01, Chapter 03, "Individual/Subsurface Sewage Disposal Rules," are exempt from the authorization requirements of these rules, but are subject to the IDAPA 58.01.03.000, et seq., "Individual/Subsurface Sewage Disposal Rules," Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code. (7-1-93)~~

~~f. State or local entities involved in highway and street construction and maintenance are exempt from the permit requirements for shallow Class V wells, but shall comply with all other requirements of these rules. (5-3-03)~~

~~g. Mine tailings backfill (5X13) wells are authorized by rule as part of mining operations because federal studies show the threat of endangerment from use of these wells is low. They are therefore exempt from the ground water quality standards and permitting requirements of these rules provided that their use is limited to the injection of mine tailings only. The use of any 5X13 well(s) shall not result in water quality standards at points of diversion for beneficial use being exceeded or otherwise affect a beneficial use. Should water quality standards be exceeded or beneficial uses be affected, the Director may order the wells to be put under the permit requirements of these rules, or the wells may be required to be remediated or closed. As a condition of their use, the Director may require the construction and sampling of monitoring wells by the owner/operator. 5X13 wells are subject to the inventory requirements of Rule Subsection 030.01. (5-3-03)~~

~~h. All large capacity cesspools must be properly abandoned 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 Subsection 030.03. (5-3-03)~~

~~i. All motor vehicle waste disposal wells must be properly abandoned 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 Subsection 030.03. (5-3-03)~~

b. Any underground injection through a class II injection well, except as authorized

by permit issued under the UIC program, is prohibited. The construction or use of any class II injection well required to have a permit is prohibited until the permit has been issued. ()

c. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows or causes the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary or secondary drinking water regulation, under IDAPA 58.01.11, "Ground Water Quality Rule," Section 200 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of Paragraph 040.02.c. are met. ()

d. For Class II wells, if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, or degradation of the ground water quality is detected and deemed significant by the Department, except as authorized under these rules, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with Subsection 057.02, or the permit may be terminated under Subsection 057.03 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. ()

e. Notwithstanding any other provision of this section, the Director may take emergency action upon receipt of information that a contaminant which is present in or likely to enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons. ()

f. Construction of large capacity cesspools, motor vehicle waste disposal wells, radioactive waste disposal wells, and untreated sewage disposal wells is prohibited. Construction and use of other Class V shallow injection wells are authorized by these rules without permit provided that: ()

i. Required inventory information is submitted to the Director pursuant to Subsection 070.01 of this rule. ()

ii. Use of the shallow injection well shall not result in unreasonable contamination of a USDW or cause a violation of surface or ground water quality standards that would affect a beneficial use. ()

g. Class IV injection wells used to inject contaminated ground water that has been treated and is being reinjected into the same formation from which it was drawn are not prohibited by these rules if such injection is approved by EPA, or a State, 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. ()

h. All large capacity cesspools must be properly decommissioned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a large capacity

cesspool is found to be a threat to the ground water resources as described in Paragraph 070.01.c. ()

i. All motor vehicle waste disposal wells must be properly decommissioned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a motor vehicle waste disposal well is found to be a threat to the ground water resources as described in Paragraph 070.01.c. ()

j. The Construction, operation or maintenance of any non-experimental Class V geologic sequestration well is prohibited. ()

k. Owners or operators of shallow injection wells are prohibited from injecting into the well upon failure to submit inventory information in a timely manner pursuant to paragraph 070.01.a of these rules. ()

03. Exemptions. ()

a. The UIC inventory and fee requirements of these rules do not apply to individual subsurface sewage disposal system wells. These systems are, however, subject to the permitting and fee requirements of IDAPA 58.01.03 "Individual/Subsurface Sewage Disposal Rules," Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code. ()

b. State or local government entities are exempt from the permit requirements of these rules for wells associated with highway and street construction and maintenance projects, but shall submit shallow injection well inventory information for said wells and shall comply with all other requirements of these rules. ()

c. Mine tailings backfill (5X13) wells are authorized by rule as part of mining operations. They are therefore exempt from the ground water quality standards and permitting requirements of these rules provided that their use is limited to the injection of mine tailings only. The use of any 5X13 well(s) shall not result in water quality standards at points of diversion for beneficial use being exceeded or otherwise affect a beneficial use. Should water quality standards be exceeded or beneficial uses be affected, the Director may order the wells to be put under the permit requirements of these rules, or the wells may be required to be remediated or closed. As a condition of their use, the Director may require the construction and sampling of monitoring wells by the owner/operator. 5X13 wells are subject to the inventory requirements of Subsection 070.01. ()

041. -- 044. (RESERVED)

045. CLASS II: APPLICATION INFORMATION.

01. Application For A Permit. ()

a. Application. ()

i. Any person who requires a permit shall complete, sign, and submit to the Director an application for each permit required under this section. ()

ii. The Director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit found in Subsection 045.02 of these rules and the signature and certification requirements found in Subsection 045.03 of these rules. ()

b. The Director shall review for administrative completeness every application for permit to operate an injection well. The Director shall notify the applicant whether the application is administratively complete within ten (10) business days of its receipt. If the application is administratively incomplete, the Director shall list the information necessary to make the application administratively complete and submit this with the notification. The purpose of this review is to determine if the applicant has submitted all of the appropriate forms and information necessary to perform a review for completeness in section 045.01.c. There will be no technical analysis of the details contained in the permit application as part of this review. ()

c. The Director shall review for completeness every application for permit. Each application for permit submitted for a new UIC injection well should be reviewed for completeness by the Director within 60 days of its receipt. Each application for permit submitted for an existing injection well should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing UIC injection well the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete. ()

d. If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provision IDWR housekeeping as determined by the Director. ()

e. If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, he or she shall notify the applicant and a date shall be scheduled. ()

f. The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided in Paragraph 045.01.c. of this rule. ()

g. For each application for a new UIC injection well the Director shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Director intends to: ()

i. Prepare a draft permit; ()

ii. Give public notice; ()

- iii. Complete the public comment period, including any public hearing; and ()
- iv. Issue a final permit. ()
- 02. Application For A Permit; Authorization By Permit.** ()
 - a.** Permit application. All injection activities including construction of an injection well are prohibited until the owner or operator is authorized by permit. Procedures for applications, issuance and administration of emergency permits are found exclusively in Subsection 045.09. ()
 - b.** When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit. ()
 - c.** Time to apply. Any person who performs or proposes an underground injection for which a permit is or will be required shall submit an application to the Director in accordance with the UIC program. For new injection wells, the application shall be submitted within a reasonable time before construction is expected to begin. ()
 - d.** Completeness. The Director shall not issue a permit before receiving a complete application for a permit except for emergency permits. An application for a permit is complete when the Director receives an application form with all of the information requirements listed in Paragraph 045.02.e., and Subsections 045.03 through 045.08, and Subsection 045.10 and any supplemental information which are completed to his satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. ()
 - e.** Information requirements. All applicants for Class II permits shall provide the following information to the Director, using the application form provided by the Director. ()
 - i. Name, mailing address, and location of the facility for which the application is submitted. ()
 - ii. Permit processing fee. ()
 - iii. Up to four (4) SIC codes which best reflect the principal products or services provided by the facility. ()
 - iv. The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity. ()
 - v. Whether the facility is located on Indian lands. ()
 - vi. Documentation that the applicant has the right to conduct operations at the proposed site. ()
 - vii. A topographic map (or other map if a topographic map is unavailable) extending one (1) mile beyond the property boundaries of the source depicting the facility and each of its

intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, and other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within a quarter mile of the facility property boundary, or within the area of review, whichever is greater. ()

viii. A brief description of the nature of the injection activity. ()

ix. The applicant shall identify and submit on a list with the permit application the names and addresses of all owners of record of land within one-quarter (1/4) mile of the facility boundary. The applicant shall also submit an affidavit certifying that all owners of record of land within one-quarter (1/4) mile of the facility boundary have been notified in writing of the proposed injection well. A copy of this notice shall be submitted with the affidavit. This requirement may be waived by the Director where the site is located in a populous area and the Director determines that the requirement would be impracticable. ()

x. A determination of the regional ground water flow direction and gradient in the USDW(s) above the injection zone. ()

xi. A plugging and abandonment plan that meets the requirements of Subsection 054.03 of these rules and is acceptable to the Director. ()

f. Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under Subsection 045.02 for a period of at least three (3) years from the date the application is signed. ()

03. Signatories to Permit Applications and Reports. ()

a. Applications. All permit applications, except those submitted for Class II wells (see Paragraph 045.03.b. of this rule), shall be signed as follows: ()

i. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: ()

(1) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision making functions for the corporation, or ()

(2) The manager of one (1) or more manufacturing, production, or operating facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five (\$25) million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. ()

Note: The Department does not require specific assignments or delegations of authority to responsible corporate officers identified in Subparagraph 045.03.a.i.(1). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures

governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under Subparagraph 045.03.a.i.(2) rather than to specific individuals. ()

ii. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or ()

iii. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: ()

(1) The chief executive officer of the agency, or ()

(2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency. ()

b. Reports. All reports required by permits, other information requested by the Director, and all permit applications submitted for Class II wells under Subsection 045.02 shall be signed by a person described in Paragraph 045.03.a. of this rule, or by a duly authorized representative of that person. A person is a duly authorized representative only if: ()

i. The authorization is made in writing by a person described in Paragraph 045.03.a. of this rule; ()

ii. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and ()

iii. The written authorization is submitted to the Director. ()

c. Changes to authorization. If an authorization under Paragraph 045.03.b. of this rule is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Paragraph 045.03.b. of this rule must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative. ()

d. Certification. Any person signing a document under Paragraph 045.03.a. or 045.03.b. of this rule shall make the following certification: ()

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. ()

04. Bonding. ()

a. Individual Bond. The Director shall require, as a condition of every Class II injection well permit, that every person who engages in the construction, modification, testing, or operation of a well provide evidence of good and sufficient security in the form of a bond, letter of credit, or other surety acceptable to the Director that ensures that the applicant perform the duties required by this chapter and properly decommission any well covered by such permit. Good and sufficient security for each injection well shall be an amount of ten thousand dollars (\$10,000) plus one dollar (\$1) per foot of depth. The bond shall be conditioned upon the performance of the owner's or operator's duty to comply with the rules of the Water Resource Board, with respect to the drilling, maintaining, operating, and plugging of each well. The bond shall remain in force and effect until the plugging and decommissioning of said well is approved by the Director or the security is released by the Director. Well decommissioning shall include reclamation of the well site so that the site is left in a stable, non-eroding condition with no impact to any ground water or surface water sources of the State. The Director may impose additional bonding on an owner or operator given sufficient reason, such as non-compliance, unusual conditions, or other circumstances that suggest a particular well has potential risk or liability in excess of that normally expected. ()

05. Information to Be Considered By The Director. This section sets forth the information which must be considered by the Director in authorizing Class II wells. Certain maps, cross-sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director (for example, in the permitting agency's files) and sufficiently identified to be retrieved. All the information in this section is to be submitted to the Director ()

a. Prior to the issuance of a permit for the construction or conversion of a new Class II well the applicant shall submit the following: ()

i. Information required in Subsection 045.02; ()

ii. A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, decommissioned wells, dry holes, and water wells. The map must also show surface bodies of waters, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or suspected. Only information of public record and pertinent information known to the applicant is required to be included on this map. This requirement does not apply to existing Class II wells. This requirement does not apply to permit renewals; and ()

iii. A tabulation of data reasonably available from public records or otherwise known to the applicant on all wells within the area of review included on the map required under Subparagraph 045.05.a.ii. of this rule which penetrate the proposed injection zone or, in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review which penetrate formations affected by the increase in pressure. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and complete, and any additional information the Director may require. In

cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells. ()

- iv. Proposed operating data: ()
 - (1) Average and maximum daily rate and volume of fluids to be injected. ()
 - (2) Average and maximum injection pressure; and ()
 - (3) Source and an appropriate analysis of the chemical and physical characteristics of the injection fluid. ()
- v. Appropriate geological data on the injection zone and confining zone including lithologic description, geological name, thickness and depth; ()
- vi. Geologic name and depth to bottom of all underground sources of drinking water which may be affected by the injection; ()
- vii. Schematic or other appropriate drawings of the surface and subsurface construction details of the well to show compliance with section 045.06 of these rules; ()
- viii. In the case of new injection wells the corrective action proposed to be taken by the applicant under the National Pollutant Discharge Elimination System in Title 40 Code of Federal Regulations 122.44; ()
- ix. A certificate that the applicant has assured through a performance bond or other appropriate means, the resources necessary to close plug or abandon the well; ()
- x. Proposed formation testing program to obtain the information required by Paragraph 045.06.e, unless such information is already available; ()
- xi. Proposed stimulation program; ()
- xii. Proposed injection procedure; ()
- xiii. Proposed contingency plans, if any, to cope with well failures so as to prevent migration of contaminating fluids into an underground source of drinking water; ()
- xiv. Plans for meeting the monitoring requirements of Paragraph 054.01.b. ()
- b. Prior to operating a Class II well the owner/operator must submit the following information: ()
 - i. All available logging and testing program data on the well; ()
 - ii. A demonstration of mechanical integrity pursuant to Subsection 054.02; ()

- iii. The anticipated maximum pressure and flow rate at which the permittee will operate. ()
 - iv. The information specified in Paragraph 045.06.e. of these rules; ()
 - v. The actual injection procedure; and ()
 - vi. For new wells the status of corrective action on defective wells in the area of review. ()
- c.** Prior to the plugging and abandonment of a Class II well the owner/operator must provide the following information: ()
- i. The type, and number of plugs to be used; ()
 - ii. The placement of each plug including the elevation of top and bottom; ()
 - iii. The type, grade, and quantity of cement to be used; ()
 - iv. The method of placement of the plugs; and ()
 - v. The procedures to meet the requirements of Subsection 054.03 of these rules. ()
- 06. Construction Requirements.** ()
- a.** All new Class II wells shall be sited in such a fashion that they inject into a formation which is separated from any USDW by a confining zone that is free of open faults or fractures within the area of review. ()
- b. Requirements.** ()
- i. All Class II injection wells shall be cased and cemented to prevent movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered: ()
 - (1) Depth to the injection zone; ()
 - (2) Depth to the bottom of all USDWs; and ()
 - (3) Estimated maximum and average injection pressures; ()
 - ii. In addition the Director may consider information on: ()
 - (1) Nature of formation fluids; ()

- (2) Lithology of injection and confining zones; ()
- (3) External pressure, internal pressure, and axial loading; ()
- (4) Hole size; ()
- (5) Size and grade of all casing strings; and ()
- (6) Class of cement. ()
- c.** The requirements in Paragraph 045.06.b. of this rule need not apply to existing or newly converted Class II wells located in existing fields if: ()
 - i.** Regulatory controls for casing and cementing existed for those wells at the time of drilling and those wells are in compliance with those controls; and ()
 - ii.** Well injection will not result in the movement of fluids into an underground source of drinking water so as to create a significant risk to the health of persons. ()
- d.** Appropriate logs and other tests shall be conducted during the drilling and construction of new Class II wells. A descriptive report interpreting the results of that portion of those logs and tests which specifically relate to (1) an USDW and the confining zone adjacent to it, and (2) the injection and adjacent formations shall be prepared by a knowledgeable log analyst and submitted to the director. At a minimum, these logs and tests shall include: ()
 - i.** Deviation checks on all holes constructed by first drilling a pilot hole and then enlarging the pilot hole, by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling. ()
 - ii.** Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required the following shall be considered by the Director in setting logging and testing requirements: ()
 - (1) For surface casing intended to protect underground sources of drinking water in areas where the lithology has not been determined: ()
 - (a) Electric and caliper logs before casing is installed; and ()
 - (b) A cement bond, temperature, or density log after the casing is set and cemented. ()
 - (2) For intermediate and long strings of casing intended to facilitate injection: ()
 - (a) Electric porosity and gamma ray logs before the casing is installed; ()

(b) Fracture finder logs; and ()

(c) A cement bond, temperature, or density log after the casing is set and cemented. ()

e. At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class II wells or projects: ()

i. Fluid pressure; ()

ii. Estimated fracture pressure; ()

iii. Physical and chemical characteristics of the injection zone. ()

07. Area of Review. The area of review for each injection well or each field, project or area of the State shall be determined according to either Paragraph 045.07.a. or 045.07.b. of this rule. The Director may solicit input from the owners or operators of injection wells within the State as to which method is most appropriate for each geographic area or field. ()

a. Zone of endangering influence. ()

i. The zone of endangering influence shall be: ()

(1) That area the radius of which is the lateral distance in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an underground source of drinking water. ()

ii. Computation of the zone of endangering influence may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The following modified equation illustrates one form which the mathematical model may take. ()

$$r \equiv [(2.25KHt) / (S10^x)]^{0.5}$$

where:

$$x \equiv \frac{(4\pi KH)(h_w - h_{bo} * S_p G_p)}{(2.3Q)}$$

\equiv

r \equiv Radius of endangering influence from injection well (length)

K \equiv Hydraulic conductivity of the injection zone (length/time)

H \equiv Thickness of the injection zone (length)

T \equiv Time of injection (time)

S \equiv Storage coefficient (dimensionless)

Q \equiv Injection rate (volume/time)

h_{bo} = Observed original hydrostatic head of injection zone (length) measured from the base of the lowermost underground source of drinking water

hw = Hydrostatic head of underground source of drinking water (length) measured from the base of the lowest underground source of drinking water

$S_p G_p$ = Specific gravity of fluid in the injection zone (dimensionless)

π = 3.142 (dimensionless)

The above equation is based on the following assumptions:

(1)The injection zone is homogenous and isotropic;

(2)The injection zone has infinite area extent;

(3)The injection well penetrates the entire thickness of the injection zone;

(4)The well diameter is infinitesimal compared to "r" when injection time is longer than a few minutes; and

(5)The emplacement of fluid into the injection zone creates instantaneous increase in pressure.

b. Fixed radius. ()

i. A fixed radius around the well of not less than one-fourth (1/4) mile may be used. ()

ii. In determining the fixed radius, the following factors shall be taken into consideration: Chemistry of injected and formation fluids; hydrogeology; population and ground-water use and dependence; and historical practices in the area. ()

c. If the area of review is determined by a mathematical model pursuant to Paragraph 045.07.a. of this rule, the permissible radius is the result of such calculation even if it is less than one-fourth (1/4) mile. In these instances, the Director has the discretion to review the area of review analysis and impose the fixed radius method if the model results yield a small radius that is unrealistic. ()

08. Corrective Action. ()

a. Coverage. Applicants for Class II injection well permits shall identify the location of all known wells within the injection well's area of review which penetrate the injection zone, or in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review penetrating formations affected by the increase in pressure. For such wells which are improperly sealed, completed, or decommissioned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into underground sources of drinking water ("corrective action"). Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate (based on the factors in Paragraph 045.08.c. of this rule), the Director shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit under Paragraph 045.08.b. of this rule, or deny the application. ()

(2) The injection will not result in the movement of fluids into underground sources of drinking water; or ()

iii. A substantial delay in production of oil or gas resources will occur unless a temporary emergency permit is granted to a new Class II well and the temporary authorization will not result in the movement of fluids into an underground source of drinking water; and()

(1) Timely application for a permit could not practically have been made. ()

b. Requirements for issuance. ()

i. Any temporary permit under Subparagraph 045.09.a.i. of this rule shall be for no longer term than required to prevent the hazard. ()

ii. Any temporary permit under Subparagraph 045.09.a.ii. of this rule shall be for no longer than 90 days, except that if a permit application has been submitted prior to the expiration of the 90-day period, the Director may extend the temporary permit until final action on the application. ()

iii. Any temporary permit under Subparagraph 045.09.a.iii. of this rule shall be issued only after a complete permit application has been submitted and shall be effective until final action on the application. ()

iv. Notice of any temporary permit under Subsection 045.09 shall be published in accordance with Subsection 048.04 within ten (10) days of the issuance of the permit. ()

v. The temporary permit under this section may be either oral or written. If oral, it must be followed within five (5) calendar days by a written temporary emergency permit. ()

vi. The Director shall condition the temporary permit in any manner he or she determines is necessary to ensure that the injection will not result in the movement of fluids into an underground source of drinking water. ()

10. Request for Variance. ()

a. When injection does not occur into, through or above an underground source of drinking water, the Director may consider a well or project with a request for variance from the requirements for area of review, ICL suggested revision operation, monitoring, and reporting than required in these rules to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water. ()

b. When injection occurs through or above an underground source of drinking water, but the radius of endangering influence when computed under Paragraph 045.07.a is smaller or equal to the radius of the well, the Director may authorize a well or project with less stringent requirements for operation, monitoring, and reporting than required in these rules to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water. ()

c. When reducing requirements under Paragraph 045.10.a. or 045.10.b. of this rule, the Director shall prepare a fact sheet under Subsection 048.02 explaining the reasons for the action. ()

11. Contingency Plan. The applicant shall submit a contingency plan(s) which describes how the fluids, that were intended to be injected, will be disposed of in the case that this injection well being applied for is unusable for injection under these rules at some point during its operating life. ()

046. -- 047. (RESERVED)

048. CLASS II: APPLICATION PROCESSING.

01. Draft Permits. ()

a. Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application. ()

b. If the Director tentatively decides to deny the permit application, he or she shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. See Paragraph 048.01.d. The applicant may request to meet with the Director, or a designated representative, to review application deficiencies and be given the opportunity to correct the deficiencies prior to initiating the public notice found in Subsection 048.04. If the Director's final decision (Subsection 048.07) is that the tentative decision to deny the permit application was incorrect, he or she shall withdraw the notice of intent to deny and proceed to prepare a draft permit under Paragraph 048.01.c. of this rule. ()

c. If the Director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information: ()

i. All conditions under Subsection 051.01; ()

ii. All compliance schedules under Subsection 051.03; ()

iii. All monitoring requirements under Subsection 051.04; and ()

iv. Permit conditions under Subsection 051.02; ()

d. All draft permits prepared under this section shall be accompanied by a fact sheet (Subsection 048.02), and shall be based on the administrative record (Subsection 048.03), publicly noticed (Subsection 048.04) and made available for public comment (Subsection 048.05). The Director shall give notice of opportunity for a public hearing (Subsection 048.05), issue a final decision (Subsection 048.07) and respond to comments (Subsection 048.08). ()

02. Fact Sheet. ()

a. A fact sheet shall be prepared for every draft permit. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person. ()

b. The fact sheet shall include, when applicable: ()

i. A brief description of the type of facility or activity which is the subject of the draft permit; ()

ii. The type and quantity of wastes, fluids, or pollutants which are proposed to be injected; ()

iii. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record; ()

iv. Reasons why any requested variances or alternatives to required standards do or do not appear justified; ()

v. A description of the procedures for reaching a final decision on the draft permit including: ()

(1) The beginning and ending dates of the comment period under Subsection 048.04 and the address where comments will be received; ()

(2) Procedures for requesting a hearing and the nature of that hearing; and ()

(3) Any other procedures by which the public may participate in the final decision. ()

vi. Name and telephone number of a person to contact for additional information. ()

03. Administrative Record for Draft Permits. ()

a. The provisions of a draft permit prepared under Subsection 048.01 shall be based on the administrative record defined in Subsection 048.03. ()

b. For preparing a draft permit under Subsection 048.01, the record shall consist of: ()

i. The application, if required, and any supporting data furnished by the applicant; ()

ii. The draft permit or notice of intent to deny the application or to terminate the permit; ()

- iii. A fact sheet (Subsection 048.02); ()
- iv. All documents cited in the statement of basis or fact sheet; and ()
- v. Other documents contained in the supporting file for the draft permit. ()
- c.** Material readily available at the Department or published material that is generally available, and that is included in the administrative record under Paragraphs 048.03.b. and 048.03.c. of this rule, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet. ()
- d.** This section applies to all draft permits when public notice was given after the effective date of these rules. ()
- 04. Public Notice of Permit Actions and Public Comment Period.** ()
- a.** Scope. ()
- i. The Director shall give public notice that the following actions have occurred: ()
 - (1) A permit application has been tentatively denied under Paragraph 048.01.b.;()
 - (2) A draft permit has been prepared under Paragraph 048.01.c.; ()
 - (3) A hearing has been scheduled under Subsection 048.06; or ()
 - (4) An appeal has been granted in accordance with the requirements of the statutes listed in Section 003 of these rules. ()
- ii. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under Paragraph 057.01.b. Written notice of that denial shall be given to the requester and to the permittee. ()
- iii. Public notices may describe more than one (1) permit or permit actions. ()
- b.** Timing. ()
- i. Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under Paragraph 048.04.a. of this rule shall allow at least thirty (30) days for public comment. Commenters may request additional time to comply with the requirements of Subsection 060.01 and must demonstrate the need for such time. ()
- ii. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.) ()
- c.** Methods. Public notice of activities described in Subparagraph 048.04.a.i. of this

rule shall be given by the following methods: ()

i. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under Paragraph 048.04.c. may waive his or her rights to receive notice for any classes and categories of permits); ()

(1) The applicant; ()

(2) Any other agency which the Director knows has issued or is required to issue a permit for the same facility or activity; ()

(3) Persons on a mailing list developed by: ()

(a) Including those who request in writing to be on the list; ()

(b) Soliciting persons for “area lists” from participants in past permit proceedings in that area; and ()

(c) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as Regional and State funded newsletters, environmental bulletins, or State law journals. ()

(4) Other Agencies; ()

(a) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and ()

(b) To each State agency having any authority under State law with respect to the construction or operation of such facility. ()

(5) Owners or operators of oil or gas wells that are in the same reservoir or field as the proposed well. ()

ii. By placing a legal notice in a newspaper of general circulation in the county in which the well is located; and ()

iii. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or legal notice in a newspaper of general circulation in the county in which the well is located, or any other forum or medium to elicit public participation. ()

d. Contents: ()

i. All public notices. All public notices issued under this part shall contain the following minimum information: ()

(1) Name and address of the office processing the permit action for which notice is being given; ()

(2) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit; ()

(3) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit; ()

(4) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application; and ()

(5) A brief description of the comment procedures required by Subsections 048.05 and 048.06 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing and other procedures by which the public may participate in the final permit decision. ()

(6) The location of the administrative record required by Subsection 048.03, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record. ()

(7) Any additional information considered necessary or proper. ()

ii. Public notices for hearings. In addition to the general public notice described in Subparagraph 048.04.d.i. of this rule, the public notice of a hearing under Subsection 048.06 shall contain the following information: ()

(1) Reference to the date of previous public notices relating to the permit; ()

(2) Date, time, and place of the hearing; ()

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures. ()

e. In addition to the general public notice described in Subparagraph 048.04.d.i. of this rule, all persons identified in Subparagraphs 048.04.c.i.(1), 048.04.c.i.(2), 048.04.c.i.(3), and 048.04.c.i.(4) of this rule shall be mailed a copy of the fact sheet or statement of basis, the permit application and the draft permit. ()

05. Public Comments and Requests For Public Hearings. During the public comment period provided under Subsection 048.04, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Subsection 048.08. ()

06. Public Hearings. ()

a. Basis and notice. The Director may conduct a fact finding hearing or investigative

hearing in accordance with section 42-3907, Idaho Code. ()

i. The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in a draft permit(s); ()

ii. The Director may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision; ()

iii. Public notice of the hearing shall be given as specified in Subsection 048.04. ()

b. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Subsection 048.04 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing. ()

07. Issuance and Effective Date Of Permit. ()

a. After the close of the public comment period under Subsection 048.04 on a draft permit, the Director shall issue a final permit decision. The Director shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit. ()

b. A final permit decision shall become effective immediately after the service of notice of the decision unless: ()

i. A later effective date is specified in the decision; or ()

ii. An Administrative Appeal is initiated in accordance with Section 003 of these rules. ()

08. Response to Comments. ()

a. At the time that any final permit decision is issued under Subsection 048.07, the Director shall issue a response to comments that will be made available to the public upon request. This response shall: ()

i. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and ()

ii. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing. ()

b. Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in Subsection 048.09. If new points are raised or new material supplied during the public comment period, the Department may document its response to those matters by adding new materials to the administrative record. ()

09. Administrative Record for Final Permit. ()

a. The Director shall base final permit decisions under Subsection 048.07 on the administrative record defined in this section. ()

b. The administrative record for any final permit shall consist of the administrative record for the draft permit and: ()

i. All comments received during the public comment period provided under Subsection 048.04; ()

ii. Any written materials submitted at such a hearing; ()

iii. The response to comments required by Subsection 048.08 and any new material placed in the record under that section; ()

iv. Other documents contained in the supporting file for the permit; and ()

v. The final permit. ()

vi. *Recordings of any contested case hearing initiated under the Administrative Appeals process as per Section 003 of these rules.* ()

c. The additional documents required under Paragraph 048.09.b. of this rule should be added to the record as soon as possible after their receipt or publication by the Agency. The record shall be complete on the date the final permit is issued. ()

d. This section applies to permits when the draft permit was subject to the administrative record requirements of Subsection 048.03. ()

e. Material readily available at the Department, or published materials which are generally available and which are included in the administrative record under the standards of this section or of Subsection 048.08 (“Response to comments”), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments. ()

10. Duration of Permits. ()

a. UIC permits for Class II wells shall be issued for a period up to the operating life of the facility. The Director shall review each issued Class II well UIC permit at least once every five (5) years to determine whether it should be modified, revoked and reissued, terminated or a minor modification made as provided in Subsection 057.02, 057.03, or 057.04. ()

b. Except as provided in Subsection 057.05, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section. ()

c. The Director may issue any permit for a duration that is less than the full allowable term under this section and the reason(s) for this determination will be added to the back file for this facility. ()

II. Criteria for Establishing Permitting Priorities. In determining priorities for setting times for owners or operators to submit applications for authorization to inject under the procedures of Subsection 045.02 of these rules, the Director shall base these priorities upon consideration of the following factors: ()

a. Injection wells known or suspected to be contaminating underground sources of drinking water; ()

b. Likelihood of contamination of underground sources of drinking water; ()

c. Potentially affected population; ()

d. Injection wells violating existing State requirements; ()

e. Coordination with the issuance of permits required by other State or Federal permit programs; ()

f. Age and depth of the injection well; and ()

g. Expiration dates of existing State permits, if any. ()

049. -- 050. (RESERVED)

051. CLASS II: PERMIT CONDITIONS.

01. Conditions Applicable to All Permits. The following conditions apply to all UIC permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. ()

a. Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of these rules and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application; except that the permittee need not comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit under Subsection 045.09. ()

b. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. ()

c. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. ()

d. Duty to mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit. ()

e. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit. ()

f. Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition. ()

g. Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege. ()

h. Duty to provide information. The permittee shall furnish to the Director, within a time specified, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit. ()

i. Inspection and entry. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to: ()

i. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit; ()

ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit; ()

iii. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and ()

iv. Sample or monitor at reasonable times, for the purposes of assuring permit compliance, any substances or parameters at any location. ()

- j.** Monitoring and records. ()
- i.** Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. ()
- ii.** The permittee shall retain records of all monitoring information, including the following: ()
- (1) Calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time; and ()
- (2) The nature and composition of all injected fluids until three (3) years after the completion of any plugging and abandonment procedures specified under Subparagraph 051.02.a.v. The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period. The owner or operator shall continue to retain the records after the three (3) year retention period unless he delivers the records to the Director or obtains written approval from the Director to discard the records. ()
- iii.** Records of monitoring information shall include: ()
- (1) The date, exact place, and time of sampling or measurements; ()
- (2) The individual(s) who performed the sampling or measurements; ()
- (3) The date(s) analyses were performed; ()
- (4) The individual(s) who performed the analyses; ()
- (5) The analytical techniques or methods used; and ()
- (6) The results of such analyses. ()
- k.** Signatory requirement. All applications, reports, or information submitted to the Director shall be signed and certified. (See Subsection 045.03) ()
- l.** Reporting requirements: ()
- i.** Planned changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. ()
- ii.** Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. ()
- iii.** Transfers. This permit is not transferable to any person except after notice to the

Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary. (See Subsection 057.06; in some cases, modification or revocation and reissuance is mandatory.) ()

iv. Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit. ()

v. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date. ()

vi. Twenty-four (24) hour reporting. Any information shall be provided orally within twenty-four hours (24) from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The permittee shall report any noncompliance which may endanger health or the environment, including: ()

(1) Any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; or ()

(2) Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs. ()

vii. Other noncompliance. The permittee shall report all instances of noncompliance not reported under Subparagraphs 051.01.l.i., 051.01.l.iv., 051.01.l.v., and 051.01.l.vi. of this rule, at the time monitoring reports are submitted. The reports shall contain the information listed in Subparagraph 051.01.l.vi. of this rule. ()

viii. Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information. ()

m. Requirements prior to commencing injection. A new injection well may not commence injection until construction is complete, and ()

i. The permittee has submitted notice of completion of construction to the Director;
and ()

ii. Review. ()

(1) The Director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or ()

(2) The permittee has not received notice from the Director of his or her intent to

inspect or otherwise review the new injection well within thirteen (13) days of the date of the notice in Subparagraph 051.01.m.i. of this rule, in which case prior inspection or review is waived and the permittee may commence injection. The Director shall include in his notice a reasonable time period in which he shall inspect the well. ()

n. The permittee shall notify the Director at such times as the permit requires before conversion or decommissioning the well. ()

o. A Class II permit shall include conditions which meet the applicable requirements of Subsection 054.03 to ensure that plugging and abandonment of the well will not allow the movement of fluids into or between USDWs. Where the plan meets the requirements of Subsection 054.03, the Director shall incorporate the plan into the permit as a permit condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director may require the applicant to revise the plan, prescribe conditions meeting the requirements of Paragraph 051.01.o., or deny the permit. For purposes of this paragraph, temporary or intermittent cessation of injection operations is not decommissioning. ()

p. Plugging and abandonment report. Within 60 days after plugging a well or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a report to the Director. If the quarterly report is due less than fifteen (15) days before completion of plugging, then the report shall be submitted within 60 days. The report shall be certified as accurate by the person who performed the plugging operation. Such report shall consist of either: ()

i. A statement that the well was plugged in accordance with the plan previously submitted to the Director; or ()

ii. Where actual plugging differed from the plan previously submitted, an updated version of the plan on the form supplied by the Director, specifying the differences. ()

q. Duty to establish and maintain mechanical integrity. ()

i. The owner or operator of a Class II well permitted under this part shall establish mechanical integrity prior to commencing injection or on a schedule determined by the Director. Thereafter the owner or operator of Class II wells must maintain mechanical integrity as defined in Subsection 054.02 The Director may require by written notice that the owner or operator comply with a schedule describing when mechanical integrity demonstrations shall be made. The frequency for establishing mechanical integrity shall be at least once every five (5) years during the life of the injection well. ()

ii. When the Director determines that a Class II well lacks mechanical integrity pursuant to Subsection 054.02 he/she shall give written notice of his/her determination to the owner or operator. Unless the Director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the Director's determination. The Director may allow plugging of the well pursuant to the requirements of Subsection 054.03 or require the permittee to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon

written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to Subsection 054.02. ()

iii. The Director may allow the owner or operator of a well which lacks mechanical integrity, as described by Paragraph 054.02.a., to continue or resume injection, if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs. The resumption of injection under this rule can be authorized for up to one (1) year. The operator can request an additional one (1) year extension. A maximum of two (2) years is allowed under this rule. ()

02. Establishing Permit Conditions. ()

a. In addition to conditions required in Subsection 051.01, the Director shall establish conditions, as required on a case-by-case basis under Subsection 048.10, and Paragraph 051.03.a., Subsection 051.04. Permits shall contain the following requirements, when applicable. ()

i. Construction requirements as set forth in Subsection 045.06. Existing wells shall achieve compliance with such requirements according to a compliance schedule established as a permit condition. The owner or operator of a proposed new injection well shall submit plans for testing, drilling, and construction as part of the permit application. No construction may commence until a permit has been issued containing construction requirements (see Paragraph 040.02.b.). New wells shall be in compliance with these requirements prior to commencing injection operations. Changes in construction plans during construction may be approved by the Director as minor modifications (Subsection 057.04). No such changes may be physically incorporated into construction of the well prior to approval of the modification by the Director. ()

ii. Corrective action as set forth in Subsection 045.08. ()

iii. Operation requirements; the permit shall establish any maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any underground source of drinking water, that formation fluids are not displaced into any underground source of drinking water, and to assure compliance with the Subsection 054.01 operating requirements. ()

iv. Monitoring and reporting requirements as set forth in Subsection 054.01. The permittee shall be required to identify types of tests and methods used to generate the monitoring data. Monitoring of the nature of injected fluids shall comply with applicable analytical methods cited and described in table I of 40 CFR 136.3 or in appendix III of 40 CFR part 261 or in certain circumstances by other methods that have been approved by the Director. ()

v. After a cessation of operations of two (2) years the owner or operator shall plug and abandon the well in accordance with the plan unless he: ()

(1) Provides notice to the Director; ()

(2) Describes actions or procedures, satisfactory to the Director, that the owner or operator will take to ensure that the well will not endanger USDWs during the period of

temporary inactivity. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Director. ()

vi. Financial responsibility. ()

(1) The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility, as described in Subsection 045.04 of these rules, and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director until: ()

(a) The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to Paragraph 051.01.o. and Subsection 054.03, and submitted a plugging and abandonment report pursuant to Paragraph 051.01.p.; or ()

(b) The well has been converted in compliance with the requirements of Paragraph 051.01.n.; or ()

(c) The transferor of a permit has received notice from the Director that the owner or operator receiving transfer of the permit, the new permittee, has demonstrated financial responsibility for the well. ()

(2) The permittee shall show evidence of such financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the Director as described in Subsection 045.04 of these rules. The Director may on a periodic basis require the holder of a lifetime permit to submit an estimate of the resources needed to plug and abandon the well revised to reflect inflation of such costs, and a revised demonstration of financial responsibility, if necessary. ()

vii. Mechanical integrity. A permit for any Class II well or injection project which lacks mechanical integrity shall include a condition prohibiting injection operations until the permittee shows to the satisfaction of the Director under Subsection 054.02 that the well has mechanical integrity. ()

viii. Additional conditions. The Director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into underground sources of drinking water. ()

ix. *If the collection and reporting of new or existing data to establish the background water quality of USDWs in the area of review has not been required, and subsequently performed, under any other permit regulating the injection well or project, the Director will require this data be collected and background water quality established as a permit condition to be satisfied prior to injecting fluids into the injection well. The Director will specify the sampling locations, potential need for the construction of new monitoring wells, sampling frequencies, sampling duration, and analytes to be sampled for.* ()

b. Other applicable requirements. ()

i. In addition to conditions required in all permits the Director shall establish

conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of these rules. ()

ii. An applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of the permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in Subsection 057.02. ()

iii. New or reissued permits, and to the extent allowed under Subsection 057.02 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Subsection 051.02. ()

c. Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit. ()

03. Schedule of Compliance. ()

a. General. The permit may, when appropriate, specify a schedule of compliance leading to compliance with these rules ()

i. Time for compliance. Any schedules of compliance shall require compliance as soon as possible, and in no case later than three (3) years after the effective date of the permit. ()

ii. Interim dates. Except as provided in Subparagraph 051.03.b.i.(2) of this rule, if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement. ()

(1) The time between interim dates shall not exceed one (1) year. ()

(2) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. ()

iii. Reporting. The permit shall be written to require that if Subparagraph 051.03.a.i. of this rule is applicable, progress reports be submitted no later than thirty (30) days following each interim date and the final date of compliance. ()

b. Alternative schedules of compliance. A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows: ()

i. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued: ()

(1) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or ()

(2) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit. ()

ii. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements. ()

iii. If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two (2) schedules as follows: ()

(1) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities; ()

(2) One schedule shall lead to timely compliance with applicable requirements;()

(3) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements; ()

(4) Each permit containing two (2) schedules shall include a requirement that after the permittee has made a final decision under Subparagraph 051.03.b.iii.(1) of this rule it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities. ()

iv. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of directors of a corporation. ()

04. Requirements for Recording and Reporting of Monitoring Results. All permits shall specify: ()

a. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate); ()

b. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring; ()

c. Applicable reporting requirements based upon the impact of the regulated activity and as specified in Paragraph 054.01.c. Reporting shall be no less frequent than specified in the above regulations. ()

052. -- 053. (RESERVED)

054. CLASS II: OPERATING REQUIREMENTS.

01. Operating, Monitoring, and Reporting Requirements. ()

a. Operating requirements. Operating requirements shall, at a minimum, specify that: ()

i. Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to the USDWs. In no case shall injection pressure cause the movement of injection or formation fluids into an underground source of drinking water. ()

ii. Injection between the outermost casing protecting underground sources of drinking water and the well bore shall be prohibited. ()

b. Monitoring requirements. Monitoring requirements shall, at a minimum, include: ()

i. Monitoring of the nature of injected fluids at time intervals sufficiently frequent to yield data representative of their characteristics; ()

ii. Observation *and recording* of injection pressure, flow rate, and cumulative volume at *reasonable intervals no greater than thirty (30) days, or at the following frequencies, whichever is more stringent*; ()

(1) Weekly for produced fluid disposal operations; ()

(2) Monthly for enhanced recovery operations; ()

(3) Daily during the injection of liquid hydrocarbons and injection for withdrawal of stored hydrocarbons; and ()

(4) Daily during the injection phase of cyclic steam operations. And recording of one observation of injection pressure, flow rate and cumulative volume at reasonable intervals no greater than thirty (30) days. ()

iii. A demonstration of mechanical integrity pursuant to Subsection 054.02 at least once every five (5) years during the life of the injection well; ()

iv. Maintenance of the results of all monitoring until the next permit review (see Subparagraph 051.02.a.iv.); and ()

v. Hydrocarbon storage and enhanced recovery may be monitored on a field or project basis rather than on an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one (1) injection well, operating with a

common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring. ()

c. **Reporting requirements.** ()

i. Reporting requirements shall at a minimum include an annual report to the Director summarizing the results of monitoring required under Paragraph 054.01.b. of this rule. Such summary shall include monthly records of injected fluids, and any major changes in characteristics or sources of injected fluid. Previously submitted information may be included by reference. ()

ii. Owners or operators of hydrocarbon storage and enhanced recovery projects may report on a field or project basis rather than an individual well basis where manifold monitoring is used. ()

02. **Mechanical Integrity.** ()

a. **An injection well has mechanical integrity if:** ()

i. **There is no significant leak in the casing, tubing or packer; and** ()

ii. **There is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.** ()

b. **One (1) of the following methods must be used to evaluate the absence of significant leaks under Subparagraph 054.01.a.i. of this rule:** ()

i. **Following an initial pressure test, monitoring of the tubing-casing annulus pressure with sufficient frequency to be representative, as determined by the Director, while maintaining an annulus pressure different from atmospheric pressure measured at the surface; or** ()

ii. **Pressure test with liquid or gas;** ()

(1) **The casing must be tested at a surface pressure of one thousand five hundred (1,500) psig or at a surface pressure of point twenty-five (0.25) psi/foot multiplied by the true vertical depth of the packer, whichever is greater, but the casing may not be subjected to a hoop stress that will exceed seventy percent (70%) of the minimum yield strength of the casing.** ()

(2) **Criteria for a passing MIT are that the test pressure must show a stabilizing pressure trend, the test pressure may not decline more than ten percent (10%) from the actual test pressure, and the initial pressure is at or above the required test pressure.** ()

c. **One (1) of the following methods must be used to determine the absence of significant fluid movement under Subparagraph 054.02.a.ii. of this rule:** ()

i. **The results of a temperature or noise log, radioactive tracer survey, oxygen activation/water flow log, or equivalent log suite preapproved by the Director; or** ()

ii. Cementing records, cement bond log, ultrasonic imaging tool, or equivalent log preapproved by the Director, demonstrating the presence of adequate cement to prevent such migration. ()

d. The Director may allow the use of a test to demonstrate mechanical integrity other than those listed in Paragraph 054.02.b. and Subparagraph 054.02.c.ii. of this rule if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. The method must have prior approval of the Director. ()

e. In conducting and evaluating the tests enumerated in this section or others to be allowed by the Director, the owner or operator and the Director shall apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Director, he shall include a description of the test(s) and the method(s) used. In making his/her evaluation, the Director shall review monitoring and other test data submitted since the previous evaluation. ()

f. The Director may require additional or alternative tests if the results presented by the owner or operator under Paragraph 054.02.e are not satisfactory to the Director to demonstrate that there is no movement of fluid into or between USDWs resulting from the injection activity. ()

g. The owner/operator must give the Director, or his designee, the opportunity to observe the mechanical integrity test by notifying the Department at least five (5) business days prior to the initiation of the test. ()

03. Plugging and Abandoning Class II Wells. ()

a. Prior to permanently decommissioning Class II wells, the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between underground sources of drinking water. ()

b. Placement of the cement plugs shall be accomplished by one (1) of the following: ()

i. The Balance method; ()

ii. The Dump Bailer method; ()

iii. The Two-Plug method; or ()

iv. An alternative method approved by the Director, which will reliably provide a comparable level of protection to underground sources of drinking water. ()

c. The well to be decommissioned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug(s). ()

055. -- 056. (RESERVED)

057. CLASS II: ACTIONS ON APPROVED PERMITS.

01. Modification, Revocation and Reissuance, or Termination of Permits. ()

a. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in Subsections 057.02 and 057.03. All requests shall be in writing and shall contain facts or reasons supporting the request. ()

b. If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. ()

c. Modification. ()

i. If the Director tentatively decides to modify or revoke and reissue a permit under Subsection 057.02, he shall prepare a draft permit under Subsection 048.01 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits the Director shall require the submission of a new application. ()

ii. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued. ()

iii. "Minor modifications" as defined in Subsection 057.04 are not subject to the requirements of this section. ()

d. Termination. If the Director tentatively decides to terminate a permit under Subsection 057.03, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under Subsection 048.01. ()

e. All draft permits (including notices of intent to terminate) prepared under this section shall be based on the administrative record as defined in Subsection 048.03. ()

02. Causes for Modification or Revocation and Reissuance of Permits. When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see Subsection 051.01), receives a request for modification or revocation and reissuance under Subsection 057.01, or conducts a review of

the permit file) he or she may determine whether or not one (1) or more of the causes listed in Paragraphs 057.02.a. and 057.02.b. of this rule for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of Paragraph 057.02.c. of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See Subparagraph 057.01.c.ii. If cause does not exist under this section or Subsection 057.04, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in Subsection 057.04 for “minor modifications” the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared. ()

a. Causes for modification. For Class II wells the following are causes for revocation and reissuance as well as modification. ()

i. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit. ()

ii. New regulations. The standards or regulations on which the permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued. ()

iii. Compliance schedules. The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. See also Paragraph 057.04.c. ()

b. Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit: ()

i. Cause exists for termination under Subsection 057.03, and the Director determines that modification or revocation and reissuance is appropriate. ()

ii. The Director has received notification (as required in the permit, see Paragraph 057.04.d.) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (Paragraph 057.06.b.) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee. ()

iii. A determination that the waste being injected is a hazardous waste as defined in Title 39, Chapter 4403 of the Idaho Code either because the definition has been revised, or because a previous determination has been changed. ()

c. Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance. ()

03. Causes For Termination of Permits. ()

a. The Director may terminate a permit during its term, or deny a permit renewal application for the following causes: ()

i. Noncompliance by the permittee with any condition of the permit; ()

ii. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or ()

iii. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; ()

b. The Director shall follow the applicable procedures in Subsection 020.03 and Subsection 057.01 in terminating any permit under this section. ()

04. Minor Modifications of Permits. Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section. Any permit modification not processed as a minor modification under this section must be made for cause and with a draft permit and public notice as required in Subsections 048.01 and 048.04. Minor modifications may only: ()

a. Correct typographical errors; ()

b. Require more frequent monitoring or reporting by the permittee; ()

c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or ()

d. Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director. ()

e. Change quantities or types of fluids injected, so long as they are within the capacity of the facility as permitted and, in the judgment of the Director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification. ()

f. Change construction requirements approved by the Director pursuant to Subparagraph 051.02.a.i. (establishing UIC permit conditions), provided that any such alteration shall comply with the requirements of this Section and Subsection 045.06. ()

g. Amend a plugging and abandonment plan which has been updated under

Subparagraph 051.02.a.v. ()

05. Continuation of Expiring Permits. ()

a. The conditions of an expired permit continue in force until the effective date of a new permit if: ()

i. The permittee has submitted a timely application which is a complete application for a new permit; and ()

ii. The permittee has submitted all supplemental information requested by the Director; and IDWR suggested revision. ()

iii. The Director, through no fault of the permittee does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints). ()

b. Effect. Permits continued under this section remain fully effective and enforceable. ()

c. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the Director may choose to do any or all of the following: ()

i. Initiate enforcement action based upon the permit which has been continued; ()

ii. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit; ()

iii. Issue a new permit with appropriate conditions; or ()

iv. Take other actions authorized by these regulations. ()

d. State continuation. An EPA issued permit does not continue in force beyond its time expiration date under Federal law if at that time a State is the permitting authority. A State authorized to administer the UIC program may continue either EPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit. ()

06. Transfer of Permits. ()

a. Transfers by modification. Except as provided in Paragraph 057.06.b. of this rule, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under Subparagraph 057.02.b.ii.), or a minor modification made (under Paragraph 057.04.d.), to identify the new permittee. ()

b. Automatic transfers. As an alternative to transfers under Paragraph 057.06.a. of this rule, any UIC permit for a well not injecting hazardous waste or injecting carbon dioxide for geologic sequestration may be automatically transferred to a new permittee if: ()

i. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date referred to in Subparagraph 057.06.b.ii. of this rule; ()

ii. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them, and the notice demonstrates that the financial responsibility requirements of Subparagraph 051.02.a.vi. will be met by the new permittee; and ()

iii. The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under Subsection 057.04. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Subparagraph 057.06.b.ii. of this rule. ()

07. Records. The Director may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with these rules. ()

058. -- 059. (RESERVED)

060. CLASS II: GENERAL PROVISIONS.

01. Obligation to Raise Issues and Provide Information During The Public Comment Period. All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under Subsection 048.04. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available to the Department as directed by the Director. (A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted under Subsection 048.04 to the extent that a commenter who requests additional time demonstrates the need for such time.) ()

02. Stays of Contested Permit Conditions. ()

a. Stays. ()

i. If an Administrative Appeal of a permit under Section 003 of these rules is filed, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial

review pending final agency action. Uncontested permit conditions shall be stayed only until the date specified in Subparagraph 060.02.a.ii.(1) of this rule. If the permit involves a new injection well, the applicant shall be without a permit for the proposed new injection well pending final agency action. ()

ii. Uncontested conditions. ()

(1) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. The Director shall identify the stayed provisions of permits for existing injection wells. All other provisions of the permit for the existing injection well become fully effective and enforceable 30 days after the date of the notification required in Subparagraph 060.02.a.ii.(2) of this rule. ()

(2) The Director shall, as soon as possible after receiving a petition for review, notify the applicant and all other interested parties of the uncontested (and severable) conditions of the final permit that will become fully effective enforceable obligations of the permit as of the date specified in Subparagraph 060.02.a.ii.(1) of this rule. ()

b. Any facility or activity holding an existing permit must: ()

i. Comply with the conditions of that permit during any modification or revocation and reissuance proceeding under Subsection 057.01; and ()

ii. To the extent conditions of any new permit are stayed under Subsection 060.02, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed. ()

03. Effect of A Permit. ()

a. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege. ()

b. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations. ()

04. Noncompliance and Program Reporting By The Director. The Director shall prepare quarterly and annual reports as detailed below. The Director shall submit any reports required under this section to EPA. ()

a. Quarterly reports. The Director shall submit quarterly narrative reports for facilities as follows: ()

i. Format. The report shall use the following format: ()

(1) Provide an alphabetized list of permittees. When two (2) or more permittees have the same name, the lowest permit number shall be entered first. ()

- (2) For each entry on the list, include the following information in the following order: ()
- (a) Name, location, and permit number of the noncomplying permittees. ()
- (b) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one (1) or more the kinds set forth in Subparagraph 060.04.a.ii. of this rule. When a permittee has noncompliance of more than one (1) kind, combine the information into a single entry for each such permittee. ()
- (c) The date(s) and a brief description of the action(s) taken by the Director to ensure compliance. ()
- (d) Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution. ()
- (e) Any details which tend to explain or mitigate the instance(s) of noncompliance. ()
- ii. Instances of noncompliance to be reported. Any instances of noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved it need not appear in subsequent reports. ()
- (1) Failure to complete construction elements. When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required elements of the schedule within 30 days from the date a compliance schedule report is due under the permit. ()
- (2) Modifications to schedules of compliance. When a schedule of compliance in the permit has been modified under Subsections 057.02 or 057.04 because of the permittee's noncompliance. ()
- (3) Failure to complete or provide compliance schedule or monitoring reports. When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress report or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports. ()
- (4) Deficient reports. When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Director and thus impede the review of the status of compliance. ()
- (5) Noncompliance with other permit requirements. Noncompliance shall be reported in the following circumstances: ()

(a) Whenever the permittee has violated a permit requirement (other than reported under Subparagraph 060.04.a.ii.(1) or 060.04.a.ii.(2) of this rule), and has not returned to compliance within forty-five (45) days from the date reporting of noncompliance was due under the permit; or ()

(b) When the Director determines that a pattern of noncompliance exists for a facility permittee over the most recent four (4) consecutive reporting periods. This pattern includes any violation of the same requirement in two (2) consecutive reporting periods, and any violation of one (1) or more requirements in each of four (4) consecutive reporting periods; or ()

(c) When the Director determines significant permit noncompliance or other significant event has occurred, such as a migration of fluids into a USDW. ()

(6) All other. Statistical information shall be reported quarterly on all other instances of noncompliance by facilities with permit requirements not otherwise reported under Paragraph 060.04.a. of this rule. ()

b. Annual reports. ()

i. Annual noncompliance report. Statistical reports shall be submitted by the Director on UIC permittees indicating the total number reviewed, the number of noncomplying permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in Paragraph 060.04.a. of this rule. ()

ii. In addition to the annual noncompliance report, the Director shall: ()

(1) Submit each year a program report to EPA (in a manner and form prescribed by EPA) consisting of: ()

(a) A detailed description of the State's implementation of its program; ()

(b) Suggested changes, if any to the program description which are necessary to reflect more accurately the State's progress in issuing permits; ()

(c) An updated inventory of active underground injection operations in the State. ()

c. Schedule. ()

i. For all quarterly reports. On the last working day of May, August, November, and February, the Director shall submit to EPA information concerning noncompliance with permit requirements by facilities in the State in accordance with the following schedule. ()

ii. For all annual reports. The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later. ()

061. -- 069. (RESERVED)

070. CLASS V: CRITERIA AND STANDARDS.

[Moved from Section 030]

0301. ~~Inventory Information And Permit Requirements~~ Class V Shallow Injection Wells ~~Requirements~~ (Rule 30). ()

01a. 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 ~~involved in highway and street construction and maintenance shall submit the following inventory information:~~ shall submit the following inventory information for wells associated with highway and street construction and maintenance projects. ~~(5-3-03)~~()

- a.i.** Facility name and location; and (7-1-93)
- b.ii.** County in which the injection well(s) is (are) located; and (7-1-93)
- c.iii.** Ownership of the well(s); and (7-1-93)
- d.iv.** Name, address and phone number of legal contact; and (7-1-93)
- e.v.** Type or function of the well(s); and (7-1-93)
- f.vi.** Number of wells of each type; and (7-1-93)
- g.vii.** Operational status of the well(s). (7-1-93)

02b. 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. ~~New shallow injection wells used for the disposal of storm water from building roof or foundation drains are exempt from Shallow Injection Well Inventory Form filing requirements and fees of this chapter.~~ State or local government entities are exempt from Shallow Injection Well Inventory Form filing fees ~~of this chapter~~ for wells associated with highway and street construction and maintenance, but shall comply with all other requirements of these rules. ~~(5-3-03)~~()

03c. Permit Requirements. If operation of a shallow Class V injection well is causing or may cause unreasonable contamination of a ~~drinking water source~~ **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. (5-3-03)()

04d. Permanent ~~Abandonment~~ Decommission. Owners or operators of shallow injection wells shall notify the Director not less than thirty (30) days prior to permanent ~~abandonment~~ decommissioning of any shallow injection well. Permanent ~~abandonment~~ decommissioning shall be accomplished in accordance with procedures approved by the Director. ~~An Injection Well Abandonment Form shall be submitted with each notification.~~ (5-3-03)()

05e. 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. (5-3-03)

~~031.—034. (RESERVED)~~

[Moved from Section 035]

~~032. Application For Permit To Construct, Modify Or Maintain An Injection Well Class V Deep Injection Well Requirements (Rule 35).~~ ()

~~04a. Application Requirements for All Class V Wells, Except Those Class V Wells Authorized Without Permit.~~ (7-1-93)()

a.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 ~~Rule 25 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. (5-3-03)()

b.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. (5-3-03)

02b. 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: (5-3-03)

- ~~a~~i. Facility name and location; (7-1-93)
 - ~~b~~ii. Name, address and phone number of the well operator; (7-1-93)
 - ~~c~~iii. Class, subclass and function of the injection well (see Rule ~~235~~); ~~(7-1-93)~~()
 - ~~d~~iv. Latitude/longitude or legal description of the well location to the nearest ten (10) acre tract; (5-3-03)
 - ~~e~~v. Ownership of the well; (7-1-93)
 - ~~f~~vi. County in which the injection well is located; (7-1-93)
 - ~~g~~vii. Construction information for the well; (7-1-93)
 - ~~h~~viii. Quantity and general character of the injected fluids; (7-1-93)
 - ~~i~~x. Status of the well ~~(to be constructed, active, temporarily abandoned, etc.);~~ ~~(7-1-93)~~()
 - ~~j~~x. A topographic map or aerial photograph extending one (1) mile beyond property boundaries, depicting: (7-1-93)
 - ~~i~~(1). Location of the injection well and associated facilities described in the application; (7-1-93)
 - ~~ii~~(2). Locations of other injection wells; (7-1-93)
 - ~~iii~~(3). Approximate drainage area, if applicable; (7-1-93)
 - ~~iv~~(4). Hazardous waste facilities, if applicable; (7-1-93)
 - ~~v~~(5). All wells used to withdraw drinking water; (7-1-93)
 - ~~vi~~(6). All other wells, springs and surface waters. (7-1-93)
 - ~~k~~xi. Distance and direction to nearest domestic well; (7-1-93)
 - ~~l~~xii. Depth to ground water; and (5-3-03)
 - ~~m~~xiii. Alternative methods of waste disposal. (7-1-93)
- ~~03c~~ **Additional Information.** The Director may require the following additional information for Class V injection wells to assess potential effects of injection: (5-3-03)

i. A topographic map showing locations of the following within a two (2) mile radius of the injection well: (5-3-03)

(1). All wells producing water; (7-1-93)

(2). All exploratory and test wells; (7-1-93)

(3). All other injection wells; (7-1-93)

(4). Surface waters (including man-made impoundments, canals and ditches); (7-1-93)

(5). Mines and quarries; (7-1-93)

(6). Residences; (7-1-93)

(7). Roads; (7-1-93)

(8). Bedrock outcrops; and (5-3-03)

(9). Faults and fractures. (7-1-93)

ii. Additional maps or aerial photographs of suitable scale to accurately depict the following: (7-1-93)

(1). Location and surface elevation of the injection well described in this permit; (7-1-93)

(2). Location and identification of all facilities within the property boundaries; (7-1-93)

(3). Locations of all wells penetrating the proposed injection zone or within a one-quarter (1/4) mile radius of the injection well; (7-1-93)

(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. (7-1-93)

iii. A comprehensive report of the following information: (7-1-93)

(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; (7-1-93)

(2). Description of the quality and quantity of fluids to be injected; (7-1-93)

(3). Geologic, hydrogeologic, and physical characteristics of the injection zone and

confining beds; (5-3-03)

~~iv~~(4). Engineering data for the proposed injection well; (7-1-93)

~~v~~(5). Proposed operating pressure; (7-1-93)

~~vi~~(6). A detailed evaluation of alternative disposal practices; (7-1-93)

~~vii~~(7). A plan of corrective action for wells penetrating the zone of injection, but not properly sealed or ~~abandoned~~ decommissioned; and ~~(5-3-03)~~()

~~viii~~(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. (7-1-93)

~~div~~. Name, address and phone number of person(s) or firm(s) supplying the technical information and/or designing the injection well; (7-1-93)

~~ev~~. Proof that the applicant is financially responsible, through a performance bond or other appropriate means, to ~~abandon~~ decommission the injection well in ~~accordance with the conditions of the permit~~ a manner approved by the Director. ~~(5-3-03)~~()

~~04d~~. **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 ~~drinking water sources~~ 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. ~~(7-1-93)~~()

~~036.—039.~~ **(RESERVED)**

[Moved from Section 040]

~~0403~~. **Application Processing** ~~(Rule 40)~~. ()

~~04a~~. **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. ~~Closed-loop heat exchange wells (Subclass 5A7), as described by Rule Subsection 040.05 are exempt from the draft permit provisions of this rule.~~ In preparing the draft permit or denial, the Director shall consider the following factors: ~~(7-1-93)~~()

~~ai~~. The availability of economic and practical alternative means of disposal; (7-1-93)

~~bii~~. The application of best management practices to the facilities and/or area draining into the well; (7-1-93)

~~eiii.~~ The availability of economical, practical means of treating or otherwise reducing the amount of contaminants in the injected fluids; (7-1-93)

~~div.~~ The quality of the receiving ground water, its category, its present and future beneficial uses or interconnected surface water; (7-1-93)

~~ev.~~ The location of the injection well with respect to drinking water supply wells; and (5-3-03)

~~fvi.~~ Compliance with the IDAPA 58.01.11, "Ground Water Quality Rule." (5-3-03)

~~02b.~~ **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. (7-1-93)

~~03c.~~ **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. (7-1-93)

~~04.~~ **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, and may consider related groups of draft permits. 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.* (7-1-93)

~~05d.~~ **Closed Open-Loop Heat Exchange Pump Return Wells (Subclass 5A7).** ()

~~i.~~ An closed open-loop heat exchange pump return well greater than eighteen (18) feet in depth to be used solely for disposal of heat pump water at a rate not exceeding fifty (50) gpm does not require a draft permit and is not subject to a recurring permit cycle, however, registration of the well with the Department and submittal of a filing fee as specified in Section 42-3905, Idaho Code is required. The Director reserves the right to override the exemptions from the draft permit and permit cycle requirements. ()

~~ii.~~ *Public notification of the application shall be by a posted notice at the regional office of the Department where the application is made, or other method approved by the Director, and shall contain the following standard operating conditions: Rules for Construction and Use of Injection Wells shall be followed. Violation of the standards stated in Rule Subsection 050.04 is adequate cause for cancellation of the permit; Injection shall be restricted to heat pump water; A closed loop system shall be maintained to prevent contamination of the injected fluids. A*

~~protected air vent may be installed if needed, and a sampling port is required; Additives shall be used in the water only if approved by the Department of Water Resources; Should the use of the well lead to degradation of the quality of the ground water, this permit may be canceled; A well log shall be submitted to the Department within thirty (30) days of the completion of the well. Permits for large capacity closed loop heat exchange wells injecting over fifty (50) gpm will be processed with a draft permit and public notice as described in these rules. 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.~~ (5-3-03)()

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. ()

~~041.—044. (RESERVED)~~

[Moved from Section 045]

045. The Director's Action On Draft Permits and Duration Of Approved Permits (~~Rule 45~~). 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. (7-1-93)

~~04a.~~ **Consideration.** The Director will consider the following factors in taking final action on draft permits: (7-1-93)

~~a.i.~~ The likelihood and consequences of the injection well system failing; (7-1-93)

~~b.ii.~~ The long term effects of such disposal or storage; (7-1-93)

~~c.iii.~~ The recommendations and related justifications of the Directors of other state agencies and the public; (5-3-03)

~~d.iv.~~ The potential for violation of ground water quality standards at the point of injection or the point of beneficial use; and (5-3-03)

~~e.v.~~ Compliance with the Idaho Ground Water Quality Plan. (5-3-03)

~~02b.~~ **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 ~~Rule 50 Subsection 070.05~~ will be met and ~~drinking water sources~~ 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. (5-3-03)()

03c. 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. (5-3-03)

04d. Construction Requirements. (7-1-93)

a.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. (7-1-93)

b.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. (7-1-93)

e.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. (5-3-03)

d.iv. Injection wells shall be constructed to prevent the entrance of any fluids other than specified in the permit. (7-1-93)

e.v. Injection wells shall be constructed to prevent waste of artesian fluids or movement of fluids from one aquifer into another. (7-1-93)

f.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. (7-1-93)

g.vii. A sampling port shall be provided if the injection well system is enclosed. (5-3-03)

h.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. (5-3-03)

i.(1) Injection wells installed into fractured basalt are exempt from separation distances. (5-3-03)

ii.(2) The Director may reduce separation distance requirements if the quality of injected

fluids are improved through additional treatment or BMPs. (5-3-03)

(3) Heat pump return wells (sub-class 5A7) are exempt from the separation distance requirement of this section. ()

~~05e.~~ **Operational Conditions.** (7-1-93)

~~a.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. (7-1-93)

~~b.ii.~~ Injection of any contaminant ~~as defined in Rule 50~~ at concentrations exceeding the standards set in Paragraph 070.05.c. into a present or future drinking or other ground water source that may cause a health hazard or adversely affect a designated and protected use is prohibited. ~~(7-1-93)~~()

~~e.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. (7-1-93)

~~d.iv.~~ Authorized representatives of the Department shall be allowed to enter, inspect and/or sample: (7-1-93)

~~i.(1)~~ The injection well and related facilities; (7-1-93)

~~ii.(2)~~ The owner or operator's records of the injection operation; (7-1-93)

~~iii.(3)~~ Monitoring instrumentation associated with the injection operation; and (7-1-93)

~~iv.(4)~~ The injected fluids. (7-1-93)

~~e.v.~~ The injection facilities shall be operated and maintained to achieve compliance with all terms and conditions of this permit. (7-1-93)

~~i.(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; (7-1-93)

~~ii.(2)~~ If compliance cannot be met, the owner shall take corrective action ~~(See Rule 065)~~ as determined by the Director or terminate injection. ~~(5-3-03)~~()

~~f.vi.~~ The owner shall mitigate any adverse effects resulting from non-compliance with the terms and conditions of the permit. (7-1-93)

~~g.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. (7-1-93)

~~h~~viii. The permit shall not convey any property rights. (7-1-93)

~~06~~f. **Conditions of Permanent ~~and Temporary Abandonment~~ Decommissioning.**
(7-1-93)()

~~a~~i. Notice of ~~abandonment for wells~~ **intent** to ~~be~~ permanently ~~abandoned~~ **decommission a well** shall be submitted ~~on a form provided by~~ to the Director not less than thirty (30) days prior to commencement of the ~~abandonment~~ **decommissioning** activity. (5-3-03)()

~~b~~ii. The method of permanent ~~abandonment~~ **decommissioning** for all injection wells shall be approved by the Director prior to commencement of the ~~abandonment~~ **decommissioning** activity ~~and shall be in accordance with current well construction standards. Permanent abandonment requires plugging the well bore with bentonite grout, cement grout, concrete, or other impermeable material to prevent the upward or downward migration of fluids.~~
(5-3-03)()

~~e~~iii. Notice of completion of permanent ~~abandonment~~ **decommission** shall be submitted to the Director within thirty (30) days of completion. (7-1-93)()

~~d~~iv. All deep injection wells that are to be permanently ~~abandoned~~ **decommissioned** shall be plugged ~~with cement grout or other impervious material in such a manner as to prevent movement of fluids into or between drinking or other ground water sources~~ in accordance with current Well Construction Standards and/or ~~the conditions of the permit.~~ (7-1-93)()

~~e~~v. Following permanent cessation of use, or where an injection well is not completed, the Director shall be notified. ~~Abandonment~~ **Decommissioning** procedures or other action, as prescribed by the Director, shall be conducted. (7-1-93)()

~~f~~vi. The injection well owner or operator ~~shall maintain the financial~~ **has the** responsibility to insure that the injection operation is ~~abandoned~~ **decommissioned** as prescribed. (7-1-93)()

~~g~~. ~~Temporary abandonment, including use of a welded steel plate to cover the well opening, or a packer to occlude the well bore does not exempt the owner or operator from the requirement to obtain a permit. A well that is permitted as temporarily abandoned must receive a new permit in order to inject fluids.~~ (7-1-93)

~~07~~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. (7-1-93)

~~046.—049.~~ (RESERVED)

[Moved from Section 050]

050. Standards For The Quality of Injected Fluids and Criteria For Location and Use (Rule 50). ()

~~01a.~~ **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 ~~by Rule 010~~ 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. (5-3-03)()

~~02b.~~ **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. (5-3-03)

~~03c.~~ **Standards for Quality of Fluids Injected by into Class V Wells.** (5-3-03)()

~~a.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 drinking water source USDW: (5-3-03)()

~~i.(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 (5-3-03)

~~ii.(2)~~ **Radiological contaminants.** Radiological levels of the injected fluids shall not exceed those levels specified by the ground water quality standards. (5-3-03)

~~bii.~~ **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: (5-3-03)

~~i.(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;** (5-3-03)()

~~ii.(2)~~ **The Director may require the use of best management practices (BMPs) to reduce the concentration of coliform bacteria in the injected fluids;** (5-3-03)

~~iii.(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;** (5-3-03)

~~iv~~(4) Ground water produced from points of diversion for beneficial use adjacent to injection wells that dispose of fluids containing coliform bacteria in concentrations greater than the current ground water quality standard shall be subject to monitoring for bacteria by the owner/operator of the injection well. A waiver of the monitoring requirement may be granted by the Director when it can be demonstrated that injection will not result in unreasonable contamination of ground water produced from these adjacent points; (5-3-03)

~~v~~(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 (5-3-03)

~~vi~~(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. (7-1-93)

~~eiii~~. 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. (7-1-93)

~~div~~. 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 *by Rule in Subsection 010.57 of these rules.* ~~(5-3-03)~~()

~~04d~~. **Criteria for Location and Use of Class V Wells Requiring Permits.** (7-1-93)

~~ai~~. 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. (5-3-03)

~~bii~~. These location requirements in Table 1 may be waived, as per *Rule Subsection 050.02 Paragraph 070.05.b.*, when the applicant can demonstrate that any springs or wells within the calculated perimeter of the generated perched water zone will not be contaminated by the applicant's waste disposal or injection well. Monitoring by the applicant of the production wells or springs in question may be required to demonstrate that they are not being contaminated.

Determined Radii of Perched Water Zones Based on Maximum Average Weekly Injection Rates (cfs) of Class V Injection Wells *	
Injection (cfs)	Radius of Generated Perched Water Zone (ft)
0 - 0.20	800
0.20 - 0.60	1,400

Determined Radii of Perched Water Zones Based on Maximum Average Weekly Injection Rates (cfs) of Class V Injection Wells *	
Injection (cfs)	Radius of Generated Perched Water Zone (ft)
0.61 - 1.00	1,800
1.01 - 2.00	2,500
2.01 - 3.00	3,000
3.01 - 4.00	3,500
4.01 - 5.00	4,000
Greater than 5.00	As determined by the Director

* Injection rates shall be based on the average volume of wastes injected by the well during the week of greatest injection in an average water year. (5-3-03)()

05e. Standards for the Quality of Fluids Injected by Subclass 5A7 Wells (~~closed~~ Open-Loop Heat ~~exchange~~ Pump Return). (7-1-93)()

ai. 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 ~~exchanger~~ **pump**, whichever is less stringent. (5-3-03)()

bii. 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. (5-3-03)

eiii. The temperature of the injected fluids shall not impair the designated beneficial uses of the receiving ground water. (7-1-93)

dii. 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. (5-3-03)

~~051. — 054. (RESERVED)~~

[Moved from Section 055]

0556. Monitoring, Record Keeping and Reporting Requirements (~~Rule 55~~). 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. (5-3-03)

01a. Monitoring. (7-1-93)

a.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: (7-1-93)

~~i.~~**(1)** Monitoring of injection pressures and pressures in the annular space between casings; (7-1-93)

~~ii.~~**(2)** Flow rate and volumes; (7-1-93)

~~iii.~~**(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; (7-1-93)

~~iv.~~**(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; (7-1-93)

~~v.~~**(5)** A demonstration of the integrity of the casing, tubing or seal of the injection well. (7-1-93)

b.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. (7-1-93)

c.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 ~~in accordance with the recommended methods set forth in the latest edition of "Standard Methods for the Examination of Water and Wastewater," American Public Health Association; "Methods for Chemical Analysis of Water and Wastes," EPA, American Society for Testing and Materials Standards; or other authority recognized by the Director.~~ (7-1-93)()

d.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. (7-1-93)

e.v. All samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity and fluids injected. (7-1-93)

~~02b.~~ **Record Keeping.** The permittee shall maintain records of all monitoring activities to include: (7-1-93)

a.i. Date, time and exact place of sampling; (7-1-93)

b.ii. Person or firm performing analysis; (7-1-93)

c.iii. Date of analysis, analytical methods used and results of analysis; (7-1-93)

- ~~d~~**iv.** Calibration and maintenance of all monitoring instruments; and (7-1-93)
- ev.** All original tapes, strip charts or other data from continuous or automated monitoring instruments. (7-1-93)
- ~~03.~~ **~~Five Year Retention of Records.~~** *The permittee shall retain for a period of five (5) years all records of monitoring, construction and application information. The period of retention shall be extended during the course of any litigation regarding the injection of contaminants by the permittee or when requested by the Director. This requirement shall continue in effect during the five (5) year period following permanent abandonment of a well.* (7-1-93)
- ~~04c.~~ **Reporting.** (7-1-93)
- ai.** 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. (7-1-93)
- bii.** 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: (7-1-93)
- ~~i.~~**(1)** A description of the violation and its cause; (7-1-93)
- ~~ii.~~**(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 (5-3-03)
- ~~iii.~~**(3)** Steps being taken to reduce, eliminate and prevent recurrence of the injection. (7-1-93)
- eiii.** 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. (7-1-93)
- d**~~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. (7-1-93)
- ev.** All applications for permits, notices and reports submitted to the Director shall be signed and certified. (7-1-93)
- fvi.** The Director shall be notified in writing of planned physical alterations or additions to any facility related to the permitted injection well operation. (7-1-93)
- gvii.** Additional information to be reported to the Director in writing: (7-1-93)
- ~~i.~~**(1)** Transfer of ownership; (7-1-93)

- ~~##~~(2) Any change in operational status not previously reported; (7-1-93)
- ~~##~~(3) Any anticipated noncompliance; and (5-3-03)
- ~~##~~(4) Reports of progress toward meeting the requirements of any compliance schedule attached or assigned to this permit. (7-1-93)
- ~~056.—059.~~ (RESERVED)

[Moved from Section 060]

~~060~~7. **Permit Assignable** ~~(Rule 60)~~. Permits ~~shall~~ **may** be assignable to a new owner or operator of an injection well if the new owner or operator ~~shall~~, within thirty (30) days of the change, ~~notifies~~ **ifies** 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. ~~(7-1-93)~~()

~~077~~1. -- 999. (RESERVED)