

RESOURCES & CONSERVATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 20 - DEPARTMENT OF LANDS

20.03.04 - RULES GOVERNING THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

DOCKET NO. 20-0304-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. 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, and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners (“Board”), Sections 830 through 835, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 58-104(6), Idaho Code.

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

This rulemaking clarifies and corrects some of the rule changes approved in 2008. The issues addressed by this rulemaking include, but are not limited to, removing the actual fee amounts from the rules and allowing the Board to set the fees subject to the maximum fee amounts in Section 58-1307, Idaho Code, clarifying several definitions and encroachment standards, allowing some boat lifts to be approved with an abbreviated permitting process, and providing for lake specific encroachment standards to assist with implementation of lake management plans. These rules are being promulgated in conjunction with changes to IDAPA 20.03.17, Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands.

Some changes were made to the pending rules after the close of comments on October 28, 2009. These changes are in response to comments received from the public and department personnel. Parking requirements at commercial marinas will be one parking space per moorage only for privately owned slips with designated parking spaces. All other parking requirements will be one parking space per two moorages, as the rule currently states. The construction standards for covered slips was changed to specifically prohibit extra piling or hard covers due to the impacts on the near shore area. The process of inspecting float home sanitation, and bringing all float homes up to the sanitation standards, was modified to be less ambiguous. The permitting procedure for certain kinds of boat lifts was also modified to correct an error in the printing of the Proposed Rule. Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have also been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

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 original text of the proposed rule was published in Book 2 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 90 through 106.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 58-1307, Idaho Code:

The actual fee amounts would be removed from the rules and would be set by the Board subject to the maximum amounts in statute. This would allow, for instance, the Board to reduce the fees down to the approximate cost of processing applications for small waterlines. As a nonnavigational encroachment they are currently assessed a fee, required by the Rules, that often exceeds the department's costs.

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

This is a general fund program. The department does not anticipate any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov. More information is also at <http://www.idl.idaho.gov/adminrule/rulemaking.html>.

DATED this 13th day of November, 2009.

Eric Wilson
Navigable Waters/Minerals Program Manager
Idaho Department of Lands
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(208) 334-0261/ Fax (208) 334-3698
ewilson@idl.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1) Idaho Code and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners (Board), Sections 830 through 835, notice is hereby given that this agency has initiated proposed rulemaking procedures. This proposed rulemaking is authorized pursuant to Section 58-104(6), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking, as well as changes pertaining to docket no. 20-0317-0901 also published in this Bulletin, will be held. The purpose of the hearing is to gather public comments on the proposed rules.

THURSDAY, OCTOBER 15th, 2009 -- 8 a.m. to 12 noon

3780 Industrial Avenue South
Coeur d'Alene, Idaho

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

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

The Idaho Department of Lands (IDL) is initiating this rulemaking to clarify and correct some of the rule changes approved in 2008. The issues to be addressed by this rulemaking include, but are not limited to, removing the actual fee amounts from the rules and allowing the Board to set the fees subject to the maximum fee amounts in Section 58-13, Idaho Code, clarifying several definitions and encroachment standards, allowing some boat lifts to be approved with an abbreviated permitting process, and providing for lake specific encroachment standards. This rulemaking will be conducted in conjunction with the IDAPA 20.03.17 rulemaking.

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

No changes to the existing fees are proposed.

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

This is a general fund program. The department does not anticipate any fiscal impacts on the state general fund due to the proposed changes.

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 1, 2009 Idaho Administrative Bulletin, Vol. 09-7 page 97. Negotiations were conducted over three (3) meetings in June, 2009.

ASSISTANCE ON TECHNICAL QUESTIONS, AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov. More information is also at <http://www.idl.idaho.gov/adminrule/rulemaking.html>.

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 28,

2007.

DATED this 27th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (4-2-08)

01. ~~International Building Code~~ ©. 2006 Edition published by the International Code Council © and available on the Internet at: <http://www.iccsafe.org>. **2008 National Electrical Code**. The 2008 National Electrical Code is available at the office of the Division of Building Safety at 1090 E. Watertower St., Meridian, Idaho 83642. (4-2-08)()

02. 2003 Uniform Plumbing Code. The 2003 Uniform Plumbing Code is available at the Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642; and at the Division of Building Safety, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. ()

023. United States Aid to Navigation System. Prepared by the United States Coast Guard and available on the Internet at: <http://www.uscgboating.org/safety/aton/system.htm>. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Adjacent. Contiguous or touching, and with regard to land or land ownership having a common boundary. (7-1-98)

02. Aids to Navigation. Buoys, warning lights, and other encroachments in aid of navigation intended to improve waterways for navigation. (4-2-08)

03. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. (4-2-08)

04. Beds of Navigable Lakes. The lands lying under or below the “natural or ordinary high water mark” of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. (9-13-90)

- 05. Board.** The Idaho State Board of Land Commissioners or its designee. (4-2-08)
- 06. Boat Garage.** A structure with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area. (4-2-08)
- 07. Boat Lift.** A mechanism for mooring boats partially or entirely out of the water. (4-2-08)
- 08. Boat Ramp.** A structure or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers. (4-2-08)
- 09. Commercial Marina.** A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. (4-2-08)
- 10. Commercial Navigational Encroachment.** A navigational encroachment used for commercial purposes. (4-2-08)
- 11. Community Dock.** A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner's associations. No public access is required for a community dock. (4-2-08)
- 12. Covered Slip.** A slip, or group of slips, with a tubular frame, fabric canopy, and ~~no~~ eaves that do not extend beyond the underlying dock. (~~4-2-08~~)()
- 13. Department.** The Idaho Department of Lands or its designee. (4-2-08)
- 14. Director.** The head of the Idaho Department of Lands or his designee. (4-2-08)
- 15. Encroachments in Aid of Navigation.** Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments." (4-2-08)
- 16. Encroachments Not in Aid of Navigation.** Includes all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It shall also include float homes and ~~floating toys~~ boat garages. The term "encroachments not in aid of navigation" may be used interchangeably herein with the term "nonnavigational encroachments." (~~4-2-08~~)()
- 17. Floating Home or Float Home.** A structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling and is not self-propelled. These structures are usually dependent for utilities upon a continuous utility linkage to a source originating on shore, and must have either a permanent continuous connection to a sewage system on shore, or an alternative method of sewage disposal that does not violate local, state, or federal

water quality and sanitation regulations. (4-2-08)

18. Floating Toys. ~~Non-navigational encroachments including, but not limited to, trampolines, inflatable structures, water ski courses, and other recreational equipment not moored to a dock.~~ Trampolines, inflatable structures, water ski courses, and other recreational equipment that are not permanently anchored to the lake bed or an encroachment and are either located between the shoreline and the line of navigability or are waterward of the line of navigability for less than twenty-four (24) consecutive hours. (4-2-08)()

19. Jet Ski Ramp, Port, or Lift. A mechanism for mooring jet skis or other personal watercraft similar to a boat lift. The lifts may be free standing or attached to a dock or pier. (4-2-08)

20. Line of Navigability. A line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question. (4-2-08)

21. Low Water Mark. That line or elevation on the bed of a lake marked or located by the average low water elevations over a period of years, and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation. (4-2-08)

22. Moorage. A place to secure float homes and watercraft including, but not limited to, boats, personal watercraft, jet skis, etc. (4-2-08)

23. Natural or Ordinary High Water Mark. The high water elevation in a lake over a period of years, uninfluenced by man made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. (9-13-90)

24. Navigable Lake. Any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes. This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency. (4-2-08)

25. Party. Each person or agency named or admitted as a party; or ~~property properly seeking and entitled as of right to be admitted as a party to a hearing on an application for an encroachment.~~ (9-13-90)()

26. Person. A partnership, association, corporation, natural person, or entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. (4-2-08)

27. Piling. A metal, concrete, plastic, or wood post that is placed into the lakebed and used to secure floating docks and other structures. (4-2-08)

28. Plans. Maps, sketches, engineering drawings, aerial and other photographs, word

descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same. (9-13-90)

29. Public Hearing. The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who shall act as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the Department by tape recorder. The hearing coordinator shall exercise such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. (4-2-08)

30. Public Trust Doctrine. The duty of the State to its people to ensure that the use of public trust resources is consistent with identified public trust values. This common law doctrine has been interpreted by decisions of the Idaho Appellate Courts and is codified at Title 58, Chapter 12, Idaho Code. (3-19-99)

31. Pylon. A metal, concrete, or wood post that is placed into the lakebed and used to support fixed piers. (4-2-08)

32. Riparian or Littoral Rights. The rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake. (4-2-08)

33. Riparian or Littoral Owner. The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed, lease, or other grant. (~~4-2-08~~)()

34. Riparian or Littoral Right Lines. Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline. (4-2-08)

35. Side Tie. Moorage for watercraft where the dock or pier is on only one (1) side of the watercraft. (4-2-08)

36. Single-Family Dock. A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. (4-2-08)

37. Slip. Moorage for boats with pier or dock structures on at least two (2) sides of the moorage. (4-2-08)

38. Submerged Lands. The state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks. (9-13-90)

39. Two-Family Dock. A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50)

feet. Usually the structure is located on the common littoral property line. (4-2-08)

40. Upland. The land bordering on navigable lakes, rivers, and streams. (4-2-08)

011. ABBREVIATIONS.

01. IDAPA. Idaho Administrative Procedure Act. (4-2-08)

02. ATON. Aids to Navigation. (4-2-08)

03. HDPE. High-Density Polyethylene. ()

(BREAK IN CONTINUITY OF SECTIONS)

015. ENCROACHMENT STANDARDS.

01. Single-Family and Two-Family Docks. The following parameters govern the size and dimensions of single-family docks and two-family docks. (7-1-98)

a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width, excluding the slip cut out. (4-2-08)

b. Total surface decking area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and shall not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. (4-2-08)

c. No portion of the docking facility shall extend beyond the line of navigability. Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of ~~navigaton~~ navigability. (4-2-08)()

d. A variance to the standards contained in Subsection 015.01 of these rules may be approved by the department where it can be justified by site specific considerations such as the distance to the established line of ~~navigaton~~ navigability. (4-2-08)()

02. Community Docks. (7-1-98)

a. A community dock shall be considered a commercial navigational aid for purposes of processing the application. (4-2-08)

b. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the department. (4-2-08)

c. A community dock shall not have less than fifty (50) feet combined shoreline

frontage. Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock shall be limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. (4-2-08)

d. If a breakwater will be incorporated into the structure of a dock, and a need for the breakwater can be demonstrated, the department may allow the surface decking area to exceed the size limitations of Paragraph 015.02.c of these rules. (4-2-08)

e. A person with an existing community dock that desires to change the facility to a commercial marina must submit the following information to the department: (4-2-08)

i. A new application for an encroachment permit. (4-2-08)

ii. Text and drawings that describe which moorage will be public and which moorage will be private. (4-2-08)

03. Commercial Marina. (4-2-08)

a. Commercial marinas must have a minimum of fifty percent (50%) of their moorage available for use by the general public. ~~Such use may range from providing day moorage on either a first come, first served basis for free or rent, to renting or leasing moorage a rent or lease agreement for a period of time up to one (1) year. Moorage contracts may be renewed annually, but the so long as a renewal term may does not exceed one (1) year. Moorage for use by the general public may not include conditions that result in a transfer of ownership of moorage or real property, or require membership in a club or organization.~~ (4-2-08)(____)

b. Commercial marinas that ~~change~~ are converted to a community dock ~~use~~ must conform to all the community dock standards, including frontage requirements and square footage restrictions. This change of use must be approved by the department through a new encroachment permit prior to implementing the change. (4-2-08)(____)

c. If local city or county ordinances governing parking requirements for marinas have not been adopted, commercial marinas shall must provide a minimum of upland vehicle parking equivalent to one (1) parking space per two (2) public watercraft or float home moorages; and. If private moorage is tied to specific parking spaces or designated parking areas, then one (1) parking space per two (2) float home moorages one (1) private watercraft or float home moorage shall be provided. In the event of conflict, the local ordinances shall prevail. ~~Local city or county ordinances governing parking requirements for marinas will apply if such have been enacted.~~ (4-2-08)(____)

d. If a commercial marina can be accessed from a road, marina customers must be allowed access via that road. (4-2-08)

~~**e.** Commercial marinas must have a minimum of fifty percent (50%) of their boat moorage available for use by the general public.~~ (4-2-08)

fe. Moorage that is not available for public use as described in Paragraph 015.03.a. of these rules is private moorage. ~~Private moorage is created when one (1) of the following occurs:~~
(4-2-08)()

~~i. Moorage is rented or leased for longer than one (1) year without requiring a renewal.~~
(4-2-08)

~~ii. Moorage is acquired with a purchase as described in Paragraph 015.03.a. of these rules.~~
(4-2-08)

gf. When calculating the moorage percentage, the amount of public moorage shall be compared to the amount of private moorage. Commercial marinas with private float home moorage shall be required to provide either non-private float home moorage or two (2) public use boat moorages for every private float home moorage in addition to any other required public use boat moorages.
(4-2-08)

hg. When private moorage is permitted, the public moorage must be of similar size and quality as private moorage, except for float home moorage as provided in Paragraph 015.03.gf. of these rules.
(4-2-08)()

ih. Commercial marinas with private moorage must form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present. This entity is responsible for obtaining and maintaining an encroachment permit under these rules and a submerged lands lease under IDAPA 20.03.17, "Rules Governing Leases on State-Owned Submerged lands and Formerly Submerged Lands."
(4-2-08)

ji. Existing commercial marinas that desire to change their operations and convert some of their moorage to private use must keep at least fifty percent (50%) of their moorage available for use by the general public. This change in operations must be approved by the department through a new encroachment permit prior to implementation of the change. The permit application shall describe, in text and in drawings, which moorage will be public and which moorage will be private.
(4-2-08)

04. Covered Slip. (4-2-08)

a. Covered slips, regardless of when constructed, may not have a temporary or permanent residential area.
(4-2-08)

b. Slip covers should have colors that blend with the natural surroundings and are approved by the department.
(4-2-08)

c. Covered slips may not be supported by extra piling nor constructed with hard roofs.
()

ed. ~~Covered slips~~ Slip covers with permanent roofs and up to three (3) walls may be maintained or replaced at their current size if they were previously permitted or if they were constructed prior to January 1, 1975. These structures may not be expanded nor converted to boat

garages. (4-2-08)()

d. Fabric covered slips must be constructed as canopies without sides unless the following standards are followed: (4-2-08)

i. At least two (2) feet of open space is left between the bottom of the cover and the dock or pier surface; and (4-2-08)

ii. Fabric for canopy and sides will transmit at least seventy-five percent (75%) of the natural light. (4-2-08)

05. Boat Garage. (4-2-08)

a. Boat garages are considered nonnavigational encroachments. (4-2-08)

b. Applications for permits to construct new boat garages, or to expand the total square footage of the existing footprint, will not be accepted unless the application is to support local emergency services. (4-2-08)

c. Existing permitted boat garages may be maintained or replaced at their current size. (4-2-08)

d. Relocation of an existing boat garage will require a permit. (4-2-08)

06. Breakwaters. Breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need, provided, however that this shall not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave, or ice damage, or used to control traffic in busy areas of lakes. The breakwater shall be designed to counter wave actions of known wave heights and wave lengths. (4-2-08)

07. Seawalls. Seawalls should be placed at or above the ordinary high water mark, or the artificial high water mark, if applicable. Seawalls are not an aid to navigation, and placement waterward of the ordinary or artificial high water mark will generally not be allowed. (4-2-08)

08. Riprap. (4-2-08)

a. Riprap used to stabilize shorelines will consist of rock that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock shall be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap shall overlie a distinct filter layer which consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer shall be keyed into the bed below the ordinary or artificial high water mark, as applicable. If the applicant wishes to install riprap with different standards, they must submit a design that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho. (4-2-08)

b. Riprap used to protect the base of a seawall or other vertical walls may not need to be keyed into the bed and may not require a filter layer, at the department's discretion. (4-2-08)

09. Mooring Buoys. Buoys shall be installed a minimum of thirty (30) feet away from littoral right lines of adjacent littoral owners. One (1) mooring buoy per littoral owner shall be allowed. (4-2-08)

10. Float Homes. (4-2-08)

a. Applications for permits to construct new float homes, or to expand the total square footage of the existing footprint, will not be accepted. (4-2-08)

b. Applications for relocation of float homes within a lake or from one (1) lake to another shall be subject to the following requirements: (4-2-08)

i. Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the Department. (7-1-98)

ii. The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Environmental Quality or the appropriate local health authority. Applicant must either obtain a letter from the local sewer district stating that the district will serve the float home or demonstrate that sewage will be appropriately handled and treated. Applicant must also provide a statement from a professional plumber licensed in the state of Idaho that the plumbing was designed according to the *International Building* 2003 Uniform Plumbing Code, as incorporated by reference in Subsection 004.02 of these rules, installed properly, and has been pressure tested. (4-2-08)()

c. Encroachment applications and approved local permits are required for replacement of, or adding another story to, a float home. (4-2-08)

d. All plumbing and electrical work on float homes must be done in accordance with the *International Building* 2003 Uniform Plumbing Code and the 2008 National Electrical Code, as incorporated by reference in Section 004 of these rules. (4-2-08)()

e. ~~All float homes that are hooked to upland sewer or septic systems must be inspected and certified every year by a professional plumber licensed in the state of Idaho. Permittees or their designee are responsible for providing this documentation to the department. All float homes in Idaho that connect with upland sewer or septic systems must implement the following standards by December 31, 2012:~~ (4-2-08)()

i. The holding tank with pump or grinder unit shall be adequately sealed to prevent material from escaping and to prevent lake water from entering. The tank lid shall have a gasket or seal, and the lid shall be securely fastened at all times unless the system is being repaired or maintained. An audible overflow alarm shall also be installed. ()

ii. Grinders or solids handling pumps shall be used to move sewage from the float home to the upland system. ()

iii. If solids handling pumps are used, they shall have a minimum two (2) inch interior diameter discharge, and the pipe to the shoreline shall also have a minimum two (2) inch interior

diameter. Connectors used on either end of this pipe shall not significantly reduce the interior diameter. ()

iv. The pipeline from the float home to the shoreline shall be a continuous line with no mechanical connections. Check valves and manual shutoff valves shall be installed at each end of the line. Butt fused HDPE, two hundred (200) psi black polyethylene pipe, or materials with similar properties shall be used. The pipeline shall contain sufficient slack to account for the maximum expected rise and fall of the lake or river level. The pipeline shall be buried in the lakebed for freeze protection where it will be exposed during periods of low water. Pipelines on the bed of the lake shall be appropriately located and anchored so they will not unduly interfere with navigation or other lake related uses. ()

v. Manifolds below the ordinary, or artificial if applicable, high water mark that collect two (2) or more sewer lines and then route the discharge to the shore through a single pipe are not allowed. All float homes must have an individual sewer line from the float home to a facility on the shore. ()

f. All float home permittees will have their float homes inspected by a professional plumber licensed in the state of Idaho by December 31, 2012. The inspection will be documented with a report prepared by the inspector. The report will document whether or not the float homes meet the standards in Paragraph 015.10.e. of these rules, and will be provided to the department before the above date. ()

g. A float home permittee must request an extension, and give cause for the extension, if their float home does not meet the standards in paragraph 015.01.e. of these rules by December 31, 2012. Extensions beyond December 31, 2016 will not be allowed. A permittee's failure to either request the extension, if needed, or to meet the December 31, 2016 deadline will be a violation subject to the provisions of Section 080 of these rules. ()

h. Construction or remodel work on a float home that costs fifty percent (50%) or more of its assessed value will require an encroachment application and construction drawings stamped by an engineer licensed in the state of Idaho. ()

11. Excavated or Dredged Channel. (4-2-08)

a. Excavating, dredging, or redredging channels shall require an encroachment permit and shall be processed in accordance with Section 030 of these rules. (4-2-08)

b. An excavated or dredged channel or basin to provide access to navigable waters must have a clear environmental, economic, or social benefit to the people of the state, and shall not result in any appreciable environmental ~~degradation~~ degradation. A channel or basin shall not be approved if the cumulative effects of these features in the same navigable lake would be adverse to fisheries or water quality. (4-2-08)()

c. Whenever practical, such channels or basins shall be located to serve more than one (1) littoral owner or a commercial marina; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonlittoral owners. (4-2-08)()

12. ATONs. Aids to Navigation will conform to the requirements established by the United States Aid to Navigation system. (4-2-08)

13. General Encroachment Standards. (4-2-08)

a. Square Footage. The square footage ~~requirements~~ limitations in Subsections 015.01 and 015.02 include all structures beyond the ordinary or artificial high water mark such as the approach, ramp, pier, dock, and all other floating or suspended structures that cover the lake surface, except for: (4-2-08)()

i. Boat lifts ~~that provide less shading than dock structures and as described in as~~ allowed pursuant to Paragraph 015.13.b. (4-2-08)()

ii. Jet ski ramp, port, or lift as ~~described in~~ allowed pursuant to Paragraph 015.13.b. (4-2-08)()

iii. Slip covers. (4-2-08)

iv. Undecked portions of breakwaters. (4-2-08)

b. Boat Lifts and Jet Ski Lifts. (4-2-08)

i. Single-family docks are allowed a single boat lift and two (2) jet ski lifts, or two (2) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)

ii. Two-family docks are allowed two (2) boat lifts and four (4) jet ski lifts, or four (4) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)

iii. A boat lift or jet ski lift within lines drawn perpendicular from the shore to the outside dock edges will not require a separate permit if the lift is outside the ten (10) foot adjacent littoral owner setback, the lift does not extend beyond the line of navigability, and the lift does not count toward the square footage of the dock as outlined in Subparagraphs 015.13.b.i. and 015.13.b.ii. The permittee shall send a revised permit drawing with the lift location as an application to the department. If the lift meets the above conditions, the application shall be approved as submitted. Future applications shall include the lifts. ()

iiii. Community docks are allowed one (1) boat lift or two (2) jet ski lifts per moorage. Boat lifts placed outside of a slip shall be oriented with the long axis parallel to the dock structure. Additional lifts will require that fifty percent (50%) of their footprint be included in the allowable square footage of the dock or pier as per Subsection 015.02. (4-2-08)()

c. Angle from Shoreline. (4-2-08)

i. Where feasible, all docks, piers, or similar structures shall be constructed so as to

protrude as nearly as possible at right angles to the general shoreline, lessening the potential for infringement on adjacent littoral rights. (4-2-08)

ii. Where it is not feasible to place docks at right angles to the general shoreline, the department shall work with the applicant to review and approve the applicant's proposed configuration and location of the dock and the dock's angle from shore. (4-2-08)

d. Length of Community Docks and Commercial Navigational Encroachments. Docks, piers, or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, designate a line of navigability for the purpose of effective administration of these rules. (4-2-08)

e. Presumed Adverse Effect. It will be presumed, subject to rebuttal, that single-family and two-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet from adjacent littoral right lines, and that commercial navigational encroachments, community docks or nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. Written consent of the adjacent littoral owner or owners will automatically rebut the presumption. All boat lifts and other structures attached to the encroachments shall be subject to the above presumptions of adverse affects. (4-2-08)

f. Weather Conditions. Encroachments and their building materials shall be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures shall be adequately secured to pilings or anchors to prevent displacement due to ice, wind, and waves. Flotation devices for docks, float homes, etc. shall be reasonably resistant to puncture and other damage. (4-2-08)

g. Markers. If the department determines that an encroachment is not of sufficient size to be readily seen or which poses a hazard to navigation, the permit shall specify that aids to navigation be used to clearly identify the potential hazard. (4-2-08)

h. Overhead Clearance. (4-2-08)

i. Overhead clearance between the natural or ordinary high water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the encroachment. In no case will the clearance be required to exceed thirty (30) feet unless the department determines after public hearing that it is in the overall public interest that the clearance be in excess of thirty (30) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The department shall specify in the permit the amount of overhead clearance and markings required. (4-2-08)

ii. When the permit provides for overhead clearance or safety markings under Paragraph 015.13.h., the department shall consider the applicable requirements of the United States Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state, or local regulations. (4-2-08)

i. Beaded Foam Flotation. Beaded foam flotation shall be completely encased in a manner that will maintain the structural integrity of the foam. The encasement shall be resistant to the entry of rodents. (4-2-08)

14. Floating Toys. ()

a. Encroachment permits are not required for floating toys, except where noted in Paragraph 015.14.b. Counties and cities may regulate floating toys for public safety and related concerns. ()

b. A floating toy becomes a nonnavigational encroachment, and an encroachment permit is required, when one (1) of the following occurs: ()

i. It is anchored to the bed of the lake with a device that requires equipment to remove it from the bed of the lake, or; ()

ii. It is located waterward of the line of navigability for more than twenty-four (24) consecutive hours. ()

15. Lake Specific Encroachment Permit Terms. ()

a. The department may use encroachment permit conditions specific to individual lakes if the permit conditions are needed to protect public trust values and the permit condition is approved by the Land Board. ()

b. Lake specific encroachment permit conditions may supplement, negate, or alter encroachment standards established in Section 015 of these rules. ()

c. Lake specific encroachment permit conditions shall be used to assist with implementing lake management plans authorized by Title 39, Chapter 66, Idaho Code; Title 39, Chapter 85, Idaho Code; Title 67, Chapter 43, Idaho Code; and Title 70, Chapter 2, Idaho Code. The purpose for using such lake specific permit conditions is to address lake specific environmental concerns that require attention and create a need for a variance from what is allowed on other lakes. ()

d. Lake specific encroachment permit terms may be read at the Idaho Department of Lands website: www.idl.idaho.gov. ()

016. -- 019. (RESERVED).

020. APPLICATIONS.

01. Encroachment Applications. No person shall hereafter make or cause to be made

any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the department. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an encroachment and written approval by the department is required. If demolition is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued. (4-2-08)

02. Signature Requirement. Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit. (4-2-08)

03. Other Permits. Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies. (9-13-90)

04. Repairs, Reinstallation of Structures. No permit is required to clean, maintain, or repair an existing permitted encroachment, but a permit is required to completely replace, enlarge, or extend an existing encroachment. Reinstalling the top or deck of a dock, wharf or similar structure shall be considered a repair; reinstallation of winter damaged or wind and water damaged pilings, docks, or float logs shall be considered a repair. Repairs that adversely affect the bed of the lake will be considered a violation of these rules. (4-2-08)

05. Dock Reconfiguration. (4-2-08)

a. Rearrangement of single-family and two-family docks will require a new application for an encroachment permit. (4-2-08)

b. Rearrangement of community docks and commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal. The department shall be consulted prior to modifications being made, and shall use the following criteria to help determine if a new permit must be submitted: (4-2-08)

i. Overall footprint does not change in dimension or orientation; (4-2-08)

ii. No increase in the square footage, as ~~per~~ described in the existing permit and in accordance with Paragraph 015.13.a., occurs. This only applies to community docks; (4-2-08)()

iii. The entrances and exits of the facility do not change. (4-2-08)

06. Redredging. Redredging a channel or basin shall be considered a new encroachment and a permit is required unless redredging is specifically authorized by the

outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how dredging is addressed in any existing or future permit. (4-2-08)

07. Forms, Filing. Applications must be in writing on forms provided by the Department or copies. Applications and plans shall be filed in the local office of the Department, whose location is available on the internet at www.idl.idaho.gov, or the director's office in Boise, together with filing fees and costs of publication when required by these rules. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. (4-2-08)

a. Plans shall include the following information on paper no larger than eight and one half by fourteen (8 1/2"x14") inches: (4-2-08)

i. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. (4-2-08)

ii. Copy of most recent survey or county plat showing the full extent of the applicant's lot and the adjacent littoral lots. (4-2-08)

iii. Proof of current ownership or control of littoral property or littoral rights. (4-2-08)

iv. A general vicinity map. (4-2-08)

v. Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake. (4-2-08)

vi. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. (4-2-08)

vii. Names and current mailing addresses of adjacent littoral landowners. (4-2-08)

b. Applications must be submitted or approved by the littoral owner or, if the encroachment will lie over or upon private lands between the natural or ordinary high water mark and the artificial high water mark, the application must be submitted or approved by the owner of such lands. When the littoral owner is not the applicant, the application shall bear the owner's signature as approving the encroachment prior to filing. (4-2-08)

c. If more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of a designated homeowner's or property management association. (4-2-08)

d. Applications for noncommercial encroachments intended to improve waterways for navigation, wildlife habitat and other recreational uses by members of the public must be filed by any municipality, county, state, or federal agency, or other entity empowered to make such improvements. Application fees are not required for these encroachments. (4-2-08)

~~e. The following applications shall be accompanied by the respective nonrefundable filing fees together with a deposit toward the cost of newspaper publication, which deposit shall be determined by the director at the time of filing: All applications shall be accompanied by a nonrefundable filing fee in an amount set by the State Board of Land Commissioners.~~

~~(4-2-08)()~~

~~i. Nonnavigational encroachments require a fee of one thousand dollars (\$1,000);~~

~~(4-2-08)~~

~~ii. Commercial navigational encroachments require a base fee of two thousand dollars (\$2,000). If the costs of processing an application exceed this amount, then the applicant may be charged additional costs as allowed by Title 58, Chapter 13, Section 58-1307, Idaho Code;~~

~~(4-2-08)~~

~~iii. Community navigational encroachments require a fee of two thousand dollars (\$2,000); and~~

~~(4-2-08)~~

~~iv. Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars (\$1,000).~~

~~(4-2-08)~~

f. Applicants shall pay any balance due on publication costs before written approval will be issued. The Department shall refund any excess at or before final action on the application.

(9-13-90)

g. Application for a single-family or two-family dock not extending beyond the line of navigability or a nonnavigational encroachment for bank stabilization and erosion control or for fisheries and wildlife habitat improvements shall be accompanied by a nonrefundable filing fee of two hundred fifty dollars (\$250).

(4-2-08)

h. No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines.

(9-13-90)

i. Applications and plans shall be stamped with the date of filing.

(7-1-98)

j. Applications that are incomplete, not in the proper form, not containing the required signature(s), or not accompanied by filing fees and costs of publication when required, shall not be accepted for filing. The department shall send the applicant a written notice of incompleteness with a listing of the application's deficiencies. The applicant will be given thirty (30) days from receipt of the notice of incompleteness to resubmit the required information. The deadline may be extended with written consent of the department. If the given deadline is not met, the department will notify the applicant that the application has been denied due to lack of sufficient information. The applicant may reapply at a later date, but will be required to pay another filing fee and publication fee, if applicable.

(4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

030. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.

01. Nonnavigational, Community, and Commercial Navigational Encroachments. ~~Upon receipt of~~ Within ten (10) days of receiving a complete application for a nonnavigational encroachment, a community dock, ~~or~~ a commercial navigational encroachment, or ~~for~~ a navigational encroachment extending beyond the line of navigability, the department shall, ~~within ten (10) days of receiving a complete application,~~ cause to be published a notice of application once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed. If, however, the director orders a hearing on the application within the time for publication of the above notice, the department shall dispense with publication of the notice of the application and shall proceed instead to publish a notice of the public hearing as provided in Subsection 030.05. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process.

(4-2-08)()

02. Encroachments Not in Aid of Navigation. Encroachments not in aid of navigation in navigable lakes will normally not be approved by the Department and will be considered only in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is no other feasible alternative with less impact on public trust values.

(4-2-08)

03. Notifications. Upon request or when the department deems it appropriate, the department may furnish copies of the application and plans to federal, state and local agencies and to adjacent littoral owners, requesting comment on the likely effect of the proposed encroachment upon adjacent littoral property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc.

(4-2-08)

04. Written Comments or Objections. Within thirty (30) days of the first date of publication, an agency, adjacent littoral owner or lessee, or any resident of the state of Idaho may do one (1) of the following:

(4-2-08)

a. Notify the department of their opinions and recommendation, if any, for alternate plans they believe will be economically feasible and will accomplish the purpose of the proposed encroachment without unreasonably adversely affecting adjacent littoral property or public trust values; or

(4-2-08)

b. File with the Department written objections to the proposed encroachment and request a public hearing on the application. The hearing must be specifically requested in writing. Any person or agency requesting a hearing on the application shall deposit and pay to the department an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection 030.05.

(4-2-08)

05. Hearing. Notice of the time and place of public hearing on the application shall be

published by the director once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is proposed, which hearing shall be held within ninety (90) days from the date the application is accepted for filing. (7-1-98)

06. Hearing Participants. Any person may appear at the public hearing and present oral testimony. Written comments shall also be received by the Department. (7-1-98)

07. Decision After Hearing. The director shall render a final decision within thirty (30) days after close of the public hearing. A copy of his final decision shall be mailed to the applicant and to each person or agency appearing at the hearing and giving oral or written testimony in support of or in opposition to the proposed encroachment. (4-2-08)

08. Decision Where No Hearing. (4-2-08)

a. In the event no objection to the proposed encroachment is filed with the department and no public hearing is requested under Subsection 030.04, or ordered by the director under Subsection 030.01, the department, based upon its investigation and considering the economics of the navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property and public trust values such as navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, water quality, etc. shall prepare and forward to the applicant its decision. (4-2-08)

b. The applicant, if dissatisfied with the director's decision, shall have twenty (20) days from the date of the director's decision to request reconsideration thereof. If reconsideration is required, the director shall set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his final decision. (4-2-08)

09. Judicial Review. Any applicant aggrieved by the director's final decision, or an aggrieved party who appeared at a hearing, shall have the right to have the proceedings and final decision of the director reviewed by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. The applicant need post no bond with the court to prosecute an appeal. Any other aggrieved party shall be required to deposit an appeal bond with the court, in an amount to be determined by the court but not less than five hundred dollars (\$500), insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director. (4-2-08)

10. Factors in Decision. In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, if present, the department shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for either a nonnavigational encroachment or a commercial navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application and no public hearing has been requested or ordered by the director, or, if upon reconsideration of a decision disallowing a permit, or following a public hearing, the

department determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, the permit shall be granted. (4-2-08)

031. -- 034. (RESERVED).

035. TEMPORARY PERMITS.

01. Applicability. Temporary permits are used for construction, temporary activities related to permitted encroachments, or other activities approved by the department. (4-2-08)

02. Permit Term. These permits are generally issued for less than one (1) year, but longer terms may be approved by the department and permits may be extended with department approval. (4-2-08)

03. Bonding. The department may require bonds for temporary permits. (4-2-08)

04. Fee. The board shall set fees for temporary permits, ~~but the fees shall be no greater than the amounts listed for the respective permit types in Subsection 020.07. Fee information is available on the Internet at www.idl.idaho.gov.~~ (4-2-08)()

05. Processing. These permits may be advertised if the department deems it appropriate, with the applicant paying the advertising fee as per Subsection 020.07. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

060. INSTALLATION.

01. Installation Only After Permit Issued. Installation or on site construction of an encroachment may commence only when the permit is issued or when the department notifies the applicant in writing that installation may be commenced or when the department has failed to act in accordance with Subsection 025.08. (4-2-08)

02. Removal of Construction Waste. (4-2-08)

a. Pilings, anchors, old docks, and other structures or waste at the site of the installation or reinstallation and not used as a part of the encroachment shall be removed from the water and lakebed at the time of the installation or reinstallation to a point above normal flood water levels; provided, however, that this shall not be construed to prevent the use of trash booms for the temporary control of floatable piling ends and other floatable materials in a securely maintained trash boom, but approval for a trash boom shall be required as part of a permit. (4-2-08)

b. Demolition of encroachments shall be done in a manner that does not unnecessarily damage the lakebed or shoreline. Demolition work must comply with water quality standards administered by the Department of Environmental Quality. (4-2-08)

03. Compliance with Permit. All work shall be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit. (7-1-98)

04. Sunset Clause. All activities authorized within the scope of the encroachment permit must be completed within three (3) years of issuance date. If the activities are not completed within three (3) years, the permit shall automatically expire unless it was previously revoked or extended by the department. The department may issue a permit with an initial sunset clause that exceeds three (3) years, if the need is demonstrated by the applicant.

(4-2-08)()

061. -- 064. (RESERVED).

065. ASSIGNMENTS.

01. Assignment of Encroachment Permit. Encroachment permits may be assigned upon approval of the department provided that the encroachment conforms with the approved permit. The assignor and assignee must complete a department assignment form and forward it to the appropriate area office. (4-2-08)

02. Assignment Fee. The assignment fee shall be ~~one hundred fifty dollars (\$150)~~ determined by the board and shall be paid at the time the assignment is submitted to the department. ~~The fee shall be paid at the time the assignment is submitted to the department.~~

(4-2-08)()

03. Approval Required for Assignment. An assignment is not valid until it has been approved by the department. (4-2-08)

04. Assignment With New Permit. Encroachments not in compliance with the approved permit may be assigned only if: (4-2-08)

a. An application for a new permit to correct the noncompliance is submitted at the same time. (4-2-08)

b. The assignee submits written consent to bring the encroachment permit into compliance. (4-2-08)

IDAPA 20 - DEPARTMENT OF LANDS

20.03.17 - RULES GOVERNING LEASES ON STATE-OWNED SUBMERGED LANDS AND FORMERLY SUBMERGED LANDS

DOCKET NO. 20-0317-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. 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, and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners (“Board”), Sections 830 through 835, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 58-104(6), Idaho Code.

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

This rulemaking clarifies and corrects some of the rule changes approved in 2008. The issues addressed by this rulemaking include, but are not limited to, removing the actual fee amounts from the rules and allowing the Board to set the fees, and clarifying the rights granted, how rental rates are determined, and the lease modification process. These rules are being promulgated in conjunction with changes to IDAPA 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 107 to 111.

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

The fee or charge is being imposed pursuant to Sections 58-304 through 58-312, Idaho Code: The actual fee amounts would be removed from the rules and would be set by the Board subject to the maximum amounts in statute.

FISCAL IMPACT: This is a general fund program. The department does not anticipate any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending fee rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov. More information is also at <http://www.idl.idaho.gov/adminrule/rulemaking.html>.

DATED this 13th day of November, 2009.

Eric Wilson
Navigable Waters/Minerals Program Manager
Idaho Department of Lands
PO Box 83720, Boise, Idaho 83720
(208) 334-0261/ Fax (208) 334-3698
ewilson@idl.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1) Idaho Code and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners (Board), Sections 830 through 835, notice is hereby given that this agency has initiated proposed rulemaking procedures. This proposed rulemaking is authorized pursuant to Section 58-104(6), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking, as well as changes pertaining to docket no. 20-0304-0901 also published in this Bulletin, will be held. The purpose of the hearing is to gather public comments on the proposed rules.

THURSDAY - OCTOBER 15TH, 2009 - 8 a.m.to 12 noon

**3780 Industrial Avenue South
Coeur d'Alene, Idaho**

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

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

The Idaho Department of Lands (IDL) is initiating this rulemaking to clarify and correct some of the rule changes approved in 2008 and to provide continuity with IDAPA 20.03.04. The issues to be addressed by this rulemaking include, but are not limited to, removing the actual fee amounts from the rules and allowing the Board to set the fees, and clarifying the rights granted and how rental rates are determined. The lease modification process is also clarified. This rulemaking will be conducted in conjunction with the IDAPA 20.03.04 rulemaking.

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

No changes to the existing fees are proposed.

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

This is a general fund program. The department does not anticipate any fiscal impacts on the state general fund due to the proposed changes.

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 1, 2009 Idaho Administrative Bulletin, Vol. 09-7 page 98. Negotiations were conducted over three (3) meetings in June, 2009.

ASSISTANCE ON TECHNICAL QUESTIONS, AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov. More information is also at <http://www.idl.idaho.gov/adminrule/rulemaking.html>.

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 28, 2007.

DATED this 27th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

025. POLICY.

01. Policy of the State of Idaho. It is the policy of the state of Idaho to regulate and control the use and disposition of lands in the beds of navigable lakes, rivers and streams to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided that the Board shall take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands. (3-26-08)

02. Director May Grant Leases. The director may grant leases for uses that are in the public interest and consistent with these rules. (7-1-97)

03. Requests or Inquiries Regarding Navigability. The State owns the beds of all lakes, rivers, and streams that were navigable in fact at statehood. The Department will respond to requests or inquiries as to which lakes, rivers, and streams are deemed navigable in fact. Additional information about streams deemed navigable by the State of Idaho is available from the Department. (3-26-08)

04. Stream Channel Alteration Permit or Encroachment Permit. Issuance of a lease shall be contingent upon the applicant obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Title 42, Chapter 38, Idaho Code, or an encroachment permit if required by the Department pursuant to the Lake Protection Act, Title 58, Chapter 13, Idaho Code, and compliance with local planning and zoning regulations if applicable. (7-1-97)

05. Other Permits and Licenses. Issuance of a lease shall not relieve an applicant from acquiring other permits and licenses that are required by law. (7-1-97)

06. Submerged Lands Lease Required Upon Notification. All persons using submerged lands in a manner that requires a submerged land lease shall obtain such a lease from the director when notified to do so. (7-1-97)

07. Term of Lease, Renewal of Lease. Leases shall be issued for a term of ten (10) years or as determined by the board. Leases may be renewed for additional periods to be determined by the department based upon satisfactory performance during the present term. Renewals shall be processed with a minimum of procedural requirements and shall not be denied except in the most unusual circumstances or noncompliance with the terms and conditions of the previous lease. Lease renewals shall be initiated by the department. (3-26-08)

08. Director's Authorization to Issue and Renew Leases. The director is authorized to issue and renew leases for the use of submerged lands in accordance with these rules. (7-1-97)

09. Rights Granted. The lease grants only such rights as are specified in the lease. The right to use the ~~property~~ submerged or formerly submerged lands for all other purposes that do not interfere with the rights authorized in the lease remains with the state. (~~7-1-97~~)()

10. Rules Applicable to All Existing and Proposed Uses and Encroachments. These rules shall apply to all existing and proposed uses and encroachments, whether or not authorized by permit under the Lake Protection Act, Title 58, Chapter 13, Idaho Code, or the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. These rules provide that a lease may be required in addition to existing permits. See Section 020 of these rules for information about exceptions to lease requirements. (3-26-08)

11. Waiver of Lease Requirements. The director may, in his discretion, waive lease requirements for single-family or two-family dock encroachments whose dock surface areas exceed square footages described in Subsections 020.01 through 020.03 of these rules when the additional dock surface area square footage is necessary to gain or maintain access to water of sufficient depth to sustain dock use for water craft customarily in use on that particular lake. (3-26-08)

12. Private Moorage at Commercial Marinas. (3-26-08)

a. This Subsection (025.12) does not apply to community docks. (3-26-08)

b. Private moorage at commercial marinas is allowed as long as the requirements of IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes

in the State of Idaho,” Subsection 015.03 are met. (3-26-08)

c. The sale, lease, or rental of private moorage is in no way an encumbrance on any underlying public trust land. All transactions related to private moorage are subject to the limitations of the associated submerged lands lease. (3-26-08)

d. Acquisition of private moorage must be documented with a disclosure that the transaction does not convey public trust lands and only conveys the right to use the designated portion of the marina. (3-26-08)

e. The department shall make no policy regarding the cost of private moorage and the resolution of disputes between the involved parties. (3-26-08)

026. -- 029. (RESERVED).

030. LEASE APPLICATION, FEE, AND PROCEDURE.

01. Fee. The lease application fee shall be ~~one hundred fifty dollars (\$150)~~ determined by the Board. ~~(3-26-08)~~()

02. Fee Shall Be Required. A lease application and nonrefundable fee shall be required for new and existing encroachments. A lease application fee shall be required for leases that are renewed upon expiration. (3-26-08)

03. Application to Lease and Fee. The lease application and fee shall be submitted with the information from Subsections 030.03.a. through 030.03.c., in sufficient detail for the department to determine an appropriate lease rate based on numbers of slips, square footage, or other permit information: (3-26-08)

a. A letter of request stating the purpose of the lease. (3-26-08)

b. A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s). An encroachment permit may satisfy this requirement. (3-26-08)

c. The permit number of each existing applicable encroachment permit. (3-26-08)

04. Submittal of Application to Lease and Fee. The lease application and fee shall be filed in the local office of the department, whose location is available on the Internet at www.idl.idaho.gov, or the director’s office in Boise. (3-26-08)

05. Notification of Approval or Denial. The applicant shall be notified in writing if the lease application is approved or denied. The applicant shall also be notified of any additional requirements. (3-26-08)

06. Request for Reconsideration. Any applicant aggrieved with the director’s determination of rent or denial of a lease application may request reconsideration by the Director. (7-1-97)

031. -- 034. (RESERVED).

035. RENTAL.

The rental rate policy for submerged land leases shall be set by the Board. This policy is available on the Internet at www.idl.idaho.gov. (3-26-08)

01. Standardized Rental Rates. The board shall set standard submerged land lease rental rates for common uses such as commercial marinas, community docks, floathomes, restaurants, and retail stores. ~~These Rental rates may use for commercial marinas and other uses which produce revenue for the lessee will commonly be calculated as a percentage of market value or gross receipts, as well as however, other methods may be used as determined appropriate~~ by the board. (3-26-08)(____)

02. Nonstandard Rental Rates. The board shall direct the department to use a percentage of market value or gross receipts, or other methods determined appropriate by the board, as the submerged lands lease rental rate for uses that are uncommon, especially for non-navigational encroachments. (3-26-08)

(BREAK IN CONTINUITY OF SECTIONS)

050. LEASE MODIFICATION OR AMENDMENT.

01. Encroachment Amendment. A lease modification or amendment must first be permitted through an amendment to the lake encroachment permit or stream alteration permit, if needed. (3-26-08)

02. Modification of Existing Lease. Modification or amendment of an existing lease will be processed in the same manner as a new lease application, but no fee will be required. Modification or amendment includes change of use, location, size or scope of the lease site, but does not include ordinary maintenance, repair or replacement of existing structures or facilities. (3-26-08)(____)

03. Modification of Interior Facilities. ~~Changes in the interior arrangement of existing facilities that do not constitute a change of use and do not alter or enlarge the exterior dimensions, may not be deemed a modification under this rule.~~ If the proposed changes to a facility do not require a new encroachment permit, a lease modification may still be needed as described in Subsection 050.02 of these rules. The lessee must give written notice to the Department at least ten (10) days in advance of making such changes. The department shall determine if a lease modification is needed due to the proposed changes. The lessee must give written notice to the Department at least ten (10) days in advance of making such changes. When requested, the lessee shall also furnish one (1) set of as-built plans to the Department within thirty (30) days following completion of changes. (3-26-08)(____)

051. -- 054. (RESERVED).

055. ASSIGNMENTS, ASSIGNMENT FEE.

01. Assignment of Lease. Leases may be assigned upon approval of the director provided that the lease conforms with Subsection 025.02 and all other provisions of these rules. The assignor and assignee must complete the Department's standard assignment form and forward it to any department office. (7-1-97)

02. Assignment Fee. The assignment fee shall be ~~one hundred fifty dollars (\$150)~~ determined by the Board. (~~3-26-08~~)()

03. Permit Assignment. The encroachment permit/stream alteration permit pertinent to a lease must be assigned to a purchaser simultaneously with a lease assignment. A lease assignment will not be approved unless the permit is assigned. (3-26-08)

04. Approval Required for Assignment. An assignment is not valid until it has been approved by the director. (7-1-97)

IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD

25.01.01 - RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 25-0101-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. 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(s) (36-2107(b) and (d), Idaho Code.

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

Rule 000 adds the Board's website address; Rule 002 adds additional activities to the definition of Hazardous Excursions; Rule 015 eliminates the multiple year license and clarifies on line fees; Rule 029 clarifies Outfitter bond cancellations; Rule 053 clarifies the fee for controlled hunts; Rule 056 eliminates the rule associated with cash bonds; and Rule 064 clarifies the Executive Director's limited authority to grant or deny certain license applications or temporary authorization applications

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 7, 2009, Idaho Administrative Bulletin, Vol. 09-10, pages 211 through 220.

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

There are no fees or charges being imposed through this rulemaking. Fees being removed from this rule are detailed in Idaho Code

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact: Jake Howard, Executive Director (208) 327-7380 - FAX (208) 327-7382.

DATED this 4th day of November, 2009.

Jake Howard
Executive Director
Outfitters and Guides Licensing Board
1365 North Orchard, Suite 172
Boise, ID 83706
(208) 327-7380 / FAX (208) 327-7382

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED FEE 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 36-2107(b) and (d), 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 21, 2009.

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:

- Rule 000 adds the Board's website address;**
- Rule 002 adds additional activities to the definition of Hazardous Excursions;**
- Rule 015 eliminates the multiple year license and clarifies on line fees;**
- Rule 029 clarifies Outfitter bond cancellations;**
- Rule 053 clarifies the fee for controlled hunts;**
- Rule 056 eliminates the rule associated with cash bonds; and**
- Rule 064 clarifies the Executive Director's limited authority to grant or deny certain license applications or temporary authorization applications.**

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees or charges being imposed through this rulemaking. Fees being removed from this rule are detailed in Idaho Code.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this proposed rule change will have minimal impact on the outfitting and guiding industry and on the public.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jake Howard, Executive Director (208) 327-7380 - FAX (208) 327-7382.

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 28, 2009.

DATED this 30th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

000. LEGAL AUTHORITY.

Rules of the Idaho Outfitters and Guides Licensing Board have been promulgated in accordance with the Idaho Administrative Procedures Act and pursuant to authority granted in the Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21). Pursuant to Section 36-2107, Idaho Code, the Board offices shall be located at 1365 N. Orchard, Suite 172, Boise, Idaho 83706. The Board's normal working hours are from 8 a.m. to 5 p.m. Mountain Time zone. The Board's telephone number is (208) 327-7380 and the FAX number is (208) 327-7382. The Board's website address is www.oglb.idaho.gov. The Board shall accept electronic signatures including facsimile signatures and other electronic signatures to the extent the Board's electronic equipment is able to receive and process such signatures. (~~3-30-01~~)()

(BREAK IN CONTINUITY OF SECTIONS)

002. DEFINITIONS.

The Act defines certain terminology applicable to its interpretation and administration (Idaho Code 36-2102). Further definitions, for the purposes of these Rules are: (4-1-92)

01. Act. Shall mean Idaho Code, Title 36, Chapter 21, commonly known as the Outfitters and Guides Act, as amended. (4-1-92)

02. Administrative Noncompliance. (3-10-03)

a. Two (2) or more repeated failures to apply for license renewal in a timely manner; (3-10-03)
or

b. Two (2) or more repeated failures to file a complete application pursuant to Section 36-2113(a)(1), Idaho Code. (3-10-03)

03. Authorized Person. An investigator or enforcement agent in the employ of the

Board, a conservation officer of the Idaho Department of Fish and Game, or any local, state, or federal law enforcement officer. (4-1-92)

- 04. Board.** The Idaho Outfitters and Guides Licensing Board. (4-1-92)
- 05. Board Meeting.** The set schedule of meeting dates established for conduct of regular Board business on a calendar year basis. Additional meetings may be scheduled as necessary (See Section 071). (4-1-92)
- 06. Booking Agent.** Any individual, firm, business, partnership, or corporation that makes arrangements for the use of the services of a licensed outfitter and receives compensation therefore. A booking agent does not supply personnel or facilities and services to outfitter clientele. (4-1-92)
- 07. Compensation.** The receipt or taking of goods, services, or cash in exchange for outfitted or guided activities. A bona fide charging of out-of-pocket travel expenses by members of a recreational party shall not be deemed compensation. However, such out-of-pocket expenses may not include depreciation, amortization, wages, or other recompense. (4-1-92)
- 08. Completed Application.** An application submitted for Board consideration which contains all of the material required to be submitted by the Board for that license category. (4-1-92)
- 09. Consideration.** The receipt or taking of goods, services, or cash in exchange for the provision of facilities and services in the conduct of outfitted or guided activities. (4-1-92)
- 10. Desert.** A region of scarce rainfall and vegetation in areas often having great differences between day, night and seasonal temperatures. A desert is a land surface ranging from level, plateau land, or undulating to sharply breaking hill-lands and sand dunes that, in addition, may be broken by poor to well-defined, deeply entrenched drainage systems, rims, cliffs, and escarpments. (4-1-92)
- 11. Designated Agent.** An individual who meets all qualifications for an outfitter's license who is employed as an agent by any person, firm, partnership, corporation, or other organization or combination thereof that is licensed by the Board to operate as an outfitter and who shall, together with the licensed outfitter, be responsible and accountable for the conduct of the licensed outfitter's operations. A designated agent may act as a guide if he possesses the qualifications of a guide as determined by the Board. (Previously referred to as Managing Agent). (4-11-06)
- 12. Drift Boats.** Shall be substituted for and have the same meaning as "float boats" defined below. (4-1-92)
- 13. Enforcement Agent.** An individual employed by the Board having the power of peace officers to enforce the provisions of the Idaho Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21) and the Rules promulgated thereunder. (4-1-92)
- 14. Facilities and Services.** The provision of personnel, lodging (tent, home, lodge, or

hotel/motel), transportation (other than by commercial carrier), guiding, preparation and serving of food and equipment, or any other accommodation for the benefit of clientele in the conduct of outdoor recreational activities as designed in Section 36-2102(b), Idaho Code. (4-1-92)

15. First Aid Card. A valid card issued by the American Red Cross to denote the individual whose name and signature appear thereon has successfully completed an applicable Red Cross course and is qualified to render appropriate, minimal first aid as prescribed by the American Red Cross, or other valid evidence showing successful completion of an equivalent course conducted by an organization acceptable to the Board. (4-1-92)

16. Fishing. Fishing activities on those waters and for those species described in the rules of the Idaho Department of Fish and Game, IDAPA 13.01.11, "Rules Governing Fish," general fishing seasons and any anadromous fishing rules; for purposes of the "Act," fishing is defined as follows: (4-1-92)

- a.** Anadromous fishing means fishing for salmon or steelhead trout. (4-1-92)
- b.** Float boat fishing means the use of floatboats without motors for the conduct of fishing as a major activity on those waters open to commercial activities as set forth in Section 059. (4-1-92)
- c.** Fly fishing means a licensed activity restricted to the use of fly fishing equipment and procedures, as defined by Idaho Department of Fish and Game rules. (4-1-92)
- d.** Incidental fishing means fishing conducted as a minor activity. (4-1-92)
- e.** Power boat fishing means the use of power boats in conduct of fishing as a major activity on those Idaho waters open to commercial outfitting activities as set forth in Section 059. (4-1-92)
- f.** Walk and wade fishing means fishing conducted along or in a river, stream, lake or reservoir, and may include the use of personalized flotation equipment, but does not include the use of watercraft. (4-1-92)

17. Float Boats. Watercraft (inflatable watercraft, dories, drift boats, canoes, catarafts, kayaks, sport yaks, or other small watercraft) propelled by, and moving with the stream flow, maneuvered by oars, paddles, sweeps, pike poles or by motors for downstream steerage only. Downstream steerage does not include holding or upstream travel of a watercraft with a motor. Excluded as float boats are personal flotation devices, innertubes, air mattresses, or similar devices. (4-1-92)

18. Guide. An individual who meets the criteria as set forth in Idaho Code 36-2102(c), and has further met the required qualifications as prescribed in the Rules to provide professional guided services to clientele in the pursuit and conduct of licensed activities. (4-1-92)

19. Guide License. A license issued by the Board to an individual who is employed by a licensed outfitter to furnish personal services for the conduct of outdoor recreational activities as defined in Idaho Code 36-2102(c). (4-1-92)

20. Hazardous Excursions. Outfitted or guided activities conducted outside municipal limits in a desert or mountainous environment that may constitute a potential danger to the health, safety, or welfare of participants involved. These activities shall include, but are not limited to: day or overnight trailrides, backpacking, technical mountaineering/rock climbing, cross-country skiing, backcountry alpine skiing, llama and goat packing, snowmobiling, survival courses, ~~and~~ guiding courses, rescue courses, fishing courses, motored and non-motored cycling, ~~but does not include~~ wagon rides, ~~or~~ sleigh rides, and dog sled rides. (3-10-03)()

21. He/His/Him. Shall mean either the male or female gender. (4-1-92)

22. Hunting. The pursuit of any game animal or bird and all related activities including packing of client camp equipment, supplies, game meat and clients to and from a hunting camp. (3-30-01)

23. Incidental Activity. Shall be and is the same as a minor activity. (4-1-92)

24. Minor Amendment. All outfitter license amendment requests that can be processed by the Board without requiring outside research or recommendation of a land managing agency or other agency before the Board takes final action on said amendment request. (4-11-06)

25. Investigator. An individual employed by the Board to monitor compliance with the provisions of the Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21) and Rules promulgated thereunder and issue warning tickets for violations thereof. An investigator shall not have arrest powers nor any other power of a peace officer. (4-1-92)

26. Major Activity. A licensed activity, the nature of which requires a significant commitment of time and effort by an outfitter in its execution and is intended to provide a significant amount of income to an outfitter. (4-1-92)

27. Major Amendment. All outfitter license amendment requests requiring Board research or recommendation of a land management agency or other agency before the Board takes final action on the amendment request. (4-1-92)

28. Minor Activity. A licensed activity the nature of which must be carried out in conjunction with a major activity, but is not the primary purpose of the excursion. (3-15-02)

29. Mountainous. A region receiving limited to abundant annual precipitation with an associated vegetative cover of grass, weeds, shrubs, or trees. Cool summer temperatures and cold winter temperatures prevail. A mountainous area is a land surface ranging from level to gently rolling low hills to elevated lands that are often broken with poor to well-developed, deeply entrenched drainage systems, rims, cliffs, and escarpments to steep-sided land masses of impressive size and height. (4-1-92)

30. New Opportunity. A proposed commercial outfitted activity to be conducted in an area where no similar commercial outfitted activity has been conducted in the past. (4-1-92)

31. Nonresident. An individual, corporation, firm, or partnership who is not a resident

of the state of Idaho. (See “Resident”). (4-1-92)

32. Operating Area. The area assigned by the Board to an outfitter for the conduct of outfitting activities. (4-1-92)

33. Operating Plan. A detailed schedule or plan of operation which an outfitter proposes to follow in the utilization of licensed privileges, areas, or activities. (See Subsection 018.03). (4-1-92)

34. Outfitter. An individual, corporation, firm, partnership, or other organization or combination thereof that meets the criteria as set forth in Idaho Code 36-2102(b), and has further met the required qualifications as prescribed in the Rules to conduct an outfitting business in Idaho. (4-1-92)

35. Outfitter License. A license issued by the Board to an individual, partnership, corporation, or other duly constituted organization to conduct activities as defined in Section 36-2102(b), Idaho Code. The conduct of an outfitted operation on any land(s) is not authorized unless signed permission, a permit, or a lease is obtained from the land owner(s), or their agent(s), and filed with the Board. (3-15-02)

36. Out-of-Pocket Costs. The direct costs attributable to a recreational activity. Such direct costs shall not include: (4-1-92)

a. Compensation for either sponsors or participants; (4-1-92)

b. Amortization or depreciation of debt or equipment; or (4-1-92)

c. Costs of non-expendable supplies. (4-1-92)

37. Power Boats. All motorized watercraft used on Idaho waters open to commercial outfitting activities as set forth in Subsections 059.01 and 059.02. Excluded as power boats are hovercraft, jetskis or similar devices, and float boats using motors for downstream steering. (4-1-92)

38. Relinquishment of License Privileges. The failure to re-apply at the expiration of a license; the loss through nonuse, inactivity, revocation, or voluntary surrender of a license; or other loss of license. (See Subsection 030.03). (3-23-98)

39. Resident. An individual, corporation, firm, or partnership who has resided in the state of Idaho for a period of six (6) months next preceding the time of application for license. (4-1-92)

40. Rules. The Rules of the Board. (4-1-92)

41. Stay of Board Action. An order, pursuant to Idaho Code 67-5215(c), stopping or delaying the enforcement of a Board decision, order or action. (4-1-92)

42. Third Party Agreement. The allowing of the conduct of an outfitted or guided

activity by the outfitter licensed to conduct those activities by any persons not directly employed by said outfitter. (See Section 023). (4-1-92)

43. Trainee. A person not less than sixteen (16) years of age who does not possess the necessary experience or skill qualifications required to obtain a guide license, but who is working toward obtaining the necessary experience or skill qualifications. This required training shall be recorded on a form provided by the Board. A trainee may not provide any direct guiding services for clients, but may assist while under direct supervision. (5-1-95)

44. Boat Trainee Under Supervision. A boat trainee must be in a boat operated by a licensed boatman, or one in which the operation is closely monitored by a licensed boatman. The licensed boatman need not be in the same boat during training as long as the trainee's activity is closely monitored. (3-10-03)

45. Unethical/Unprofessional Conduct. Any activity(ies) by an outfitter or guide which is inappropriate to the conduct of the outfitting or guiding profession. These activities include, but are not limited to: (3-30-01)

- a.** An outfitter employing an unlicensed guide; (3-30-01)
- b.** Providing false, fraudulent or misleading information to the Board; (3-30-01)
- c.** Failure to obey an order of the Board; (3-30-01)
- d.** Failure to provide services as advertised or contracted; (3-30-01)
- e.** Harassment of the public in their use of Idaho's outdoor recreational opportunities; (3-30-01)
- f.** Violation of state or federal fish and game laws; (3-30-01)
- g.** Engaging in unlicensed activities or conducting outfitter/guide services outside the operating area for which the licensee is licensed; (3-30-01)
- h.** Disregard for the conservation, maintenance or enhancement of fish, game, land and water resources; (3-30-01)
- i.** Failure to pay a supplier of goods or services to the outfitter business; (3-15-02)
- j.** Failure to pay state taxes; or (3-15-02)
- k.** Operating in a manner which endangers the health, safety, or welfare of the public. (3-30-01)
- l.** Selling lifetime excursions, lifetime hunts, or selling of outfitted activities to an individual for the life of that individual and collecting fees accordingly. (4-11-06)

46. Validated Training Form. An approved form bearing the "Great Seal of the State

of Idaho” and the official stamp of the Board affixed thereon. (4-1-92)

47. Watercraft. A boat or vessel propelled mechanically or manually, capable of operating on inland water surfaces. Excluded as watercraft are hovercraft, jetskis, personal flotation devices (PFD's), or similar devices. (4-1-92)

(BREAK IN CONTINUITY OF SECTIONS)

015. ANNUAL DATE, MULTIPLE YEARS, FEES, AND PAYMENT.

01. Annual Dates. (3-20-04)

a. All outfitter and designated license applications must be completed and received by the Board by January 31 of each year. (3-20-04)

b. All outfitter applications and designated agent applications received by the Board after January 31 that are not complete will be subject to special processing fees. (3-20-04)

c. The last day of the license year for all licenses is March 31 of each year. (3-20-04)

d. Guide license applications may be submitted at any time during the year. (3-20-04)

02. Outfitter and Designated Agent Penalty Fee. When a completed renewal application is filed with the Board after the last day of the license year, the following penalty shall apply: (4-11-06)

a. A completed application received by the Board the last day of the license year - no penalty fee shall apply. (4-11-06)

b. A completed application received by the Board after the last day of the license year - a penalty fee shall be paid before the license is issued. (4-11-06)

03. License Lapsed and Relinquished. A completed outfitter application received by the Board after ninety (90) days after the last day of the license year will not be accepted for licensure. The license will have lapsed and therefore is void and vacated. If a completed application is not received by the Board by ninety (90) days after the last day of the license year, the license is relinquished. (3-10-03)

04. Refund of Unused One Time Application Fees. All unused portions of one (1) time new outfitter, new designated agent, or new guide application fees shall be returned to the applicant. (3-19-99)

~~**05. Multiple Year Licenses.** (3-20-04)~~

~~**a.** Beginning in license year 2004, outfitter and designated agent licenses may be~~

~~issued for a one (1) year or three (3) year period. All new applicants must be licensed for two (2) years before the applicant may apply for a three (3) year license. (3-20-04)~~

~~**b.** License fees shall be prorated based on the number of years for which the applicant is licensed. The multiyear license fee may be transferred to the bona fide purchaser of an outfitter business. Bona fide purchasers of an outfitter business will be credited for annual license fees for prorated years remaining with a business at the time of the purchase. (3-20-04)~~

~~**e.** The multiple year fee must be paid at the time of renewal and prior to the beginning of the license period. This does not relieve a licensed outfitter from submitting annual reports and use reports, and annual bonding and insurance requirements. (3-20-04)~~

~~**d.** There shall be no reimbursement of fees should the license become revoked or relinquished. (3-20-04)~~

~~**e.** Outfitters must submit renewal applications no later than January 31 prior to the subsequent license period. (3-20-04)~~

065. Payment. (4-11-06)

a. Prior to the issuance of a license, an applicant must submit the appropriate fee in the form of a certified check, cashier's check, money order, outfitter's company check or use of outfitter and designated agent credit cards. (4-11-06)

b. The applicant must pay an annual license fee for each license issued, submit annual use reports for each license, and be able to differentiate between each business and its clients. (4-11-06)

c. Designated Agents must pay an annual license fee for each license issued. (4-11-06)

d. Guides must pay an annual license fee for a license but that license can be amended to include more than one (1) outfitter. (4-11-06)

076. Expedited or Emergency Application Fees. The fee for expedited or emergency applications for which there is a request to have the application pulled forward before other applications and have it processed and a license issued within seven (7) days of receipt of the application shall be: (3-16-04)

a. One hundred fifty dollars (\$150) for an outfitter license; (3-16-04)

b. Seventy-five dollars (\$75) for a designated agent license; and (3-16-04)

c. Fifty dollars (\$50) for a guide license. (3-16-04)

087. Resubmittal, Exceptional or Special Processing of Application. The fee for resubmittal, exceptional or special processing of an application that is incomplete, or for other reasons for which the Board is otherwise unable to process the application shall be: (3-16-04)

- a. One hundred dollars (\$100) for an outfitter license; (3-16-04)
- b. Seventy-five dollars (\$75) for a designated license; (3-16-04)
- c. Fifty dollars (\$50) for a guide license; and (3-16-04)
- d. Five dollars (\$5) for allocation fee recovery. (3-16-04)

~~**09. Fees Associated With the Filing of Applications.** There shall be a credit for online and electronic filing of applications, and a fee for the use of credit cards corresponding to the cost to the agency for processing the card pursuant to Section 36-2108, Idaho Code. (3-16-04)~~

- ~~a. Twenty dollars (\$20) for an outfitter license; (3-16-04)~~
- ~~b. Seven dollars (\$7) for a designated agent license; and (3-16-04)~~
- ~~c. Five dollars and twenty-five cents (\$5.25) for a guide license. (3-16-04)~~

(BREAK IN CONTINUITY OF SECTIONS)

029. OUTFITTER ~~LICENSE~~ BOND CANCELLATION.

An outfitter or designated agent shall immediately notify the Board in the event their bond is cancelled. The cancellation of an outfitter license bond by the insurer automatically ~~canels~~ suspends the outfitter's license and the outfitter shall immediately cease operation. The license shall remain suspended until such time that the outfitter can demonstrate that the bond has been reinstated or a new bond issued and until the license is reinstated. Special processing fees will apply. If the bond is not reinstated within ninety (90) days, the license shall be relinquished.

~~(3-1-86)()~~

(BREAK IN CONTINUITY OF SECTIONS)

053. CONTROLLED HUNTS OUTSIDE OUTFITTER'S OPERATING AREA.

01. Requirements to Conduct a Controlled Hunt Outside Operating Area. An outfitter wishing to conduct a controlled hunt outside his licensed area with a client with a controlled hunt permit must: (3-30-01)

- a. Obtain written permission from all outfitters whose licensed area(s) will be directly involved in the hunt; (3-30-01)
- b. Obtain written permission from all applicable landowners or land managers;

(3-30-01)

c. Obtain approval from the Outfitters and Guides Licensing Board to conduct the hunt by satisfying the following criteria: (3-30-01)

i. Must be licensed for the controlled hunt species; and (3-30-01)

ii. Send a written request to the Board for special one-time hunt approval, to include the hunter name and address, hunting license, tag and permit numbers, controlled hunt number, and dates of hunt. (3-30-01)

d. Submit a ~~ten-dollar~~ *(\$10)* minor amendment fee. (~~3-30-01~~)(____)

02. Authorization by Board. Upon approval the Board will issue a letter authorizing the one-time hunt. This notification will include the name and address of the hunter(s), controlled hunt number, hunter(s) license, tag and permit numbers. No compensation or remuneration shall be permitted between outfitters participating in the conduct of a controlled hunt on another outfitter's area, unless the outfitter supplies a service for that compensation. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

056. BOND REQUIREMENTS.

Pursuant to Section 36-2108(b), Idaho Code, outfitters shall submit a bond of five thousand dollars (\$5,000) if the gross income of the outfitting business for the previous calendar year, rounded up to the nearest whole thousand dollars, does not exceed ten thousand dollars (\$10,000). Outfitters with a gross income of the outfitting business for the previous calendar year of more than ten thousand dollars (\$10,000) shall submit a bond of ten thousand dollars (\$10,000). An outfitter who conducts day trips only may petition the Board for a reduction to a five thousand dollar (\$5,000) bond. ~~With prior approval from the Board, outfitters may submit a cash bond to the Board including, but not limited to, certificates of deposit, registered checks, certified funds and money orders.~~ (~~3-19-99~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

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

01. Executive Director Authorizations. The Executive Director is authorized to grant, issue or deny, ~~suspend, or revoke~~ temporary authorizations, licenses and license amendments, hot pursuit agreements and allocated tags with the concurrence of the Board, under the following conditions: (~~3-10-03~~)(____)

a. The Executive Director may grant and issue all routine temporary authorizations, license applications, ~~and~~ amendments and related matters when the applicant does not have any convictions for fish and game violations, ~~falsified or otherwise invalid first aid cards,~~ or other ~~convictions of~~ violations of the grounds enumerated in Section 36-2113(a), Idaho Code, ~~has not falsified or provided any misleading information to the Board,~~ and otherwise ~~qualify~~ qualifies for licensure. ~~The Executive Director may issue a temporary authorization to an applicant pending final approval and issuance of a license. The Executive Director may not waive fees.~~

(3-10-03)()

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

(3-30-01)()

c. The Executive Director may grant a license with probationary status for conviction of minor fish and game violations or violations enumerated in Section 36-2113(a), Idaho Code, that occurred at least five (5) years prior to the date of application, excluding felony convictions. ~~The Executive Director shall not grant a license to an applicant who has a conviction of a flagrant violation pursuant to Section. 36-2401(e), Idaho Code.~~

(3-30-01)()

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

(3-30-01)()

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

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

(3-30-01)

a. The Board may grant a license to an applicant with convictions of violations enumerated in Section 36-2113(a), Idaho Code, which are over five (5) years old and may or may not place the licensee on probation.

(3-30-01)

b. The Board may grant a license to an applicant with convictions of violations enumerated in Section 36-2113(a), Idaho Code, which are less than five (5) years old and may or may not place the licensee on probation.

(3-30-01)

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

(3-30-01)

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

**26.01.31 - RULES GOVERNING THE ADMINISTRATION OF THE IDAHO
DEPARTMENT OF PARKS AND RECREATION
STATE AND FEDERAL GRANT FUNDS**

DOCKET NO. 26-0131-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5221(1), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. 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 67-5221(1), 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 following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 7, 2009 - Vol. 2, Idaho Administrative Bulletin, Vol. 09-10, page 227 through 229.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 67-7126, Idaho Code.

The 2009 Legislature amended Section 67-7126, Idaho Code, to increase the price of an off-highway vehicle registration sticker by one dollar (\$1.00) to fund County Sheriff's to enforce off-highway vehicle related law enforcement.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
None

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Nancy Merrill, 514-2250; Nancy.Merrill@idpr.idaho.gov.

DATED this 13th day of November, 2009.

Nancy Merrill, Director
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue, Boise ID 83716
PO Box 83720, Boise ID 83720-0065
Phone: 208.334.4199 / FAX: 208.334.3741

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED FEE RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4223, 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 October 21, 2009.

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 2009 Legislature amended Section 67-7126, Idaho Code, to increase the price of an off-highway vehicle registration sticker by one dollar (\$1.00) to fund County Sheriff's to enforce off-highway vehicle related law enforcement. Idaho Code further directs the Idaho Department of Parks and Recreation Board to establish a formula in rule to distribute these funds to Sheriffs of counties with a current or an actively developing off-highway vehicle law enforcement program.

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

The 2009 Legislature amended Section 67-7126, Idaho Code, to increase the price of an off-highway vehicle registration sticker by one dollar (\$1.00) to fund County Sheriff's to enforce off-highway vehicle related law enforcement.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it was determined there was insufficient time from the formal approval of the proposed rules by the Idaho Park and Recreation Board. Public meetings will be scheduled prior to the upcoming legislative session if requested.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Frost, 208-514-2410.

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 28,

2009.

DATED this 23rd day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

251. OFF-HIGHWAY VEHICLE LAW ENFORCEMENT FUND DISTRIBUTION.

01. Deposits Into and Usage of Fund. One dollar (\$1) of every off-highway vehicle registration shall be deposited into the off-highway vehicle law enforcement fund. Moneys in this fund shall be paid out and used as follows: ()

a. Sheriffs of counties with a current or an actively developing off-highway vehicle law enforcement program recognized by the Department shall receive moneys from the fund based upon the formula provided in this rule. ()

b. A program shall be recognized as an off-highway vehicle law enforcement program if it is sponsored by a county sheriff to promote off-highway vehicle safety, education, and law enforcement and is overseen by an advisory committee of three (3) or more individuals to include at least one (1) sheriff or deputy sheriff, one (1) motorbike representative, and one (1) all-terrain vehicle or utility type vehicle representative. ()

c. The Department shall not withhold recognition of an off-highway vehicle law enforcement program unless it is clearly demonstrated that the program has not performed its off-highway vehicle enforcement duties within the past calendar year. An annual report of accomplishments of the previous calendar year by each participating sheriff shall be delivered to the Department by March 1 of each year and shall include: ()

i. The number of citations issued; ()

ii. Assistance calls responded to; ()

iii. Off-highway vehicle contacts made; and ()

iv. Safety classes held. ()

d. Money from the off-highway vehicle law enforcement fund shall be used to defray costs for enforcement by sheriffs' offices pertaining to the use of all terrain vehicles, motorbikes, specialty off-highway vehicles, and utility type vehicles as defined in section 67-7101, Idaho Code. ()

e. Money in the off-highway vehicle law enforcement fund shall be used by the Department for the purpose of defraying costs of off highway vehicle related law enforcement activities that are conducted by a county sheriff's office and for no other purpose. Defrayable

costs shall include: ()

i. Wages (including overtime wages) of county sheriff's deputies directly engaged in off-highway vehicle law enforcement, as described in this Section; ()

ii. Wages for court appearances pertaining to violations of Idaho law pertaining to off-highway vehicles, as described in this Section; and ()

iii. Direct costs to the sheriff's office required to facilitate the enforcement of off-highway vehicle laws, including vehicle purchase costs, fuel costs, supply costs and vehicle maintenance costs. ()

02. Annual Notification of Qualifying Offices. Each year no later than April 1, the Department shall notify the Idaho Sheriffs' Association in writing regarding which sheriff's offices are recognized by the Department as qualifying for enforcement funding under Section 67-7126, Idaho Code, and the balance of the off-highway vehicle law enforcement fund. It shall be the responsibility of each sheriff's office to provide information regarding its off-highway vehicle enforcement program in order for the Department to determine whether it recognizes the program. A sheriff's office shall have fourteen (14) days to request reconsideration of the Department's decision withholding recognition, and the Department shall act upon such request within fourteen (14) days. ()

03. Formula for Distribution of Funds. The Department shall distribute the funds in the off-highway vehicle law enforcement fund based on the following formula: ()

a. Total federal acres with reference to the Payments in Lieu of Taxes (PILT) number for each eligible county minus large tracts of land not open to off-highway vehicle use. The result is the total off-highway vehicle opportunity on federal public land for that county. ()

b. Calculate the percentage of the total off-highway vehicle opportunity on federal public land for each eligible county as compared to the entire state. ()

c. Multiply this percentage by point zero six (0.6) to get sixty percent (60%) of the value. ()

d. Calculate the percentage of off-highway vehicle registration designations for each eligible county as compared to the entire state. ()

e. Multiply this percentage by point zero four (0.4) to get forty percent (40%) of the value. ()

f. Add the sixty percent (60%) value from the total off-highway vehicle opportunity on federal public land to the forty (40%) value of the off-highway vehicle registrations. This total will be the percentage of the off-highway vehicle law enforcement funds for which the individual county is eligible. ()

04. Distribution of Funds Not Used. For the off-highway vehicle law enforcement funds that are not allocated to a county because they do not have an off-highway vehicle

enforcement program as described by this rule, or for funds from undesignated registrations, the funds return to the off-highway vehicle law enforcement fund. Any undistributed money shall be allocated as follows: ()

a. Fifty percent (50%) of the unallocated money shall be distributed as per the distribution formula previously listed; and ()

b. Fifty percent (50%) of the unallocated money shall be held by the Idaho Sheriff's Association to be used for emphasis areas of off-highway vehicle law enforcement. ()

05. Annual Audit. All counties that receive off-highway vehicle law enforcement funding are subject to an annual audit of the expenditure of the funds. ()

2542. -- 299. (RESERVED).

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.34 - IDAHO PROTECTION AGAINST INVASIVE SPECIES STICKER RULES

DOCKET NO. 26-0134-0901 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. 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 fee rule. The action is authorized pursuant to Sections 67-7002 and 67-7008A, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 3, 2009 Idaho Administrative Bulletin, Vol. 09-6, pages 101 through 104.

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

This fee or charge is being imposed pursuant to Section 67-7008A, Idaho Code. In accordance with the provisions of Section 67-7008A (2009 HB 213), the Idaho Department of Parks and Recreation is responsible for the creation, distribution, and sale of Idaho protection against invasive species stickers, and to collect and distribute those revenues to the Idaho State Department of Agriculture for the Idaho Invasive Species Fund.

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

There is no negative fiscal impact on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Renee' Iverson, IDPR Registration Unit Supervisor, (208) 514-2458.

DATED this 5th day of August, 2009.

Renee' Iverson, Registration Unit Supervisor
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
PO Box 83720, Boise ID 83720-0065
Phone (208) 514-2458/ Fax (208) 334-2639

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

EFFECTIVE DATE: The effective date of the temporary rule is **May 8, 2009**.

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 67-7002, Idaho Code, and Section 67-7008A, 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 June 17, 2009.

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:

These rules address the implementation of HB 213 requiring the creation, distribution, and sale of an Idaho Protection Against Invasive Species Sticker. The rules provide definitions, descriptions of the fees and handling of the revenue, guidance on proper application of the stickers, and the establishment of enforcement requirements relating to boating activities on state park properties.

The rule also clarifies that for the 2010 boating registration season the Registration Validation Sticker will also serve as the Protection Against Invasive Species Sticker that was created under HB 213 and enacted on April 8, 2009 for all motorized vessels that are required to be registered. However, for the 2009 boating season a separate Protection Against Invasive Species Sticker must be purchased as well as the Registration Validation Sticker.

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

This temporary rule is necessary to ensure IDPR compliance with the requirements of the Idaho Safe Boating Act as it relates to the passage of HB 213 by the 2009 Legislature, requiring the creation, distribution, and sale of an Idaho protection against invasive species sticker.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, 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:

In accordance with the provisions of HB 213, IDPR is responsible for the creation, distribution, and sale of Idaho protection against invasive species stickers, and for the collection and distribution of those revenues to the Idaho State Department of Agriculture for the Idaho Invasive Species Fund.

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

There is no impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need to comply with deadlines provided in HB 213.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed fee rule, contact Renee' Iverson, IDPR Registration Unit Supervisor, (208) 514-2458.

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 June 24, 2009.

DATED this 27th day of April, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

IDAPA 26
TITLE 01
CHAPTER 34

26.01.34 - IDAHO PROTECTION AGAINST INVASIVE SPECIES STICKER RULES

000. LEGAL AUTHORITY.

The Idaho Park and Recreation Board is authorized under Section 67-7002, Idaho Code to promulgate rules to aid in the administration of the Idaho Safe Boating Act, Title 67, Chapter 70, Idaho Code; and is authorized under Section 67-7008A, Idaho Code, to promulgate rules prescribing the display of protection against invasive species stickers. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.34, "Idaho Protection Against Invasive Species Sticker Rules." ()

02. Scope. This chapter establishes rules to aid in the administration and enforcement

of the Idaho Safe Boating Act, Title 67, Chapter 70, Idaho Code. ()

002. WRITTEN INTERPRETATIONS.

This agency has written interpretations of these rules, in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules, or documentation of compliance with IDAPA 26.01.01, “Rules of Administrative Procedure of the Idaho Park and Recreation Board,” Section 150. ()

003. APPEALS.

Any person who may be adversely affected by a final decision, ruling, or direction of the director may appeal the decision, ruling, or direction as outlined under IDAPA 26.01.01.250, “Rules of Administrative Procedure of the Idaho Park and Recreation Board.” ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. ()

005. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The state office of the Department of Parks and Recreation is located at 5657 Warm Springs Avenue, Boise, Idaho 83706-0065, (208) 334-4199, www.parksandrecreation.idaho.gov. The office hours are 8 a.m. to 5 p.m. Monday through Friday. ()

006. IDAHO PUBLIC RECORDS ACT.

The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ()

007. CITATION.

The official citation of this chapter is IDAPA 26.01.34.000 et seq. For example, the citation for this section is IDAPA 26.01.34.007. ()

008. -- 009. (RESERVED).

010. DEFINITIONS.

As used in this chapter: ()

01. Commercial Outfitters. As defined in Section 36-2102(b), Idaho Code. ()

02. Department. The Idaho Department of Parks and Recreation. ()

03. Fund. Invasive Species Fund as defined in Section 22-1911, Idaho Code. ()

04. Idaho Invasive Species Act. The Idaho Invasive Species Act of 2008 as established in Title 22, Chapter 19, Idaho Code. ()

05. Motorized Vessel. Any watercraft requiring registration under Section 67-7008, Idaho Code, or any comparable U.S. vessel registration program. ()

06. Non-Motorized Vessel. Any watercraft used or capable of being used as a means of transportation on water that is propelled by human effort. For the purpose of this chapter this term does not include small inflatable rafts or other inflatable vessels less than ten (10) feet in length. ()

07. Protection Against Invasive Species Sticker. Any sticker issued by the Department in accordance with the provisions of Section 67-7008(A), Idaho Code. ()

08. Registration Validation Sticker. Any sticker issued by the Department in accordance with the provisions of 67-7008, Idaho Code. ()

011. ABBREVIATIONS.

There are no abbreviations defined in this chapter. ()

012. -- 049. (RESERVED).

050. COLLECTION OF FEES AND DISTRIBUTION OF REVENUES INTO FUND.

In addition to any other moneys or fees collected pursuant to Section 67-7008 or any other provision of Title 67, Chapter 70, Idaho Code, all vessels are required to pay an additional fee as established in Section 67-7008A, Idaho Code. ()

01. Operator Responsibilities. The operator of any watercraft required to display a Protection Against Invasive Species Sticker pursuant to this chapter will ensure that fees are paid and that a Protection Against Invasive Species Sticker is displayed on the vessel, except as provided in Subsection 075.01 of this chapter, prior to launch into the public waters of Idaho. ()

02. Prorated Group Rates for Commercial Outfitters. Group rates for commercial outfitters with nonmotorized fleets exceeding five (5) vessels will be determined using the number of vessels being stickered at the time of purchase, as provided in Section 67-7008A(1)(c). Previous or future sticker purchases will be prorated separately. ()

03. Transfer of Funds. Fees collected will be transferred and deposited into the Fund no less than quarterly during any fiscal year. ()

051. -- 074. (RESERVED).

075. PROTECTION AGAINST INVASIVE SPECIES STICKER.

01. Motorized Vessels. Beginning with the 2010 boating registration season, upon payment of the fees required by Section 050 of these rules, the registration validation sticker as identified in IDAPA 26.01.30, "Idaho Safe Boating Rules," will also serve as the Protection Against Invasive Species Sticker for those vessels registered pursuant to Section 67-7008, Idaho Code. ()

02. All Other Watercraft. A separate Protection Against Invasive Species Sticker will be issued for all other watercraft upon payment of the fees required under Section 050 of these rules. ()

076. PLACEMENT OF PROTECTION AGAINST INVASIVE SPECIES STICKER.

01. Location. ()

a. Motorized vessel. Except as provided in Subsection 075.01 of this chapter, the Protection Against Invasive Species Sticker should be affixed next to the current year Registration Validation Sticker on the port (left) side of the vessel. ()

b. Non-motorized. ()

i. For canoes, kayaks, and other small rigid vessels, the Protection Against Invasive Species Sticker should be affixed near the bow above the waterline on the port (left) side, or on top of the vessel if there is little or no waterline distinction. ()

ii. For inflatable (non-rigid) vessels, the Protection Against Invasive Species Sticker can be modified to allow attachment of a zip tie, plastic attachment, or other similar mechanism, or be laminated into a hang tag. ()

02. Removal. Protection Against Invasive Species Stickers issued in accordance with Section 67-7008A, Idaho Code, which have become invalid, shall be removed from the vessel. ()

077. ENFORCEMENT.

All operators of vessels as defined in this chapter must ensure their vessel is in compliance with the provisions of this chapter when launched upon the public waters of the state of Idaho. Non-compliance with the provisions of this chapter will result in possible assessment of penalties as described in Sec. 67-7033, Idaho Code, the Idaho Safe Boating Act. ()

078. -- 999. (RESERVED).