

# **PENDING RULES COMMITTEE RULES REVIEW BOOK**

**Submitted for Review Before  
Senate Resources &  
Environment Committee**

**63rd Idaho Legislature  
First Regular Session**



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Department of Administration*

*January 2015*

**SENATE RESOURCES & ENVIRONMENT COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

**Table of Contents**

**2015 Legislative Session**

**IDAPA 13 - IDAHO FISH AND GAME COMMISSION**

**13.01.02 - Rules Governing Hunter Education and Mentored Hunting**

Docket No. 13-0102-1401 .....4

**13.01.04 - Rules Governing Licensing**

Docket No. 13-0104-1402 .....8

Docket No. 13-0104-1403 .....11

Docket No. 13-0104-1404 .....14

**13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho**

Docket No. 13-0108-1402 .....20

Docket No. 13-0108-1403 .....28

Docket No. 13-0108-1404 .....36

**13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho**

Docket No. 13-0109-1401 .....39

**IDAPA 15 - OFFICE OF THE GOVERNOR, FOREST PRODUCTS COMMISSION**

**15.03.01 - Rules of Administrative Procedure of the Idaho Forest Products Commission**

Docket No. 15-0301-1401 .....42

**IDAPA 20 - IDAHO DEPARTMENT OF LANDS**

**20.07.02 - Rules Governing Conservation of Oil and Natural Gas in the State of Idaho**

Docket No. 20-0702-1401 .....45

**IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION**

**26.01.03 - Rules Governing Recreational Registration Vendors**

Docket No. 26-0103-1401 .....92

**26.01.20 - Rules Governing the Administration of Park and Recreation  
Areas and Facilities**

Docket No. 26-0120-1401 .....97

**26.01.21 - Rules Governing Leasing Practices and Procedures  
for Recreational Residences Within Heyburn State Park**

Docket No. 26-0121-1401 .....102

**26.01.30 - Idaho Safe Boating Rules**

Docket No. 26-0130-1401 .....105

**26.01.31 - Rules Governing the Administration of the Idaho Department of Parks  
and Recreation State and Federal Grant Funds**

Docket No. 26-0131-1401 .....110

**26.01.34 - Idaho Protection Against Invasive Species Sticker Rules**  
Docket No. 26-0134-1401 .....115

**26.01.36 - Rules Governing the Winter Recreational Parking Permit Program**  
Docket No. 26-0136-1401 .....118

**IDAPA 37 - DEPARTMENT OF WATER RESOURCES**

**37.03.03 - Rules and Minimum Standards for the Construction and Use of Injection Wells**  
Docket No. 37-0303-1401 .....121

**37.03.11 - Rules for Conjunctive Management of Surface and Ground Water Resources**  
Docket No. 37-0311-1101 .....130

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

**58.01.02 - Water Quality Standards**  
Docket No. 58-0102-1301 .....135

**58.01.02 - Water Quality Standards**  
Docket No. 58-0102-1401 .....146

**58.01.10 - Rules Regulating the Disposal of Radioactive Materials not Regulated  
Under the Atomic Energy Act of 1954, as Amended**  
Docket No. 58-0110-1401 .....162

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.02 - RULES GOVERNING HUNTER EDUCATION AND MENTORED HUNTING

DOCKET NO. 13-0102-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-401, 36-404 and 36-407, Idaho Code; and House Bill 399 (2014).

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

Rules that govern the Mentored Hunting program must be amended to reflect that youth that are 10 years of age can hunt big game.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 206 through 208](#).

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

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sharon Kiefer (208) 287-2780.

DATED this 18th Day of November, 2014.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut Street.  
P.O. Box 25, Boise, Idaho 83707  
Tel: (208) 334-3715 / Fax: (208) 334-4885

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this

agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections, 36-401, 36-404 and 36-407, Idaho Code; and House Bill 399 (2014).

**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 15, 2014.

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

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

Rules that govern the Mentored Hunting program must be amended to reflect that youth that are 10 years of age can hunt big game.

**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:

Compliance with amendments to governing law.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a straightforward amendment to comply with amended state law.

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

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 22nd Day of August, 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0102-1401

#### 010. DEFINITIONS.

**01. Accompanied.** The term “accompanied” as used in the requirement for ~~a Youth Hunter Education Graduate License holder or Youth Small Game~~ youth who are hunting and have a Junior Hunting or Junior Combination License who are younger than twelve (12) years of age or for Nonresident Junior Mentored Hunting

License holders ~~s~~ or ~~for~~ the Mentored Hunting program shall mean close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices (4-4-13)(    )

**011. -- 099. (RESERVED)**

**100. HUNTER EDUCATION.**

**01. Mandatory Hunter Education Program.** All students being certified under this program must have successfully completed at least ten (10) hours of instruction in firearms safety, wildlife management, wildlife law, hunter ethics, first aid/survival, plus practical experience in the handling and shooting of firearms. This instruction may be completed through classroom study, home study, an on-line computer course, or other approved methods. The Department of Fish and Game shall manage the Hunter Education Program pursuant to the Idaho Hunter Education Policy and Procedure Manual. Only certificates for courses which meet or exceed the standards of the Idaho course are acceptable from other states or countries. (4-7-11)

**02. Fees.** A fee as established by Section 36-412(c), Idaho Code, shall be charged each student enrolling in the Hunter Education Program. (3-20-04)

**03. Parent to Attend ~~Live-Fire Exercise~~ Shooting Clinic with Student.** For students under the age of twelve (12), a parent, legal guardian or other adult designated by the parent or legal guardian shall attend ~~the any~~ Hunter Education ~~Live-Fire Exercise~~ Shooting Clinic with the student. Preferably, the adult attending the ~~live-fire Exercise~~ Shooting Clinic exercise should be the same adult who will accompany the student into the field while hunting. ~~This requirement is mandatory for successful completion of the Hunter Education Course.~~ (3-20-04)(    )

**04. Exemption from Practical Handling and Shooting of Firearms Requirement.** An active, former, or retired member of the United States Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) or an active, former or retired peace officer as defined by Section 19-5101(d), Idaho Code, may be exempted from the practical firearms handling and shooting requirement of the Mandatory Hunter Education Program if they received training in firearms handling and shooting. To qualify for the exemption the applicant must submit by mail or in person a signed affidavit provided by the Department, which certifies the applicant meets the criteria for exemption due to training in the practical handling and shooting of firearms provided through either the Armed Forces or as a peace officer. (3-29-12)

**101. MENTORED HUNTING PROGRAM.**

Nothing in this section shall be construed as altering the requirements of Section 36-411, Idaho Code, to obtain a valid hunting license, or any other statutory or rule requirements for the take of wildlife. (4-4-13)

**01. Hunting Passport.** A Hunting Passport is a special authorization for any person to take wildlife when they are accompanied by a mentor and participating in the Mentored Hunting Program. (4-4-13)

**a.** Any person must obtain a Hunting Passport from the Department or a licensed vendor to participate as a mentee in the Mentored Hunting Program. (4-4-13)

**b.** Hunter education certification is not required for any person to possess a hunting passport. (4-4-13)

**c.** A Hunting Passport shall expire December 31 of the year for which it is valid. (4-4-13)

**d.** Any person who has possessed a Hunter Passport may not apply for a Hunter Passport in any subsequent year. (4-4-13)

**02. Eligibility of Mentee.** (4-4-13)

**a.** Any person who has not previously possessed a hunting license or equivalent license in any other state may possess a Hunting Passport to participate in the Mentored Hunting Program as a mentee. (4-4-13)

**b.** Any mentee possessing a Hunting Passport is eligible to possess general big game, turkey, and sandhill crane tags if the mentee is qualified to participate in the hunt. (4-4-13)

- c.** Any mentee possessing a Hunting Passport is not eligible to possess a control hunt tag but may be designated for a Landowner controlled hunt tag if the mentee is qualified to participate in the hunt. (4-4-13)
- d.** Any mentee with a Hunting Passport shall be ~~twelve~~ **ten** (120) years of age to hunt big game. ~~(4-4-13)~~( )
- e.** Any mentee with a Hunting Passport must be accompanied by a mentor as provided in Subsection 101.03.a. (4-4-13)
- f.** Any person shall be eight (8) years or older to possess a Hunting Passport. (4-4-13)
- g.** Any mentee must possess on his person a hunting passport while hunting and produce the same for inspection upon request of a conservation officer or any other person authorized to enforce fish and game laws. (4-4-13)
- 03. Eligibility of Mentor.** (4-4-13)
- a.** Any person who possesses a valid Idaho hunting license and who is eighteen (18) years or older may participate in the Mentored Hunting Program as a mentor. (4-4-13)
- b.** A mentor may not accompany more than two (2) mentees at one (1) time that are participating in the Mentored Hunting Program. (4-4-13)
- c.** A mentor may hunt while participating in the Mentored Hunting Program if the mentor is qualified to participate in the hunt. (4-4-13)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1402

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104 and 36-407, Idaho Code; and Senate Bill 1278 (2014).

**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:

Eligibility rules for nonresident disabled American veterans to receive a reduced fee hunting license and certain tags must be amended to comply with new law.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 209 through 211](#).

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

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sharon Kiefer (208) 287-2780.

DATED this 18th Day of November, 2014.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut Street.  
P.O. Box 25, Boise, Idaho 83707  
Tel: (208) 334-3715 / Fax: (208) 334-4885

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this



agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections, 36-104, and 36-407, Idaho Code; and Senate Bill 1278 (2014).

**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 15, 2014.

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:

Eligibility rules for nonresident disabled American veterans to receive a reduced fee hunting license and certain tags must be amended to comply with new law.

**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:

Compliance with amendments to governing law.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a straightforward amendment to comply with new state law.

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

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 22nd Day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-1402**

#### **302. DISABILITY LICENSES.**

Disabled Combination Hunting/Fishing, Disabled Fishing, Disabled American Veterans Combination Hunting and Fishing License, Disabled American Veterans Fishing License, and Nonresident Disabled American Veterans Hunting License. (3-29-12)

**01. Applicants for Disability Licenses Must Attest to the Disability Requirements.** It is a violation for any person to misrepresent any information to obtain a disability license. (3-8-07)

**02. Required Documentation.** Required documentation must be submitted in person or by mail to the Department of Fish and Game set forth in Section 005 of this rule. Applications must be supported by the documentation noted in either Subsection 302.02.a., 302.02.b., or 302.02.c., ~~or 302.02.d.~~ of this rule. ~~(3-29-12)~~ ( )

**a.** License buyer must present, to an Idaho Department of Fish and Game office or select vendor one (1) of the following: (3-8-07)

i. A current year's award statement in the individuals name showing that he or she is receiving SSI or SSDI benefits for the current year; (3-8-07)

ii. A letter from the Railroad Retirement board verifying disability status and being dated within three years preceding the application for a disabled license; (3-8-07)

iii. A letter from the from the Veterans Affairs office verifying a service-connected disability rating of forty percent (40%) or greater. Such documentation can bear any date prior to license application. Such documentation will be required only for the initial application and will not be required for subsequent disability license application. (5-8-09)

iv. A current year's letter from the Veterans Affairs office showing an individual is receiving a nonservice-connected pension. (5-8-09)

**b.** License buyer must initially present to an Idaho Fish and Game office a form, prescribed by the Department, showing physician certification of permanent disability, defined in Subsections 010.04 and 010.08 of this rule, or an individual may present their valid Idaho driver's license in lieu of the prescribed department form if the individual meets the disability requirements of Section 49-117(7)(b), Idaho Code, and the driver's license is appropriately marked as disabled. Only eligible applicants may submit such applications. Physician certification will not be required for subsequent disability license application. (3-8-07)

**c.** Individuals using the department form for a physician's permanent disability certification must complete and sign the application form. Each application submitted on the department form shall be accompanied by certification from the applicant's physician, physician assistant, or nurse practitioner stating which of the criteria set forth in Subsection 010.04 of this rule, qualifies the applicant and why. If the physician, physician assistant, or nurse practitioner is not licensed to practice in Idaho, a photo copy of the physician, physician assistant, or nurse practitioner's medical license must accompany the application. Physicians, physician assistants, or nurse practitioners must check the appropriate box for a permanent disability on the application. (5-8-09)

**d.** Nonresident Disabled American Veterans must meet the requirements in Subsection 302.02.a.iii. ~~and provide information, prescribed by the Department, showing they are participating in a hunt in association with a Qualified Organization. Applicant must provide a letter from a Qualified Organization documenting the following:~~ ~~(3-29-12)~~ ( )

~~i. The license applicant is participating in a hunt in association with the Qualified Organization in the calendar year of the application. (3-29-12)~~

~~ii. The Qualified Organization is qualified under Internal Revenue Code Section 501(c)(3) as a nonprofit organization with a mission to offer opportunities, experiences, and assistance to disabled veterans or the qualified organization is a government agency with a mission to offer opportunities, experiences, and assistance to disabled veterans. (3-29-12)~~

~~iii. If the Qualified Organization is a government agency, the letter must be on the government agency letterhead and signed by an employee of the government agency. (3-29-12)~~

~~iv. If the Qualified Organization is a nonprofit organization, a copy of the IRS determination letter showing IRS Section 501(c)(3) status must be included with the letter. (3-29-12)~~

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1403

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104, 36-401 and 36-408, Idaho Code; and Senate Bill 1276.

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

Rules that reference qualified organizations for the disabled veteran big game tag program must be amended to add IRS status 501(c) (4) organizations to comply with new law.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 212 through 214](#).

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

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sharon Kiefer (208) 287-2780.

DATED this 18th Day of November, 2014.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut Street.  
P.O. Box 25, Boise, Idaho 83707  
Tel: (208) 334-3715 / Fax: (208) 334-4885

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections, 36-104, 36-401 and 36-408, Idaho Code; and Senate Bill 1276.

**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 15, 2014.

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

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

Rules that reference qualified organizations for the disabled veteran big game tag program must be amended to add IRS status 501(c) (4) and 501(c) (19) organizations to comply with new law.

**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:

Compliance with amendments to governing law.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a straightforward amendment to comply with new state law.

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

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 22nd Day of August, 2014.

[LSO Rules Analysis Memo](#)

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-1403**

**901. DISABLED VETERANS SPECIAL BIG GAME TAG.**

**01. Availability.** The Department shall make up to five (5) big game tags available for disabled veterans. (3-29-10)

**a.** Any of the five (5) big game tags described in Section 900 that have not been issued by July 15 each year may also be available for disabled veterans. (3-29-10)

**02. Issuance.** The Commission delegates discretionary authority to issue a disabled veterans special big game tag to the Director. (3-29-10)

**03. Eligibility.** In order to receive a disabled veterans special big game tag, a resident or nonresident must be a disabled veteran, as certified by the Department of Veterans Affairs. (3-29-10)

**a.** A qualified applicant must be sponsored by a nonprofit organization that is qualified under section 501(c) (3), ~~501 (c) (4), or 501 (c) (19)~~ of the Internal Revenue Code or sponsored by a governmental agency. ~~(3-29-10)~~( )

**b.** A mission of the sponsoring organization or governmental agency must be to afford opportunities, experiences, and assistance to disabled veterans. (3-29-10)

**c.** Hunter education requirements are waived for individuals applying for or receiving a disabled veterans special big game tag. (3-29-10)

**04. Validity of Tag.** The disabled veterans special big game tag shall be valid for one (1) deer, one (1) elk, one (1) pronghorn, one (1) moose, one (1) black bear, or one (1) mountain lion as allowed by Commission proclamation. (3-29-10)

**a.** A license is not required to apply for or receive a disabled veterans special big game tag. (3-29-10)

**b.** The disabled veterans special big game tag is valid in any open hunt, controlled or general, as provided by Commission proclamation. (3-29-10)

**c.** Applicants may only receive one (1) disabled veterans special big game tag in a lifetime. (3-29-10)

**05. Application.** Applications shall be on a form as prescribed by the Director. (3-29-10)

**a.** Applications shall be submitted on behalf of applicants by an eligible nonprofit organization or governmental agency. (3-29-10)

**b.** A copy of the nonprofit organization's IRS determination letter must accompany the application. (3-29-10)

**06. Fees.** All fees associated with applying for and receiving disabled veterans special big game tag shall be waived. (3-29-10)

**07. Hunters with Disabilities Permit Fees.** All fees associated with applying for or receiving a Disabled Persons Motor Vehicle Hunting Permit or a Disabled Archery Permit by the recipient of a disabled veterans special big game tag are waived. (3-29-10)

**08. Application of Big Game Rules.** All rules governing the taking of Big Game Animals, IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," shall apply to holders of a disabled veterans special big game tag. (3-29-10)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

### 13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1404

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 36-104, Idaho Code, and House Bill 467 (2014).

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

This rule would implement new discretionary Commission authority to add bear tags to the Landowner Appreciation Program.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 215 through 219](#).

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

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sharon Kiefer (208) 287-2780.

DATED this 18th Day of November, 2014.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut Street.  
P.O. Box 25, Boise, Idaho 83707  
Tel: (208) 334-3715 / Fax: (208) 334-4885

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 11, 2014.

**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 36-104, Idaho Code, and House Bill 467 (2014).

**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 15, 2014.

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:

This rule would implement new discretionary Commission authority to add bear tags to the Landowner Appreciation Program.

**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:

Compliance with amendment to governing state law.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a straightforward amendment to comply with new state law.

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

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 22nd Day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-1404**

#### **010. DEFINITIONS.**

These definitions will provide clarity and consistency in enforcement of these rules.

(7-1-93)

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

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

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

- a.** What address does the person use on tax returns and where does the person file a state resident income tax return? (7-1-93)
- b.** Where is the person registered to vote? (7-1-93)
- c.** Where does the person and his immediate family live? (7-1-93)
- d.** Where does the person have his mail sent or forwarded to? (7-1-93)
- e.** Does the person remain listed in the telephone directory? (7-1-93)
- f.** Where does he register his automobiles? (7-1-93)
- g.** Where has the person claimed a homeowner exemption on a personal residence? (7-1-93)
- h.** Where does he have a driver’s license? (7-1-93)
- i.** Where are his regular physicians and dentists located? (7-1-93)

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

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

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

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

**08. Permanent Disability.** Permanent disability is defined as a medically determinable physical



impairment, which a physician has certified that the condition has no expectation for a fundamental or marked change at any time in the future. (3-8-07)

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

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

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. LANDOWNER APPRECIATION PROGRAM.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**d.** Only one (1) leftover Landowner Appreciation Program controlled hunt tag may be issued for eligible property consisting of between three hundred twenty (320) and six hundred thirty nine (639) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. Only one (1) landowner appreciation program controlled hunt tag may be issued for eligible property consisting of between six hundred forty (640) and four thousand nine hundred ninety-nine (4,999) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. One (1) additional controlled hunt tag may be issued to a landowner or designated agent(s) for eligible property in excess of five thousand (5,000) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. No landowner or designated agent(s) is eligible to receive more than one (1) controlled hunt tag for one (1) species in a calendar year. (4-7-11)

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

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

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

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

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

**c.** Landowner appreciation program controlled hunt tags are exempt from the one (1) year waiting periods applicable for certain deer, elk and pronghorn permits. (4-7-11)

**10. Special Restrictions.** Any person hunting with a Landowner appreciation program controlled hunt

tag shall hunt only within the boundaries described in the hunt area designated by the Director. Only valid, current-year controlled hunt deer, elk, ~~or~~ pronghorn, or black bear tags may be used in conjunction with a landowner appreciation program. No person shall kill more than one (1) deer, elk or pronghorn during a calendar year EXCEPT: ~~(4-7-11)~~( )

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

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

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**404. BLACK BEAR LANDOWNER APPRECIATION SEASONS.**  
Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. ( )

~~404~~**5. -- 499. (RESERVED)**

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

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

DOCKET NO. 13-0108-1402

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

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

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

Some unlimited controlled hunts result in higher-than-desired hunter numbers because some hunters select these hunts as their second choice (as a backup in case they do not draw their first choice) when applying for a more desirable hunt. A Notice of Intent to Promulgate Rules was filed, and after analyzing the comments from interested parties, the proposal was modified to apply to only deer and elk unlimited controlled hunts. Allow the Commission to designate specific unlimited controlled hunts for deer and elk as "first-choice only."

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 220 through 226](#).

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

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jon Rachael, (208) 334-2920.

DATED this 18th Day of November, 2014.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut Street.  
P.O. Box 25, Boise, Idaho 83707  
Tel: (208) 334-3715 / Fax: (208) 334-4885

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 36-104, 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 15, 2014.

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:

Some unlimited controlled hunts result in higher-than-desired hunter number because some hunters select these hunts as their second choice (as a backup in case they do not draw their first choice) when applying for a more desirable hunt. A Notice of Intent to Promulgate Rules was filed, and after analyzing the comments from interested parties, the proposal was modified to apply to only deer and elk unlimited controlled hunts. Allow the Commission to designate specific unlimited controlled hunts for deer and elk as “first-choice only.”

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

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

**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 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, pages 38 and 39](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jon Rachael, (208) 334-2920.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 22nd Day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1402**

#### **260. TAGS FOR CONTROLLED HUNTS.**

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

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

**b.** In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person

will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**f.** Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a

Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

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

**h.** Any resident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her resident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

**i.** Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to his or her resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-20-14)

**ii.** Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

**iii.** Any resident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

**iv.** Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

**i.** Any nonresident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

**i.** Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates his or her control hunt tag to a resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-20-14)

**ii.** Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

**iii.** Any nonresident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

**iv.** Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

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

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

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

**c.** For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt tags; including outfitter allocated controlled

hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

**d.** Governor's Wildlife Partnership Tags for deer, elk, pronghorn, bighorn sheep, mountain goat, and moose shall be taken from the nonresident tag quota and availability is subject to Nonresident Tag Limitations. (4-4-13)

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

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

**b.** Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags, Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. EXCEPT all successful and unsuccessful pronghorn, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled pronghorn/deer/elk tags to hunt in any open general and/or controlled pronghorn, deer or elk hunt in the following hunting season. (4-4-13)

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

**d.** Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Bighorn sheep auction tag recipients under IDAPA 13.01.04.700 and lottery tag recipients under IDAPA 13.01.04.800 are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-4-13)

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

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



- g.** Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag. (4-7-11)
- h.** Any person who has killed an antlered moose in Idaho may not apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a tag for antlerless moose EXCEPT that any person may apply for tags remaining unfilled after the controlled hunt draw. (4-7-11)
- i.** Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)
- j.** Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)
- k.** Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)
- l.** Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)
- m.** The Commission establishes youth only controlled hunts by proclamation. Only hunters twelve (12) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (5-8-09)
- 04. Applications.** Individual applications or group applications for controlled hunts may be submitted electronically through the automated licensing system at any vendor location, through the Internet, over the telephone, or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be cancelled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. (4-7-11)
- a.** Spring black bear - Application period - January 15 - February 15. (4-6-05)
- b.** Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)
- c.** Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for first drawing - May 1 - June 5. (4-7-11)
- d.** Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)
- e.** Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for second drawing - August 5 - 15. (4-7-11)
- 05. Applicant Requirements.** Applicants must comply with the following requirements: (7-1-93)
- a.** Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (4-7-11)
- b.** Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)

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

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

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

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

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

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

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

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

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

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

**j. Deer and elk unlimited controlled hunts as identified by the Fish and Game Commission's Big Game Season Proclamation as "first-choice only" may be applied for only as a first choice controlled hunt during the controlled hunt application process. The Proclamation is published in a brochure available at department offices and license vendors.** ( )

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

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

- b.** Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)
- c.** Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)
- d.** Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. (7-1-93)
- e.** Application fees are nonrefundable. (4-7-11)
- f.** Fees for resident and nonresident adult control hunt tags that are subsequently designated to a minor child or grandchild are not refundable. (4-4-13)
- 07. Controlled Hunt Drawing.** Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)
- 08. Unclaimed Tags.** Successful applicants for the first deer, elk, black bear, gray wolf, or pronghorn controlled hunt drawing must purchase and pick up their controlled hunt tag by August 1. All controlled hunt tags not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-7-11)
- 09. Second Drawing Exclusion.** The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt. (3-29-10)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

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

DOCKET NO. 13-0108-1403

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-401 and 36-404, Idaho Code; and House Bill 399 (2014).

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

The change to the hunting age is a straightforward amendment to comply with changed state law.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 227 through 233](#).

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

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sharon Kiefer (208) 287-2780.

DATED this 18th Day of November, 2014.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut Street.  
P.O. Box 25, Boise, Idaho 83707  
Tel: (208) 334-3715 / Fax: (208) 334-4885

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-401 and 36-404, Idaho Code, and House Bill 399 (2014).

**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 15, 2014.

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

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

The change to the hunting age is a straightforward amendment to comply with changed state law.

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

Compliance with amendments to governing law.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a straightforward amendment to comply with amended state law on hunting age.

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

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 22nd Day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1403**

#### **260. TAGS FOR CONTROLLED HUNTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**f.** Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the

controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

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

**h.** Any resident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her resident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

**i.** Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to his or her resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-20-14)

**ii.** Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

**iii.** Any resident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

**iv.** Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

**i.** Any nonresident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

**i.** Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates his or her control hunt tag to a resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-20-14)

**ii.** Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

**iii.** Any nonresident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

**iv.** Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

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

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

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

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

**d.** Governor's Wildlife Partnership Tags for deer, elk, pronghorn, bighorn sheep, mountain goat, and moose shall be taken from the nonresident tag quota and availability is subject to Nonresident Tag Limitations. (4-4-13)

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

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

**b.** Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags, Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. EXCEPT all successful and unsuccessful pronghorn, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled pronghorn/deer/elk tags to hunt in any open general and/or controlled pronghorn, deer or elk hunt in the following hunting season. (4-4-13)

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

**d.** Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Bighorn sheep auction tag recipients under IDAPA 13.01.04.700 and lottery tag recipients under IDAPA 13.01.04.800 are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-4-13)

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

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



bighorn ram the same year. (4-7-11)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- b.** Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)
- c.** Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt tag hunts or controlled hunt extra tag hunts. (4-7-11)
- d.** Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, pronghorn, moose, bighorn sheep, mountain goat, black bear, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, pronghorn, black bear, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a tag in the mail. (4-7-11)
- e.** Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold by any Point-of-Sale vendor, through the Internet, or over the telephone on a first-come, first-served basis on the dates below UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt application and tag will be issued to successful controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. (4-7-11)
- i.** Spring Turkey and Spring Bear - April 1. (4-7-11)
- ii.** Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)
- iii.** Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)
- f.** A "group application" for deer, elk, and pronghorn is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (4-7-11)
- g.** A "group application" for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)
- h.** If a group application exceeds the number of tags available in a hunt that group application will not be selected for that hunt. (4-7-11)
- i.** Landowner permission hunt tags will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15. (4-7-11)
- 06. Refunds of Controlled Hunt Fees.** (7-1-93)
- a.** Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)
- b.** Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)
- c.** Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or

ineligible applicants. (10-26-94)

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

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

**f.** Fees for resident and nonresident adult control hunt tags that are subsequently designated to a minor child or grandchild are not refundable. (4-4-13)

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

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

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

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

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

DOCKET NO. 13-0108-1404

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

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

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

The reorganized elk zone descriptions allow the Department to better manage elk populations, and benefit the public with more balanced hunting opportunities.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 234 through 236](#).

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

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Sharon Kiefer (208) 287-2780.

DATED this 18th Day of November, 2014.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut Street.  
P.O. Box 25, Boise, Idaho 83707  
Tel: (208) 334-3715 / Fax: (208) 334-4885

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 1, 2014.

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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:

This amendment reorganizes some of the elk zones, and the units contained within a zone, within the Smoky Mountains, Bennett Hills, Owyhee/South Hills, Teton, Palisades, Island Park, and Bannock elk zones. This amendment is part of the Statewide Elk Management Plan development which has been a three year public process.

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

The reorganized elk zone descriptions allow the Department to better manage elk populations, and benefit the public with more balanced hunting opportunities.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a simple reorganization of elk zones pursuant to the 2014 Elk Plan.

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

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 22nd Day of August, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1404**

**605. ELK ZONE DESCRIPTIONS.**

- 01. Panhandle Zone.** All of Units 1, 2, 3, 4, 4A, 5, 6, 7, and 9. (7-1-99)

02. Palouse Zone. All of Units 8, 8A, and 11A. (7-1-99)
03. Dworshak Zone. All of Unit 10A. (7-1-99)
04. Hells Canyon Zone. All of Units 11, 13, and 18. (7-1-99)
05. Lolo Zone. All of Units 10 and 12. (7-1-99)
06. Elk City Zone. All of Units 14, 15, and 16. (7-1-99)
07. Selway Zone. All of Units 16A, 17, 19, and 20. (7-1-99)
08. Middle Fork Zone. All of Units 20A, 26, and 27. (3-29-12)
09. Salmon Zone. All of Units 21, 21A, 28, and 36B. (3-29-12)
10. Weiser River Zone. All of Units 22, 32, and 32A. (4-5-00)
11. McCall Zone. All of Units 19A, 23, 24, and 25. (7-1-99)
12. Lemhi Zone. All of Units 29, 37, 37A, and 51. (7-1-99)
13. Beaverhead Zone. All of Units 30, 30A, 58, 59, and 59A. (7-1-99)
14. Brownlee Zone. All of Unit 31. (7-1-99)
15. Sawtooth Zone. All of Units 33, 34, 35, and 36. (7-1-99)
16. Pioneer Zone. All of Units 36A, 49, and 50. (7-1-99)
17. Owyhee ~~South Hill~~ Zone. All of Units 38, 40, 41, and 42, 46, 47, 54, 55, and 57. ~~(4-5-00)~~( )
18. South Hills Zone. All of Units 46, 47, 54, 55, 56, and 57. ( )
- ~~189.~~ Boise River Zone. All of Unit 39. (7-1-99)
- ~~1920.~~ Smoky ~~Mountains~~ - Bennett Zone. All of Units 43, 44, 45, and 48, and 52. ~~(3-15-02)~~( )
- ~~20.~~ ~~Bennett Hills Zone. All of Units 45 and 52.~~ ~~(7-1-99)~~
21. Big Desert Zone. All of Units 52A and 68. (4-7-11)
22. Island Park Zone. All of Units 60, 60A, 61, 62, and 62A. ~~(7-1-99)~~( )
- ~~23.~~ ~~Teton Zone. All of Units 62 and 65.~~ ~~(7-1-99)~~
- ~~243.~~ Palisades Zone. All of Units 64, 65, and 67. ~~(7-1-99)~~( )
- ~~254.~~ Tex Creek Zone. All of Units 66 and 69. (7-1-99)
- ~~265.~~ Bannock Zone. All of Units ~~56,~~ 70, 71, 72, 73, 73A, and 74. ~~(7-1-99)~~( )
- ~~276.~~ Bear River Zone. All of Units 75, 77, and 78. (7-1-99)
- ~~287.~~ Diamond Creek Zone. All of Units 66A and 76. (7-1-99)
- ~~298.~~ Snake River Zone. All of Units 53, 63, 63A, and 68A. (3-15-02)

## IDAPA 13 - IDAHO FISH AND GAME COMMISSION

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

DOCKET NO. 13-0109-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

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

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

The purpose is to give the Commission the flexibility to modify shooting hours on Wildlife Management Areas where pheasants are stocked. The change is needed to: 1) address human safety concerns where employees/volunteers stocking upland game birds and vehicles were sprayed with shotgun pellets, 2) to help further distribute stocked upland game birds, and 3) to reduce conflict between waterfowl hunters and upland game bird hunters using the same property.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 237-238](#).

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

Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jeff Knetter (208) 287-2747.

DATED this 18th Day of November, 2014.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut Street.  
P.O. Box 25, Boise, Idaho 83707  
Tel: (208) 334-3715 / Fax: (208) 334-4885

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 1, 2014.

**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 36-104, 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 15, 2014.

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

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

The purpose is to give the Commission the flexibility to modify shooting hours on Wildlife Management Areas where pheasants are stocked. The change is needed to: 1) address human safety concerns where employees/volunteers stocking upland game birds and vehicles were sprayed with shotgun pellets, 2) to help further distribute stocked upland game birds, and 3) to reduce conflict between waterfowl hunters and upland game bird hunters using the same property.

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

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

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

**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 February 5, 2014 Idaho Administrative Bulletin, [Vol. 14-2, pages 20 and 21](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Jeff Knetter (208) 287-2747.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 22nd Day of August, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0109-1401**

**300. UPLAND GAME BIRD METHODS OF TAKE.**



- 01. Taking of Upland Game Birds.** No person shall take upland game birds: (7-1-93)
- a.** Except wild turkey, from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise. Wild turkey shall not be taken between sunset and one-half (1/2) hour before sunrise. ~~Upland game birds shall not be taken before 10 a.m. during the pheasant season on the Fort Boise, Montour, Payette River and C.J. Strike Wildlife Management Areas~~ The Commission may designate by proclamation the shooting hours on Wildlife Management Areas with Upland Game Bird Permit requirements. (~~3-29-12~~)(    )
- b.** With a trap, snare, net, crossbow, or firearms EXCEPT a shotgun using shells not exceeding three and one-half (3-1/2) inches maximum length, slingshot, hand-held or thrown missiles, EXCEPT forest grouse. Forest grouse shall not be taken with a trap, snare, net, or crossbow. (3-30-01)
- c.** From any watercraft. (4-7-11)
- d.** By the use or aid of any electronic call. (7-1-93)
- e.** By the aid of baiting. Bait is defined as any substance placed to attract upland game birds. (7-1-93)
- f.** When hunting on Wildlife Management Areas where pheasants are stocked without wearing at least thirty-six (36) square inches of visible hunter orange above the waist. (5-8-09)
- 02. Wild Turkey.** In addition to the methods listed above, wild turkey may not be taken: (7-1-93)
- a.** With lead shot exceeding BB size. (7-1-93)
- b.** With steel shot exceeding T size. (7-1-93)
- c.** By the use of dogs, except during fall hunts. (3-30-01)

**IDAPA 15 - OFFICE OF THE GOVERNOR  
FOREST PRODUCTS COMMISSION**

**15.03.01 - RULES OF ADMINISTRATIVE PROCEDURE OF  
THE IDAHO FOREST PRODUCTS COMMISSION**

**DOCKET NO. 15-0301-1401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 38-1508, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, [Vol. 14-10, pages 239 - 240](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Betty Munis, Director at (208) 334-3292.

DATED this 29th day of October, 2014.

Betty Munis, Director  
Idaho Forest Products Commission  
350 N. 9th St., Ste. 102  
P. O. Box 855  
Boise, ID 83701  
Phone: (208) 334-3292  
Fax: (208) 334-3449

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 38-1508, 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 15, 2014.

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 2014 Idaho Legislature passed House Bill No. 371, which requires changes to the rules. Pursuant to HB 371, changes address the nomination and vacancy of the at-large Commission member and amend the assessment basis of forest landowners.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because changes to the rules were necessary to incorporate statutory changes passed by the 2014 Idaho Legislature in House Bill No. 371.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Betty Munis, Director at (208) 334-3292.

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 22, 2014.

DATED this 25th day of August, 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0301-1401

#### 100. NOMINATIONS, VACANCIES AND TERMS.

**01. Chair and Vice-Chair.** The Commission shall nominate and elect, by majority vote, a Chair to serve as presiding officer at all Commission meetings. The Commission may also nominate and elect, by majority vote, a Vice-Chair to accept the duties of the Chair in the event that the Chair is unable to attend a meeting of the Commission. The term of the office of Chair and Vice-Chair shall be one (1) year, commencing July 30 of each year. (11-22-93)

**02. Nominations.** Nominations for expiring seats on the Commission shall be made by the financial supporters of the Commission from the district in which the seat is expiring, or from all districts in the case of an at-large member, no later than June 1 of that year. The Commission shall provide nomination applications to all financial supporters and shall forward the names of all qualified nominees to the Governor. The Commission may also make recommendations or nominations. In making the appointments, the Governor shall take into consideration recommendations made to him by the Commission and by organizations that represent or are engaged in harvesting, transporting or manufacturing forest products. (~~11-22-93~~)(    )

**03. Vacancies.** Vacancies in any unexpired term shall be filled by the Governor for the remainder of the

unexpired term. The Commission will identify qualified candidates and forward their names to the Governor. The member appointed to fill the vacancy shall represent the same region and interests as the person whose seat has become vacant. The at-large member shall represent all regions. (~~11-22-93~~)( )

**04. Terms.** Terms of office for Commission members shall consist of three (3) year terms beginning on July 1 of the year of appointment. (7-1-98)

**101. -- 199. (RESERVED)**

**200. ASSESSMENTS AND FEES.**

**01. Assessments.** An assessment for all logs harvested, measured or processed within the state of Idaho and for all employees, including self employed, engaged in the harvest or transport of timber, logs, unfinished lumber, chips, sawdust, shavings or hog fuel in Idaho, and for each acre of forest land owned by a business entity or person that ~~has no Idaho manufacturing facilities and~~ owns more than fifty ten thousand (~~5~~10,000) acres of forest land shall be set by the Commission no later than January 1 of the assessment year. Notice of the assessment shall be mailed no later than the last day of the fourth week of May of the assessment year to the last known address of each financial supporter. Assessment shall not be reduced for financial supporters who cease business during an assessment year. (~~5-3-03~~)( )

**a.** Financial supporters of the Commission may choose to pay their assessment in either one (1) full payment due thirty (30) days after the date the notice of assessment is mailed, or in four (4) equal payments with payment in full made by December 31 of the assessment year. (5-3-03)

**b.** Assessments on logs processed into various manufactured products shall be levied against the forest products manufacturer which initiates the manufacturing process. (11-22-93)

**c.** The Commission shall establish a policy and schedule for insufficient funds checks which will be reviewed annually. This policy and schedule shall be available to the public under the procedures set forth by the Public Records Act, Title 3, Chapter 9, Idaho Code. (5-3-03)

**04. Cooperation With Other Departments.** In determining assessments levied by the Commission, the Commission may access the records of the Department of Labor, the Board of Scaling Practices, the Tax Commission, the Transportation Department, and the Department of Lands. Such records may include, but are not limited to those reports filed pursuant to Sections 49-434, 49-1001, 38-122, and 38-123, Idaho Code. (5-3-03)

## IDAPA 20 - IDAHO DEPARTMENT OF LANDS

### 20.07.02 - RULES GOVERNING CONSERVATION OF OIL AND NATURAL GAS IN THE STATE OF IDAHO

DOCKET NO. 20-0702-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 47-319(8), Idaho Code.

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

The Oil and Gas Conservation Commission (Commission) adopted the pending rule with changes to the text of the proposed rule based on comments on the proposed rule submitted to the agency. A definition for “systems approach” is added in Subsection 010.49 to clarify how chemical information must be reported under Paragraph 210.06.d. In Subsection 120.04, the pending rule clarifies the consent of operators and unleased mineral owners is required for exceptions to well spacing. In Subsection 130.01, the integration explanatory statement requirement is eliminated because it is not necessary, the geologic statement requirement is simplified to cover essential information, and the bonus payment requirement clarifies only the highest payment paid to mineral interest owners must be in the application. In Subsection 130.02, the pending rule clarifies that information exempt by law from disclosure may be redacted in an application and that applications are served on unleased mineral interest owners. In Subsection 131.02, the pending rule clarifies when working interest owners are entitled to their share of production. In Subsections 420.01 and 430.01, certain setback distances are changed to 300 feet to align with Federal Housing Administration mortgage rules. In Subsection 430.04, the flaring requirement for gas processing facilities requires compliance with the Department of Environmental Quality’s authority in IDAPA 58.01.01, “Rules for the Control of Air Pollution in Idaho.”

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 with one exception: proposed rule Section 230, Subsection 06.e.i. was inadvertently left out of the proposed rule docket. This Subsection has not been deleted from the rule and remains in the rule as previously codified. The complete text of the proposed rule was published in the September 3, 2014 Idaho Administrative Bulletin, **Vol. 14-9, pages 292 - 338**.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No Fiscal Impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Bobby Johnson, Oil and Gas Program Manager at (208) 334-0243 or [brjohnson@idl.idaho.gov](mailto:brjohnson@idl.idaho.gov).

DATED this 7th Day of November, 2014.

Bobby Johnson, Oil & Gas Program Manger  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
P.O. Box 83720, Boise, ID 83720-0050  
Tel: (208) 334-0243 / Fax:(208) 334-5342  
Email: [brjohnson@idl.idaho.gov](mailto:brjohnson@idl.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 47-319(8), Idaho Code.

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

**Wednesday, September 24, 2014**  
**5:00 p.m. MDT**

**Idaho Department of Lands**  
**Garnet Conference Rooms**  
**300 N. 6th Street, Suite 103**  
**Boise, Idaho**

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

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

Sections of the rules have been grouped by subject matter into five subchapters to improve the organization and readability of the rules. Non-substantive housekeeping changes were also made to the rules.

The Department added new sections addressing the following topics which were not previously covered in the rules: organization reports (Section 032), integration within spacing units (Sections 130 and 131), the disclosure of chemicals used in well treatments (Paragraph 210.06.d.), well site operations (Section 301), step-off requests (Subsection 310.09), production reports (Section 400), gas-oil ratio for well classification (Section 403), tank batteries (Section 420), and gas processing facilities (Section 430). New definitions were added to Section 010 for bonus payment, gas processing facility, surface water, tank, tank battery, tank dike, and well site. New abbreviations were added to Section 011 for oilfield barrel, one thousand cubic foot, and polyvinyl chloride.

Several existing sections have been revised. Sections 001 and 003 were revised since the Board of Land Commissioners no longer comprises the Oil and Gas Conservation Commission. Section 006 was revised to correct statutory references and clarify that all records relating to this chapter are public records unless records are by law exempt from disclosure. Section 030 was revised to include a period to publish legal notices. Section 040 was revised to allow public comment on applications for geophysical permits. Section 130 was revised to clarify the location of gas wells within a spacing unit, as well as the requirements for exemptions to well locations and changes to spacing units. Section 220 was revised to increase the inactive well bond amount and clarify where interest on cash bonds will be deposited. In Section 300, the requirements for well signs were updated. In Section 310, the notice and inspection requirements were revised for spud, surface casing, blowout prevention, intermediate casing, and production casing activities. In Subsection 310.12, revisions were made to the requirements for cable tools. In Section 341, a standardized scale requirement was added for drilling logs. The requirements for flaring of gas were revised in Section 413.

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

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

**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 June 4, 2014,

Idaho Administrative Bulletin, [Vol. 14-6, pages 67 and 68](#).

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Bobby Johnson, Oil and Gas Program Manager.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 11th day of August 2014.

### LSO RULES ANALYSIS MEMO

THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0702-1401

## 20.07.02 - RULES GOVERNING OIL AND GAS CONSERVATION ~~OF OIL AND NATURAL GAS~~ IN THE STATE OF IDAHO

### SUBCHAPTER A - GENERAL PROVISIONS

#### 000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of ~~Title 58, Chapter 1, Sections 58-104(6), 58-105, and 58-127, Idaho Code;~~ Title 47, Chapter 3, Idaho Code; and Title 67, Chapter 52, Idaho Code. ~~(3-29-12)( )~~

#### (BREAK IN CONTINUITY OF SECTIONS)

#### 003. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the Commission shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, ~~IDAPA 20.01.01~~, Title 47, Chapter 3, Idaho Code, and IDAPA 20.07.01, "Rules of Practice and Procedure before the Idaho Oil and Gas Conservation Commission." ~~(3-29-12)( )~~

#### (BREAK IN CONTINUITY OF SECTIONS)

#### 006. PUBLIC RECORDS ACT COMPLIANCE.

~~01. Promulgation. The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (3-29-12)~~

~~02. Confidentiality. All records relating to this chapter are public records except to the extent such records are by law exempt from disclosure.~~ Information obtained by the Department under these rules is subject to

public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code. Upon request in any application or material submitted to the Department, confidentiality protection shall be provided for ~~trade secrets consistent with Section 9-340D(1), Idaho Code, and for “[a]rchaeological and geologic records concerning exploratory drilling, logging, mining and other excavation” consistent with Section 9-340E(2), Idaho Code.~~ information by law exempt from disclosure, and ~~only those parts of an application or other materials that fall under these provisions of Section 9-340, Idaho Code,~~ are by law exempt from disclosure can be held as confidential. ~~The owner or operator shall not unreasonably designate other parts of their application or other materials as confidential.~~ (3-29-12)(    )

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Act.** The Idaho Oil and Gas Conservation Act, Title 47, Chapter 3, Idaho Code. (10-21-92)
02. **Active Well.** A permitted well used for production, disposal, or injection that is not idled for more than twenty-four (24) continuous months. (3-29-12)
03. **Barrel.** Forty-two (42) U. S. gallons at sixty (60) Degrees F at atmospheric pressure. (10-21-92)
04. **Blowout.** An unplanned sudden or violent escape of fluids from a well. (3-29-12)
05. **Blowout Preventer.** A casinghead control equipped with special gates or rams that can be closed and sealed around the drill pipe, or that otherwise completely closes the top of the casing. (3-29-12)(    )
06. **Bonus Payment.** Monetary consideration that is paid by the lessee to the lessor for the execution of an oil and gas lease. (    )
- ~~067.~~ **Casing Pressure.** The pressure within the casing or between the casing, tubing, or drill pipe. (3-29-12)
- ~~078.~~ **Casinghead.** A metal flange attached to the top of the conductor pipe that is the primary interface for the diverter system during drilling out for surface casing. (3-29-12)
- ~~089.~~ **Casinghead Gas.** Any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil. (3-29-12)
- ~~0910.~~ **Commission.** The Oil and Gas Conservation Commission of the state of Idaho. (10-21-92)
- ~~101.~~ **Common Source of Supply.** The geographical area or horizon definitely separated from any other such area or horizon and which contains, or from competent evidence appears to contain, a common accumulation of oil or gas or both. Any oil or gas field or part thereof which comprises and includes any area which is underlaid, or which from geological or other scientific data or experiments or from drilling operations or other evidence appears to be underlaid by a common pool or accumulation of oil or gas or both oil and gas. (3-29-12)
- ~~112.~~ **Completion.** An oil well shall be considered completed when the first new oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after the production casing has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production casing has been run. (3-29-12)
- ~~123.~~ **Conductor Pipe.** The first and largest diameter string of casing to be installed in a well. This casing extends from land surface to a depth great enough to keep surface waters from entering and loose earth from falling in the hole and to provide anchorage for the diverter system prior to setting surface casing. (3-29-12)
- ~~134.~~ **Cubic Foot of Gas.** The volume of gas contained in one (1) cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be fourteen and seventy-three hundredths (14.73) pounds per square inch absolute and the standard temperature base shall be sixty (60) Degrees F. (3-29-12)



- day. **145. Day.** A period of twenty-four (24) consecutive hours from 8 a.m. one day to 8 a.m. the following (3-29-12)
- 156. Department.** The Idaho Department of Lands or its designee. (3-29-12)
- 167. Development.** Any work which actively promotes bringing in production. (10-21-92)
- 178. Director.** The head of the Idaho Department of Lands and secretary to the Oil and Gas Conservation Commission, or his designee. (3-29-12)
- 189. Drilling Logs.** The recorded description of the lithologic sequence encountered in drilling a well, and any electric, gamma ray, geophysical, or other logging done in the hole. (3-29-12)
- 1920. Field.** The general area underlaid by one (1) or more pools. (10-21-92)
- 201. Fresh Water.** All surface waters and those ground waters that are used, or may be used in the future, for drinking water, agriculture, aquaculture, or industrial purposes other than oil and gas development. The possibility of future use is based on hydrogeologic conditions, water quality, future land use activities, and social/economic considerations. (3-29-12)
- 212. Gas-Oil Ratio.** The volume of gas produced in standard cubic feet to each barrel of oil or condensate produced concurrently during any stated period. (3-29-12)
- 23. Gas Processing Facility.** A facility that conditions liquids or gas by compression, dehydration, refrigeration, or by other means. ( )
- 224. Gas Well.** (10-21-92)
- a.** A well which produces primarily natural gas; (3-29-12)
- b.** Any well capable of producing gas in commercial quantities and also producing oil from the same common source of supply but not in commercial quantities; or (10-21-92)
- c.** Any well classed as a gas well by the Commission for any reason. (10-21-92)
- 235. Geophysical or Seismic Operations.** Any geophysical method performed on the surface of the land utilizing certain instruments operating under the laws of physics respecting vibration or sound to determine conditions below the surface of the earth that may contain oil or gas and is inclusive of, but not limited to, the preliminary line survey, the acquisition of necessary permits, the selection and marking of shot-hole locations, necessary clearing of vegetation, shot-hole drilling, implantation of charge, placement of geophones, detonation and backfill of shot-holes, and vibroseis. (3-29-12)
- 246. Hydraulic Fracturing, or Fracing.** A method of stimulating or increasing the recovery of hydrocarbons by perforating the production casing and injecting fluids or gels into the potential target reservoir at pressures greater than the existing fracture gradient in the target reservoir. (3-29-12)
- 257. Inactive Well.** An unplugged well that has no reported production, disposal, injection, or other permitted activity for a period of greater than twenty-four (24) continuous months, and for which no extension has been granted. (3-29-12)
- 268. Intermediate Casing.** The casing installed within the well to seal intermediate zones above the anticipated bottom hole depth. The casing is generally set in place after the surface casing and before the production casing. (3-29-12)
- 279. Junk.** Debris in a hole that impedes drilling or completion. (3-29-12)

- ~~28~~**30. Lease.** A tract(s) of land which by virtue of an oil and gas lease, fee or mineral ownership, a drilling, pooling or other agreement, a rule, regulation or order of a governmental authority, or otherwise constitutes a single tract or leasehold estate for the purpose of the development or operation thereof for oil or gas or both. (10-21-92)
- ~~29~~**31. Mechanical Integrity Test.** A test designed to determine if there is a significant leak in the casing, tubing, or packer of a well. (3-29-12)
- ~~30~~**2. Oil and Gas.** Oil or gas or both. (10-21-92)
- ~~31~~**3. Oil Well.** Any well capable of primarily producing oil in paying quantities, but not a gas well. (3-29-12)
- ~~32~~**4. Operator.** Any duly authorized person who is in charge of the development of a lease or the operation of a producing well. (10-21-92)
- ~~33~~**5. Owner.** The person who has the right to drill into and produce from a pool and to appropriate the oil or gas that produces there from either for himself and/or others. (10-21-92)
- ~~34~~**6. Person.** Any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any government or any political subdivision or any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter gender. (10-21-92)
- ~~35~~**7. Pit.** Any excavated or constructed depression or reservoir used to contain reserve, drilling, well treatment, produced water, or other fluids at the drill site. This does not include enclosed, mobile, or portable tanks used to contain fluids. (3-29-12)
- ~~36~~**8. Pollution.** Constituents of oil, gas, salt water, or other materials used in oil and gas extraction, occurring in fresh water supplies at levels that exceed the standards in IDAPA 58.01.02, "Water Quality Standards," and IDAPA 58.01.11, "Ground Water Quality Rules," as the result of the drilling, casing, treating, operation or plugging of wells. (3-29-12)
- ~~37~~**9. Pool or Reservoir.** An underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure that is completely separated from any other zone in the same structure is a pool. (3-29-12)
- ~~38~~**40. Pressure Maintenance.** The injection of gas, water, or other fluids into oil or gas reservoirs to maintain pressure or retard pressure decline in the reservoir for the purpose of increasing the recovery of oil or other hydrocarbons therefrom. (10-21-92)
- ~~39~~**41. Produced Water.** Water that is produced along with oil or gas. (3-29-12)
- ~~40~~**2. Producer.** The owner of a well(s) capable of producing oil or gas or both. (10-21-92)
- ~~41~~**3. Production Casing.** The casing set across the reservoir interval and within which the primary completion components are installed. (3-29-12)
- ~~42~~**4. Proppant.** Sand or other materials used in hydraulic fracturing to prop open fractures. (3-29-12)
- ~~43~~**5. Release.** Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (3-29-12)
- ~~44~~**6. Spud.** To start the drilling process by removing rock, dirt, and other sedimentary material with the drill bit. ( )
- ~~45~~**7. Surface Casing.** The first casing which is run after the conductor pipe to anchor blow out

prevention equipment and to seal out fresh water zones. (3-29-12)

**48.** Surface Water. Rivers, streams, lakes, and springs when flowing in their natural channels. ( )

**49.** Systems Approach. *The disclosure of chemical information by chemical abstract service name only, without disclosing component percentages or chemical relationships.* ( )

**50.** Tank. A concrete, metal, or plastic stationary vessel used to contain fluids. ( )

**51.** Tank Battery. One (1) or more tanks that are connected to receive crude oil, condensate, or produced waters from a well(s) and which serves as the point of collection and disbursement of oil or gas from a well(s). ( )

**52.** Tank Dike. An impermeable man-made structure constructed around a tank to contain leakage from the tank. ( )

**453.** Tubing. Pipe used inside the production casing to convey oil or gas from the producing interval to the surface. (3-29-12)

**4654.** Volatile Organic Compound. Organic chemical compounds whose composition makes it possible for them to evaporate under normal indoor atmospheric conditions of sixty-eight (68) degrees F and an absolute pressure of fourteen point seven (14.7) psi atmospheric. (3-29-12)

**4755.** Waterflooding. The injection into a reservoir through one (1) or more wells with volumes of water for the purpose of increasing the recovery of oil therefrom. (3-29-12)

**4856.** Waste as Applied to Oil. Underground waste; inefficient, excessive, improper use, or dissipation of reservoir energy, including gas energy and water drive; surface waste, open-pit storage, and waste incident to the production of oil in excess of the producer's above-ground storage facilities and lease and contractual requirements, but excluding storage (other than open-pit storage) reasonably necessary for building up and maintaining crude stocks and products thereof for consumption, use, and sale; the locating, drilling, equipping, operating, or producing of any well in a manner that causes, or tends to cause, reduction of the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations. (10-21-92)

**4957.** Waste as Applied to Gas. The escape, blowing or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil or gas that might ultimately be produced; excepting gas that is reasonably necessary in the drilling, completing, and testing of wells and in furnishing power for the production of wells. (10-21-92)

**508.** Well Report. The written record progressively describing the strata, water, oil, or gas encountered in drilling a well with such additional information as to give volumes, pressures, rate of fill-up, water depths, casing strata, casing record, etc., as is usually recorded in normal procedure of drilling; also, it includes electrical radioactivity, or other similar logs run, lithologic description of all cores, and all drill-stem tests, including depth-tested, cushion-used, time tool open, flowing and shut-in pressures and recoveries. (3-29-12)

**59.** Well Site. The areas that are directly disturbed during the drilling and subsequent operation of, or affected by production facilities directly associated with, any oil well, gas well, or injection well, and its associated well pad. ( )

**5460.** Well Treatment. Actions performed on a well to acidize, fracture, or stimulate the target reservoir. (3-29-12)

**5261.** Wildcat Well. An exploratory well drilled in an area of unknown subsurface conditions. (3-29-12)

## 011. ABBREVIATIONS.

<del>01.</del>	API. American Petroleum Institute.	(3-29-12)
<del>02.</del>	ASTM. American Society for Testing and Materials.	(3-29-12)
<del>03.</del>	<u>BBL. Oilfield Barrel.</u>	<u>( )</u>
<del>034.</del>	BOP. Blowout Preventer.	(3-29-12)
<del>045.</del>	CAS. Chemical Abstracts Service.	(3-29-12)
<del>056.</del>	EPA. United States Environmental Protection Agency.	(3-29-12)
<del>067.</del>	F. Fahrenheit.	(3-29-12)
<del>078.</del>	GPS. Global Positioning System.	(3-29-12)
<del>089.</del>	HDPE. High Density Polyethylene.	(3-29-12)
<del>0910.</del>	IDAPA. Idaho Administrative Procedure Act.	(3-29-12)
<del>101.</del>	IDEQ. Idaho Department of Environmental Quality.	(3-29-12)
<del>112.</del>	IDWR. Idaho Department of Water Resources.	(3-29-12)
<del>13.</del>	<u>MCF. One thousand cubic foot.</u>	<u>( )</u>
<del>124.</del>	MSDS. Material Safety Data Sheet.	(3-29-12)
<del>135.</del>	OSHA. Occupational Safety & Health Administration.	(3-29-12)
<del>146.</del>	PSI. Pounds per Square Inch.	(3-29-12)
<del>17.</del>	<u>PVC. Polyvinyl Chloride.</u>	<u>( )</u>

**(BREAK IN CONTINUITY OF SECTIONS)**

**~~250~~021. CLASS II INJECTION WELLS.**

Class II injection wells, as described in IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells," are currently not authorized under this rule. Permits for Class II injection wells must be obtained through IDAPA 37.03.03. (3-29-12)

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

**~~0430.~~ NOTICES - GENERAL.**

**01. Written Authorization Required.** Any written notice of intention to do work or to change plans previously approved must be filed with the Department, unless otherwise directed, and must be approved before the work is begun. Such approval may be given orally and, if so given, shall thereafter be confirmed by the Department in writing. Written notices may be submitted to the Department by e-mail or facsimile. (~~3-29-12~~)( )

**02. Emergency Authorization.** In case of emergency, or a situation where operations might be unduly delayed, any written notice required by these rules and regulations to be given the Department may be given orally or by wire and if approval is obtained, the transaction shall be confirmed in writing, as a matter of record. (3-29-12)

**03. Publication of Legal Notices.** Whenever these rules require a legal notice to be published in a

newspaper, the notice must be published once a week for two (2) consecutive weeks. ( )

~~350~~**031. WRITTEN NOTICES, REQUESTS, PERMITS AND REPORTS FORMS.**

The Department shall adopt such forms of notices, requests, permits, and reports as it may deem advisable or necessary in carrying out the provisions of law and its rules and regulations. (3-29-12)( )

**032. ORGANIZATION REPORTS.**

**01. Required Content.** Before any person engages in any activity covered by the statutes and rules of the Commission, that person must file an organization report with the Department. The organization report must include the following information: ( )

**a.** The person's name and the type of the business being operated or conducted; ( )

**b.** The mailing address to which all correspondence from the Department is to be sent; ( )

**c.** The telephone number(s), facsimile number(s), and e-mail address(es) for which contact by the Department may be made; ( )

**d.** The names of persons authorized to submit required forms, reports, and other documents to the Department; and ( )

**e.** If a legal entity, proof the person is authorized to transact business within the state. ( )

**02. Updates.** A supplementary report must be filed with the Department within thirty (30) days of any change to facts stated in a previously-filed organization report. ( )

~~40~~**33. DESIGNATION OF AGENT.**

A "Designation of Agent" shall be submitted to the Department in a manner and form approved by the Department prior to the commencement of operations. A Designation of Agent(s) will be accepted as authority of agent to fulfill the obligations of the owner and to sign any papers or reports required under these oil and gas operating regulations, and all authorized orders or notices given by the Department when given in the manner hereinafter provided shall be deemed service of such orders or notices upon the owner and the lessee. All changes of address and any termination of the agent's authority shall be immediately reported in writing to the Department and, in the latter case, the designation of a new agent(s) shall be immediately made. If the designated agent(s) shall at any time be incapacitated for duty or absent from the address provided, the owner shall designate in writing a substitute to serve in his or their stead, and in the absence of such owner or of notice of appointment of a substitute then, in such case, notices may be given by the Department by delivering a registered letter to the United States Post Office at Boise, Idaho, directed to the agent(s) at the address shown on the current Designation of Agent on file in the Department's office, and such notice will be deemed service upon the owner and lessee. (3-29-12)

~~024~~**34. -- 039. (RESERVED)**

*[Codified Section 040 is being moved and renumbered to Section 030.]*

~~054~~**40. PUBLIC COMMENT.**

Applications submitted under Sections ~~050, 055, 085,~~ 100, 200, 210, 230 and ~~170~~ 330 of these rules will be posted on the Department's website for a fifteen-day (15) written comment period. The Department will also send an electronic copy of the application to the respective county, and city if applicable, where the proposed operation is located. The purpose of the comment period is to receive written comments on whether a proposed application complies with these rules. These comments will be considered by the Department prior to permit approval or denial. Relevant comments will be posted on the Department's website following the comment period. (3-29-12)( )

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

*[Codified Section 050 is being moved and renumbered to Section 200.]*

~~370~~**50.** ENFORCEMENT.

The Department shall enforce these rules pursuant to Section 47-325, Idaho Code.

(3-29-12)

*[Codified Section 051 is being moved and renumbered to Section 040.]*

~~052.—054.~~ (RESERVED)

*[Codified Sections 055 and 056 are being moved and renumbered to Sections 210 and 211, respectively.]*

~~057.—059.~~ (RESERVED)

*[Codified Section 060 is being moved and renumbered to Section 221.]*

~~061.—069.~~ (RESERVED)

*[Codified Section 070 is being moved and renumbered to Section 220.]*

~~071.—074.~~ (RESERVED)

*[Codified Section 075 is being moved and renumbered to Section 110.]*

~~076.—079.~~ (RESERVED)

*[Codified Section 080 is being moved and renumbered to Section 310.]*

~~081.—084.~~ (RESERVED)

*[Codified Section 085 is being moved and renumbered to Section 230.]*

~~086.—089.~~ (RESERVED)

*[Codified Sections 090 and 091 are being moved and renumbered to Sections 340 and 341, respectively.]*

~~092.—094.~~ (RESERVED)

*[Codified Sections 095 and 096 are being moved and renumbered to Sections 500 and 501, respectively.]*

~~097~~**051.** -- 099. (RESERVED)

**SUBCHAPTER B - EXPLORATION AND DEVELOPMENT**

*[Codified Section 100 is being moved and renumbered to Section 300.]*

~~360~~**100.** GEOPHYSICAL OPERATIONS.

**01. Permit Required.** Before beginning seismic operations in the state of Idaho, a representative of the client company and the seismic contractor shall meet with the staff of the Department, file an application for a permit to conduct seismic operations, and pay an application fee. No seismic operation shall be conducted without such a permit. The Department has discretion to waive the requirement of the pre-permit meeting for the client company. The permit for seismic operations may be revoked or suspended or the application for the permit denied by the Department for failure to comply with the Commission's rules, statutes, and orders. The Department may revoke,

suspend, or deny the application for a seismic permit without a hearing; provided that the seismic contractor shall be given an opportunity for a hearing at the next regularly scheduled Commission meeting. The fact that a permit is revoked or suspended does not excuse the seismic contractor or client company from properly plugging existing seismic holes but does prohibit the person(s) from drilling any more. The application for a permit for seismic operations must include: (3-29-12)

**a.** The proposed route of the seismic line on a topographic or recent air photo base map at a sufficient scale to show roads, buildings, surface waters, and Section, Township, and Range lines. The map must also show additional area as needed for any alternative routing. The alternative routing must be within at least one-half (1/2) mile of the proposed route. Reapplication must be made if the final route strays from the proposed route and outside the designated alternative routing areas; and (3-29-12)

**b.** The energy sources proposed to be used for the seismic operation, such as vibroseis, shot holes, surface shot, or others. (3-29-12)

**c.** The approximate number, depth, and location of the seismic holes and the size of the explosive charges. The application shall be accompanied by a map with a scale of one inch equaling two (2) miles that shows the depth and location of the shotholes. (10-21-92)

**d.** The name and permanent address of the client company the Department may contact about the seismic operation. (3-29-12)

**e.** The name, permanent address, and phone number of the seismic contractor and his local representative whom the Department may contact about the seismic activity. (3-29-12)

**f.** The name, phone number, and permanent address of the hole plugging contractor, if different from the seismic contractor. (10-21-92)

**g.** A detailed description of the hole plugging procedures, and a description of the surface reclamation procedures, if such reclamation is needed. (3-29-12)

**h.** The anticipated starting date of seismic operations. (3-29-12)

**i.** The anticipated completion date of seismic operations, and the anticipated date of any required reclamation or hole plugging. (3-29-12)

**j.** A description of the identifying mark that will be on the hat or nonmetallic plug to be used in the plugging of the seismic hole. (10-21-92)

**02. Operating Requirements.** All geophysical operations must comply with the following requirements: (3-29-12)

**a.** All vehicles utilized by the permit holder, or its agents or contractors, shall be clearly identified by signs or markings utilizing letters or numbers, or a combination thereof, a minimum of three (3) inches in height and one-half (1/2) inch wide, indicating the name of such agent. (3-29-12)

**b.** No seismic source generation from vibroseis, shot holes, surface shot, or other method shall be conducted within two hundred (200) feet of any residence, water well, oil well, gas well, injection well or other structure without having first secured the express written authority of the owner(s) thereof and the permit holder shall be responsible for any resulting damages. (3-29-12)

**c.** Written authority from the owner of a residence, water well, oil well, gas well, injection well or other structure must also be obtained from the owner(s) if any explosive charge exceeds the maximum allowable charge within the scaled distance below:

<b>DISTANCE TO STRUCTURE (Feet)*</b>	<b>MAXIMUM ALLOWABLE CHARGE WEIGHTS (Pounds)*</b>
50	0.5
100	2.0
150	4.5
200	8.0
250	12.0
300	18.0
350	25.0
* Based upon a charge weight of seventy (70) Foot/Pound <sup>1/2</sup>	

(3-29-12)

**d.** The maximum allowable charge weight is twenty-five (25) pounds, unless the permit holder requests and secures the prior written authorization from the Department. (3-29-12)

**e.** All seismic sources placed for detonation shall contain additives to accelerate the biodegradation thereof and shall be handled with due care in accordance with industry standards. The cap leads for any seismic sources that fail to detonate shall be buried at least three (3) feet deep. (3-29-12)

**f.** All vegetation cleared to the ground shall be cleared in a competent and workmanlike manner in the exercise of due care. (3-29-12)

**g.** Unless otherwise consented to by the surface owner in writing, permit holder shall not cut down any tree measuring six (6) inches or more in diameter, as measured at a height of three (3) feet from the ground surface, unless there are no reasonable alternatives to the removal of such tree(s) available to permit holder. Permit holder shall compensate surface owner the value of all such trees. (3-29-12)

**h.** All excessive rutting or soil disturbances shall be repaired or restored to the original condition and contour to the extent reasonable, unless otherwise agreed to by the permit holder and the surface owner in writing. (3-29-12)

**i.** All fences removed shall be replaced, unless otherwise agreed to by the permit holder and the surface owner in writing. (3-29-12)

**j.** All debris associated with the seismic activity shall be removed and properly disposed. (3-29-12)

**03. Bond Required.** (3-29-12)

**a.** Before beginning geophysical operations, the geophysical contractor must file and have approved by the Department a bond in the amount of at least ten thousand dollars (\$10,000). The Department may increase this bonding requirement for geophysical contractors based on the amount of potential damage from the contemplated operation. The condition of such bond shall comply with the Act, the rules and orders of the Commission, and orders of the Department. The obligation of the bond shall not be discharged until one (1) year from completion of the survey or until the geophysical contractor has complied with the Oil and Gas Conservation Law, the Commission's rules, and the orders of the Commission and the Department. (3-29-12)

**b.** Persons or other entities who engage in the plugging of seismic holes and are not a regular full-time employee of the seismic company, owner, or operator shall have posted with the director a surety bond in favor of the Department. Said bond shall be on a form prescribed by the Department and in the amount of five thousand dollars (\$5,000). The condition of the bond shall comply with the Oil and Gas Conservation Law and the regulations and orders of the Commission and the Department. (3-29-12)



**04. Newspaper Notice.** Before a geophysical contractor conducts the geophysical operation, the contractor shall publish a legal notice in a newspaper of general circulation in the county where the survey will be conducted. The notice shall state the nature and approximate time period of the seismic operations. These requirements do not apply to operations conducted within a well or conducted by aerial surveys. (3-29-12)

**05. Owner and Occupant Notification.** No entry shall be made by any person to conduct seismic operations, upon the lands where such seismic operations are to be conducted, without the permit holder having first given notice at least thirty (30) calendar days prior to commencement of field seismic operations. (3-29-12)

**a.** The notice shall be in writing and given either personally or by certified United States mail to the following persons: (3-29-12)

**i.** Surface owners reflected in the tax records of the counties where the lands are located, at the mailing addresses identified for such surface owners in such records; (3-29-12)

**ii.** Occupants residing on the lands who are not the surface owners, if it can be reasonably ascertained that there are such occupants; and (3-29-12)

**iii.** Owners or operators of oil and gas wells within the seismic survey area, as reflected in Department records. (3-29-12)

**b.** The notice shall contain the following: (3-29-12)

**i.** Name of the person or entity that is conducting the seismic operations; (3-29-12)

**ii.** Proposed location of the seismic operations; and (3-29-12)

**iii.** Approximate date the person or entity proposes to commence seismic operations. (3-29-12)

**06. Department Notifications.** (3-29-12)

**a.** The permit holder shall also notify the Department within five (5) business days of the commencement and completion of each seismic operation. (3-29-12)

**b.** Before beginning geophysical operations other than seismic operations, the geophysical contractor shall file a notice of intention to do so with the Department. Said notice shall describe the geophysical method to be used and be accompanied by a map of a scale of one (1) inch equals two (2) miles showing the location of the project. (3-29-12)

**07. Reports and Notices Required.** (10-21-92)

**a.** Activity Report. Upon completion of the seismic activity or at thirty (30) day intervals after the work has commenced, whichever occurs first, the seismic contractor shall file with the Department a report of the completion or progress of the seismic project. The final completion report shall be in affidavit form and shall include a seven and one-half (7.5) - or fifteen (15) minute United States Geological Survey topographic quadrangle map (at a scale of one (1) inch equals two thousand (2,000) feet or one (1) inch equals four thousand (4,000) feet that shows section, township, and range) and the location of each survey so that the shotholes and other potential impacts can be easily located. The final completion report shall also include a statement that all work has been performed in compliance with the application for a permit to perform seismic activity, ~~Commission Rule 360~~ [Section 100 of these rules](#), and permit provisions. Said maps, applications, and reports shall be kept confidential by the Department for a period of one (1) year from the date of receipt, subject to the needs of the Department to use them to enforce these regulations, the Act, and the orders of the Commission or the Department. Also, the owner of the surface of the land may be advised of the location of seismic lines or seismic holes on his land and of the exploration method used. (3-29-12)( )

**b.** Plugging Notice. Seismic contractors shall give the Department at least twenty-four (24) hours advance notice of shothole plugging operations, provided that notice of plugging operations planned for Sunday or

Monday may be given on the previous Friday. (3-29-12)

**08. Client-Contractor Responsibility.** The client company may be held responsible along with the seismic contractor for conducting the operation in compliance with the Commission's rules and orders, the Department's orders, and the Act for the seismic contractor's failure to comply with such rules, statutes, and orders. The hats used in the plugging of seismic holes shall be imprinted with the name of the contractor responsible for the plugging of the hole. (3-29-12)

**09. Plugging.** Unless the seismic contractor can prove to the satisfaction of the Department that another method will provide better protection to ground water and long-term land stability, seismic shothole operations shall be conducted in the following manner: (3-29-12)

**a.** When water is used in conjunction with the drilling of seismic shotholes and artesian flow is not encountered at the surface, seismic holes are to be filled with a high grade bentonite/water slurry mixture. Said slurry shall have a density that is at least four percent (4%) greater than the density of fresh water; said slurry shall also have a Marsh funnel viscosity of at least sixty (60) seconds per quart. Density and viscosity are to be measured prior to adding cuttings to the slurry. Cuttings not added to the slurry are to be disposed of in accordance with [Subsections Paragraph 360100.09.f.](#) of this rule. Any other suitable plugging material commonly used in the industry may be substituted for the bentonite/water slurry as long as the physical characteristics of said substitute are at least comparable to those of the bentonite/water slurry. Between November 1 and May 1, coarse ground bentonite approved by the Department shall be used as a plugging material. (3-29-12)( )

**b.** The hole will be filled with the slurry from the bottom up to a depth of three (3) feet (three (3) feet below ground level). A nonmetallic plug will be set at this depth of three (3) feet, and the remaining hole will be filled and tamped to the surface with cuttings and native soil. (10-21-92)

**c.** When drilling with air and nonartesian water is encountered, the hole shall be plugged with the slurry mixture, or coarse ground bentonite, as specified in [Subsections Paragraph 360100.09.a.](#), supra. (3-29-12)( )

**d.** When drilling with air only and in completely dry holes, plugging may be accomplished by returning the cuttings to the hole, tamping the returned cuttings to the above-referenced depth of three (3) feet, and setting the permaplug topped with more cuttings and soil as per [Subsection Paragraph 360100.09.b.](#) above. A small mound will be left over the hole for settling allowance. Auger holes twenty (20) feet or less in depth may be plugged in this same manner. (3-29-12)( )

**e.** The foregoing seismic holes shall be properly plugged and abandoned as soon as practical after the shot has been fired; however, a shot hole shall not be left unplugged for more than thirty (30) days without approval of the Department. (3-29-12)

**f.** Any slurry, drilling fluid, or cuttings which are deposited on the surface around the seismic hole will be raked or otherwise spread out to at least within one (1) inch of the surface, so that the growth of the natural grasses or foliage will not be impaired. (10-21-92)

**g.** The requirements of Paragraphs [360100.09.a.](#) through [360100.09.f.](#) of this rule may be modified by any reasonable written agreement between the seismic company and the surface owner. (3-29-12)( )

**h.** If artesian flow (water flowing at the surface) is encountered in the drilling of any seismic hole, cement will be used to seal off the water flow thereby preventing cross-flow, erosion, and/or contamination of freshwater supplies. Said holes shall be cemented immediately. (3-29-12)

**i.** After completing the plugging of seismic shot holes and spreading the cuttings as required by this rule, the seismic contractor shall record the GPS location of the seismic hole, and the contractor shall provide the location data to the Department. (3-29-12)

**10. Forfeiture of Geophysical Exploration Bond.** The Department may forfeit the bond submitted under Subsection [360100.03](#) of this rule upon failure of the owner or operator to conduct the seismic survey and

complete reclamation in conformance with Section ~~360~~100 of this rule. The owner or operator will be given an opportunity to address compliance issues prior to the Department taking action against the bond. (~~3-29-12~~)( )

101. -- ~~104.~~ (RESERVED)

*[Codified Section 105 is being moved and renumbered to Section 320.]*

~~106.~~—109. (RESERVED)

*[Codified Section 110 is being moved and renumbered to Section 033.]*

~~075~~110. SURFACE OWNER PROTECTIONS.

**01. Surface Use Agreement.** If the mineral estate has been severed from the surface estate where an oil or gas well is to be located, the owner or operator shall attempt a good faith negotiation of a surface use agreement with the surface owner. The surface use agreement must address how the surface owner will be compensated for lost agricultural income and lost value of improvements directly caused by oil and gas exploration and production. The owner or operator may rely on the tax records of the respective county assessor to identify the surface owner. (3-29-12)

**02. Surface Owner Notification.** If a surface use agreement cannot be negotiated, then the owner or operator must notify the surface owner of the intent to drill by certified mail at least sixty (60) days prior to the commencement of surface disturbing activities, unless otherwise agreed to by the surface owner. The notification must include a proposed surface use bond amount, and a copy must be sent to the Department. (3-29-12)

**03. Surface Owner Objection.** If the surface owner disagrees with the owner's or operator's proposed surface use bond amount, the surface owner must send a written objection to the Department within thirty (30) days of receiving the notification from the owner or operator. The objection must contain the owner's or operator's proposed surface use bond amount. Any objection filed will not delay the owner's or operator's proposed start of surface disturbing activities. (3-29-12)

**04. Surface Use Bond.** The minimum surface use bond in all instances with no surface use agreement will be five thousand dollars (\$5,000), and will be paid in cash to the Department. If the surface owner objects to the owner's or operator's proposed bond amount, the Department will determine a surface use bond based on the information received from both the owner or operator and the surface owner. The Department will then request that the owner or operator submit this bond. The Department may issue the permit and authorize the commencement of drilling operations after this bond has been received. The purpose of this bond is to safeguard the surface owner's loss of agricultural income and improvement values pending the results of a hearing on the final bond. (3-29-12)

**05. Hearing to Determine Surface Use Bond.** When the owner, operator, or surface owner objects to the Department's proposed surface use bond, a hearing will be scheduled as soon as possible to determine the final bond amount. The owner, operator, surface owner, and Department may offer testimony to the hearing officer. The hearing officer will recommend a final bond amount to the Commission. After the Commission's final order, the owner or operator and surface owner will have twenty-eight (28) days to file a request for judicial review. (3-29-12)

**06. Release of Surface Use Bond.** The Department will hold the bond pending either a surface use agreement between the two (2) parties that negates the need for a surface use bond, or reclamation of the surface disturbance. (3-29-12)

**07. Forfeiture of Surface Use Bond.** The Department may forfeit this bond upon failure of the owner or operator to reclaim the disturbed area in a timely manner, or upon failure of the parties to reach a surface use agreement, upon the completion of drilling operations. (3-29-12)

111. -- ~~124~~19. (RESERVED)

~~330~~120. WELL SPACING.

In the absence of an order by the Commission setting spacing units for a pool, or a unit operation as described in

Section ~~31~~140, the following rules shall apply:

~~(3-29-12)~~( )

**01. Wells Drilled for Oil; Standard Spacing Unit and Well Location.** Every well drilled for oil must be located in the center of a forty (40) acre governmental quarter quarter section, lot or tract, or combination of lots or tracts substantially equivalent thereto as shown by the most recent governmental survey, with a tolerance of two hundred (200) feet in any direction from the center location; provided that no oil well shall be drilled less than nine hundred twenty (920) feet from any other well drilling to or capable of producing oil from the same pool, or no oil well shall be completed in a known pool unless it is located more than nine hundred twenty (920) feet from any other well completed in and capable of producing oil from the same pool. (10-21-92)

**02. Wells Drilled for Gas; Standard Spacing Unit and Well Location.** Every well drilled for gas must be located on a drilling unit consisting of approximately six hundred forty (640) contiguous surface acres, which shall be one governmental section or lot(s) equivalent thereto, upon which there is not located, and of which no part is attributed to, any other well completed in or drilling to the same pool. In areas not covered by United States Public Land Surveys, such drilling unit shall consist of an area which is: 1) bounded by four (4) sides intersecting at angles of not less than eighty five (85) degrees or more than ninety five (95) degrees; 2) the distance between two (2) points farthest apart thereon shall not exceed eight thousand five hundred (8,500) feet; and 3) shall contain at least six hundred (600) contiguous surface acres. In areas covered by United States Public Land Surveys, such drilling unit shall consist of one governmental section containing not less than six hundred (600) surface acres. ~~Each well drilled for gas shall be located within a square, each side of which is one thousand six hundred sixty (1,660) feet in length and parallel to a center line of the section. The center of such square shall coincide with the geometric center of the section.~~ A gas well must have a minimum setback of three hundred thirty (330) feet from the governmental section line. (10-21-92)( )

**03. Well Locations Adjacent to Spaced Areas.** The Commission shall have the discretion to determine the pattern location of wells adjacent to an area spaced by the Commission, or under application for spacing where there is sufficient evidence to indicate that the pool or reservoir spaced or about to be spaced may extend beyond the boundary of the spacing order or application, and the uniformity of spacing patterns is necessary to insure orderly development of the reservoir pool. (10-21-92)

**04. Exceptions to Location of Wells and Well-Spacing Orders.** Upon proper application therefore, the Department may approve, as an administrative matter, an exception to Subsections ~~330~~120.01 and ~~330~~120.02 or any order of the Commission establishing well spacing for a pool. The application for an exception shall state fully the reasons why such an exception is necessary or desirable, include the consent of the owners of all drilling units directly or diagonally offsetting the drilling unit for which an exception is requested, and shall be accompanied by a plat showing: ~~(3-29-12)~~( )

a. The location at which an oil or gas well could be drilled in compliance with Subsections ~~330~~120.01 or ~~330~~120.02 or the applicable order; (10-21-92)( )

b. The location at which the applicant requests permission to drill an oil or gas well and the location of the proposed spacing unit; and (10-21-92)( )

c. The location at which oil or gas wells have been drilled or could be drilled, in agreement with Subsections ~~330~~120.01 or ~~330~~120.02 or the applicable order, directly or diagonally offsetting the proposed exception. No exception shall prevent any owner or operator from drilling an oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by Subsections ~~330~~120.01 or ~~330~~120.02 or any applicable order of the Commission establishing oil or gas well-spacing units for the pool involved. ~~(3-29-12)~~( )

**05. Spacing Unit Changes.** The Commission will review applications to change the size or shape of spacing units established by Subsections 120.01 or 120.02 of these rules or an order by the Commission. ( )

*[Codified Section 125 is being moved and renumbered to Section 311.]*

~~126~~1. -- 129. (RESERVED)

*[Codified Section 130 is being moved and renumbered to Section 301.]*

**130. INTEGRATION.**

When two (2) or more separately owned tracts or interests are within a spacing unit, the owners of the tracts or interests may voluntarily integrate their tracts or interests for the development and operation of the spacing unit. In the absence of voluntary integration and upon an application by an owner within a spacing unit, the Commission may, either before or after drilling a well, make an order integrating all tracts or interests within the spacing unit for the development and operation of the spacing unit. ( )

**01. Integration Application Requirements.** Integration applications must be filed with the Commission in hard copy and electronic formats. The application must contain the following information: ( )

**a.** Name and address of the applicant; ( )

**b.** Description of the spacing unit to be integrated; ( )

**c.** Plat of the subject spacing unit identifying the location of the well site, tank battery, gas processing facility, pipelines, roads, and the ownerships of tracts and interests within the spacing unit; ( )

**d.** A geologic statement explaining the likely presence of hydrocarbons; ( )

**e.** A statement of the proposed operations for the spacing unit, including the name and address of the proposed operator; ( )

**f.** A proposed joint operating agreement and a proposed lease form; ( )

**g.** A list of all mineral interest owners in the spacing unit and a list of the owners to be integrated under the application, including names, addresses, and respective acreages within the spacing unit; ( )

**h.** Affidavits indicating that at least fifty-five percent (55%) of the mineral interest owners in the spacing unit support the integration application by leasing or participating as a working interest owner; ( )

**i.** An affidavit stating the highest bonus payment paid to leased mineral interest owners prior to filing the integration application; and ( )

**j.** A resume of efforts documenting the applicant's good faith efforts on at least three (3) separate occasions within a period of time no less than sixty (60) days to inform mineral interest owners of the applicant's intentions to develop the mineral resources in the spacing unit and reach an agreement with owners in the spacing unit. At least one (1) contact must be by certified U.S. mail return receipt requested sent to an owner's last known address. If an owner of a tract cannot be found, the applicant must publish a legal notice in a newspaper in the county where the tract is located. The resume of efforts must show the applicant has exhausted all reasonable efforts to reach an agreement with owners in a spacing unit. ( )

**02. Response to the Application and Hearing.** At the time the integration application is filed with the Commission, the applicant must certify that a copy of the integration application and supporting information was served on all mineral interest owners in the spacing unit to be integrated under the application. The affected mineral interest owners in the spacing unit will have twenty-one (21) days from the date of service of the application to file a response to the application with the Commission. The Commission will schedule a hearing on the application for integration. The applicant will give notice of the hearing to all mineral interest owners in the unit to be integrated under the application in the manner required by Section 47-324(b), Idaho Code. ( )

**131. INTEGRATION ORDERS.**

The Commission will issue an integration order if the Commission approves an application for integration. The integration order will authorize the drilling and operation of a well in a spacing unit, prescribe the time and manner in which all owners in the spacing unit may elect to participate therein, and prescribe the manner for the payment of the costs of drilling and operating the well upon terms that are just and reasonable pursuant to Section 47-322, Idaho Code. ( )

**01. Participation Terms.** Upon issuance of an integration order by the Commission, the operator of the integrated spacing unit must issue an elections form to all non-leased owners in the spacing unit by certified U.S. mail, return receipt requested. The election form must clearly identify the participation terms, the course of action if an owner does not respond to the election form, and a response deadline. The terms in Subsections 131.02, 03, and 04 of these rules are available to non-leased owners in an integrated spacing unit. ( )

**02. Working Interest Owner.** An owner who elects to participate as a working interest owner will pay the proportionate share of the actual costs of drilling and operating a well allocated to the owner's interest in the spacing unit. Prior to the drilling operations, working interest owners who share in the costs of drilling and operating the well are entitled to their respective shares of the production of the well. The operator of the integrated spacing unit and working interest owners must enter into a joint operating agreement approved by the Commission in the integration order. ( )

**03. Nonconsenting Working Interest Owner.** An owner who refuses to share in the risk and actual costs of drilling and operating the well is a nonconsenting working interest owner. Nonconsenting working interest owners are entitled to their respective shares of the production of the well, not to exceed one-eighth (1/8) royalty, until the operator of the integrated spacing unit has recovered up to three hundred percent (300%) of the nonconsenting working interest owner's share of the cost of drilling and operating the well under the terms set forth in the integration order. After all the costs have been recovered by the consenting owners in the spacing unit, the nonconsenting owner owns the proportionate share in the well, surface facilities, and production, and will be liable for further costs as if the nonconsenting owner had originally agreed to pay the costs of drilling and operating the well. The operator of the integrated spacing unit and nonconsenting working interest owners must enter into a joint operating agreement approved by the Commission in the integration order. ( )

**04. Lease.** An owner may enter into a lease with the operator of the integrated spacing unit under the terms and conditions in the integration order. The owner will receive one-eighth (1/8) royalty. The operator of an integrated spacing unit must pay a leasing mineral owner the same bonus payment per acre as the operator originally paid to other owners in the spacing unit prior to the issuance of the integration order. If an owner fails to make an election within the election period set forth in the integration order, such owner's interest will be deemed leased under the terms and conditions in the integration order. ( )

~~134.2.~~ -- 139. (RESERVED)

*[Codified Section 140 is being moved and renumbered to Section 312.]*

~~3140.~~ UNIT OPERATIONS AGREEMENTS.

Any person desiring to obtain the benefits of Section 47-323, Idaho Code, relating to any method of unit, cooperative development, or operation of a field or pool or a part of either, shall file an application with the Department for approval of such agreement which shall have attached a copy of such agreement. Notice of the hearing of such application shall be given by publication of a legal notice in a newspaper of general circulation in Ada County, Idaho, and the county of the unit operation. (~~3-29-12~~)( )

141. -- ~~149.~~ (RESERVED)

*[Codified Section 150 is being moved and renumbered to Section 411.]*

~~151. — 159.~~ (RESERVED)

~~160.~~ FIRE PROTECTION.

~~Dikes or firewalls shall be required where it is deemed necessary by the Department to protect life, health, or property. Such dikes or firewalls must be erected and continuously maintained in good condition around all permanent oil tanks or batteries that are within the corporate limits of any city, town, or village, or where such tanks are closer than one hundred fifty (150) feet to any highway or inhabited dwelling, or closer than one thousand (1,000) feet to any school or church. The capacity of the dike, or firewall, shall be one and one-half (1 1/2) times the capacity of the tank(s) that it surrounds. The reservoir so formed within the dike shall be kept free from vegetation, water, and~~

~~oil.~~

~~(3-29-12)~~

~~161.—169. (RESERVED)~~

*[Codified Section 170 is being moved and renumbered to Section 330.]*

~~171.—179. (RESERVED)~~

*[Codified Section 180 is being moved and renumbered to Section 314.]*

~~181.—189. (RESERVED)~~

*[Codified Section 190 is being moved and renumbered to Section 315.]*

~~191.—199. (RESERVED)~~

### **SUBCHAPTER C - DRILLING, WELL TREATMENT, AND PIT PERMITS**

*[Codified Section 200 is being moved and renumbered to Section 302.]*

#### **050200. PERMIT TO DRILL, DEEPEN, OR PLUG BACK.**

**01. Permits Required.** Prior to the commencement of operations to drill, deepen, or plug back to any source of supply other than the existing producing horizon, application shall be delivered to the Department of intention to drill, deepen, or plug back any well for oil or gas, and approval obtained. (3-29-12)

**02. Fees.** An application fee must accompany each application for permit to drill, deepen, or plug back. No service fee is required for a permit to deepen or plug back in a well for which the fee has been paid for permit to drill unless the drilling permit has expired. (3-29-12)

**03. Time Required to Commence Operations; Term of Permit.** On the first anniversary of the date of issuance of a permit to drill, deepen, or plug back, said permit will expire and be of no further force or effect, unless the work for which the permit was issued has been started. Prior to the anniversary date, the owner or operator may apply for a one-time, six-month extension if work has not started. If conditions have not changed and no changes to the permit are requested, the extension may be approved by the Department. If a permit expires due to the failure to commence operations, then reapplication is required prior to commencing operations. (3-29-12)

**04. Application.** The Application for Permit to Drill shall include a Department approved form and the following: (3-29-12)

**a.** An accurate plat showing the location of the proposed well with reference to the nearest lines of an established public survey. (3-29-12)

**b.** The location of the nearest structure with a water supply, or the nearest water well as shown on the IDWR registry of water rights or well log database. (3-29-12)

**c.** Information on the type of tools to be used and the proposed logging program. (3-29-12)

**d.** Proposed total depth to which the well will be drilled, estimated depth to the top of the important geologic markers, and the estimated depth to the top of the target formations. (3-29-12)

**e.** The proposed casing program, including size and weight thereof, the depth at which each casing type is to be set. (3-29-12)

**f.** The type and amount of cement to be used, and the intervals cemented. (3-29-12)

- g. Information on the drilling plan. (3-29-12)
  - h. Best management practices to be used for erosion and sediment control. (3-29-12)
  - i. Plan for interim reclamation of the drill site after the well is completed, and a plan for final reclamation of the drill site following plugging and abandonment of the well. These plans must contain the information needed to implement reclamation as described in Subsection ~~080310.156~~ and Section ~~32510~~ of these rules. ~~(3-29-12)~~( )
  - j. Applications that include the following actions must also provide the information from the respective Section of these rules: (3-29-12)
    - i. Well treatments require the submittal of the information in Section ~~055210~~. ~~(3-29-12)~~( )
    - ii. Pit construction and use requires the submittal of the information in Section ~~085230~~. ~~(3-29-12)~~( )
    - iii. Directional or horizontal drilling requires the submittal of the information in Section ~~170330~~. ~~(3-29-12)~~( )
  - k. Any other information which may be required by the Department based on site specific reasons. (3-29-12)
- 05. Permit Denial.** Applications may be denied for the following reasons: (3-29-12)
- a. Application fee was not submitted. (3-29-12)
  - b. Application is incomplete. (3-29-12)
  - c. Failure to post required bonds. (3-29-12)
  - d. Proposed well will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. (3-29-12)

**~~201~~. MULTIPLE ZONE COMPLETIONS.**

**01. Requirements of the Owner or Operator; Request for Approval.** A multiple zone completion may be approved by the Department upon application by the owner or operator and payment of an application fee, as herein provided. The application shall be accompanied by an exhibit showing the location of wells on applicant's lease and all offset wells on leases, and shall set forth all material facts involved and the manner and method of completion proposed, including a diagrammatic sketch of the mechanical installation of the proposed well. The application fee may not exceed that required by Subsection ~~050200.02~~ of these rules. Notice of the filing of such application shall be given by the applicant by mailing to each offset operator a notice containing a full description of the proposed completion for which approval is requested, and proof of mailing such notice shall be made by affidavit, which shall be attached to the application showing names and addresses of those to whom notice was mailed. ~~(3-29-12)~~( )

**02. Conditions for Approval; Cause for Hearing.** In the event the Department is in agreement with the application and that no offset operator files a written objection to the application with the Department within fifteen (15) days of the date of the offset operator's receipt of application, the application shall be approved as an amendment to the drilling permit. If any offset operator shall file in writing with the Department an objection to such multiple completion, or if the Department is not in agreement with the application, the matter shall be immediately set for hearing and Notice of Hearing duly given by the Department. (3-29-12)

**03. Zone Effectiveness; Requirement for Production Testing.** The Department may require such tests as necessary to determine the effectiveness of the segregation of the different productive zones. (3-29-12)



04. **Commingling Production.** The Department may require that oil or gas from multiple zones be produced through different sets of tubing, if needed to protect correlative rights or to prevent waste. (3-29-12)

~~2042.~~ -- 209. (RESERVED)

[Codified Section 210 is being moved and renumbered to Section 412.]

~~055~~210. WELL TREATMENTS.

01. **Application Required.** An Application for Permit to Drill required by Section ~~050~~200 must include any plans for well treatment if they are known before the well is drilled. If well treatments are not covered in the original drilling permit, then an application to amend the permit must be made to the Department with an application fee. Approval by the Department is required prior to the well treatments being implemented. Actions to clean the casing or perforations not in excess of pressures sufficient to overcome the fracture gradient in the surrounding formation are not considered to be well treatments, but ~~a notice to operators must notify~~ the Department ~~as described in Section 350 of these rules is still required~~ when such actions occur. Applications for well treatments must include the permit number, well name, well location, as-built description if drilling has been completed, and the following: ~~(3-29-12)~~( )

- a. Depth to perforations or the openhole interval; (3-29-12)
- b. The source of water or type of base fluid; (3-29-12)
- c. Additives, meaning any substance or any combination of substances including proppant, having a specified purpose that is combined with base treatment fluid by trade name, if available, and MSDS for each additive; (3-29-12)
- d. Type of proppant(s); (3-29-12)
- e. Anticipated percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s); (3-29-12)
- f. Estimated pump pressures; (3-29-12)
- g. Method and timeline for the management, storage, and disposal of well treatment fluids, including anticipated disposal site of treatment fluids or plans for reuse; (3-29-12)
- h. Size and design of storage pits, if proposed, in conformance with Section ~~085~~230 of these rules; ~~(3-29-12)~~( )
- i. Information specific to hydraulic fracturing as described in Section ~~056~~211 of these rules; ~~(3-29-12)~~( )
- j. Summary identifying all water bearing zones from the surface down to the bottom of the well; (3-29-12)
- k. Fresh water protection plan that describes the proposed site specific measures to protect water quality from activities associated with well treatments. The Department will review this plan in consultation with the IDEQ. The Fresh Water Protection Plan shall include the following information: (3-29-12)
  - i. Ground water and storm water best management practices; (3-29-12)
  - ii. Statement certifying that the owner or operator is complying with Spill Prevention, Control, and Countermeasures (SPCC) requirements administered by the EPA; (3-29-12)
  - iii. A preconstruction topographic site map or aerial photos identifying all habitable structures, wells,

perennial and intermittent springs, surface waters, and irrigation ditches within one-quarter (1/4) mile of the oil or gas well. The distance or location may be changed based on site specific factors such as horizontal drilling, the expected length of fractures, or lack of suitable water sample locations within one-quarter (1/4) mile; (3-29-12)

iv. A brief description of the structural geology that may influence ground water flow and direction; (3-29-12)  
and

v. The general hydrogeological characteristics of the treatment area and surrounding land. (3-29-12)

**l.** Certification by the owner or operator that all aspects of the well construction, including the suitability and integrity of the cement used to seal the well, are designed to meet the requirements of proposed well treatments; (3-29-12)

**m.** Affidavit signed by the owner or operator stating that all home owners and water well owners within one-quarter (1/4) mile of the oil or gas well, and all owners of a public drinking water system that have a IDEQ recognized source water assessment or protection area within one-quarter (1/4) mile of the oil or gas well, have been notified of the proposed treatment. If a well deviates from the vertical, these surface distances will be from the entire length of the wellbore from the surface to total depth. The notification will also offer an opportunity to have the owner or operator sample and test the water, at the owner or operator's cost, prior to and after the oil or gas well being treated. Notification shall be by certified mail to the surface owner as identified by the county assessor's records, or to the well owner as identified on the IDWR registry of water rights or well log database; (3-29-12)

**n.** Proof of publication in a newspaper of general circulation in the county where the well is located of a legal notice briefly describing the well treatment to be performed. Notice shall also advise all water well or public drinking water system owners, as described in ~~p~~Paragraph ~~055210.01~~.m. of these rules, of the opportunity to have their water tested at the owner's or operator's cost before and after the well treatment; and ~~(3-29-12)~~( )

**o.** Additional information as required by the Department. (3-29-12)

**02. Master Drilling/Treatment Plans.** Where multiple stimulation activities will be undertaken for several wells proposed to be drilled in the same field within an area of geologic similarity, approval may be sought from the Department for a comprehensive master drilling/treatment plan containing the information required. The approved master drilling/treatment plan must then be referenced on each individual well's Application for Permit to Drill. (3-29-12)

**03. Application Denial.** The Department may deny well treatment applications for one (1) or more of the following reasons: (3-29-12)

**a.** Application does not contain the information in Subsection ~~055210.01~~ of these rules; ~~(3-29-12)~~( )

**b.** Application fee was not submitted. (3-29-12)

**c.** Proposed treatment will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. (3-29-12)

**04. Time Limit.** If a treatment approved in a drilling permit or amended drilling permit is not started within one (1) year of the approval of the well treatment, the well treatment permit will expire and reapplication will be required prior to conducting the well treatment. Prior to the anniversary date, the owner or operator may apply for a six-month ~~(6)~~ extension. If conditions have not changed, and no changes to the permit are requested, the extension may be approved by the Department. (3-29-12)

**05. Inspections.** The Department may conduct inspections prior, during, and after well treatments. (3-29-12)

**06. Reporting Requirements.** A report on the well treatment must be submitted within thirty (30) days of the treatment. The report shall present a detailed account of the work done and the manner in which such work was

performed, including: (3-29-12)

- a. The daily production of oil, gas, and water both prior to and after the operation. (3-29-12)
- b. The size and depth of perforations. (3-29-12)
- c. Percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s). This requirement can be met by the submittal of well completion field tickets if they contain this information. (3-29-12)

d. Documentation demonstrating the chemicals used in the well treatment have been reported to the website [www.fracfocus.org](http://www.fracfocus.org), its successor website, or another publicly accessible database approved by the Department. The chemical information must be reported in a systems approach. ( )

de. Information specific to hydraulic fracturing, as described in Section ~~056~~211 of these rules. ~~(3-29-12)~~( )

ef. Static pressure testing results before and after the well treatment. (3-29-12)

fg. The amounts, handling, and if necessary, disposal at an identified appropriate disposal facility, or reuse of the well stimulation fluid load recovered during flow back, swabbing, and/or recovery from production facility vessels. Reporting of recovered fluids shall be included with other monthly production reports required by the Department. Storage of such fluid shall be protective of ground water as demonstrated by the use of either tanks or authorized lined pits as described in Section ~~085~~230 of these rules. ~~(3-29-12)~~( )

gh. Any other information related to operations which alter the performance or characteristics of the well. (3-29-12)

**07. Fresh Water Protections for Well Treatments.** (3-29-12)

a. The Department will not authorize pits, lagoons, ponds, or other methods of subsurface storage for treatment fluids within IDEQ recognized source water assessment or protection areas for public drinking water systems. Owners or operators must store and transport treatment fluids using above ground storage facilities and tanker trucks for well treatments in these locations. (3-29-12)

b. The Department will not authorize well treatments to create fractures within five hundred (500) vertical feet above or below fresh water aquifers. ~~(3-29-12)~~( )

c. The Department shall require the owner or operator to complete fresh water monitoring at the owner's or operator's cost before and after a well treatment unless the Department, in consultation with the IDEQ, determines that the proposed treatment does not pose a threat of pollution to fresh waters. The Department will review and approve all monitoring proposals with the IDEQ. The monitoring will be done using representative existing water wells or surface waters within one-quarter (1/4) horizontal mile of the treated well. For wells that deviate from the vertical, sampling may be required within one-quarter (1/4) horizontal mile of the wellbore's projected location on the surface. If no water wells or surface waters are present in this area, the sampling area may be enlarged as needed with approval by the Department. If the Department determines that existing water wells are not representative of the ground waters that could be impacted, then the Department may require the owner or operator to install one (1) or more ground water monitoring wells at the owner's or operator's cost. The owner or operator must obtain consent from appropriate property owners to gain access prior to any sampling or well construction. When monitoring is required by the Department, the operator will prepare a monitoring plan that includes the following: (3-29-12)

i. Location of proposed monitoring sites; (3-29-12)

ii. Construction details of any sampled or constructed wells including total well depth, depth of screened interval(s), screen size, and drilling log. For existing wells, the operator must make every reasonable attempt to locate this information; (3-29-12)

- iii. When possible, data from the existing wells collected within the last five (5) years and analyzed in a state or EPA certified drinking water lab; (3-29-12)
  - iv. List of proposed analytes, testing methods, and their detection limits; (3-29-12)
  - v. Additional tests such as stable isotopic analysis; and (3-29-12)
  - vi. Pre-treatment sampling and analysis when no relevant data exists, and a schedule for post-treatment sampling and analysis. (3-29-12)
- d.** The owner or operator will provide the Department with copies of any analysis or reports within thirty (30) days of samples being taken. All samples must be analyzed in a state or EPA certified drinking water lab. (3-29-12)
- e.** Pollution of fresh water supplies due to a well treatment is a violation of these rules and Title 47, Chapter 3, Idaho Code. (3-29-12)

**~~056~~211. HYDRAULIC FRACTURING.**

**01. Application Requirements.** In addition to the information required by Subsection ~~055~~210.01 of this rule, the owner or operator shall provide the following application information regarding hydraulic fracturing: ~~(3-29-12)~~( )

- a.** The geological names and descriptions of the formation into which well stimulation fluids are to be injected; (3-29-12)
- b.** Detailed information on the base stimulation fluid source. For each stage of the well stimulation program, provide the chemical additives and proppants and concentrations or rates proposed to be mixed and injected, including: (3-29-12)
  - i. Stimulation fluid identified by additive type (such as but not limited to acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, surfactant); (3-29-12)
  - ii. The chemical compound name and Chemical Abstracts Service (CAS) number as found on the previously submitted MSDS shall be identified (such as the additive biocide is glutaraldehyde, or the additive breaker is ammonium persulfate, or the proppant is silica or quartz sand, and so on for each additive used); (3-29-12)
  - iii. The proposed rate or concentration for each additive and the total volume of each shall be provided (such as gel as pounds per thousand gallons, or biocide at gallons per thousand gallons, or proppant at pounds per gallon, or expressed as percent by weight or percent by volume, or parts per million, or parts per billion); and (3-29-12)
  - iv. The formulary disclosure of the chemical compounds used in the well stimulation(s) for the purpose of protecting public health and safety. (3-29-12)
- c.** A detailed description of the proposed well stimulation design that shall include: (3-29-12)
  - i. The anticipated surface treating pressure range; (3-29-12)
  - ii. The maximum injection treating pressure, which shall be within accepted safety limits. Accepted safety limits are generally eighty percent (80%) of the maximum pressure rating of the pressurized system; ~~(3-29-12)~~( )
  - iii. The estimated or calculated fracture height in both the horizontal and vertical directions. (3-29-12)

**02. Volatile Organic Compounds and Petroleum Distillates.** The injection of volatile organic compounds, such as benzene, toluene, ethyl benzene and xylene, also known as BTEX compounds, or any petroleum distillates into ground water in excess of the applicable ground water quality standards is prohibited. Volatile organic compounds or petroleum distillates may be appropriate as additives, but they are not appropriate for use as the base fluids. The proposed use of volatile organic compounds or any petroleum distillates for well stimulation into hydrocarbon bearing zones may be authorized with prior approval of the director. Water that is produced with oil and gas, and which may contain small amounts of naturally occurring volatile organic compounds or petroleum distillates, may be used as well stimulation fluid in hydrocarbon bearing zones. (3-29-12)

**03. Well Integrity.** Prior to the well stimulation, the owner or operator will perform a suitable mechanical integrity test of the casing or of the casing-tubing annulus or other mechanical integrity test methods and submit an affidavit certifying that the well was tested in anticipation of proposed treatment pressures. The owner or operator will notify the Department of this test twelve (12) to twenty-four (24) hours in advance. (3-29-12)

**04. Pressure Monitoring.** During the well stimulation operation, the owner or operator shall monitor and record the annulus pressure at the casinghead. If intermediate casing has been set on the well being stimulated, the pressure in the annulus between the intermediate casing and the production casing shall also be monitored and recorded. If the annulus pressure increases by more than five hundred (500) psi gauge as compared to the pressure immediately preceding the stimulation, the owner or operator shall verbally notify the Department as soon as practicable but no later than twenty-four (24) hours following the incident. (3-29-12)

**05. Post Treatment Report.** In addition to the information required by Subsection ~~055210~~ 06 of this rule, the owner or operator shall provide the following post-treatment reporting: ~~(3-29-12)~~( )

- a. The actual total well stimulation treatment volume pumped; (3-29-12)
- b. The actual surface pressure and rate at the end of each fluid stage and the actual flush volume, rate and final pump pressure; (3-29-12)
- c. The instantaneous shut-in pressure, and the actual fifteen (15) minute and thirty (30) minute shut-in pressures when these pressure measurements are available; (3-29-12)
- d. A continuous record of the annulus pressure during the well stimulation; (3-29-12)
- e. A copy of the well stimulation service contractor's job log, without any cost/pricing data from the field ticket, in lieu of paragraphs (a) through (d) above. If the job log does not contain all the needed information, it must be supplemented with additional information needed to satisfy ~~p~~ Paragraphs ~~056211~~ 05.a. through ~~056211~~ 05.d. of this rule. ~~(3-29-12)~~( )
- f. A report containing all details pertaining to any annulus pressure increases of more than five hundred (500) psi gauge as described in Subsection ~~056211~~ 04 of this rule. The report shall include corrective actions taken, if necessary. ~~(3-29-12)~~( )
- g. Results of post treatment fluid analysis used to help determine where the fluid can be disposed. (3-29-12)

~~2142~~ -- 219. (RESERVED)

*[Codified Section 220 is being moved and renumbered to Section 201.]*

~~070220~~. BONDING.

**01. Individual Bond.** The Department shall, except as hereinafter provided, require from the owner or operator a good and sufficient bond in the sum of not less than ten thousand dollars (\$10,000) plus one dollar (\$1) for each foot of planned well length in favor of the Department. The bond shall be conditioned upon the performance of the owner's or operator's duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas and the reclamation of

surface disturbance associated with these activities. Said bond shall remain in force and effect until the plugging of said well is approved by the Department and the well site is reclaimed as described in Section ~~325~~<sup>10</sup> of these rules, or the bond is released by the Department. ~~(3-29-12)~~( )

**02. Blanket Bond.** In lieu of the bond in Subsection ~~070~~<sup>220</sup>.01 of this rule, any owner or operator may file with the Department a good and sufficient blanket bond covering all active wells drilled or to be drilled in the state of Idaho. ~~The bond(s) herein before referred to shall be by a corporate surety authorized to do business in the state of Idaho or in cash.~~ The amount of the blanket bond will be as follows according to the number of active wells covered by the bond: ~~(3-29-12)~~( )

- a. Up to ten (10) wells, fifty thousand dollars (\$50,000); (3-29-12)
- b. Eleven (11) to thirty (30) wells, one hundred thousand dollars (\$100,000); or (3-29-12)
- c. More than thirty (30) wells, one hundred fifty thousand dollars (\$150,000). (3-29-12)

**03. Inactive Well Bond.** An owner or operator must provide the Department with a bond of at least ten thousand dollars (\$10,000) plus ~~one~~ <sup>one</sup> ~~eight~~ <sup>eight</sup> dollars (~~\$7~~<sup>\$8</sup>) for each foot of planned well length for each inactive well conditioned upon the performance of the duty to comply with the requirements of the Act and the rules of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas. Said bond shall remain in force and effect until the plugging of said well is approved by the Department, or the bond is released by the Department. Inactive wells may not be covered by a blanket bond as provided in Subsection ~~070~~<sup>220</sup>.02 of this rule. ~~(3-29-12)~~( )

**04. Additional Bonding.** The Department may impose additional bonding on an owner or operator given sufficient reason, such as non-compliance, unusual conditions, horizontal drilling, or other circumstances that suggest a particular well or group of wells has potential risk or liability in excess of that normally expected. The owner or operator may request a hearing to appeal either the decision to impose an additional bond or the proposed amount of the bond. (3-29-12)

**05. Authorized Bonds.** The bond(s) referred to in Section 220 must be by a corporate surety authorized to do business in the state of Idaho or in cash. If cash is used to satisfy the bonding requirements in these rules, interest on the cash will be allocated to the general fund. ( )

~~060~~<sup>221</sup>. **TRANSFER OF DRILLING PERMITS.**

No person to whom a permit has been issued shall transfer the permit to any other location or to any other person until the following requirements have been complied with: (10-21-92)

**01. Prior to Drilling Well.** If, prior to the drilling of a well, the person to whom the permit was originally issued desires to change the location, he shall submit a letter so stating and another application properly filled out showing the new location. Drilling shall not be started until the transfer has been approved and the new permit posted at the new location. (3-29-12)

**02. During Drilling or After Completion.** If, while a well is being drilled or after it has been completed, the person to whom the permit was originally issued disposes of his interest in the well, he shall submit a written statement to the Department setting forth the facts and requesting that the permit be transferred to the person who has acquired the well. (3-29-12)

**03. Terms for Acceptance of Transfer.** Before the transfer of a drilling permit shall be recognized, the person who has acquired the well must submit a written statement setting forth that he has acquired such well and assumes full responsibility for its operation and abandonment in conformity with the law, rules, regulations, and orders issued by the Commission. If bond is required to guarantee compliance with the rules and regulations of the Commission, the person acquiring such well shall furnish bond. (3-29-12)

~~224~~<sup>2</sup>. -- 229. (RESERVED)

*[Codified Section 230 is being moved and renumbered to Section 313.]*

~~085230~~. PIT REQUIREMENTS.

**01. Plans Required.** If pits are proposed to be constructed in connection with another permit application required by these rules, then the owner or operator must include plans for pit construction in the application. If a pit is needed after the other permits have been approved, then an application to amend the permit must be made to the Department with an application fee. Approval by the Department is required prior to the pit being constructed unless the pit is necessary for an emergency action. Pit applications must include the permit number, well name, well location, as-built description if drilling has been completed, proposed pit location, and plans for pit construction, operation, and reclamation. (3-29-12)

**02. Location.** (3-29-12)

**a.** Pits must be located where they are structurally sound and the liner systems can be adequately protected against factors such as wild fires, floods, landslides, surface and ground water systems, equipment operation, and public access. (3-29-12)

**b.** Pits located in a one hundred-year floodplain must be in conformance with any applicable floodplain ordinances pertaining to activities within the one hundred-year floodplain. (3-29-12)

**c.** Pits shall not be located within an IDEQ recognized source water assessment or protection areas for public drinking water systems. (3-29-12)

**03. Site Preparation.** All sites must be properly prepared prior to pit construction. Vegetation, roots, brush, large woody debris and other deleterious materials, topsoil, historic foundations and plumbing, or other materials that may adversely affect appropriate construction, must be removed from the footprint of the pit unless approved by the Department. (3-29-12)

**04. Pit Sizing Criteria.** (3-29-12)

**a.** Pits that have constructed berms ten (10) or more feet in height or hold fifty (50) acre-feet or more of fluid must also comply with the dam safety requirements of IDAPA 37.03.06, "Safety of Dams Rules." (3-29-12)

**b.** Pits must be designed to hold the maximum volume of fluids being used for drilling or well treatment and the volume of water associated with a one hundred-year, twenty-four-hour precipitation event. (3-29-12)

**c.** Snowmelt events shall be considered in determining the containment capacity. (3-29-12)

**d.** Pits that are left over winter must be able to contain one hundred twenty-five percent (125%) of the average annual precipitation that falls from October through May. (3-29-12)

**e.** Pits must be designed to maintain a minimum two (2) foot freeboard at all times. Contingency plans for managing excesses of fluids shall be described in the application. At no time shall fluids in a pit be allowed to escape from the impoundment. (3-29-12)

**05. Minimum Plans and Specifications for Reserve, Well Treatment, and Other Short Term Pits.** Pits used for one (1) year or less, not including extensions, are short term pits. Construction plans and specifications for short term pits must include the requirements under Subsections ~~085230~~.02 through ~~085230~~.04 of this rule and the following: (~~3-29-12~~)(    )

**a.** A prepared subbase, which shall be free of plus three (3) inch rocks, roots, brush, trash, debris or other deleterious materials, and compacted to ninety-five percent (95%) of Standard Proctor Test ASTM D698-07e1 or ninety-five percent (95%) of Modified Proctor Test ASTM D1557-09; (3-29-12)

**b.** Slopes of two (2) feet horizontal to one (1) foot vertical (2H:1V) or flatter for all interior and exterior pit walls. The top of a bermed pit wall must be a minimum of two (2) feet wide; (3-29-12)

**c.** A primary liner system consisting of a synthetic liner of at least twenty (20) mils thickness and constructed according to manufacturers' standards with at least four (4) inches of welded seam overlap and complete coverage on the floor and inside walls of the pit. Seams must run parallel to the line of maximum slope so they do not traverse across the slope. The liner edges shall be anchored in a compacted earth filled trench at least eighteen (18) inches in depth. The liner must be protected against cracking, sun damage, ice, frost penetration or heaving, wildlife and wildfires, and damage that may be caused by personnel or equipment operating in or around these facilities. Liner compatibility shall comply with EPA SW-846 method 9090A. Alternative liner systems with similar standards may be proposed by the owner or operator and approved at the Department's discretion; (3-29-12)

**d.** Minimum factors of safety, and the logic behind their selection, for the stability of the earthworks and the lining system of the pit; (3-29-12)

**e.** Site-specific methods for excluding people, terrestrial animals, and avian wildlife from the pits; (3-29-12)

**f.** Segregation and stockpiling of topsoil in a manner that will support reestablishment of the pre-disturbance land use after pit closure; and (3-29-12)

**g.** A closure plan including the following: (3-29-12)

**i.** Testing of residual fluids and any accumulated solids, if anything other than water based drilling fluid was placed in the pit; (3-29-12)

**ii.** Plans for removal and disposal of residual fluids and accumulated solids, with the liner material, at an appropriate facility; (3-29-12)

**iii.** Regrading plan, replacement of topsoil, and erosion control measures; and (3-29-12)

**iv.** Reseeding and Revegetation. (3-29-12)

**06. Minimum Plans and Specifications for Long Term Pits.** Pits used for more than one (1) year, not including extensions, are long term pits. Construction plans and specifications for long term pits must include the requirements under Subsections ~~085230.02~~ through ~~085230.05~~ of this rule and the following: (~~3-29-12~~)(    )

**a.** A quality control/quality assurance construction and installation plan; (3-29-12)

**b.** Type of fluids to be contained in the pit; (3-29-12)

**c.** Secondary containment synthetic liners, which shall have a minimum thickness of sixty (60) mils consisting of HDPE and a maximum coefficient of permeability of  $10^{-9}$  cm/sec, or comparable liners approved by the Department; (3-29-12)

**d.** Leak detection and collection systems. The plans and specifications shall: (3-29-12)

**i.** Provide a material between primary and secondary containment synthetic liners to collect, transport and remove all fluids that pass through the primary containment synthetic liner at such a rate as to prevent hydraulic head from developing on the secondary containment synthetic liner to the level at which it may be reasonably expected to result in discharges through the secondary containment synthetic liner; (3-29-12)

**ii.** Provide routines and schedules for the evaluation of the efficiency and effectiveness of the removal of fluids from the layer placed between primary and secondary containment synthetic liners. The properly working system shall continually relieve head pressures on the secondary containment synthetic liner; (3-29-12)

**iii.** Provide specific triggers for maintenance routines, which shall be initiated in response to inadequate performance of primary or secondary containment synthetic liners; and (3-29-12)



iv. Specify operation and maintenance procedures, which shall be initiated in response to inadequate performance of primary and secondary containment or leak detection and collection systems. (3-29-12)

e. All piping, including that contained in the leak detection and collection system, shall have a minimum wall thickness of ~~PVC~~ ~~§~~Schedule 80 and be designed to: ~~(3-29-12)~~( )

i. Withstand chemical attack from oil field waste or leachate; (3-29-12)

ii. Withstand structural loading from stresses and disturbances from cover materials or equipment operation; and (3-29-12)

iii. Facilitate clean-out and maintenance. (3-29-12)

f. Protections for the liner from excessive hydrostatic force or mechanical damage at the point of discharge into, or suction from, the pit. External discharge or suction lines shall not penetrate the liner; (3-29-12)

g. Plans for erosion control during and immediately following construction; and (3-29-12)

h. Operating and maintenance plans. (3-29-12)

**07. Time Limits for Short Term Pits.** Reserve, well treatment, and other short term pits must be closed out and reclaimed within one (1) year of being constructed. The owner or operator may request a one-time extension for up to six (6) months. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for ensuring that the pit is adequately monitored and maintained. (3-29-12)

a. Fluids may be left in a pit for up to six (6) months after the associated well activities are conducted. The owner or operator may request a one-time extension for up to one (1) year. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for keeping the fluids in a usable state. (3-29-12)

b. Notwithstanding the above time limits, the owner or operator may request additional time based upon conditions wholly outside of the owner's or operator's control including, but not limited to, governmental lease requirements and delays related to difficult drilling conditions. The Department may impose additional construction or monitoring requirements prior to granting additional time. (3-29-12)

**08. Emergency Pits.** Pits constructed during an emergency situation may be approved by an after-the-fact application submitted to the Department. The requirements in Subsections ~~085230.02~~ through ~~085230.05~~ of this rule shall apply, and the pit must be closed out and reclaimed within six (6) months of being constructed. The Department must be notified within twenty-four (24) hours of an emergency situation requiring an emergency pit. ~~(3-29-12)~~( )

**09. Operating Requirements.** (3-29-12)

a. Waste oil, hydraulic fluid, transmission fluids, trash, or any other miscellaneous waste products must not be disposed of in a pit. Placement of these materials into a pit may result in the creation of a mixed waste that requires handling and disposal as a hazardous waste. (3-29-12)

b. If a pit liner's integrity is compromised, or if any penetration of the liner occurs above the liquid's surface, then the owner or operator shall notify the appropriate Department area office within forty-eight (48) hours of the discovery and repair the damage or replace the liner. (3-29-12)

c. If a pit or closed-loop system develops a leak, or if any penetration of the pit liner occurs below the liquid's surface, then the owner or operator shall remove all liquid above the damage or leak line within forty-eight (48) hours, notify the appropriate Department area office within forty-eight (48) hours of the discovery, and repair the damage or replace the pit liner. (3-29-12)

d. The owner or operator shall install, or maintain on site, an oil absorbent boom or other device to contain and remove oil from a pit's surface. Visible oil must be removed from short term pits immediately following

the cessation of activity for which the pit was constructed. Visible oil must be removed from long term pits as soon as it is discovered. (3-29-12)

**10. Closure of Pits.** (3-29-12)

**a.** The owner or operator shall remove all liquids from the pit prior to closure and dispose of them at an appropriate facility or reuse them at a different location. If the nature of the fluids has substantially altered during their use, then the fluids must be sampled and tested to determine which disposal facility can accept them. (3-29-12)

**b.** Any solids that have been accumulated in the bottom of the pit will be tested to determine which disposal facility can accept the material. The solid material and liner will then be removed and disposed of at an appropriate facility. (3-29-12)

**c.** The owner or operator must notify the Department at least forty-eight (48) hours prior to removal of the pit liner so an inspection may be conducted. (3-29-12)

**d.** The pit foundation will be inspected for signs of leakage. If evidence of leakage is observed, the owner or operator must contact the Department and the IDEQ within twenty-four (24) hours and report the type of fluids released and the estimated extent of release. The owner or operator must then remediate the site in conformance with the applicable standards administered by IDEQ in IDAPA 58.01.02, "Water Quality Standards," Sections 850 through 852. (3-29-12)

**e.** After addressing any pit leakage concerns, the owner or operator shall perform the activities described in Subsections ~~325~~510.04 through ~~325~~510.08 of these rules. (~~3-29-12~~)(    )

**11. Condemnation Due to Improper Impoundment.** The Department shall have authority to condemn any pit that does not properly impound fluids and order the disposal of such fluids in conformance with IDAPA 58.01.16, "Wastewater Rules," and other applicable rules. (3-29-12)

~~231. -- 249.~~ (RESERVED)

*[Codified Section 250 is being moved and renumbered to Section 021.]*

~~251. — 254.~~ (RESERVED)

*[Codified Section 255 is being moved and renumbered to Section 410.]*

~~256. — 259.~~ (RESERVED)

*[Codified Section 260 is being moved and renumbered to Section 401.]*

~~261. — 269.~~ (RESERVED)

*[Codified Section 270 is being moved and renumbered to Section 402.]*

~~271. — 279.~~ (RESERVED)

*[Codified Section 280 is being moved and renumbered to Section 404.]*

~~281. — 289.~~ (RESERVED)

*[Codified Section 290 is being moved and renumbered to Section 405.]*

~~291. — 299.~~ (RESERVED)

**SUBCHAPTER D - WELL SITES AND DRILLING**

*[Codified Section 300 is being moved and renumbered to Section 413.]*

**300. IDENTIFICATION OF WELLS.**

**01. Signs; Lease Access Roads.** To identify all producing leases the owner or operator thereof shall cause a sign to be placed where the principal lease road enters the lease and such sign shall show the name of the lease and the owner or operator thereof and the section, township, and range. (10-21-92)

**02. Signs; Well Sites.** ~~A legible numeral shall be attached to or painted on~~ Prior to spud activity, a legible sign must be placed near the well to identify the operator, permit number, well number, name, and emergency telephone number. If a multiple completion, each well head connection shall be identified. ~~(10-21-92)~~( )

**301. FIRE HAZARD WELL SITE OPERATIONS.**

The owner or operator must conduct all operations and maintain the well site at all times in a safe and workmanlike manner. Best management practices and good housekeeping practices must be used at well sites. ( )

**01. Fencing.** Within sixty (60) days after completion of the well, the owner or operator must install a fence around the well site to maintain safe working conditions, secure the well site, and prevent access by wildlife and livestock. The fence design must be acceptable to both the landowner and owner or operator. ( )

**02. Storage.** All chemicals must be stored and maintained in accordance with the applicable MSDS requirements. Materials related to operations must be palletized where applicable. Vehicles and materials not in use must be removed from the well site. ( )

**03. Vegetation.** All well sites must be kept free of excessive vegetation. ( )

**04. Trash.** All trash, debris, and scrap metal must be removed from the well site. Pending removal, any rubbish trash or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred (100) feet from the well location, tanks, and separator. ~~(3-29-12)~~( )

**200302. ACCIDENTS AND FIRES.**

The owner or operator shall take all reasonable precautions to prevent accidents and fires. An emergency response plan will be prepared and available at the well for use or inspection. Coordination with local emergency responders and the Idaho Bureau of Homeland Security is recommended prior to rig set up. The following actions must be taken in event of a release, industrial accident, or fire of major consequence: (3-29-12)

**01. Provide Information to Emergency Response.** Emergency workers will be given information on all fluids or chemicals involved in a spill or accident as needed according to OSHA Standard 1910.1200 (Hazard Communication). Nothing in this rule shall authorize any person to withhold information that is required by state or federal law to be provided to a health care professional, a doctor, or a nurse. All information required by a health care professional, a doctor, or a nurse shall be supplied, immediately upon request, by the owner or operator, or their contractors, directly to the requesting health care professional, doctor, or nurse, including the percent by volume of the chemical constituents (and associated CAS numbers) in the fluids and the additives; (3-29-12)

**02. Initiate Spill Response and Corrective Actions.** Owner or operator must comply with the requirements of IDAPA 58.01.02, "Water Quality Standards," Sections 850 through 852; and (3-29-12)

**03. Notify the Department.** Notify the Department within twenty-four (24) hours and submit a full report thereon within fifteen (15) days. (3-29-12)

**303. -- 309. (RESERVED)**

**310. GENERAL DRILLING RULES.**

**01. General Design Requirements for Casing and Cementing.** Casing and cementing programs

adopted for wells must be so planned as to protect any potential oil- or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to another. Owners and operators shall follow the standards for casing and tubing in API SPEC 5CT and the standards for cementing in API SPEC 10A. (3-29-12)

**02. Wildcat and High-Pressure Conditions.** When drilling wildcat territory or in any field where high pressures are likely to exist, the owner or operator shall take all necessary precautions to keep the well under control at all times and shall use proper high-pressure fittings and equipment at the time the well is started. Under such conditions all strings of casings must be securely anchored. (3-29-12)

**03. High Temperature Conditions.** Due to high geothermal gradients in Idaho, the temperature of the return drilling mud shall be monitored daily during the drilling of the surface casing hole and all deeper holes. The owner or operator must use cements appropriate for the temperatures expected or encountered. (3-29-12)

**04. Conductor Pipe or Casing Requirements.** A minimum of forty (40) feet of conductor pipe shall be installed. If geologic conditions are such that forty (40) feet is not feasible, the owner or operator may request a variance from the Department. The annular space is to be cemented solid to the surface. A twenty-four (24) hour cure period for the grout must be allowed prior to drilling out the shoe unless sufficient additives, as determined by the Department, are used to obtain early strength. (3-29-12)

**05. Surface Casing Requirements.** (3-29-12)

**a.** The Department must be notified in writing seventy-two (72) hours in advance of planned spud activity for surface casing. The Department will post the spud activity notice on its website and send an electronic copy of the notice to the county where the well is located. ( )

**b.** Surface casing must be set at a minimum depth equal to ten percent (10%) of the proposed total depth of the well. In areas where pressures and formations are unknown, a minimum of two hundred (200) feet of surface casing shall be set. (3-29-12)

**c.** This Surface casing shall provide for control of formation fluids, protection of fresh water, and for adequate anchorage of blow out prevention equipment. The casing must be seated through a sufficient series of low permeability, competent lithologic units such as claystone, siltstone, basalt, etc., to insure a solid anchor for blow out prevention equipment and to protect usable ground water from contamination. Additional surface casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent lithologic units, or rapidly increasing thermal gradients or formation pressures are encountered. (3-29-12)

**d.** All surface casing shall be cemented solid to the surface by pump and plug, displacement, or other approved method. When surface samples are cured, additional drilling activities may commence. (3-29-12)

**e.** The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for surface casing. The Department will witness and document all surface casing cementing activities. ( )

**06. Requirements for BOP Equipment.** Unless altered, modified, or changed for a particular pool(s) upon hearing before the Commission, BOP and related equipment shall be installed and maintained during the drilling of all wells in accordance with the following rules: (3-29-12)

**a.** BOP equipment installed on wells in which formation pressures to be encountered are abnormal or unknown shall consist of a double-gate, hydraulically operated preventer with pipe and blind rams or two (2) single-ram-type preventers; one (1) equipped with pipe rams, the other with blind rams and an annular type preventer. In addition, upper and lower kelly cocks, pit level indicators with alarms and/or flow sensors with alarms, and surface facilities to handle pressure kicks shall be installed prior to drilling any formation with known abnormal pressure. (10-21-92)

**i.** Accumulators shall maintain a pressure capacity reserve at all times to provide for operation of the hydraulic preventers and valves with no outside source. (10-21-92)

- ii. In all other drilling operations, BOP equipment shall consist of at least one (1) double-gate preventer with pipe and blind rams or two (2) single-ram-type preventers, one (1) equipped with pipe rams, the other with blind rams, and sufficient valving to permit fluid circulation at the surface. (3-29-12)
- b. All ~~blowout preventers~~ **BOP equipment**, choke lines, and manifolds shall be installed above ground level. Casing heads and optional spools may be installed below ground level provided they are visible and accessible. (~~3-29-12~~)(    )
- c. BOP equipment and related casing heads and spools shall have a vertical bore no smaller than the inside diameter of the casing to which they are attached. (3-29-12)
- d. The working pressure rating of all ~~blowout preventers~~ **BOP** and related equipment shall equal or exceed the maximum anticipated pressure to be contained at the surface. (~~10-21-92~~)(    )
- e. All ram-type ~~blowout preventers~~ **BOP** and related equipment, including casing, shall be tested to the full working pressure rating of said equipment upon installation, provided that components need not be tested to levels higher than the lowest working pressure rated component. Annular type ~~blowout preventers are to~~ **BOP and related equipment must** be tested in conformance with the manufacturer's published recommendations. If, for any reason, a pressure seal in the assembly is disassembled, a test to a full working pressure rating of that seal shall be conducted prior to the resumption of any drilling operation. In addition to the initial pressure tests, ram-type ~~preventers~~ **BOP** shall be checked for physical operation at least once per week and all components, again with exception of the annular-type ~~blowout preventer~~ **BOP**, tested at least once every twenty-one (21) days to at least fifty percent (50%) of the rated pressure of the BOP equipment and/or to the maximum anticipated pressure to be contained at the surface, whichever is greater. (~~3-29-12~~)(    )
- f. The Department ~~may will~~ require an affidavit covering the initial pressure tests after installation signed by the owner, operator, or contractor attesting to the satisfactory pressure tests. The Department ~~is to~~ **must** be advised at least twenty-four (24) hours in advance of all tests. The Department may inspect and witness all BOP operations and testing. (~~3-29-12~~)(    )
- g. A schematic diagram of the BOP and well head assembly shall be submitted to the Department upon application for a permit to drill. The schematic diagram should indicate the minimum size and pressure rating of all components of the well head and BOP assembly. (3-29-12)
- h. Studs on all well head and BOP flanges shall be checked for tightness each week. Hand wheels for locking screws shall be installed and operational, and the entire BOP and well head assembly shall be kept clean of mud and ice. (10-21-92)
- i. A drillstem safety valve shall be available on the rig floor at all times with correct thread for the pipe in use. (3-29-12)
- j. A drillstem float valve shall be installed in bit sub or as close to bit as reasonably possible. (3-29-12)
- 07. Intermediate Casing.** (3-29-12)
- a. Intermediate casing, if installed, shall be cemented solidly to the surface or to the top of the casing. (3-29-12)
- b. Intermediate casing not run to surface will be lapped into at least one hundred (100) feet of the surface casing, or at least one hundred (100) feet of the next larger casing to provide overlap and secure a seal. (3-29-12)
- c. Such casing shall be cemented and pressure tested before cement plugs are drilled. (3-29-12)
- d. The Department must be notified in writing twenty-four (24) hours in advance of planned

cementing activity for intermediate casing. The Department may witness and document all intermediate casing cementing activities. ( )

**08. Production Casing; Cementing and Testing Requirements.** (3-29-12)

**a.** If and when it becomes necessary to run a production casing, such casing shall be cemented and pressure tested before cement plugs are drilled. (3-29-12)

**b.** The Department must be notified in writing twenty-four (24) hours in advance of planned cementing activity for production casing. The Department may witness and document all production casing cementing activities. ( )

**c.** When not run to the surface, production casing will be cemented from the bottom of the hole up into at least one hundred (100) feet of the next larger casing to provide overlap and secure a seal. (3-29-12)

**d.** If the bottom plug will be drilled out, the open hole interval must be completed to protect any potential oil-bearing or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to another. (3-29-12)

**09. Step-off.** An owner or operator may submit to the Department a step-off request to complete a new borehole from surface if a borehole without production casing deviates from vertical plumb by more than five (5) degrees. A step-off borehole must be drilled within the existing pad of the permitted well. The incomplete borehole must be plugged and abandoned in accordance with Section 502 of these rules. ( )

**0910. Blowout Well Control (Rotary Tools); Reserve Mud Tanks.** When drilling with rotary tools, the owner or operator shall provide, as required by the Department, a reserve mud pit or tank of suitable capacity for the anticipated depth of the well and maintain an on-site supply of mud additives that can raise the mud weight by one (1) pound per gallon in case of blowouts loss of well control. (3-29-12)( )

**101. Mud Pits.** Before commencing to drill, proper and adequate mud pits shall be constructed for the reception and confinement of mud and cuttings and to facilitate the drilling operation. Special precautions shall be taken, if necessary, to prevent contamination of fresh waters. These pits must conform to the standards in Section 085230 of these rules. If tanks will be used, then mud pits may not be required. (3-29-12)( )

**112. Well Control (Cable Tools); Fluid Containment ~~and Gas Flaring~~.** Natural gas or oil which may be encountered in a substantial quantity in any section of a cabletool drilled hole above the ultimate objective shall be shut off with reasonable diligence either by mudding or by casing, or other approved method, and confined to its original source to the satisfaction of the Department. Any gas escaping from the well during drilling operations shall be, as far as practicable, conducted to a safe distance from the well site and burned. The use of cable tools for drilling activities requires written approval by the Department prior to spud activities. A request to use cable tools must include the following: (3-29-12)( )

**a.** Proposed pressure control measures; ( )

**b.** Diversion and disposal methods for stray gas; ( )

**c.** Safety protocols for mud weights and well controls; and ( )

**d.** Annual drill rig safety inspection information, including the date of last replacement of cables, draw works inspection report, and metallurgic report of safety compliance for structural integrity of the drill rig. ( )

**123. Drilling Mud Disposal.** Drilling mud will be disposed of at an appropriate facility in compliance with applicable state and federal requirements. (3-29-12)

**134. Report of Water Encountered; Owner's or Operator's Duties.** It shall be the duty of any owner or operator drilling an oil or gas well or drilling a seismic, core or other exploratory hole to report to the Department

all potential water bearing zones encountered; such report shall be in writing and give the location of the well or hole, the depth at which the zones were encountered, the thickness of such zones, and the rate of flow of water if known. This requirement can be met by the submittal of the logs required in Section ~~090~~340 of this rule. ~~(3-29-12)~~( )

**145. Spill Prevention, Control, and Countermeasures Plan.** The owner or operator must have a Spill Prevention, Control, and Countermeasures Plan in conformance with the requirements of the EPA. This plan must be updated as needed when facilities or activities change. (3-29-12)

**156. Interim Drill Site Clean Up.** If a well is completed for production or other purposes, interim reclamation must be completed within six (6) months of the rig being removed. Interim reclamation includes the following activities: (3-29-12)

a. Debris and waste materials including, but not limited to, concrete, sack bentonite and other drilling mud additives, sand, plastic, pipe, and cable associated with the drilling, re-entry, or completion operations shall be removed and disposed of properly. (3-29-12)

b. All disturbed areas affected by drilling or subsequent operations, except areas reasonably needed for production operations or for subsequent drilling operations to be commenced within twelve (12) months, shall be reclaimed and revegetated to approximately the pre-drilling condition or to the condition specified in an agreement with the surface owner. The reclamation standards in Subsections ~~325~~10.04 through ~~325~~10.07 of these rules, shall apply. ~~(3-29-12)~~( )

**~~125~~311. LOSS OF TOOL WITH RADIOACTIVE MATERIAL.**

**01. Recovery or Cementing of Tool.** If a gamma ray tool, or some other tool containing radioactive material, becomes lost in a well, the owner or operator shall make every reasonable attempt to retrieve the tool from the well. If the tool cannot be recovered, the owner or operator must immediately cover the tool with cement sufficient to secure it in place and prevent it from contacting any fluids in the well. A whipstock or other approved deflection device shall be placed on top of the cement plug to prevent accidental or intentional mechanical disintegration of the radioactive source. (3-29-12)

**02. Sidetracking.** If the hole is later sidetracked above the radioactive material, the sidetracked hole must be at least fifteen (15) feet from the original hole with the lost radioactive material. (3-29-12)

**03. Reporting.** A report must be sent to the Department and IDEQ within thirty (30) days of cementing the tool. The report must describe the tool that was lost, the depth it was lost at, the specific type and amount of radioactive material in the tool, and an estimate of the length of cement covering the tool. This report may be included in a plugging report if the well will be plugged. (3-29-12)

**~~140~~312. CHOKES.**

All flowing wells shall be equipped with adequate chokes or beans to properly control the flow thereof. (10-21-92)

**~~230~~313. USE OF EARTHEN RESERVOIRS.**

Oil shall not be produced, stored, or retained in earthen reservoirs or in open receptacles. (10-21-92)

**~~180~~314. VACUUM PUMPS PROHIBITED.**

The use of vacuum pumps or other devices for the purpose of placing a vacuum on any gas- or oil-bearing stratum is prohibited; however, the Department may upon application and hearing and for good cause shown permit the use of vacuum pumps. (3-29-12)

**~~190~~315. PULLING OUTSIDE STRINGS OF CASING.**

Casing shall not be recovered if its recovery will expose any abnormal pressure, lost circulation, oil, gas, or water zone. In pulling outside strings of casing from any oil or gas well, the space outside the casing left in the hole shall be kept and left full of mud-laden fluid of adequate specific gravity to seal off all fresh and saltwater strata and any strata bearing oil or gas which is not producing. Casing may not be pulled without first making application to the Department and receiving approval. The application must describe how fresh waters will be protected. (3-29-12)

~~3016~~ -- 319. (RESERVED)

*[Codified Section 320 is being moved and renumbered to Section 502.]*

~~405320~~. MECHANICAL INTEGRITY TESTING.

- 01. Mechanical Integrity Testing.** (3-29-12)
- a.** The mechanical integrity test shall include one (1) of the following tests to determine whether leaks are present in the casing, tubing, or packer: (3-29-12)
- i. A pressure test with liquid or gas at a pressure of not less than three hundred (300) psi or the minimum injection pressure, whichever is greater, and not more than the maximum injection pressure; or (3-29-12)
- ii. The monitoring and reporting to the Department, on a monthly basis for sixty (60) consecutive months, of the average casing-tubing annulus pressure, following an initial pressure test; or (3-29-12)
- iii. In lieu of Subsections paragraphs ~~405320~~.01.a.i. and ~~405320~~.01.a.ii. of this rule, any equivalent test or combinations of tests approved by the Department. (~~3-29-12~~)( )
- b.** The mechanical integrity test shall include one (1) of the following tests to determine whether there are fluid movements in vertical channels adjacent to the well bore: (3-29-12)
- i. Tracer surveys; (3-29-12)
- ii. Cement bond log or other acceptable cement evaluation log; (3-29-12)
- iii. Temperature surveys; or (3-29-12)
- iv. In lieu of Subsections paragraphs ~~405320~~.01.b.i. through ~~405320~~.01.b.iii. of this rule, any other equivalent test or combination of tests approved by the Department. (~~3-29-12~~)( )
- c.** Mechanical integrity tests shall be performed at the rate of not less than one (1) test every five (5) years, regardless of well status. The first five-year period shall commence on the date the initial mechanical integrity test is performed. (3-29-12)
- 02. Inactive Wells.** If, at any time, surface equipment excluding the wellhead is removed or the well becomes incapable of production, a mechanical integrity test shall be performed within thirty (30) days. The mechanical integrity test for an inactive well shall be isolation of the wellbore with a bridge plug or similar approved isolating device set one hundred (100) feet or less above the highest perforations and a pressure test with liquid or gas at a pressure of not less than three hundred (300) psi surface pressure or any equivalent test or combination of tests approved by the Department. (3-29-12)
- 03. Prior Notification.** Not less than ten (10) days prior to the performance of any mechanical integrity test required by this rule, any person required to perform the test shall notify the Department, in writing, of the scheduled date on which the test will be performed. (3-29-12)
- 04. Reporting Requirements.** Mechanical integrity test results shall be submitted to the Department within thirty (30) days of testing. (3-29-12)
- 05. Mechanical Integrity Required.** All wells shall maintain mechanical integrity. All wells that fail a mechanical integrity test, or that are determined through any other means to lack mechanical integrity, shall immediately be investigated by the owner or operator. The well shall be repaired or immediately shut down following the investigation. Repairs shall be completed within six (6) months, or the well shall be plugged and abandoned. If the repair cannot be completed within six (6) months, the owner or operator may request an extension and provide a plan for the repair, (3-29-12)



321. -- ~~324.~~ (RESERVED)

[Codified Section 325 is being moved and renumbered to Section 510.]

~~326.~~ 329. (RESERVED)

[Codified Section 330 is being moved and renumbered to Section 120.]

~~170~~330. WELL DIRECTIONAL CONTROL.

**01. General Restrictions; Allowable Deviation.** The maximum point at which a well penetrates the producing formation shall not unreasonably vary from the vertical drawn from the center of the hole at the surface. Deviation is permitted without special permission to remedy blowouts and, for short distances, to straighten the hole, sidetrack junk, or correct other mechanical difficulties. (10-21-92)

**02. Controlled Directional Drilling.** Except for the purposes recited in Subsection ~~170~~330.01, no well hereafter drilled may be intentionally directionally deviated from the vertical unless the owner or operator thereof shall first file an application and application fee to amend the drilling permit and receive approval from the Department. Such application shall contain the following information: (~~3-29-12~~)( )

- a. Name and address of the owner or operator. (3-29-12)
- b. Lease name, well number, name of field and reservoir and county. (10-21-92)
- c. Description of surface location and proposed location of the producing interval (footage from lease and section or block and survey lines). (10-21-92)
- d. Reason for intentional deviation. (10-21-92)
- e. List of offset operators and statement that each has been furnished a copy of the application by registered mail. (10-21-92)
- f. Signature of representative of owner or operator. (3-29-12)
- g. Notification to offset operators that any objection they may have to the proposed intentional deviation of the well must be filed with the Department within fifteen (15) days of receipt of a copy of the application. (3-29-12)
- h. The application shall be accompanied by a neat, accurate plat or sketch of the lease and all offset leases showing the names of all offset operators and the surface and proposed producing interval locations of the well. Plat shall be drawn to a scale which will permit facile observation of all pertinent data. (10-21-92)

**03. Copy of Application to Offset Operators.** At the time the application is filed with the Department, a copy of the application and the plat shall be forwarded by registered mail to all offset operators to the lease on which the well is to be drilled. (3-29-12)

**04. Department Action.** Upon receipt, the Department will hold the application for fifteen (15) days. If objection from any offset operator to the proposed intentional deviation is received within fifteen (15) days of receipt of the application by said operator, or if the Department is not in agreement with the proposed deviation, the application shall be set down for public hearing. If no objection from either an offset operator or the Department is interposed within the fifteen (15) day period, the application shall be approved and permit issued by the Department. If written consent of the offset operator(s) is filed concurrently with the application to drill directionally, the Department may immediately approve the application without waiting fifteen (15) days. (3-29-12)

**05. Angular Deviation and Directional Survey.** Upon completion, a complete angular deviation and directional survey of the well obtained by an approved well surveying company shall be filed with the Department, together with other regularly required reports. (3-29-12)

06. **Application for Exceptions.** In the event the proposed, or final, location of the producing interval of the directionally deviated well is not in agreement with spacing or other rules of the Commission applicable to the reservoir, proper applications shall be made to obtain approval of exceptions to such rules. Such approval shall be granted or denied at the discretion of the Department, and shall be accorded with the same consideration and treatment as if the well had been drilled vertically to the producing interval. (3-29-12)

331. -- 339. (RESERVED)

*[Codified Section 340 is being moved and renumbered to Section 140.]*

**~~090~~340. WELL COMPLETION/RECOMPLETION REPORT AND WELL REPORT.**

Within thirty (30) days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different source of supply, or where the producing interval is changed, a completion report shall be filed with the Department, on a form prescribed by the Department. Such report shall include name, number, and exact location of the well; lease name, date of completion and date of first production, if any; name and depth of hydrocarbon reservoir(s), if a multiple completion, from which well is producing; annulus pressure test; initial production test, including oil, gas, and water, if any; a well report as defined in Section 010; and such other relevant information as the Department may require. (3-29-12)

**~~091~~341. DRILLING LOGS.**

01. **Minimum Required Logs.** All wells shall have a lithologic log from the bottom of the hole to the top, to the extent practicable. (3-29-12)

02. **Bottom Hole Survey.** All wells shall have a bottom hole location survey. (3-29-12)

03. **Cement Bond Log.** All wells that are cased and cemented shall have a cement bond log run across the casing. (3-29-12)

04. **Other Logs.** If other logs are run, including, but not limited to, resistivity, gamma-neutron log, sonic log, etc., then the owner or operator shall retain a copy regardless of results. (3-29-12)

05. **Log Submittal.** The above logs shall be submitted to the Department in paper and digital formats within thirty (30) days of the log being run. If logs were run in color, then the submitted copies shall also be in color. Digital formats must be Tiff and LAS 2.0 or higher. Logs submitted to the Department must have a scale of one (1) inch for correlation logs and five (5) inches for detail logs. (~~3-29-12~~)( )

~~341~~2. -- ~~349~~. (RESERVED)

*[Codified Section 350 is being moved and renumbered to Section 031.]*

~~351~~ -- ~~359~~. (RESERVED)

*[Codified Section 360 is being moved and renumbered to Section 100.]*

~~361~~ -- ~~369~~. (RESERVED)

*[Codified Section 370 is being moved and renumbered to Section 050.]*

~~371~~ -- ~~93~~99. (RESERVED)

**SUBCHAPTER E - PRODUCTION**

**400. PRODUCTION REPORTS.**

**01. Required Content.** An owner or operator must report production on a form created by the Department. Production reports submitted to the Department must include gas quantities sold in thousand cubic feet (mcf), condensate sold in barrel quantities (bbl), oil sold in barrel quantities (bbl), and formational waters produced in barrel quantities (bbl). ( )

**02. Frequency.** Initial production reports must be submitted to the Department no later than the twenty-first (21st) day of the month following the sixth month after the beginning of production. After the initial production report, operators must report production monthly to the Department. Monthly reports must be submitted to the Department no later than the twenty-first (21st) day of the following month. In the event the twenty-first (21st) day of the month falls on a non-business day, the report is due the next business day. ( )

**03. Annual Production Report.** By January 31 of each year, an owner or operator must submit to the Department an aggregated report of all hydrocarbons and formational waters produced and sold or disposed of for each well during the previous calendar year. ( )

**260401. MEASUREMENT OF OIL.**

The volume of production of oil shall be computed in terms of barrels of clean oil on the basis of meter measurements or tank measurements of oil-level difference made and recorded to the nearest quarter-inch (1/4") of one hundred percent (100%) capacity tables, subject to the following corrections: (10-21-92)

**01. Correction for Impurities.** The percentage of impurities (water, sand, and other foreign substances, not constituting a natural component part of the oil) shall be determined to the satisfaction of the Department, and the observed gross volume of oil shall be corrected to exclude the entire volume of such impurities. (3-29-12)

**02. Temperature Correction.** The observed volume of oil corrected for impurities shall be further corrected to the standard volume at sixty (60) Degrees F in accordance with ASTM D-1250-08, Table 7, or any revisions thereof and any supplements thereto, or any close approximation thereof approved by the Department. (3-29-12)

**03. Gravity Determination.** The gravity of oil at sixty (60) degrees F shall be determined in accordance with ASTM D-1250-08, Table 5, or any revisions thereof and any supplements thereto approved by the Department. (3-29-12)

**270402. MEASUREMENT OF GAS.**

**01. Gas Metering.** For protection of correlative rights of all parties, the owner or operator of a natural gas well shall meter or caused to be metered all natural gas produced from a well, utilizing a standard industry meter approved by the American Gas Association and capable of recording accurately the volume of natural gas produced at each well, unless another methodology, approved by the director, is utilized to provide for proper production allocation back to the individual well from a central point production meter or central point sales meter, which ever meter occurs first. (3-29-12)

**02. Gas Measurement.** For computing volume of gas to be reported to the Department, the standard of pressure shall be fourteen point seventy-three (14.73) psi atmospheric, and the standard of temperature shall be sixty (60) Degrees F. All volumes of gas to be reported to the Department shall be adjusted by computation to these standards, unless otherwise authorized by the Department. (3-29-12)

**403. GAS-OIL RATIO FOR WELL CLASSIFICATIONS.**

In the absence of an order by the Commission setting a field-specific oil-gas ratio, a well that produces gas of five thousand (5,000) cubic feet or greater to one (1) bbl of oil at standard temperature and pressure will be classified as a gas well. ( )

**280404. GAS-OIL RATIO LIMITATION.**

**01. Waste Prevention; Conditions for Emergency Order.** To further prevent waste resulting from

the production of wells with inefficient gas-oil ratios, the Department may enter an emergency order temporarily prohibiting the production of oil or gas from all wells in a pool producing both oil and gas when the Department believes that waste may be occurring or is imminent in said pool by reason of the operation of wells with inefficient gas-oil ratios. The order shall specify a date for the hearing described in Subsection ~~280404~~.02 of these rules. The Department may use information provided by an offset operator or an owner or operator in a common source of supply to determine if waste is occurring. ~~(3-29-12)~~( )

**02. Notice and Cause for Hearing.** The Department will notify all offset operators and owners or operators in the common source of supply of the hearing date. A hearing regarding waste due to inefficient gas-oil ratios will held for any of the following reasons: (3-29-12)

i. If an emergency order is issued as described in Subsection ~~280404~~.01 of these rules. The hearing will be scheduled between five (5) and fifteen (15) days after the effective date of the order. ~~(3-29-12)~~( )

ii. Upon application to the Department from any person with an ownership interest in the common source of supply who believes that waste is occurring due to inefficient oil and gas ratios. The application must include credible evidence of such waste. The hearing shall be held within thirty (30) days of the Department receiving the application. (3-29-12)

iii. Prior to an emergency situation and upon its own motion with reasonable cause, the Department may schedule a hearing regarding potential waste due to inefficient gas-oil ratios. (3-29-12)

**03. Determination of Inefficient Ratios; Power to Limit Production.** If the Department after notice and hearing, whether held upon its own motion, upon the application of an interested party, or pursuant to an emergency order entered as hereinafter provided for, shall find that a well(s) in the pool are operating with inefficient gas-oil ratios, and that waste is occurring or is imminent as a result thereof, it shall enter an order limiting the production of oil and gas from said pool to that amount which the pool can produce without waste and in accordance with sound engineering practice. The order shall also limit the amount of oil or gas, or both, that may be produced from any well in the pool, so that each owner or operator is given an opportunity to produce his just and equitable share in the pool in accordance with sound engineering practice. (3-29-12)

#### ~~290~~405. GAS-OIL RATIO SURVEYS AND REPORTS.

Within thirty (30) days following the completion or recompletion of each well producing oil and gas and thereafter as the Department may require, the owner or operator of such well shall make a gas-oil ratio test of such well and the results of such test shall be reported to the Department within twenty (20) days after the test is made. Certain wells may be excepted from this rule by the Department upon written request. Entire fields may be excepted from this rule after notice and hearing. (3-29-12)

~~406. -- 409.~~ (RESERVED)

#### ~~255~~410. SURFACE EQUIPMENT METERS.

**01. General Requirements.** Meter fittings of adequate size to measure the gas efficiently for the purpose of obtaining gas-oil ratios shall be installed on the gas vent line of every separator or proper connections made for orifice well tester. Well-head equipment shall be installed and maintained in excellent condition. Valves shall be installed so that pressures can be readily obtained on both casing and tubing. (3-29-12)

**02. Meter Calibration.** All required meters shall be calibrated at least once per calendar year. The records of such calibration shall be maintained or made available by the owner or operator of the well and shall be available for inspection by the Department. Such records shall be maintained by the owner or operator for a period of at least five (5) years. (3-29-12)

**03. Visibility.** All required meters shall be accessible and viewable by the Department for the purpose of monitoring daily, monthly and/or cumulative production volumes from individual wells. (3-29-12)

#### ~~150~~411. SEPARATORS.

All flowing oil wells must be produced through an adequate oil and gas separator or emulsion treater, provided,

however, the director may approve producing wells without a separator or emulsion treater. (10-21-92)

**210412. PRODUCING FROM DIFFERENT POOLS THROUGH THE SAME CASING STRING.**

No well shall be permitted to produce either oil or gas from different pools through the same string of casing without first receiving written permission from the Department. (3-29-12)

**300413. GAS UTILIZATION.**

After a well is completed and while it is being tested, the owner or operator may flare gas for no more than fourteen (14) days without paying royalties and severance taxes on the flared gas. Under no conditions may gas be flared for more than sixty (60) days after a well is completed or recompleted. Prior to flaring gas, owners or operators must notify the county in which the well is located and all owners of occupied structures within one-quarter (1/4) mile radius of the well. After the owner or operator has ~~completed and has had a reasonable opportunity to~~ tested a gas well, no gas from such well shall be permitted to escape into the air, and all gas produced therefrom shall be utilized without waste. (3-29-12)( )

**414. -- 419. (RESERVED)**

**420. TANK BATTERIES.**

Tank batteries must meet the following requirements. ( )

**01. Location of Tank Batteries.** No tank batteries may be constructed within three hundred (300) feet of existing occupied structures, water wells, canal, ditches, the natural or ordinary high water mark of surface waters, or within fifty (50) feet of highways, as measured from the outermost portion of the tank dike. The owner of a water well or existing occupied structure may provide express written permission to construct a tank battery closer than three hundred (300) feet, but in no event may a tank battery be constructed within one hundred (100) feet of a water well or existing occupied structure. ( )

**02. Containment Requirements.** All tank batteries consisting of tanks containing produced fluids or crude oil storage tanks or containing tanks equipped to receive produced fluids must be surrounded by tank dikes that meet the following requirements: ( )

**a.** Tank dikes must be designed to have a capacity of at least one and one-half (1½) times the volume of the largest tank which the dike surrounds. ( )

**b.** The material used to construct a tank dike and the material used to line the bottom and sides of the containment reservoir must have a maximum coefficient of permeability of 10<sup>-9</sup> cm/sec so as to contain fluids and resist erosion. An operator must submit proof of compliance for tank dike liner construction to the Department in the form of a manufacturer's statement of design or a nuclear density test performed by a third party trained to perform the test. ( )

**c.** All piping and manmade improvements that perforate the tank dike wall or tank battery floor must be sealed to a minimum radius of twelve (12) inches from the outside edge of the piping or improvement. ( )

**d.** Valves and quick-connect couplers on tank batteries must be at least eighteen (18) inches from the inside wall of the tank dike. ( )

**e.** Vegetation on the top and outside surface of tank dike must be properly maintained so as to not pose a fire hazard. ( )

**f.** A ladder or other permanent device must be installed over the tank dike to access the containment reservoir. ( )

**g.** The containment reservoir must be kept free of vegetation, stormwater, produced fluids, other oil and gas field related debris, general trash, or any flammable material. Drain lines installed through the tank dike for the purpose of draining storm water from the containment reservoir must have a valve installed which must remain closed and capped when not in use. Any fluids collected, spilled or discharged within the containment reservoirs must be removed as soon as practical, characterized, treated if necessary, and disposed in conformance with IDAPA

58.01.16. "Wastewater Rules." and other applicable rules. ( )

**421. -- 429. (RESERVED)**

**430. GAS PROCESSING FACILITIES.**

Gas processing facilities must meet the following requirements. ( )

**01. Location of Gas Processing Facilities.** No gas processing facility may be constructed within three hundred (300) feet of existing occupied structures, water wells, canals and ditches, the natural or ordinary high water mark of surface waters, or within fifty (50) feet of highways, as measured from the outermost portion of the gas processing facility. The owner of a water well or existing occupied structure may provide express written permission to construct a gas processing facility closer than three hundred (300) feet, but in no event may a gas processing facility be constructed within one hundred (100) feet of a water well or existing occupied structure. ( )

**02. Operations.** Operators of gas processing facilities must notify the Department which wells, by API number, are served by a gas processing facility. All gas processing facilities not constructed on a well site must comply with the requirements in Sections 301 and 302 of these rules. ( )

**03. Meters and Facility Plans.** Gas processing facilities must account for all liquids and gas entering and leaving the facility with accurate meters. A supervisory control and data acquisition systems or other data recording system must be used to monitor the liquids and gas in the facility. Operators of gas processing facilities must submit an as-built facility design plan to the Department upon completion of the facility, a facility design plan must contain at the minimum: ( )

- a. Site layout; ( )
- b. Piping and instrumentation diagram; ( )
- c. Process Flow schematics; ( )
- d. Electronic controls and sensing schematic; ( )
- e. Equipment operations and maintenance manuals for, pumps, meters, heat exchangers and any other operationally critical equipment that requires periodic maintenance and calibration; ( )
- f. Periodic maintenance schedule for critical equipment; ( )
- g. Troubleshooting metric; and ( )
- h. Other information or documentation necessary for the safe and continued operation of a gas processing facility. ( )

**04. Flaring.** Flaring at gas processing facilities must be in conformance with IDAPA 58.01.01, Rules for the Control of Air Pollution in Idaho, and any permit issued by the IDEQ. ( )

**05. Inspections.** Gas processing facilities must have site specific facility design plans and a log book of gas metered in and out of the facility available for review by Department staff during the inspections of gas processing facilities. During inspections, gas process facility staff must demonstrate knowledge of all operations and the location of all emergency shut off equipment, direction of flow lines, and heat exchangers. The Department will conduct quarterly inspections of facilities. ( )

**06. Reports.** A quarterly report must be submitted to the Department accounting for receipt, processing, and disposition of all gas by the gas processing facility within the reporting period. The report is due to the Department by the twenty-first (21st) day following the end of the reporting period. ( )

**431. -- 499. (RESERVED)**

**SUBCHAPTER F - WELL ACTIVITY AND RECLAMATION**

**09500. ACTIVE WELLS.**

**01. Gas Storage Wells.** Gas storage wells are to be considered active at all times unless physically plugged. (3-29-12)

**02. Extension of Active Status.** An owner or operator may request an extension of active well status for wells that are idled for more than twenty-four (24) continuous months. The owner or operator shall provide a written request to the Department stating the reason for the extension, the length of extension, the method used to close the well to the atmosphere, and the plans for future operation. The Department shall review the request for approval, modification, or denial, and shall set the duration of the extension if approved. An extension shall not exceed five (5) years and may be renewed upon request. (3-29-12)

**03. Annual Reports for Active Wells.** The owner or operator shall submit an annual report to the Department describing the current status of the well and the plans for future well operation by January 31 of each year. Failure to submit the annual report may result in the Department declaring the well inactive. (~~3-29-12~~)(    )

**096501. INACTIVE WELLS.**

**01. Determination of Inactive Status.** The Department shall declare a well inactive after twenty-four (24) continuous months of inactivity if the owner or operator has not received approval for an extension of active status, or after an owner or operator fails to submit an annual report for an active well. The Department will immediately notify an owner or operator of this determination by certified mail, and the owner or operator may appeal this determination to the Commission. (3-29-12)

**02. Owner's or Operator's Responsibility for Inactive Wells.** The owner or operator must plug and abandon an inactive well in accordance with Section ~~320502~~ of these rules within six (6) months of being notified by the Department unless the owner or operator supplies the following information within the six-month time period: (~~3-29-12~~)(    )

- a. A written request to extend inactive status; (3-29-12)
- b. An individual bond, as provided for in Subsection ~~070220.03~~ of these rules, if the well was covered by a blanket bond; and (~~3-29-12~~)(    )
- c. A description of how the well is closed to the atmosphere with a swedge and valve, packer, or other approved method, and how the well is to be maintained. (3-29-12)

**03. Inactive Review and Decision.** The Department shall review the request for approval, modification, or denial, and shall set the duration of the extension if approved. An extension shall not exceed three (3) years and may be renewed upon request. (3-29-12)

**04. Testing of Inactive Wells.** In addition to the requirements of Section ~~405320~~ of these rules, inactive wells shall have a mechanical integrity test performed within two (2) years after the date of last use in order to retain inactive status. (~~3-29-12~~)(    )

**05. Converting Inactive Wells to Active Wells.** The owner or operator must apply to the Department to change the status of a well from inactive to active. The Department shall review the request for approval, modification, or denial. A mechanical integrity test may be required by the Department if the well has been worked over or if a test has not been conducted for five (5) years or longer. If approved, the well may again be covered by a blanket bond. (3-29-12)

**320502. WELL PLUGGING.**

**01. Plugging Required.** The operator or owner shall not permit any well drilled for oil, gas, saltwater disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted. (10-21-92)

**02. Notice of Intention to Abandon Well.** Before beginning abandonment work on an oil or gas well, a Notice of Intention to Abandon shall be filed with the Department and approval obtained as to the method of abandonment before the work is started. The notice must show the reason for abandonment and must give a detailed statement of the proposed work, including such information as kind, location, and length of plugs (by depths), and plans for mudding, cementing, shooting, testing, and removing casing as well as any other pertinent information. (3-29-12)

**03. Plugging Dry Holes.** If a nonproductive well, or dry hole, is drilled and not needed for any specific purpose, it must be plugged and abandoned prior to removal of the drill rig. A verbal notification and approval may be used for dry holes in lieu of the written notification referenced in Subsection ~~320502~~.02 of these rules. The standards in Subsections ~~320502~~.04 through ~~320502~~.06 of these rules will still apply. (~~3-29-12~~)(    )

**04. Plugging of Wells.** The owner or operator of any well drilled for oil or gas, or any seismic, core, or other exploratory holes, whether cased or uncased, and regardless of diameter shall be responsible for the plugging of said hole in a manner sufficient to properly protect all freshwater-bearing and possible or probable oil- or gas-bearing formations. The material used in plugging, whether cement, mechanical plug, or some other equivalent method approved in writing by the Director, must be placed in the well in a manner to permanently prevent migration of oil, gas, water, or other substance from the formation or horizon in which it originally occurred. The preferred plugging cement slurry is that recommended in API Bulletin E3. Pozzolan, gel, and other approved extenders may be used if the owner or operator can document to the Department's satisfaction that the slurry design will achieve a minimum compressive strength of three hundred (300) psi after twenty-four (24) hours, and eight hundred (800) psi after seventy-two (72) hours measured at ninety-five (95) degrees F and at eight hundred (800) psi. No substances of any nature or description other than those normally used in plugging operations shall be placed in any well at any time during plugging operations. (3-29-12)

**05. Plugged Intervals.** The following plugging standards shall be followed for all wells: (3-29-12)

**a.** Cement must be placed for a length of at least one hundred (100) feet on either side of each casing shoe, or casing bottom if no shoe is present. If the bottom of the hole is less than one hundred (100) feet from the bottom of the lowest casing, then the entire length of the uncased hole below the casing will be cemented. (3-29-12)

**b.** In the uncased portions of a well, cement plugs must be placed to extend from one hundred (100) feet below the bottom up to one hundred (100) feet above the top of any oil, gas, and abnormally high pressure zones, so as to isolate fluids in the strata in which they are found and to prevent them from escaping into other strata. (3-29-12)

**c.** A cement plug shall be placed a minimum of one hundred (100) feet above all producing zones in uncased portions of a well. (3-29-12)

**d.** A cement plug shall be placed a minimum of fifty (50) feet above and below the following intervals: (3-29-12)

**i.** Where the casing is perforated or ruptured. If no cement is present behind the casing, then cement must also be squeezed out the perforations or ruptures and into the annular space between the casing and the borehole. (3-29-12)

**ii.** Top and bottom of fresh water zones. If fresh water zone is less than one hundred (100) feet thick, then continuous cement must be placed from fifty (50) feet below the zone upward to fifty (50) feet above the zone. (3-29-12)

**e.** The top of all cement plugs will be tagged to verify their depth. (3-29-12)

**f.** The owner or operator shall have the option as to the method of placing cement in the hole by:



- (3-29-12)
- i. Dump bailer; (3-29-12)
  - ii. Pumping a balanced cement plug through tubing or drill pipe; (3-29-12)
  - iii. Pump and plug; or (3-29-12)
  - iv. Equivalent method approved by the Director prior to plugging. (3-29-12)
- g.** Unless prior approval is given, all wellbores shall have water based drilling muds, high viscosity pills, or other approved fluids between all plugs. (3-29-12)
- h.** All abandoned wells shall have a plug or seal placed at the surface of the ground or the bottom of the cellar in the hole in such manner as not to interfere with soil cultivation or other surface use. The top of the pipe must be sealed with either a cement plug and a screw cap, or cement plug and a steel plate welded in place or by other approved method, or in the alternative be marked with a permanent monument which shall consist of a piece of pipe not less than four (4) inches in diameter and not less than ten (10) feet in length, of which four (4) feet shall be above the general ground level, the remainder to be embedded in cement or to be welded to the surface casing. (3-29-12)

**06. Subsequent Report of Abandonment.** If a well is plugged or abandoned, a subsequent record of work done must be filed with the Department. This report shall be filed separately within thirty (30) days after the work is done. The report shall give a detailed account of the manner in which the abandonment of plugging work was carried out, including the weight of mud, the nature and quantities of materials used in plugging, the location and extent (by depths) of the plugs of different materials, and the records of any tests or measurements made and of the amount, size, and location (by depths) of casing left in the well. If an attempt was made to part any casing, a complete report of the method used and the results obtained must be included. (3-29-12)

**07. Wells Used for Fresh Water (Cold Water < 85 degrees Fahrenheit), Low Temperature Geothermal (85 - 212 Degrees Fahrenheit) or Geothermal Wells (>212 Degrees Fahrenheit).** (3-29-12)

**a.** Oil and gas wells, seismic, core or other exploratory holes no longer being used for their original purpose may not be converted into fresh water, low temperature geothermal, or geothermal wells unless the following actions occur: (3-29-12)

i. Owner, operator, or surface owner files an application with the IDWR describing the conversion and the proposed use for the water or geothermal resource and any modifications necessary to meet the applicable well construction standards; (3-29-12)

ii. The surface owner provides written documentation assuming responsibility for the converted well including, should it become necessary, decommissioning (plugging) of the converted well in accordance with applicable law; (3-29-12)

iii. IDWR issues a permit for a geothermal resource well, a water right, or recognizes a domestic exemption authorizing the withdrawal of water from the converted well; and (3-29-12)

iv. A licensed driller in Idaho inspects and certifies that the converted well meets all well construction standards for its intended purpose. (3-29-12)

**b.** The Department's bond may not be released, and the oil and gas permit cancelled, until all requirements in Paragraph ~~320~~502.07.a. of these rules are met. (~~3-29-12~~)(    )

~~503.~~ -- 509. **(RESERVED)**

~~325~~10. **SURFACE RECLAMATION.**

**01. Timing of Reclamation.** After the plugging and abandonment of a well or closure of other oil and

gas facilities, all reclamation work described in this Section shall be completed within twelve (12) months. The Director may grant an extension where unusual circumstances are encountered, but every reasonable effort shall be made to complete reclamation before the next local growing season. (3-29-12)

**02. General Clean Up.** All debris, abandoned gathering line risers and flowline risers, surface equipment, supplies, rubbish, and other waste materials shall be removed within three (3) months of plugging a well. The burning or burial of such material on the premises shall be performed in accordance with applicable local, state, or federal solid waste disposal and air quality regulations. In addition, material may be burned or buried on the premises only with the prior written consent of the surface owner. (3-29-12)

**03. Road Removal.** All access roads to plugged and abandoned wells and associated production facilities shall be ripped, regraded, and recontoured unless otherwise specified in a surface use agreement. Culverts and any other obstructions that were part of the access road(s) shall be removed. Roads to be left will be graded to drain and prepared with rolling dips or other best management practices to minimize erosion. (3-29-12)

**04. Regrading.** Drill pads, pits, berms, cut and fill slopes, and other disturbed areas will be regraded to approximate the original contour. Where possible, slopes should be reduced to three (3) horizontal feet to one (1) vertical foot (3H:1V) or flatter. (3-29-12)

**05. Compacted Areas.** All areas compacted by drilling and subsequent oil and gas operations that are no longer needed following completion of such operations shall be cross-ripped. Ripping shall be undertaken to a depth of eighteen (18) inches or bedrock, whichever is reached first. (3-29-12)

**06. Topsoiling.** Stockpiled topsoil shall be replaced in a manner that will support reestablishment of the pre-disturbance land use and contoured to control erosion and provide long-term stability. If necessary, topsoiled areas shall be tilled adequately in order to establish a proper seedbed. (3-29-12)

**07. Revegetation.** (3-29-12)

**a.** The owner or operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands prior to the oil and gas operations. Certified weed free seed should be used in revegetation. The owner or operator may use available technical data and results of field tests for selecting seeding practices and soil amendments that will result in viable revegetation. (3-29-12)

**b.** The disturbed areas shall be reseeded in the first favorable season following rig demobilization, site regrading, and topsoil replacement. (3-29-12)

**c.** Unless otherwise specified in the approved permit, the success of revegetation efforts shall be measured against the existing vegetation on site prior to the oil and gas operations, or against an adjacent reference area supporting similar types of vegetation. Reseeding or replanting is required until the following cover standards are met: (3-29-12)

**i.** The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on an adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation, if used; (3-29-12)

**ii.** Ground cover shall be considered comparable if the planted area has at least seventy percent (70%) of the pre-disturbance, or adjacent reference area, ground cover; (3-29-12)

**iii.** For locations with an average annual precipitation of more than twenty-six (26) inches, the Department, in approving a drilling permit or a pit, may set a minimum standard for success of revegetation as follows: Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species; (3-29-12)

**iv.** As used in this section, "herbaceous species" means grasses, legumes, and other forbs; "woody plants" means woody shrubs, trees, and vines; and "ground cover" means the area of the ground surface covered by

the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measured. Rock surface areas will be excluded from this calculation; and (3-29-12)

v. In all cases, vegetative cover shall be established to the extent necessary to control erosion. (3-29-12)

d. Introduced species may be planted if they are known to be comparable to previous vegetation, or if known to be of equal or superior use for the approved post-reclamation land use, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weed species shall not be used in revegetation. (3-29-12)

e. By mutual agreement of the Department, the surface owner, and the owner or operator, a site may be converted to a different, more desirable or more economically suitable habitat. (3-29-12)

f. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. (3-29-12)

g. The owner or operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to oil and gas operations. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the surface owner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical binders, or other acceptable means during establishment of the shrubs. (3-29-12)

h. Tree stocking of forestlands should meet the following criteria: (3-29-12)

i. Trees that are adapted to the site should be planted in a density which can be expected over time to yield a timber stand comparable to pre-disturbance timber stands; (3-29-12)

ii. Trees shall be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and (3-29-12)

iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. (3-29-12)

i. Revegetation is not required on areas that the surface owner wishes to incorporate into an irrigated field and any roads which will be used for other oil and gas operations. (3-29-12)

j. Mulch should be used on severe sites and may be required by the permit where slopes are steeper than three (3) horizontal feet to one (1) vertical foot (3H:1V) or the mean annual rainfall is less than twelve (12) inches. When used, straw, or hay mulch should be obtained from certified weed free sources. "Mulch" means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. (3-29-12)

**08. Reclamation Under a Surface Use Agreement.** Notwithstanding the requirements of Subsections ~~32510.03~~ through ~~32510.07~~ of this rule, reclamation may be superseded by the conditions of a surface use agreement as long as the site is left in a stable, non-eroding condition that will not impact fresh waters. (~~3-29-12~~)(    )

**511. -- 999. (RESERVED)**

**IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION**  
**26.01.03 - RULES GOVERNING RECREATIONAL REGISTRATION VENDORS**  
**DOCKET NO. 26-0103-1401**  
**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections Idaho Code, and 67-4210, 67-4223, and 67-4249, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, pages 101 through 105](#).

**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 expected fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Anna Canning, 208-514- 2252.

DATED this 21st Day of November, 2014.

Anna Canning , Division Administrator  
Management Services  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue  
Boise, ID 83716-8700  
P.O. Box 87320, Boise ID 83720-0065  
Tel: (208) 514-2252 / Fax: (208) 334-5232

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-4210, 67-4223, and 67-4249, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 16, 2014.

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:

In order to implement the 2014 Legislative session, HB 492 which was signed into law on April 4, 2014 with an effective date of July 1, 2014, the Idaho Department of Parks and Recreation (IDPR) proposes changes to IDAPA 26, Title 01, Chapter 03 in order to change terminology to clarify and distinguish between the Recreational Registrations the IDPR performs and the Vehicle Registrations performed by the Idaho Transportation Department (ITD).

**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:

The rule changes are required to implement 2014 Legislative session HB492.

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

No fees or charges are being imposed or changed in this rulemaking.

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

There is no expected fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because rule changes are required to come into compliance with law.

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

There are no documents being incorporated by reference.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Anna Canning, (208) 514-2252.

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 July, 23 2014.

DATED this 6th day of June, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0103-1401**

26.01.03 - RULES GOVERNING RECREATIONAL REGISTRATION **PROGRAM** VENDORS

**000. LEGAL AUTHORITY.**

The Parks and Recreation Board, State of Idaho, acting pursuant to the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and its powers and responsibilities under the Parks and Recreation Act, Title 67, Chapter 42, Idaho Code, adopted the following rules. These rules are promulgated under the Department's authority to administer the following Acts: Recreational Activities, Sections 67-7101 through 67-7133, Idaho Code, and Idaho Safe Boating Act, Section 67-7001 et seq., Idaho Code. ~~These rules are intended to set forth the procedures for vendors to apply to sell recreational registrations for the Idaho Department of Parks and Recreation and to set forth procedures necessary to effect consistent, effective and efficient operation and management of the recreational registration program.~~ (7-1-93)( )

**001.—002. (RESERVED) TITLE AND SCOPE.**

**01. Title.** The title of this chapter shall be cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.03, "Rules Governing Recreational Registration Program Vendors." ( )

**02. Scope.** These rules are intended to set forth the procedures for vendors to apply to sell Recreational Registration Program products including, but not limited to, certificates of number, permits, user certificates, and stickers for the Idaho Department of Parks and Recreation and to set forth procedures necessary to effect consistent, effective, and efficient operation and management of the recreational registration program. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**004.—009. (RESERVED) INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules. ( )

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

**01. Office Hours.** Central office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ( )

**02. Mailing Address.** The mailing address for the central office is Idaho Department of Parks and Recreation, PO Box 83720, Boise, ID 83720-0065. ( )

**03. Street Address.** The Central office of the Idaho Department of Parks and Recreation is located at 5657 Warm Springs Ave., Boise, ID 83716-8700. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 1, Idaho Code. ( )

**007. -- 009. (RESERVED)**

**010. DEFINITION OF TERMS.**

**01. Application.** A form prescribed and furnished to prospective vendors by the Department. (7-1-93)

**02. Department or Central Office.** The Idaho Department of Parks and Recreation. Location: 5657

Warm Springs Avenue, Boise, Idaho, 83716; Mailing Address: Statehouse Mail, Boise, Idaho 83720; Phone: 208-334-4199. (7-1-93)

**03. Memorandum of Agreement.** A contract between the Department and the Vendor. (7-1-93)

**04. Products.** ~~Recreational Registration Program products shall include but not be limited to certificates of number, permits, user certificates, and stickers.~~ ( )

**045. Recreational Registrations Program.** ~~Registration of various recreational vehicles, which includes, but is not limited to, snowmobiles, boats, off-road motorbikes, and recreational activities such as use of Park 'N' Ski facilities. A unit within Idaho Department of Parks and Recreation responsible for the administration and oversight of the vendor program, the sale of program products, and the management and distribution of the resulting funds.~~ (7-1-93)( )

**056. Vendor.** Any business authorized to sell ~~recreational registration licenses~~ products. (7-1-93)( )

**067. Vendor Policy Manual.** A policy manual setting forth guidelines for selling ~~recreational registration licenses~~ products. (7-1-93)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. CRITERIA FOR APPLYING FOR VENDORSHIP.**

A prospective vendor may apply to sell one (1) or more types of ~~registrations~~ products. A prospective vendor may make a request to the Department at any time by phone, mail, or in person to receive Vendor Application forms and a copy of the applicable vendor Memorandum of Agreement. The application and the signed Memorandum of Agreement must be completed in full and returned to the Department for approval. If approved by the Department, the vendorship will be effective upon issuance of the signed Memorandum of Agreement by the Licensing Section, Department of Parks and Recreation. (7-1-93)( )

**101. -- 149. (RESERVED)**

**150. MINIMUM QUALIFICATIONS OF VENDORS.**

**01. Established Business.** The prospective vendor's business must be known as an established business in the general area they will serve and they may need to provide additional references to establish, to the department's satisfaction, the likelihood of an ongoing business operation. No vendor will be given an exclusive territory or area in which to sell ~~registrations and licenses~~ products. (7-1-93)( )

**02. Taxes and Fees.** The applicant must not be delinquent in payment of any taxes or fees to the state of Idaho or any subdivision thereof. (7-1-93)

**03. Operating Hours.** The location of the business and hours of operation must be ~~such that registration will be available to registrants at a convenient time and place~~ convenient to the intended customers. (7-1-93)( )

**04. Service.** Every effort will be made by the applicant to provide satisfactory service to both ~~registrants in issuing registrations and~~ the Department and its customers in properly collecting fees, safeguarding supplies and reporting in a timely, accurate manner. (7-1-93)( )

**05. Bonding.** When applicable, a vendor must be bondable to the extent that his gross fees collected will exceed one thousand dollars (\$1,000); such bond to be provided by the Department. (7-1-93)

**06. Nondiscrimination.** Vendors shall not discriminate against any ~~registrant~~ Department customers on the basis of race, religion, or nationality or gender. (7-1-93)( )

(BREAK IN CONTINUITY OF SECTIONS)

250. VENDOR SUSPENSION AND TERMINATION.

01. **Suspension.** A vendor may be suspended from selling ~~registrations~~ products for up to one (1) year for: (7-1-93)( )

a. Failure to file a sales report on or before the date required by law, even if there were no ~~registrations~~ products sold. (7-1-93)( )

b. Filing of inaccurate or incorrect reports. (7-1-93)

c. Failure to issue ~~registrations~~ products in accordance with the provisions of Idaho Code, the Vendor Memorandum of Agreement and procedures, policies and instructions of the Department. (7-1-93)( )

02. **Termination.** A vendor may be terminated permanently for: (7-1-93)

a. Being suspended twice in any three (3) year period. (7-1-93)

b. Breach of the vendor Contract. (7-1-93)

c. Remitting fees with a nonsufficient funds check which is not due to bank error. (7-1-93)

d. A volume of ten (10) or less ~~registrations, or total lack of~~ sales, for a one (1) year period. (7-1-93)( )

e. Refusal to remit fees collected or return voided or unused ~~sticker~~ product. (7-1-93)( )

f. Use of unacceptable or unbusiness-like conduct toward a ~~registrant~~ Department customer. (7-1-93)( )

251. -- 299. (RESERVED)

300. VENDOR FEES.

In order to establish consistency in vendor ~~registration~~ fees, vendors are strongly encouraged to charge the maximum allowable vendor fee as established under appropriate statutes as outlined in Section 000 of this chapter, and to notify the Department of vendor's intent to reduce the fee. The fee must remain consistent for a full season or program year, and changes must be approved by the Department in advance. (7-1-93)( )

301. -- 349. (RESERVED)

350. DEPARTMENT RESERVES EXCLUSIVE RIGHT TO RENEW ~~REGISTRATIONS~~ CERTIFICATES OF NUMBER BY MAIL.

The Department reserves the exclusive right to mail out requests for renewal on all ~~registrations~~ certificates of number which it is authorized to administer. This does not preclude vendors from making arrangements with ~~registrants~~ Department customers who may be physically removed from their place of residence at a time when ~~re-registration~~ numbering becomes necessary. To perform such ~~re-registration~~ numbering as a service to that patron, vendor should follow the procedures as outlined in the Vendor Policy Manual. (7-1-93)( )

351. -- 399. (RESERVED)

400. VENDORS TO OBTAIN EVIDENCE OF OWNERSHIP PRIOR TO ISSUING ~~REGISTRATIONS~~ CERTIFICATES OF NUMBER.

Vendors must take reasonable care that adequate evidence of ownership is presented prior to ~~registration~~ numbering. Prior ~~registration~~ certificate of number is sufficient evidence. (7-1-93)( )



## IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

### 26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections Idaho Code, and 67-4210, 67-4223, and 67-4249, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, pages 106 through 110](#).

**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 expected fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Anna Canning, (208) 514- 2252.

DATED this 21st Day of November, 2014.

Anna Canning , Division Administrator  
Management Services  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue  
Boise, ID 83716-8700  
P.O. Box 87320, Boise ID 83720-0065  
Tel: (208) 514-2252 / Fax: (208) 334-5232

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-4210, 67-4223, and 67-4249, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 16, 2014.

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. Hearings are not planned but will be held if requested.

**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:

In order to implement the 2014 Legislative session, HB 492 which was signed into law on April 4, 2014 with an effective date of July 1, 2014 the Idaho Department of Parks and Recreation (IDPR) proposes changes to IDAPA 26, Title 01, Chapter 20 in order to change terminology so as to clarify and distinguish between the Recreational Registrations the IDPR performs and the Vehicle Registrations performed by the Idaho Transportation Department (ITD).

**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:

The rule changes are required to implement 2014 Legislative session HB492.

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

**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 expected fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because rule changes are required to come into compliance with law.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Anna Canning, (208) 514- 2252.

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 July, 23 2014.

DATED this 6th day of June, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0120-1401**

**010. DEFINITIONS.**

As used in this chapter:

(1-1-94)

- 01. ADA Campsites and Facilities.** (3-30-06)
- a.** ADA Designated Campsites. Campsites that have been designated and built to meet ADA accessibility requirements. These campsites are not managed exclusively for ADA use. (3-27-13)
- b.** ADA Accessible Facilities. IDPR offers some facilities that provide for ADA accessibility. These facilities are not managed exclusively for ADA use. (3-30-06)
- 02. Annual Motor Vehicle Entrance Fee.** A sticker that allows a single motor vehicle to enter Idaho State Parks without being charged a motor vehicle entrance fee. (3-27-13)
- a.** The Annual Motor Vehicle Entrance Fee sticker expires December 31 of the year issued. (3-27-13)
- b.** The Annual Motor Vehicle Entrance Fee sticker may be purchased at any Idaho State Park, the Idaho Department of Parks and Recreation central or regional offices, or online. (3-27-13)
- c.** Automobiles, Trucks, Motorhomes. The sticker must be permanently affixed on the lower corner of the driver's side windshield. (3-27-13)
- d.** All-Terrain Vehicles (ATVs), Utility Type Vehicles (UTVs), Speciality Off-Highway Vehicles (SOHVs). The sticker must be permanently affixed on the rear fender. (3-27-13)
- e.** Motorbikes. The sticker must be permanently affixed on the rider's right fork. (3-27-13)
- f.** Snowmobiles. The sticker must be permanently affixed to the right side of the cowling located just below the hood, to the right of the ~~registration~~ validation sticker. It must be visible and legible at all times. ~~(3-27-13)~~ ( )
- 03. Annual Motor Vehicle Entrance Fee Replacement.** Replacement due to a motor vehicle sale or damage to an existing annual motor vehicle entrance fee sticker. (3-27-13)
- a.** The applicant must apply at any Idaho State Park, at the Idaho Department of Parks and Recreation central or regional offices, or online for replacement sticker. (3-27-13)
- b.** Proof of purchase must be established. (3-27-13)
- c.** Display and placement of the replacement sticker will comply with Subsections 010.02.c. through 010.02.f. of this Chapter. (3-27-13)
- 04. Board.** The Idaho Park and Recreation Board, a bipartisan, six (6) member Board, appointed by the Governor. (3-13-97)
- 05. Camping Unit.** A camping unit is the combined equipment and people capacity that a site or facility will accommodate. (3-30-06)
- a.** Campsites. Maximum capacity limits on each campsite are subject to each site's design and size. Unless otherwise specified, the maximum capacity will be one (1) family unit or a party of no more than eight (8) persons, two (2) motor vehicles or one (1) RV or two (2) motorcycles, and up to two (2) tents, provided the combined equipment and people fit within the designated camping area of the site selected. (4-4-13)
- b.** Facilities. Maximum capacity limits on each facility are subject to each facility's design and size. The combined equipment and people occupying a facility must fit within the designated areas of the facility selected. (3-30-06)
- 06. Camping Day.** (3-30-06)

- a.** For individual and group campsites the period between 2 p.m. of one (1) calendar day and 1 p.m. of the following calendar day. (3-30-06)
- b.** For individual and group camping facilities, the period between 3 p.m. of one (1) calendar day and 12 noon of the following calendar day. (3-30-06)
- 07. Campsite.** (3-30-06)
- a.** Individual. An area within an IDPR managed campground designated for camping use by an individual camping unit or camping party. (3-30-06)
- b.** Group. An area within an IDPR managed campground designated for group camping use or a block of individual campsites designated for group use within a campground primarily managed for individual use. (3-30-06)
- c.** Facility, Individual. A camping structure within an IDPR managed campground or area designated for camping use by an individual camping party. (3-30-06)
- d.** Facility, Group. A camping structure within an IDPR managed campground or area designated for group use. (3-30-06)
- 08. Day Use.** Use of any non-camping lands and/or facilities between the hours of 7 a.m. and 10 p.m. unless otherwise posted. (3-30-06)
- 09. Department.** The Idaho Department of Parks and Recreation. (1-1-94)
- 10. Designated Beach.** Waterfront areas designated by the park manager or designee for water-based recreation activities. The length and width of each designated beach shall be visibly identified with signs. (3-30-06)
- 11. Designated Roads and Trails.** Facilities recognizable by reasonable formal development, signing, or posted rules. (3-7-03)
- 12. Director.** The Director and chief administrator of the Department, or the designee of the Director. (1-1-94)
- 13. Dock and Boating Facility.** Floats, piers, and mooring buoys owned or operated by the Department. (3-13-97)
- 14. Encroachments.** Non-recreational uses of lands under the control of the Board including any utilization for personal, commercial, or governmental use by a non-Department entity. (4-4-13)
- 15. Extra Vehicle.** An additional motor vehicle without built in sleeping accommodations registered to a camp site. (3-27-13)
- 16. Facilities.** (3-30-06)
- a.** Individual. A camping structure within an IDPR managed campground or area designated for camping use by an individual camping party. (3-30-06)
- b.** Group. A camping structure within an IDPR managed campground or area designated for group use. (3-30-06)
- 17. Group Use.** Twenty-five (25) or more people, or any group needing special considerations or deviations from normal Department rules or activities. (1-1-94)
- 18. Idaho State Parks Passport.** A sticker, purchased from any county Department of Motor Vehicles' office in the state of Idaho, that matches a particular motor vehicle license number and expiration date, allowing that vehicle to enter Idaho State Parks without being charged a motor vehicle entrance fee. (3-27-13)

- a. Idaho State Parks Passport sticker expires concurrent with the expiration of that vehicle's registration. (3-27-13)
- b. Display and placement of the Idaho State Parks Passport will comply with Subsections 010.02.c. through 010.02.f. of this rule. (3-27-13)
- 19. Idaho State Parks Passport Replacement.** Replacement due to a motor vehicle registration transfer or damage to an existing passport. (3-27-13)
- a. The applicant must apply in person to their county Department of Motor Vehicles' office for this replacement sticker. (3-27-13)
- b. Display and placement of the replacement sticker will comply with Subsections 010.02.c. through 010.02.f. of this rule. (3-27-13)
- 20. Motor Vehicle.** Every vehicle that is self-propelled except for vehicles moved solely by human power and motorized wheelchairs. (3-27-13)
- 21. Motor Vehicle Entrance Fee (MVEF).** A fee charged for entry to or operation of a motor vehicle in an Idaho State Park. Day use expires at 10 p.m. on date of purchase or as posted; overnight camping use expires upon checkout which is 1 p.m. for a campsite and 12 noon for a facility. (3-27-13)
- 22. Overnight Use.** Use of any non-camping lands for the parking of motor vehicles or trailers not associated with a campsite between the hours of 10 p.m. and 7 a.m. unless otherwise posted. (4-4-13)
- 23. Overnight Use Fee.** A fee charged for overnight use of non-camping lands between the hours of 10 p.m. and 7 a.m. (4-4-13)
- 24. Park or Program Manager.** The person, designated by the Director, responsible for administering and supervising particular lands, facilities, and staff that are under the jurisdiction of the Department. (3-7-03)
- 25. Recreational Vehicle (RV).** A "recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The entities are travel trailer, camping trailer, truck camper, fifth-wheel trailer, and motorhome. It does not include pickup hoods, shells, or canopies designed, created, or modified for occupational use. (Section 39, Idaho Code) (3-27-13)
- 26. Standard Amenities.** Campsite with no serviced amenities. (3-30-06)
- 27. Serviced Amenities.** Serviced campsite amenities includes water, electricity, or sewer. (3-30-06)
- 28. Primary Season.** The time of the year when the majority of use occurs at a park facility. (3-7-03)
- 29. Vessel.** Every description of watercraft, including a seaplane on the water, used or capable of being used as a means of transportation on water, but not including float houses, diver's aids operated and designed primarily to propel a diver below the surface of the water, and non-motorized devices not designed or modified to be used as a means of transportation on the water such as inflatable air mattresses, single inner tubes, and beach and water toys as defined in Section 67-7003(22), Idaho Code. (3-7-03)
- 30. Vessel Length.** The distance measured at the centerline at the highest point above the waterline from the fore-part of the outer hull at the bow to the aft-part of the outer hull at the stern, excepting any bowsprits, railings or extraneous or additional equipment. (3-13-97)

**IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION**  
**26.01.21 - RULES GOVERNING LEASING PRACTICES AND PROCEDURES**  
**FOR RECREATIONAL RESIDENCES WITHIN HEYBURN STATE PARK**

**DOCKET NO. 26-0121-1401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections Idaho Code, and 67-4210, 67-4223, and 67-4249, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the May 7, 2014 Idaho Administrative Bulletin, [Vol. 14-5, pages 68 and 69](#).

**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 expected fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Anna Canning, 208-514- 2252.

DATED this 21st Day of November, 2014.

Anna Canning , Division Administrator  
Management Services  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue  
Boise, ID 83716-8700  
P.O. Box 87320  
Boise ID 83720-0065  
Tel: (208) 514-2252  
Fax: (208) 334-5232

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

**EFFECTIVE DATE:** The effective date of the temporary rule is March 18th, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this

agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-4210, 67-4223, and 67-4249, 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 May 21, 2014.

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.

Hearings are not planned but will be held if requested.

**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:

In order to implement and comply with Senate Bill 1346aa, which was passed during the 2014 legislative session and signed into law on March 18, 2014, the Idaho Department of Parks and Recreation (IDPR) proposes changes to IDAPA 26.01.21 to clarify and delineate lease terms for Cottage site leases and for Float Home Moorage site leases within Heyburn State Park.

**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:

The rule changes are required to implement Senate Bill S1346aa.

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

**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 expected fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because rule changes are required to come into compliance with state law.

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

No materials are incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Tammy L. Kolsky, 208-514-2427.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 28, 2014.

DATED this 4th day of April, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0121-1401**

050. LEASE TERM.

**01. Cottage Site Leases.** Leases shall be issued for a term not to exceed ten (10) years commencing upon January 1 of the year the lease is entered into and ending upon December 31 of the final year of the term.

~~(7-1-99)~~ ( )

**02. Float Home Moorage Site Leases.** Lease of a float home moorage site may be issued for a period of up to thirty (30) years commencing upon January 1 of the year the lease is entered into and ending upon December 31 of the final year of the term. ( )



**IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION**

**26.01.30 - IDAHO SAFE BOATING RULES**

**DOCKET NO. 26-0130-1401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections Idaho Code, and 67-4210, 67-4223, and 67-4249, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, pages 111 through 114](#).

**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 expected fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Anna Canning, 208-514- 2252.

DATED this 21st Day of November, 2014.

Anna Canning , Division Administrator  
Management Services  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue  
Boise, ID 83716-8700  
P.O. Box 87320  
Boise ID 83720-0065  
Tel: (208) 514-2252  
Fax: (208) 334-5232

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this

agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-4210, 67-4223, and 67-4249, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 16, 2014.

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. Hearings are not planned but will be held if requested.

**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:

In order to implement the 2014 Legislative session, HB 492 which was signed into law on April 4, 2014 with an effective date of July 1, 2014 the Idaho Department of Parks and Recreation (IDPR) proposes changes to IDAPA 26, Title 01, Chapter 30 in order to change terminology so as to clarify and distinguish between the Recreational Registrations the IDPR performs and the Vehicle Registrations performed by the Idaho Transportation Department (ITD).

**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:

The rule changes are required to implement 2014 Legislative session HB492.

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

**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 expected fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because rule changes are required to come into compliance with law.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Anna Canning, (208) 514- 2252.

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 July, 23 2014.

DATED this 6th day of June, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0130-1401**

250. ~~REGISTRATION~~ **VESSEL** NUMBERS -- DISPLAY, SIZE, COLOR.

- 01. Requirements.** Each ~~registration~~ **vessel** number required by Section 67-7008, Idaho Code shall: ~~(1-1-94)~~( )
- a.** Be in plain vertical block characters of not less than three (3) inches in height; (7-1-93)
  - b.** Contrast with the color of the background; (7-1-93)
  - c.** Have spaces or hyphens that are equal to the width of a letter other than “I” or a number other than “1” between the letter and number groupings (Example: ID 5678 A or ID-5678-A); (7-1-93)
  - d.** Read from left to right; (7-1-93)
  - e.** Be maintained in legible condition; (7-1-93)
  - f.** Be as high above the waterline as practicable without decreasing the visibility of the number. (7-1-93)
- 02. Manufacturers and Dealers.** When a vessel is used by a manufacturer or dealer for testing or demonstrating, the ~~registration~~ **vessel** number may be painted on or attached to removable plates that are temporarily but firmly attached to each side of the forward half of the vessel. ~~(1-1-94)~~( )
- 03. Special Circumstances.** On vessels so configured that a ~~registration~~ **vessel** number on the hull or superstructure would not be easily visible, the ~~registration~~ **vessel** number shall be painted on or attached to a backing plate that is attached to the forward half of the vessel so that the ~~registration~~ **vessel** number is visible from each side of the vessel. ~~(1-1-94)~~( )

251. -- 274. (RESERVED)

275. ~~REGISTRATION~~ **VESSEL** NUMBERS -- FORM.

- 01. Numbering.** Each ~~registration~~ **vessel** number issued according to Section 67-7008, Idaho Code, shall consist of the prefix “ID,” which denotes Idaho as the State of issuing authority, followed by: ~~(1-1-94)~~( )
- a.** Not more than four (4) numerals followed by not more than two (2) capital letters (Example: ID 1234 AB); or (1-1-94)
  - b.** Not more than three (3) numerals followed by not more than three (3) capital letters (Example: ID 123 ABC). (7-1-93)
- 02. Prohibited Letters.** A ~~registration~~ **vessel** number suffix may not include the letters “I,” “O,” or “Q,” which may be mistaken for numerals. ~~(1-1-94)~~( )

276. -- 299. (RESERVED)

300. ~~REGISTRATION/USE PERMIT~~—VALIDATION STICKERS.

- 01. Size and Location of Stickers.** ~~Registration~~ Validation stickers issued according to Section 67-7008, Idaho Code shall: ~~(1-1-94)~~( )
- a.** Be displayed within six (6) inches of and directly in line with the ~~registration~~ **vessel** number displayed on the vessel; ~~(7-1-93)~~( )
  - b.** Be approximately three (3) inches square; and (7-1-93)

c. Indicate the year in which each validation sticker expires by the colors, green, red, blue, and international orange, in rotation beginning with green for stickers that expire in 1987. (7-1-93)

**02. Removal of Stickers.** Validation stickers issued according to Sections 67-7008 or 67-7011, Idaho Code, which have become invalid, shall be removed from the vessel. (1-1-94)

**301. -- 324. (RESERVED)**

**325. APPLICATION AND CERTIFICATE OF ~~REGISTRATION~~ NUMBER -- CONTENTS.**

**01. Requirements.** Except as allowed in Subsections 325.03 and 325.04 of this chapter, each application for a certificate of ~~registration~~ number and each certificate of ~~registration~~ number, referred to in Section 67-7008, Idaho Code, shall contain the following information: (7-1-94)( )

- a. Number issued to the vessel; (7-1-93)
- b. Expiration date of the certificate; (7-1-93)
- c. State of principal use; (7-1-93)
- d. Name of the owner; (7-1-93)
- e. Address of owner, including ZIP code; (7-1-93)
- f. Whether the vessel is used for pleasure, rent or lease, dealer or manufacturer demonstration, commercial passenger carrying, commercial fishing or other use; (7-1-93)
- g. Manufacturer's hull identification number (if any); (7-1-93)
- h. Make of vessel; (7-1-93)
- i. Year vessel was manufactured; (7-1-93)
- j. Overall length of vessel; (7-1-93)
- k. Whether the vessel is an open boat, cabin cruiser, houseboat, or other type; (7-1-93)
- l. Hull material; (7-1-93)
- m. Whether the propulsion is inboard, outboard, inboard-outdrive, or sail; (7-1-93)
- n. Whether the fuel is gasoline, diesel, or other; (7-1-93)
- o. The number previously issued by an issuing authority for the vessel, if any; (7-1-93)
- p. Whether the application is for a new ~~registration~~ certificate of number, renewal of a ~~registration~~ certificate of number, or transfer of ownership; (7-1-93)( )
- q. The signature of the owner. (7-1-93)

**02. Manufacturer or Dealer.** A certificate of ~~registration~~ number issued to a manufacturer or dealer to be used on a vessel for test or demonstration purposes may omit the requirements of Subsections 325.01.g. through 325.01.n. of this chapter if the word "manufacturer" or "dealer" is plainly marked on the certificate. (7-1-93)

**03. Livery Vessels.** A certificate of ~~registration~~ number issued to a vessel that is to be rented or leased without propulsion machinery may omit the requirements of Subsections 325.01.m. and 325.01.n. of this chapter if the words "livery vessel" are plainly marked on the certificate. (7-1-93)

**04. Proof of Ownership.** Each applicant for a certificate of ~~registration~~ number as prescribed in Section 67-7008, Idaho Code, shall submit one (1) of the following documents to the Department or authorized vendor: (3-23-98)

**a.** The bill of sale from the dealer or a bill of sale from the previous owner of the vessel; (3-23-98)

**b.** If the vessel is home built, a sworn statement attesting to the identity of the builder, the location or place of construction, the source of the material used for construction and a description of the vessel. The statement must also be accompanied by any receipts received from the purchase or acquisition of the materials used in the construction of the vessel and a copy of the construction plans, if any; (3-23-98)

**c.** If the vessel has been rebuilt, a sworn statement attesting to the identity of the builder, the location or place of rebuilding, the source of the material used for rebuilding and a description of the vessel. The statement must also be accompanied by any receipts received for the purchase or acquisition of the materials used in the rebuilding of the vessel and documentation indicating the source of the original hull and proof of ownership from the previous owner; (3-23-98)

**d.** If none of the documents listed in Subsections 325.04.a. or 325.04.b. of this Section are available, the applicant must submit an affidavit of ownership to the Department. (3-23-98)

**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. 26-0131-1401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections Idaho Code, and 67-4210, 67-4223, and 67-4249, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, pages 115 through 118](#).

**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 expected fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Anna Canning, (208) 514- 2252.

DATED this 21st Day of November, 2014.

Anna Canning , Division Administrator  
Management Services  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue  
Boise, ID 83716-8700  
P.O. Box 87320  
Boise ID 83720-0065  
Tel: (208) 514-2252  
Fax: (208) 334-5232

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this

agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-4210, 67-4223, and 67-4249, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 16, 2014.

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. Hearings are not planned but will be held if requested.

**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:

In order to implement the 2014 Legislative session, HB 492 which was signed into law on April 4, 2014 with an effective date of July 1, 2014 the Idaho Department of Parks and Recreation (IDPR) proposes changes to IDAPA 26, Title 01, Chapter 31 in order to change terminology so as to clarify and distinguish between the Recreational Registrations the IDPR performs and the Vehicle Registrations performed by the Idaho Transportation Department (ITD).

**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:

The rule changes are required to implement 2014 Legislative session HB492.

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

**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 expected fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because rule changes are required to come into compliance with law.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Anna Canning, (208) 514- 2252.

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 July, 23 2014.

DATED this 6th day of June, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0131-1401**

**251. OFF-HIGHWAY VEHICLE LAW ENFORCEMENT FUND DISTRIBUTION.**

**01. Deposits Into and Usage of Fund.** One dollar (\$1) of every off-highway vehicle ~~registration certificate of number~~ shall be deposited into the off-highway vehicle law enforcement fund. Moneys in this fund shall be paid out and used as follows: ~~(3-29-10)~~( )

**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. (3-29-10)

**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. (3-29-10)

**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: (3-29-10)

i. The number of citations issued; (3-29-10)

ii. Assistance calls responded to; (3-29-10)

iii. Off-highway vehicle contacts made; and (3-29-10)

iv. Safety classes held. (3-29-10)

**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. (3-29-10)

**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: (3-29-10)

i. Wages (including overtime wages) of county sheriff's deputies directly engaged in off-highway vehicle law enforcement, as described in this Section; (3-29-10)

ii. Wages for court appearances pertaining to violations of Idaho law pertaining to off-highway vehicles, as described in this Section; and (3-29-10)

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. (3-29-10)

**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. (3-29-10)

**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: (3-29-10)



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. (3-29-10)

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. (3-29-10)

c. Multiply this percentage by point zero six (0.6) to get sixty percent (60%) of the value. (3-29-10)

d. Calculate the percentage of off-highway vehicle ~~registration~~ certificate of number designations for each eligible county as compared to the entire state. (~~3-29-10~~)(    )

e. Multiply this percentage by point zero four (0.4) to get forty percent (40%) of the value. (3-29-10)

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~~ certificates of number. This total will be the percentage of the off-highway vehicle law enforcement funds for which the individual county is eligible. (~~3-29-10~~)(    )

**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~~ certificates of number, the funds return to the off-highway vehicle law enforcement fund. Any undistributed money shall be allocated as follows: (~~3-29-10~~)(    )

a. Fifty percent (50%) of the unallocated money shall be distributed as per the distribution formula previously listed; and (3-29-10)

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. (3-29-10)

**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. (3-29-10)

**252. -- 299. (RESERVED)**

**300. GRANTEE OBLIGATIONS.**

**01. Project Completion.** Except as herein proved, upon approval of a grant application the grantee shall be obligated to complete all elements of a project as described on the approved grant application, grant agreement, or approved amendment. (4-11-06)

**02. Project Management.** Except as herein provided, upon approval of a grant application the grantee shall ensure adequate management of the project as specified in the approved grant application or grant agreement. (4-11-06)

**03. Grant Modification.** Only for good cause, and upon the submission of detailed justification shown in writing and approval by the State and Federal Grant Manager may the terms and obligations of the grant application or grant agreement be modified. (4-11-06)

**04. Maintenance and Operation.** Real property, physical facilities and equipment funded by a grant shall be maintained and operated in the condition or state equivalent to that existing when such facility was completed or property or equipment purchased, normal wear and tear excepted. (4-11-06)

**05. Public Use/Nondiscrimination.** Physical facilities and real property purchased in whole or in part with grant moneys shall be available for public use regardless of race, color, religion, national origin, gender, age, or disability. Facilities constructed with grant moneys shall meet the requirements as set by the Americans with Disabilities Act Guidelines. (4-11-06)

**06. Fees And Donations.** Except as herein provided, fees may be charged or donations subscribed for the use of or access to facilities or real property developed or purchased with grant funds at a level commensurate with the costs of maintenance and upkeep of the facility or real property with the approval of the Board. Fees may be charged or donations subscribed for special events of limited duration at the facility when approved by the Department. (4-11-06)

**07. Acknowledgment of Funding Assistance.** Grantee shall post and maintain appropriate permanent signs or decals upon project sites or equipment acknowledging funding assistance from the appropriate grant fund and the Department upon start of the project or purchase of equipment. (4-11-06)

**08. Notice Of ~~Registration~~ Numbering Requirements.** Off-Road Motor Vehicle Account project applicants and sponsors shall be responsible for posting a written notice of the requirement of applicable ~~registration certificate of number~~ requirements and enforcing such requirements for special events as well as general use. (7-1-99)( )

**09. Project Liability.** Grantees, through a signed agreement, shall assume all project liability and hold the Department harmless. (4-11-06)

**10. Purchase and Bidding Requirements.** The grantee shall follow all local, state and federal laws pertaining to the expenditure of public funds. (4-11-06)

**11. Permits.** The grantee shall legally acquire all required local, state and federal permits for the construction or development of the project before grant funds shall be expended. Construction shall comply with the then current codes and standards as set by the Uniform Building Code, Uniform Plumbing Code, and the National Electrical Code. (4-11-06)

**12. Failure to Comply.** Failure by the grantee to comply with such terms and obligations as set forth in the approved grant application or grant agreement shall result in the immediate revocation of an approved grant or shall constitute a conversion pursuant to Section 350 of this chapter, as applicable. (4-11-06)

**IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION**

**26.01.34 - IDAHO PROTECTION AGAINST INVASIVE SPECIES STICKER RULES**

**DOCKET NO. 26-0134-1401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections Idaho Code, and 67-4210, 67-4223, and 67-4249, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, pages 119 through 121](#).

**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 expected fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Anna Canning, (208) 514- 2252.

DATED this 21st Day of November, 2014.

Anna Canning , Division Administrator  
Management Services  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue  
Boise, ID 83716-8700  
P.O. Box 87320, Boise ID 83720-0065  
Tel: (208) 514-2252 . Fax: (208) 334-5232

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-4210, 67-4223, and 67-4249, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in

writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 16, 2014.

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. Hearings are not planned but will be held if requested.

**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:

In order to implement the 2014 Legislative session, HB 492 which was signed into law on April 4, 2014 with an effective date of July 1, 2014 the Idaho Department of Parks and Recreation (IDPR) proposes changes to IDAPA 26, Title 01, Chapter 34 in order to change terminology so as to clarify and distinguish between the Recreational Registrations the IDPR performs and the Vehicle Registrations performed by the Idaho Transportation Department (ITD).

**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:

The rule changes are required to implement 2014 Legislative session HB492.

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

**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 expected fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because rule changes are required to come into compliance with law.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Anna Canning, (208) 514- 2252.

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 July, 23 2014.

DATED this 6th day of June, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0134-1401**

**010. DEFINITIONS.**

As used in this chapter:

(3-29-10)

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

(3-29-10)

- 02. Department.** The Idaho Department of Parks and Recreation. (3-29-10)
- 03. Fund.** Invasive Species Fund as defined in Section 22-1911, Idaho Code. (3-29-10)
- 04. Idaho Invasive Species Act.** The Idaho Invasive Species Act of 2008 as established in Title 22, Chapter 19, Idaho Code. (3-29-10)
- 05. Motorized Vessel.** Any watercraft requiring ~~registration~~ registration certificate of number under Section 67-7008, Idaho Code, or any comparable U.S. vessel ~~registration~~ registration certificate of number program. (~~3-29-10~~)(    )
- 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. (3-29-10)
- 07. Protection Against Invasive Species Sticker.** Any sticker issued by the Department in accordance with the provisions of Section 67-7008(A), Idaho Code. (3-29-10)
- 08. ~~Registration~~ Validation Sticker.** Any sticker issued by the Department in accordance with the provisions of Section 67-7008, Idaho Code. (~~3-29-10~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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~~ numbered pursuant to Section 67-7008, Idaho Code. (~~3-29-10~~)(    )
- 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. (3-29-10)

**076. PLACEMENT OF PROTECTION AGAINST INVASIVE SPECIES STICKER.**

- 01. Location.** (3-29-10)
- 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 ~~S~~ sticker on the port (left) side of the vessel. (~~3-29-10~~)(    )
- b.** Non-motorized. Except as provided in Subsection 050.02.a. of this chapter, the Protection Against Invasive Species Sticker should be affixed in the following manner. (4-7-11)
- 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. (3-29-10)
- 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. (3-29-10)
- 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. (3-29-10)

**IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION**

**26.01.36 - RULES GOVERNING THE WINTER RECREATIONAL  
PARKING PERMIT PROGRAM**

**DOCKET NO. 26-0136-1401**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections Idaho Code, and 67-4210, 67-4223, and 67-4249, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 2, 2014 Idaho Administrative Bulletin, [Vol. 14-7, pages 122 through 124](#).

**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 expected fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Anna Canning, (208) 514- 2252.

DATED this 21st Day of November, 2014.

Anna Canning , Division Administrator  
Management Services  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue  
Boise, ID 83716-8700  
P.O. Box 87320 , Boise ID 83720-0065  
Tel: (208) 514-2252 / Fax: (208) 334-5232

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2014.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-4210, 67-4223, and 67-4249, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 16, 2014.

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. Hearings are not planned but will be held if requested.

**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:

In order to implement the 2014 Legislative session, HB 492 which was signed into law on April 4, 2014 with an effective date of July 1, 2014 the Idaho Department of Parks and Recreation (IDPR) proposes changes to IDAPA 26, Title 01, Chapter 36 in order to change terminology so as to clarify and distinguish between the Recreational Registrations the IDPR performs and the Vehicle Registrations performed by the Idaho Transportation Department (ITD). Adds required sections to the rule.

**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:

The rule changes are required to implement 2014 Legislative session HB492.

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

**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 expected fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because rule changes are required to come into compliance with law.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Anna Canning, (208) 514-2252.

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 July, 23 2014.

DATED this 6th day of June, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0136-1401**

**001.—~~049.~~ (~~RESERVED~~) TITLE AND SCOPE.**

**01. Title. The title of this chapter shall be cited in full as Idaho Department of Parks and Recreation**

Rules, IDAPA 26.01.36, "Rules Governing the Winter Recreational Parking Permit Program." ( )

**02. Scope.** This chapter establishes fees for and rules governing the winter recreational parking permit program administered by the Department, and establishes procedures for obtaining a winter recreational parking permit. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. ( )

**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.**

No documents have been incorporated by reference into these rules. ( )

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

**01. Office Hours.** Central office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ( )

**02. Mailing Address.** The mailing address for the central office is Idaho Department of Parks and Recreation, PO Box 83720, Boise, ID 83720-0065. ( )

**03. Street Address.** The Central office of the Idaho Department of Parks and Recreation is located at 5657 Warm Springs Ave., Boise, ID 83716-8700. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 1, Idaho Code. ( )

**007. -- 049. (RESERVED)**

**050. LOCATION OF PERMIT ON VEHICLE.**

The annual winter recreational parking permit shall be permanently affixed on the front window of the vehicle nearest the driver's seat and the temporary three-day permit shall be ~~hung on the vehicle's interior rear view mirror~~ displayed on the vehicle's dashboard with the dated side displayed to the front of the vehicle in such a manner that it is completely visible and shall be kept in legible condition at all times. No person shall transfer or attempt to transfer an annual winter recreational parking permit decal or a temporary three-day permit ~~hangtag~~ from the vehicle upon which it was legally ~~registered~~ permitted and placed. (7-1-93)( )

**051. -- 099. (RESERVED)**

**100. PERMIT COST, EXPIRATION.**

The fee for an annual winter recreational parking permit shall not exceed thirty dollars (\$30). The fee for a temporary winter recreational parking permit shall not exceed ten dollars (\$10). The annual winter recreational parking permit is valid until the expiration date printed on the decal. The temporary winter recreational parking permit is valid for only the three (3) consecutive days written on the permit ~~hanging~~. (7-1-99)( )

**101. -- 149. (RESERVED)**

**150. USER EXCEPTION.**

Snowmobilers shall be allowed to park their transportation vehicles in a designated parking area without displaying a parking permit when the snowmobiles have current snowmobile ~~registration decals~~ validation stickers. (7-1-93)( )



## IDAPA 37 - DEPARTMENT OF WATER RESOURCES

### 37.03.03 - RULES AND MINIMUM STANDARDS FOR THE CONSTRUCTION AND USE OF INJECTION WELLS

DOCKET NO. 37-0303-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 42-3913, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 3rd, 2014 Idaho Administrative Bulletin, [Vol. 14-9, pages 359 through 366](#).

**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: NA

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Brian Ragan at (208) 287-4934 or [brian.ragan@idwr.idaho.gov](mailto:brian.ragan@idwr.idaho.gov).

DATED this 17th Day of November, 2014.

Brian Ragan, P.G., Technical Hydrogeologist  
Idaho Department of Water Resources  
Underground Injection Control Program  
322 East Front Street  
Boise, Idaho 83720  
Phone: (208) 287-4934  
FAX: (208) 287-6700

#### THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 42-3913, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2014.

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

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

This rule which will appear in IDAPA 37.03.03.010.49 will update the definition of an “injection well” to match that found in Section 42-3902(10), Idaho Code. This rule revision is being proposed in order to make the reinforcing regulation match the statute.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because negotiations regarding the parent statute revision were held prior to its adoption by the 2014 Idaho Legislature under House Bill 410 rendering negotiations for this proposed rule unnecessary.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Brian Ragan at (208) 287-4934 or [brian.ragan@idwr.idaho.gov](mailto:brian.ragan@idwr.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this August 11, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 37-0303-1401**

#### **010. DEFINITIONS.**

- 01. Abandonment.** See “permanent decommission. (4-4-13)
- 02. Abandoned Well.** See “permanent decommission”. (4-4-13)
- 03. Agricultural Runoff Waste.** Excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tail water, as well as natural drainage resulting from precipitation, snowmelt, and floodwaters, and is identical to the statutory phrase “irrigation waste water” found in Idaho Code 42-3902. (4-4-13)
- 04. Applicant.** Any owner or operator submitting an application for permit to construct, modify or maintain an injection well to the Director of the Department of Water Resources. (7-1-93)
- 05. Application.** The standard Department forms for applying for a permit, including any additions, revisions or modifications to the forms. (4-4-13)

**06. Aquifer.** Any formation that will yield water to a well in sufficient quantities to make production of water from the formation reasonable for a beneficial use, except when the water in such formation results solely from fluids deposited through an injection well. (5-3-03)

**07. Area of Review.** The area surrounding an injection well described according to the criteria set forth in Subsection 045.07 of these rules. (4-4-13)

**08. Beneficial Use.** One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, aquifer recharge and storage, stockwatering and fish propagation uses, as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water. (5-3-03)

**09. Best Management Practice (BMP).** A practice or combination of practices that are more effective than other techniques at preventing or reducing contamination of ground water and surface water by injection well operation. (4-4-13)

**10. Casing.** A pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mudfluid into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole. (4-4-13)

**11. Cementing.** The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing. (4-4-13)

**12. Cesspool.** An injection well that receives sanitary waste without benefit of a treatment system or treatment device such as a septic tank. Cesspools sometimes have open bottom and/or perforated sides. (4-4-13)

**13. Coliform Bacteria.** All of the aerobic and facultative anaerobic, gram-negative, non-spore forming, rod-shaped bacteria that either ferment lactose broth with gas formation within forty-eight (48) hours at thirty-five degrees Celsius (35C), or produce a dark colony with a metallic sheen within twenty-four (24) hours on an Endo-type medium containing lactose. (7-1-93)

**14. Confining Bed.** A body of impermeable or distinctly less permeable material stratigraphically adjacent to one (1) or more aquifers. (4-4-13)

**15. Confining Zone.** A geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone. (4-4-13)

**16. Construct.** To create a new injection well or to convert any structure into an injection well. (7-1-93)

**17. Contaminant.** Any physical, chemical, biological, or radiological substance or matter. (4-4-13)

**18. Contamination.** The introduction into the natural ground water of any physical, chemical, biological, or radioactive material that may: (4-4-13)

**a.** Cause a violation of Idaho Ground Water Quality Standards found in IDAPA 58.01.11 "Ground Water Quality Rule" or the federal drinking water quality standards, whichever is more stringent; or (4-4-13)

**b.** Adversely affect the health of the public; or (4-4-13)

**c.** Adversely affect a designated or beneficial use of the State's ground water. Contamination includes the introduction of heated or cooled water into the subsurface that will alter the ground water temperature and render the local ground water less suitable for beneficial use. (4-4-13)

19. **Conventional Mine.** An open pit or underground excavation for the production of minerals. (4-4-13)
20. **Decommission.** To remove a well from operation such that injection through the well is not possible. See “permanent decommission” and “unauthorized decommission”. (4-4-13)
21. **DEQ.** The Idaho Department of Environmental Quality. (5-3-03)
22. **Deep Injection Well.** An injection well which is more than eighteen (18) feet in vertical depth below land surface. (4-4-13)
23. **Department.** The Idaho Department of Water Resources. (7-1-93)
24. **Director.** The Director of the Idaho Department of Water Resources. (7-1-93)
25. **Disposal Well.** A well used for the disposal of waste into a subsurface stratum. (4-4-13)
26. **Draft Permit.** A prepared document indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a “permit.” Permit conditions, compliance schedules, and monitoring requirements are typically included in a “draft permit”. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of “draft permits.” A denial of a request for modification, revocation and reissuance, or termination is not a “draft permit.” (4-4-13)
27. **Drilling Fluid.** Any number of liquid or gaseous fluids and mixtures of fluids and solids (such as solid suspensions, mixtures and emulsions of liquids, gases, and solids) used in operations to drill boreholes into the earth. (4-4-13)
28. **Drywell.** An injection well completed above the water table so that its bottom and sides are typically dry except when receiving fluids. (5-3-03)
29. **Emergency Permit.** A UIC “permit” issued in accordance with Subsection 045.09 of these rules. (4-4-13)
30. **EPA.** The United States Environmental Protection Agency. (5-3-03)
31. **Endangerment.** Injection of any fluid which exceeds Idaho ground water quality standards, or federal drinking water quality standards, whichever is more stringent, that may result in the presence of any contaminant in ground water which supplies or can reasonably be expected to supply any public or non-public water system, and if the presence of such contaminant may result in such a system not complying with any ground water quality standard or may otherwise adversely affect the health of persons or result in a violation of ground water quality standards that would adversely affect beneficial uses. (4-4-13)
32. **Exempted Aquifer.** An “aquifer” or its portion that meets the criteria in the definition of “underground source of drinking water” but which has been exempted according to the procedures in Section 025 of these rules and been recategorized as “other” according to the procedures in IDAPA 58.01.11 “Ground Water Quality Rule”. (4-4-13)
33. **Existing Injection Well.** An “injection well” other than a “new injection well.” (4-4-13)
34. **Experimental Technology.** A technology which has not been proven feasible under the conditions in which it is being tested. (4-4-13)
35. **Facility or Activity.** Any UIC “injection well,” or another facility or activity that is subject to regulation under the UIC program. (4-4-13)
36. **Fault.** A surface or zone of rock fracture along which there has been displacement. (4-4-13)

- 37. Flow Rate.** The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel. (4-4-13)
- 38. Fluid.** Any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gaseous or any other form or state. (7-1-93)
- 39. Formation.** A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface. (4-4-13)
- 40. Formation Fluid.** Fluid present in a "formation" under natural conditions as opposed to introduced fluids. (4-4-13)
- 41. Generator.** Any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR part 261. (4-4-13)
- 42. Ground Water.** Any water that occurs beneath the surface of the earth in a saturated formation of rock or soil. (5-3-03)
- 43. Ground Water Quality Standards.** Standards found in IDAPA 58.01.11, "Ground Water Quality Rule," Section 200. (5-3-03)
- 44. Hazardous Waste.** Any substance defined by IDAPA 58.01.05, "Rules and Standards for Hazardous Waste,". (5-3-03)
- 45. Indian Lands.** "Indian Country" as defined in 18 U.S.C. 1151. That section defines Indian Country as:
- a.** All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (4-4-13)
  - b.** All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (4-4-13)
  - c.** All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (4-4-13)
- 46. Individual Subsurface Sewage Disposal System.** For the purpose of these rules, any standard or alternative disposal system which injects sanitary waste from single family residential septic systems, or non-residential septic systems which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than twenty (20) people a day. (4-4-13)
- 47. Improved Sinkhole.** A naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface. (4-4-13)
- 48. Injection.** The subsurface emplacement of fluids through an injection well, but excludes the following: (4-4-13)
- a.** The underground injection of natural gas for purposes of storage; (4-4-13)
  - b.** The underground injection of fluids or propping agents, other than diesel fuels, pursuant to hydraulic fracturing operations related to oil, gas, or geothermal activities. (4-4-13)
- 49. Injection Well.** Any feature that is operated to allow injection which also meets at least one (1) of the following criteria: (4-4-13)

- a. A bored, or driven shaft whose depth is greater than the largest surface dimension; (4-4-13)
- b. A dug hole whose depth is greater than the largest surface dimension; (4-4-13)
- c. An improved sinkhole; or (4-4-13)
- d. A subsurface fluid distribution system. (4-4-13)
- e. Provided however, that “injection well” does not mean or include any well *drilled used* for oil, gas, or geothermal production activities, other than one into which diesel fuels are injected pursuant to hydraulic fracturing operations (4-4-13)(    )
- 50. Injection Zone.** A geological “formation”, or those sections of a formation receiving fluids through an “injection well.” (4-4-13)
- 51. IWRB.** Idaho Water Resource Board. (5-3-03)
- 52. Large Capacity Cesspools.** Any cesspool used by a multiple dwelling, community or regional system for the disposal of sanitary wastes (for example: a duplex or an apartment building) or any cesspool used by or intended to be used by twenty (20) or more people per day (for example: a rest stop, campground, restaurant or church). (5-3-03)
- 53. Large Capacity Septic System.** Class V wells that are used to inject sanitary waste through a septic tank and do not meet the criteria of an individual subsurface sewage disposal system. (4-4-13)
- 54. Lithology.** The description of rocks on the basis of their physical and chemical characteristics. (4-4-13)
- 55. Maintain.** To allow, either expressly or by implication, an injection well to exist in such condition as to accept or be able to accept fluids. Unless a well has been permanently decommissioned pursuant to the criteria contained in these rules it is considered to be capable of accepting fluids. (4-4-13)
- 56. Mechanical Integrity.** The condition or status of an injection well and its physical components as they relate to the flow of fluids inside or outside the injection well. A well is said to have mechanical integrity if there is no significant leak in the casing, tubing, or packer, and there is no significant fluid movement into a underground source of drinking water through vertical channels adjacent to the wellbore. (4-4-13)
- 57. Modify.** To alter the construction of an injection well, but does not include cleaning or redrilling operations which neither deepen nor increase the dimensions of the well. (7-1-93)
- 58. Motor Vehicle Waste Disposal Wells.** Injection wells that receive or have received fluids from vehicle repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (transmission and muffler repair shop), or any facility that does any vehicular repair work. (5-3-03)
- 59. New Injection Well.** An “injection well” which began to be used for injection after a UIC program for the State applicable to the well is approved or prescribed. (4-4-13)
- 60. Open-Loop Heat Pump Return Wells.** Injection wells that receive surface water or ground water that has been passed through a heat exchange system for cooling or heating purposes. (4-4-13)
- 61. Operate.** To allow fluids to enter an injection well by action or inaction of the operator. (7-1-93)
- 62. Operator.** Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity that operates or proposes to operate any injection well. (7-1-93)

- 63. Owner.** Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity owning land on which any injection well exists or is proposed to be constructed. (7-1-93)
- 64. Packer.** A device lowered into a well to produce a fluid-tight seal. (4-4-13)
- 65. Perched Aquifer.** Ground water separated from an underlying main body of ground water by an unsaturated zone. (7-1-93)
- 66. Permanent Decommission.** The discontinuance of use of an injection well in a method approved by the Director such that the injection well no longer has the capacity to inject fluids and the upward or downward migration of fluid is prevented. This also includes the disposal and proper management of any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the injection well in accordance with all applicable Federal, State, and local regulations and requirements. (4-4-13)
- 67. Permit.** An authorization, license, or equivalent control document issued by the Department. (4-4-13)
- 68. Person.** Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law. (4-4-13)
- 69. Plugging.** The act or process of stopping the flow of water, oil or, gas, or other fluids into or out of a formation through a borehole or well penetrating that formation. (4-4-13)
- 70. Plugging Record.** A systematic listing of permanent or temporary decommissioning of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures. (4-4-13)
- 71. Point of Beneficial Use.** The top or surface of a USDW, directly below an injection well, where water is available for a beneficial use. (4-4-13)
- 72. Point of Diversion for Beneficial Use.** A location such as a producing well or spring where ground water is taken under control and diverted for a beneficial use. (7-1-93)
- 73. Point of Injection.** The last accessible sampling point prior to waste being released into the subsurface environment through an injection well. For example, the point of injection for a Class V septic system might be the distribution box. For a drywell, it is likely to be the well bore itself. (4-4-13)
- 74. Pressure.** The total load or force per unit area acting on a surface. (4-4-13)
- 75. Project.** A group of wells in a single operation. (4-4-13)
- 76. Radioactive Material.** Any material, solid, liquid or gas which emits radiation spontaneously. Radioactive geologic materials occurring in their natural state are not included. (7-1-93)
- 77. Radioactive Waste.** Any fluid which contains radioactive material in concentrations which exceed those established for discharges to water in an unrestricted area by 10 CFR 20.1302.(b)(2)(i) and Table 2 in Appendix B of 10 CFR 20. (5-3-03)
- 78. RCRA.** The Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976. (4-4-13)
- 79. Remediation Project.** Use of an injection well for the removal, treatment or isolation of a contaminant from ground water through actions or the removal or treatment of a contaminant in ground water as

approved by the Director. (4-4-13)

**80. Residential (Domestic) Activities.** Human activities that generate liquid or solid waste in any public, private, industrial, commercial, municipal, or other facility. (4-4-13)

**81. Sanitary Waste.** Any fluid generated through residential (domestic) activities, such as food preparation, cleaning and personal hygiene. This term does not include industrial, municipal, commercial, or other non-residential process fluids. (4-4-13)

**82. Schedule of Compliance.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the standards. (7-1-93)

**83. Septic System.** An injection well that is used to inject sanitary waste below the surface. A septic system is typically comprised of a septic tank and subsurface fluid distribution system or disposal system. (5-3-03)

**84. Shallow Injection Well.** An injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface. (7-1-93)

**85. Site.** The land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity. (4-4-13)

**86. State.** The state of Idaho. (7-1-93)

**87. Stratum (plural strata).** A single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material. (4-4-13)

**88. Subsidence.** The lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface. (4-4-13)

**89. Subsurface Fluid Distribution System.** An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. (4-4-13)

**90. Surface Casing.** The largest diameter permanent pipe string set and sealed following setting of the conductor pipe. (4-4-13)

**91. Total Dissolved Solids.** The total dissolved (filterable) solids as determined by the use of the method specified in 40 CFR part 136. (4-4-13)

**92. Transferor.** The owner or operator transferring ownership and/or operational control of the well. (4-4-13)

**93. UIC.** The Underground Injection Control program under Part C of the Safe Drinking Water Act, including an “approved State program.” (4-4-13)

**94. Unauthorized Decommission.** The decommissioning of any injection well that has not received the approval of the Department prior to decommissioning, or was not decommissioned in a method approved by the Director. These wells may have to be properly decommissioned when discovered by the Director to ensure that the well prevents commingling of aquifers or is no longer capable of injection. (4-4-13)

**95. Underground Injection.** See “injection.” (4-4-13)

**96. Underground Source of Drinking Water (USDW).** An aquifer or its portion: (4-4-13)

**a.** Which: (4-4-13)



- i. Supplies any public water system; or (4-4-13)
  - ii. Contains a sufficient quantity of ground water to supply a public water system; or (4-4-13)
  - (1) Currently supplies drinking water for human consumption; or (4-4-13)
  - (2) Contains fewer than ten thousand (10,000) mg/l total dissolved solids; and (4-4-13)
  - b. Which is not an exempted aquifer. (4-4-13)
- 97. Unreasonable Contamination.** Endangerment of a USDW or the health of persons or other beneficial uses by injection. See “endangerment.” (4-4-13)
- 98. USDW.** Underground Source of Drinking Water. (4-4-13)
- 99. Water Quality Standards.** Refers to those standards found in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards” and IDAPA 58.01.11, “Ground Water Quality Rule.” (5-3-03)
- 100. Well.** For the purposes of these rules, “well” means “injection well.” (5-3-03)
- 101. Well Monitoring.** The measurement, by on-site instruments or laboratory methods, of the quality of water in a well. (4-4-13)

## IDAPA 37 - IDAHO DEPARTMENT OF WATER RESOURCES

### 37.03.11 - RULES FOR CONJUNCTIVE MANAGEMENT OF SURFACE AND GROUND WATER RESOURCES

DOCKET NO. 37-0311-1101

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and of full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Chapter 52, Title 67, Idaho Code, the Idaho Administrative Procedure Act, and Section 42-603, Idaho Code, which provides that the Director of IDWR is authorized to adopt rules and regulations for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources as shall be necessary to carry out the laws in accordance with the priorities of the rights of the users thereof. The Conjunctive Management Rules are also promulgated pursuant to Section 42-1805(8), Idaho Code, which provides the Director with authority to promulgate the rules implementing or effectuating the powers and duties of the Department.

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

The rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11) address conjunctive administration of connected ground and surface water supplies. Part 50 of the rules (IDAPA 37.03.11.050) identifies the area on the Eastern Snake Plain Aquifer (ESPA) having a common ground water supply as identified in a 1992 professional paper of the United States Geological Survey (USGS).

Clear Springs Foods filed a petition on November 2, 2010 for the Department to promulgate revisions to part 50. The Department determined that Rule 50 did not reflect current technical information and commenced negotiated rulemaking proceedings in January of 2011. Multiple public meetings were held. However, due to ongoing work related to the ESPA model and issues related to delivery calls pending before the Department, the Director stayed the rulemaking proceedings in August of 2011. The Director restarted the negotiated rulemaking process in May of 2014. Four additional public meetings were held and comments received and considered.

After considering the public oral and written comments received, the Director concluded Rule 50 should be repealed. The Director concluded the rule is no longer necessary and that administrative hearings and deliberations associated with individual delivery calls is the proper venue to address which ground water rights should be subject to administration under a delivery call.

On October 24, 2014, a public hearing was held on the proposal to repeal Rule 50. The Department provided interested parties an extended comment period to submit comments on this rulemaking.

Additionally, the Department discovered an oversight after the publication of the proposed rule whereby a reference to Rule 50 was found in Section 020. of the Rules for Conjunctive Management of Surface and Ground Water Resources, specifically 37.03.11.020.07. As a matter of administration, the reference to Rule 50 should also be deleted in conjunction with the repeal of Rule 50.

The rule has been adopted by the agency and is now pending. 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. As stated above, 37.03.11.020.07 has been added to this rulemaking to delete the reference to Rule 50. No other changes have been made to the pending rule as it was published. The complete text of the proposed rule was published in the October 1, 2014 issue of the Idaho Administrative Bulletin, [Vol. 14-10, pages 447-448](#).

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

This rulemaking has no fiscal impact to dedicated funds for the Department or the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact: Richard M. Rigby at (208) 287-4839. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Department's web site at the following web address: [www.idwr.idaho.gov](http://www.idwr.idaho.gov).

DATED this 7th Day of November, 2014.

Richard M. Rigby, Senior Advisor  
Idaho Department of Water Resources  
322 East Front Street  
P.O. Box 83720  
Boise, Idaho 83720  
Phone: (208) 287-4839  
Fax: (208) 287-6700  
[richard.rigby@idwr.idaho.gov](mailto:richard.rigby@idwr.idaho.gov)

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

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Chapter 52, Title 67, Idaho Code, the Idaho Administrative Procedure Act, and Section 42-603, Idaho Code, which provides that the Director of IDWR is authorized to adopt rules and regulations for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources as shall be necessary to carry out the laws in accordance with the priorities of the rights of the users thereof. The Conjunctive Management Rules are also promulgated pursuant to Section 42-1805(8), Idaho Code, which provides the Director with authority to promulgate the rules implementing or effectuating the powers and duties of the Department.

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

**Friday, October 24, 2014, at 1:30 p.m. (MDT)**

**Idaho Department of Water Resources  
322 East Front Street, Boise, ID 83702  
6th Floor Conference Rooms B and C**

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. Interested parties who wish to attend the public hearing by phone may contact the Department for the teleconference number and pass code.

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

The rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11) address conjunctive administration of connected ground and surface water supplies. Rule 50 (IDAPA 37.03.11.050) identifies the area on the Eastern Snake Plain Aquifer (ESPA) having a common ground water supply as identified in a 1992 professional paper of the United States Geological Survey (USGS).

Clear Springs Foods filed a petition on November 2, 2010, for the Department to promulgate revisions to Rule 50. The Department determined that Rule 50 did not reflect current technical information and commenced negotiated rulemaking proceedings in January of 2011. Multiple public meetings were held. However, due to ongoing work related to the ESPA model and issues related to delivery calls pending before the Department, the Director stayed the rulemaking proceedings in August of 2011. The Director restarted the negotiated rulemaking process in May of 2014. Four additional public meetings were held and comments received and considered.

Having considered all of the public oral and written comments received, the Department has decided to repeal Rule 50. The Director has concluded that the rule is no longer necessary and that the administrative hearings and deliberations associated with individual delivery calls is the proper venue to address which ground water rights should be subject to administration under a delivery call.

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

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

This rulemaking has no fiscal impact to dedicated funds for the Department or the state general fund.

**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 May 7, 2014 Idaho Administrative Bulletin, **Vol. 14-5, page 77**.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by referenced into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact: Richard M. Rigby at (208) 287-4839. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Department's web site at the following web address: [www.idwr.idaho.gov](http://www.idwr.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 31, 2014.

DATED this 15th Day of September, 2014.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 37-0311-1101**

#### **020. GENERAL STATEMENTS OF PURPOSE AND POLICIES FOR CONJUNCTIVE MANAGEMENT OF SURFACE AND GROUND WATER RESOURCES (RULE 20).**

**01. Distribution of Water Among the Holders of Senior and Junior-Priority Rights.** These rules apply to all situations in the state where the diversion and use of water under junior-priority ground water rights either

individually or collectively causes material injury to uses of water under senior-priority water rights. The rules govern the distribution of water from ground water sources and areas having a common ground water supply. (10-7-94)

**02. Prior Appropriation Doctrine.** These rules acknowledge all elements of the prior appropriation doctrine as established by Idaho law. (10-7-94)

**03. Reasonable Use of Surface and Ground Water.** These rules integrate the administration and use of surface and ground water in a manner consistent with the traditional policy of reasonable use of both surface and ground water. The policy of reasonable use includes the concepts of priority in time and superiority in right being subject to conditions of reasonable use as the legislature may by law prescribe as provided in Article XV, Section 5, Idaho Constitution, optimum development of water resources in the public interest prescribed in Article XV, Section 7, Idaho Constitution, and full economic development as defined by Idaho law. An appropriator is not entitled to command the entirety of large volumes of water in a surface or ground water source to support his appropriation contrary to the public policy of reasonable use of water as described in this rule. (10-7-94)

**04. Delivery Calls.** These rules provide the basis and procedure for responding to delivery calls made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right. The principle of the futile call applies to the distribution of water under these rules. Although a call may be denied under the futile call doctrine, these rules may require mitigation or staged or phased curtailment of a junior-priority use if diversion and use of water by the holder of the junior-priority water right causes material injury, even though not immediately measurable, to the holder of a senior-priority surface or ground water right in instances where the hydrologic connection may be remote, the resource is large and no direct immediate relief would be achieved if the junior-priority water use was discontinued. (10-7-94)

**05. Exercise of Water Rights.** These rules provide the basis for determining the reasonableness of the diversion and use of water by both the holder of a senior-priority water right who requests priority delivery and the holder of a junior-priority water right against whom the call is made. (10-7-94)

**06. Areas Having a Common Ground Water Supply.** These rules provide the basis for the designation of areas of the state that have a common ground water supply and the procedures that will be followed in incorporating the water rights within such areas into existing water districts or creating new districts as provided in Section 42-237a.g., and Section 42-604, Idaho Code, or designating such areas as ground water management areas as provided in Section 42-233(b), Idaho Code. (10-7-94)

**07. Sequence of Actions for Responding to Delivery Calls.** Rule 30 provides procedures for responding to delivery calls within areas having a common ground water supply that have not been incorporated into an existing or new water district or designated a ground water management area. Rule 40 provides procedures for responding to delivery calls within water districts where areas having a common ground water supply have been incorporated into the district or a new district has been created. Rule 41 provides procedures for responding to delivery calls within areas that have been designated as ground water management areas. ~~Rule 50 designates specific known areas having a common ground water supply within the state.~~ (10-7-94) ( )

**08. Reasonably Anticipated Average Rate of Future Natural Recharge.** These rules provide for administration of the use of ground water resources to achieve the goal that withdrawals of ground water not exceed the reasonably anticipated average rate of future natural recharge. (Section 42-237a.g., Idaho Code) (10-7-94)

**09. Saving of Defenses.** Nothing in these rules shall affect or in any way limit any person's entitlement to assert any defense or claim based upon fact or law in any contested case or other proceeding. (10-7-94)

**10. Wells as Alternate or Changed Points of Diversion for Water Rights from a Surface Water Source.** Nothing in these rules shall prohibit any holder of a water right from a surface water source from seeking, pursuant to Idaho law, to change the point of diversion of the water to an inter-connected area having a common ground water supply. (10-7-94)

**11. Domestic and Stock Watering Ground Water Rights Exempt.** A delivery call shall not be effective against any ground water right used for domestic purposes regardless of priority date where such domestic use is within the limits of the definition set forth in Section 42-111, Idaho Code, nor against any ground water right

used for stock watering where such stock watering use is within the limits of the definition set forth in Section 42-1401A(12), Idaho Code; provided, however, this exemption shall not prohibit the holder of a water right for domestic or stock watering uses from making a delivery call, including a delivery call against the holders of other domestic or stockwatering rights, where the holder of such right is suffering material injury. (10-7-94)

(BREAK IN CONTINUITY OF SECTIONS)

044. -- ~~04999.~~ (RESERVED)

~~050. AREAS DETERMINED TO HAVE A COMMON GROUND WATER SUPPLY (RULE 50).~~

~~01. Eastern Snake Plain Aquifer. The area of coverage of this rule is the aquifer underlying the Eastern Snake River Plain as the aquifer is defined in the report, Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho, USGS Professional Paper 1408-F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian. (10-7-94)~~

~~a. The Eastern Snake Plain Aquifer supplies water to and receives water from the Snake River. (10-7-94)~~

~~b. The Eastern Snake Plain Aquifer is found to be an area having a common ground water supply. (10-7-94)~~

~~c. The reasonably anticipated average rate of future natural recharge of the Eastern Snake Plain Aquifer will be estimated in any order issued pursuant to Rule 30. (10-7-94)~~

~~d. The Eastern Snake Plain Aquifer area of common ground water supply will be created as a new water district or incorporated into an existing or expanded water district as provided in Section 42-604, Idaho Code, when the rights to the diversion and use of water from the aquifer have been adjudicated, or will be designated a ground water management area. (10-7-94)~~

~~051. 999. (RESERVED)~~

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.02 - WATER QUALITY STANDARDS

#### DOCKET NO. 58-0102-1301

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** The temporary rule is effective June 4, 2014 and remains in effect until the adjournment of the 2015 legislative session unless rescinded by the agency. This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-third Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Sections 67-5226 and 67-5224, Idaho Code, notice is hereby given that the Board has adopted a temporary and pending rule. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code. Section 39-3603(2)(c), Idaho Code, has been revised by the 2014 Idaho Legislature (House Bill 392). This legislation is consistent with the language in the pending rule.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, December 4, 2013, **Vol. 13-12, pages 119 through 128**. After consideration of public comments, the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov/58-0102-1301](http://www.deq.idaho.gov/58-0102-1301) or by contacting the undersigned.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in federal programs and, therefore, avoid federal promulgation of Idaho's water quality standards.

**IDAHO CODE SECTION 39-107D STATEMENT:** The standards included in this rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Don Essig at [don.essig@deq.idaho.gov](mailto:don.essig@deq.idaho.gov), (208)373-0119.

Dated this 9th day of May, 2014.

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

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has

initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before December 20, 2013. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** DEQ initiated this rulemaking docket in response to U.S. Environmental Protection Agency (EPA) disapproval of the water quality standards provision that exempts, from Tier II antidegradation review, those activities or discharges determined to be insignificant (*de minimus* exemption). This provision is set out in IDAPA 58.01.02.052.08.a.

DEQ is also proposing to revise IDAPA 58.01.02.055, which addresses the treatment of water bodies that do not support designated beneficial uses. This section needs to be updated to ensure it is consistent with changes in the Idaho Code and other sections of the water quality standards that have been adopted since the adoption of Section 055. For example, Subsection 055.04, which was adopted in 1997, contains antidegradation provisions that have since been superseded by the antidegradation policy and implementation provisions contained in Section 39-3603, Idaho Code, and IDAPA 58.01.02.051 and 052, which were adopted by the Idaho Board of Environmental Quality (Board) in 2010 and approved by the Idaho Legislature in 2011 (Docket No. 58-0102-1001).

In November 2010, antidegradation implementation procedures were adopted by the Board and then submitted to the 2011 Idaho Legislature for review (Docket No. 58-0102-1001). Under House Concurrent Resolution 16 (HCR16), the Idaho Legislature rejected certain portions of the rule and approved the remainder of the rule. The 2011 Idaho Legislature also adopted House Bill 153 (HB153) which revised the Idaho Code to include sections addressing the definition of degradation, the treatment of general permits, the identification of Tier II waters, and insignificant discharges or activities (codified at Sections 39-3601, 39-3602, 39-3603, and 39-3623, Idaho Code). The new sections added to Idaho law by HB153 correspond to the portions of the rule rejected by HCR16.

In April 2011, DEQ submitted revisions to its water quality standards administrative rule (Docket No. 58-0102-1001) and corresponding revisions to the Idaho Code to EPA for review and action. In August 2011, EPA approved the revisions as submitted.

In November 2011, the Board adopted Docket No. 58-0102-1103, which included revisions to make the language on implementation of antidegradation procedures in Idaho's water quality standards complete and consistent with changes in state law brought about by the 2011 Legislature's passage of HB153.

On February 14, 2012, Greater Yellowstone Coalition (GYC) brought an action in the U.S. District Court for the District of Idaho (Court) challenging EPA's approval of Idaho's definition of "degradation" of water quality and Idaho's mandatory exemption from review for *de minimus* levels of discharge. The *de minimus* exemption provided for an automatic exemption from Tier II antidegradation review if the added pollution from a new or increased activity would cause less than a 10% cumulative loss of a water body's assimilative capacity as of July 1, 2011. GYC argued that the *de minimus* exemption allows too much pollution. On April 24, 2013, the Court granted EPA's motion for remand of the *de minimus* issue and gave EPA 90 days to either: 1) take a new action on the *de minimus* provision; or 2) inform the Court that it has determined not to take a new action, and to file a cross-motion for summary judgment and brief in support of that motion regarding the *de minimus* provision. The Court will retain jurisdiction to ensure a timely remand process and to allow the parties to challenge any new EPA decision in this case.

On July 23, 2013, EPA disapproved the *de minimus* exemption. The Clean Water Act provides that if the state does not adopt changes in its rule to address the disapproval within 90 days, EPA shall promulgate a standard for the state. Pursuant to this section of the Clean Water Act, EPA may be required to promptly prepare a proposed rule for the state of Idaho. Adoption of this rule docket will avoid EPA promulgation.

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



After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality at the May 2014 Board meeting for adoption as a pending and temporary rule. If adopted by the Board, the temporary rule will become effective on June 4, 2014. The pending rule is expected to be final upon adjournment of the 2015 legislative session if approved by the Idaho Legislature. Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to comply with deadlines in federal programs and, therefore, avoid federal promulgation of Idaho's water quality standards.

Before this rule docket can become effective, it will be necessary to revise Section 39-3603(2)(c), Idaho Code. DEQ intends to submit draft companion legislation for consideration by the 2014 Idaho Legislature.

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

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. On August 7, 2013, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, [Vol. 13-8, pages 334 and 335](#), and a preliminary draft rule was made available for public review. A meeting was held on August 28, 2013. Several members of the public participated in this negotiated rulemaking process by attending the meeting and by submitting written comments. A record of the negotiated rule drafts, written comments received, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary is available at [www.deq.idaho.gov/58-0102-1301](http://www.deq.idaho.gov/58-0102-1301).

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions that resulted in drafting the proposed rule. The proposed rule is the same as Negotiated Rule Draft No. 4 with the exception of Subsection 055.02.a. Upon review, DEQ revised Subsection 055.02.a. for grammatical purposes. DEQ is now seeking public comment on the proposed rule.

**IDAHO CODE SECTION 39-107D STATEMENT:** The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

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

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Don Essig at [don.essig@deq.idaho.gov](mailto:don.essig@deq.idaho.gov), (208)373-0119.

Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before January 3, 2014.

DATED this 8th day of November, 2013.

### **LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-1301**

**052. ANTIDegradation Implementation.**

The antidegradation policy shall be implemented as follows: (3-18-11)

**01. Waters Protected.** All waters receive Tier I protection. Waters receiving Tier II protection will be identified using a water body by water body approach during the antidegradation review. Waters given Tier III protection are designated in law. (3-18-11)

**02. Restoration Projects.** Changes in water quality may be allowed by the Department without an antidegradation review where determined necessary to secure long-term water quality improvement through restoration projects designed to trend toward natural characteristics and associated uses to a water body where those characteristics and uses have been lost or diminished. Restoration projects shall implement best management practices. (3-18-11)

**03. General Permits.** For general permits issued on or after July 1, 2011, the Department will conduct an antidegradation review, including any required Tier II analysis, at the time at which general permits are certified. For general permits that the Department determines adequately address antidegradation, review of individual applications for coverage will not be required unless it is required by the general permit. For general permits that the Department determines do not adequately address antidegradation, the Department may conclude that other conditions, such as the submittal of additional information or individual certification at the time an application is submitted for coverage under a general permit, may be necessary in the general permit to provide reasonable assurance of compliance with the antidegradation policy. If supported by the permit record, the Department may also presume that discharges authorized under a general permit are insignificant or that the pollution controls required in the general permit are the least degrading alternative as specified in Subsection 052.08.c. (3-29-12)

**04. Initiation of Antidegradation Review.** Review of degradation potential and application of the appropriate level of protection from degradation will be triggered by an application for a new or reissued permit or license. (3-18-11)

**05. Identification of Tier II Waters.** The Department will utilize a water body by water body approach in determining where Tier II protection is appropriate in addition to Tier I protection. This approach shall be based on an assessment of the chemical, physical, biological and other information regarding the water body. The most recent federally approved Integrated Report and supporting data will be used to determine the appropriate level of protection as follows: (3-29-12)

**a.** Water bodies identified in the Integrated Report as fully supporting assessed uses will be provided Tier II protection. (3-29-12)

**b.** Water bodies identified in the Integrated Report as not assessed will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license. (3-29-12)

**c.** Water bodies identified in the Integrated Report as not fully supporting assessed uses will receive Tier I protection for the impaired aquatic life or recreational use, except as follows: (3-29-12)

**i.** For aquatic life uses identified as impaired for dissolved oxygen, pH or temperature, if biological or aquatic habitat parameters show a healthy, balanced biological community is present, as described in the "Water Body Assessment Guidance" published by the Idaho Department of Environmental Quality, then the water body shall receive Tier II protection for aquatic life uses. (3-29-12)

**ii.** For recreational uses, if water quality data show compliance with those levels of water quality criteria listed in Sections 200, 210, 251, and 275 (where applicable), then the water body shall receive Tier II protection for recreational uses. (3-29-12)

**06. Evaluation of Effect of an Activity or Discharge on Water Quality.** The Department will evaluate the effect on water quality for each pollutant. The Department will determine whether an activity or discharge results in an improvement, no change, or degradation of water quality. (3-18-11)

a. Effect on water quality will be based on the calculated change in concentration in the receiving water as a result of a new or reissued permit or license. With respect to a discharge, this calculation will take into account dilution using appropriate mixing of the receiving water under critical conditions coupled with the design flow of the discharge. For a reissued permit or license, the calculated change will be the difference in water quality that would result from the activity or discharge as authorized in the current permit or license and the water quality that would result from the activity or discharge as proposed in the reissued permit or license. For a new permit or license, the calculated change will be the difference between the existing receiving water quality and water quality that would result from the activity or discharge as proposed in the new permit or license. (3-18-11)

i. Current Discharge Quality. For pollutants that are currently limited, current discharge quality shall be based on limits in the current permit or license. For pollutants not currently limited, current discharge quality shall be based on available discharge quality data collected within five years of the application for a permit or license or other relevant information. (3-18-11)

ii. Proposed Quality for an Existing Discharge. Future discharge quality shall be based on proposed permit limits. For pollutants not limited in the proposed permit or license, future discharge quality will be estimated from available discharge quality data since the last permit or license was issued accounting for any changes in production, treatment or operation. For the proposed discharge of a new pollutant or a proposed increased discharge of a pollutant, future discharge quality will be estimated based on information provided by the applicant or other relevant information. (3-18-11)

iii. New Permit Limits for an Existing Discharge. When new permit limits are proposed for the first time for a pollutant in an existing discharge, then for purposes of calculating the change in water quality, any statistical procedures used to derive the proposed new limits will be applied to past discharge quality as well, where appropriate. (3-18-11)

iv. Proposed Quality for a New Discharge. Future discharge quality shall be based on proposed permit limits. For pollutants not limited in the proposed permit or license, future discharge quality will be based on information provided by the applicant or other relevant information. (3-18-11)

b. Receiving water quality will be the quality measured, or modeled as appropriate, immediately above the discharge for flowing waters and outside any Department authorized mixing zone for lakes and reservoirs. (3-18-11)

c. Offsets. In determining the effect of an activity or discharge on water quality of Tier II or Tier III waters, the Department may take into account reductions in pollution from other sources that are tied to the proposed activity or discharge. These offsets in pollution must be upstream of the degradation in water quality due to the proposed activity or discharge and occur before the activity or discharge is allowed to begin. The applicant seeking a permit or license for an activity or discharge based on offsets will be held responsible for assuring offsets are achieved and maintained as a condition of their permit or license. (3-18-11)

**07. Tier I Review.** Tier I review will be performed for all new or reissued permits or licenses. Existing uses and the water quality necessary to protect the existing uses must always be maintained and protected. No degradation or lowering of water quality may be allowed that would cause or contribute to violation of water quality criteria as calculated after authorized mixing of the discharge with the receiving water. Identification of existing uses and the water quality necessary for their protection will be based on all available information, including any water quality related data and information submitted during the public comment period for the permit or license. (3-18-11)

**08. Tier II Analysis.** A Tier II analysis will only be conducted for activities or discharges, subject to a permit or a license, that cause degradation. The Department may allow significant degradation of surface water quality that is better than assigned criteria only if it is determined to be necessary to accommodate important economic or social development in the area in which the waters are located. The process and standard for this determination are set forth below. (3-18-11)

a. Insignificant *Activity or Discharge Degradation.* ~~If~~ *The Department shall consider the size and character of* determines an activity or discharge *or the magnitude of its effect on the receiving stream and* will cause

~~degradation, then the Department shall determine whether the degradation is insignificant. If an activity or discharge is determined to be insignificant, then no further Tier II analysis for other source controls (Subsection 052.08.b.), alternatives analysis (Subsection 052.08.c.) or socioeconomic justification (Subsection 052.08.d.) is required. (3-29-12)( )~~

~~i. The Department shall determine insignificance when the proposed change in an activity or discharge, from conditions as of July 1, 2011, will not cumulatively decrease assimilative capacity by more than ten percent (10%). A cumulative decrease in assimilative capacity of more than ten percent (10%), from conditions as of July 1, 2011, shall constitute significant degradation. If the cumulative decrease in assimilative capacity from conditions as of July 1, 2011, is equal to or less than ten percent (10%), then, taking into consideration the size and character of the activity or discharge and the magnitude of its effect on the receiving stream, the Department may determine that the degradation is insignificant. (3-29-12)( )~~

~~ii. The Department may request additional information from the applicant in making a determination whether a proposed change in an activity or discharge is insignificant as needed to determine the significance of the degradation. (3-29-12)( )~~

~~iii. If degradation is determined to be insignificant, then no further Tier II analysis for other source controls (Subsection 052.08.b.), alternatives analysis (Subsection 052.08.c.), or socioeconomic justification (Subsection 052.08.d.) is required. ( )~~

**b.** Other Source Controls. In allowing any degradation of high water quality, the Department must assure that there shall be achieved in the watershed the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for all nonpoint source controls. In providing such assurance, the Department may enter together into an agreement with other State of Idaho or federal agencies in accordance with Sections 67-2326 through 67-2333, Idaho Code. (3-18-11)

**c.** Alternatives Analysis. Degradation will be deemed necessary only if there are no reasonable alternatives to discharging at the levels proposed. The applicant seeking authorization to degrade high water quality must provide an analysis of alternatives aimed at selecting the best combination of site, structural, managerial and treatment approaches that can be reasonably implemented to avoid or minimize the degradation of water quality. To identify the least degrading alternative that is reasonable, the following principles shall be followed: (3-18-11)

i. Controls to avoid or minimize degradation should be considered at the earliest possible stage of project design. (3-18-11)

ii. Alternatives that must be evaluated as appropriate, are: (3-18-11)

(1) Relocation or configuration of outfall or diffuser; (3-18-11)

(2) Process changes/improved efficiency that reduces pollutant discharge; (3-18-11)

(3) Seasonal discharge to avoid critical time periods for water quality; (3-18-11)

(4) Non-discharge alternatives such as land application; and (3-18-11)

(5) Offsets to the activity or discharge's effect on water quality. (3-18-11)

iii. The Department retains the discretion to require the applicant to examine specific alternatives or provide additional information to conduct the analysis. (3-18-11)

iv. In selecting the preferred alternative the applicant shall: (3-18-11)

(1) Evaluate economic impacts (total cost effectiveness, incremental cost effectiveness) of all technologically feasible alternatives; (3-18-11)

(2) Rank all technologically feasible treatment alternatives by their cost effectiveness at pollutant

- reduction; (3-18-11)
- (3) Consider the environmental costs and benefits across media and between pollutants; and (3-18-11)
- (4) Select the least degrading option or show that a more degrading alternative is justified based on Subsections 052.08.c.iv.(1), 052.08.c.iv.(2), or 052.08.c.iv.(3) above. (3-29-12)
- d.** Socioeconomic Justification. Degradation of water quality deemed necessary must also be determined by the Department to accommodate important economic or social development. Therefore, the applicant seeking authorization to degrade water quality must at a minimum identify the important economic or social development for which lowering water quality is necessary and should use the following steps to demonstrate this: (3-18-11)
- i. Identify the affected community; (3-18-11)
- ii. Describe the important social or economic development associated with the activity which can include cleanup/restoration of a closed facility; (3-18-11)
- iii. Identify the relevant social, economic and environmental health benefits and costs associated with the proposed degradation in water quality for the preferred alternative. Benefits and costs that must be analyzed include, but are not limited to: (3-18-11)
- (1) Economic benefits to the community such as changes in employment, household incomes and tax base; (3-18-11)
- (2) Provision of necessary services to the community; (3-18-11)
- (3) Potential health impacts related to the proposed activity; (3-18-11)
- (4) Impacts to direct and indirect uses associated with high quality water, e.g., fishing, recreation, and tourism; and (3-18-11)
- (5) Retention of assimilative capacity for future activities or discharges. (3-18-11)
- iv. Factors identified in the socioeconomic justification should be quantified whenever possible but for those factors that cannot be quantified a qualitative description of the impacts may be accepted; and (3-18-11)
- v. If the Department determines that more information is required, then the Department may require the applicant to provide further information or seek additional sources of information. (3-18-11)
- e.** Process. (3-18-11)
- i. Analysis. The Department in cooperation with State of Idaho designated management agencies and/or federal agencies will collect information regarding the other source controls specified in Subsection 052.08.b. The applicant for a new or reissued permit or license is responsible for providing information pertinent to determining significance/insignificance of proposed changes in water quality and completing an alternatives analysis and socioeconomic justification as appropriate and submitting them to the Department for review. (3-29-12)
- ii. Departmental review. The Department shall review all pertinent information and, after intergovernmental coordination, public notice and input, make a determination as to whether there is assurance that the other source controls specified in Subsection 052.08.b. shall be achieved, and whether degradation of water quality is necessary to accommodate important economic or social development. (3-29-12)
- iii. Public Involvement. The Department will satisfy the public participation provisions of Idaho's continuing planning process. Public notice and review of antidegradation will be coordinated with existing 401 certification notices for public review. (3-18-11)

**09. Tier III - Outstanding Resource Waters (ORWs).** ORWs are designated by the legislature. Subsection 052.09 describes the nomination, public notice and comment, public hearing, and board review process for directing the Department to develop legislation designating ORWs. Only the legislature may designate ORWs. Once designated by the legislature, the ORWs are listed in these rules. (3-18-11)

**a. Nominations.** Any person may request, in writing to the board, that a stream segment be considered for designation as an Outstanding Resource Water. To be considered for ORW designation, nominations must be received by the board by April 1 or ten (10) days after the adjournment sine die of that year's regular session of the legislature, whichever is later, for consideration during the next regular session of the legislature. All nominations shall be addressed to:

Idaho Board of Environmental Quality  
Department of Environmental Quality  
Outstanding Resource Water Nomination  
1410 N. Hilton  
Boise, Idaho 83706-1255

The nomination shall include the following information: (3-18-11)

- i. The name, description and location of the stream segment; (3-18-11)
- ii. The boundaries upstream and downstream of the stream segment; (3-18-11)
- iii. An explanation of what makes the segment a candidate for the designation; (3-18-11)
- iv. A description of the existing water quality and any technical data upon which the description is based as can be found in the most current basin status reports; (3-18-11)
- v. A discussion of the types of nonpoint source activities currently being conducted that may lower water quality, together with those activities that are anticipated during the next two (2) years, as described in the most current basin status reports; and (3-18-11)
- vi. Any additional evidence to substantiate such a designation. (3-18-11)

**b. Public Notice and Public Comment.** The board will give public notice that one (1) or more stream segments are being considered for recommendation to the legislature as outstanding resource waters. Public notice will also be given if a public hearing is being held. Public comments regarding possible designation will be accepted by the board for a period of at least forty-five (45) days. Public comments may include, but are not limited to, discussion of socioeconomic considerations; fish, wildlife or recreational values; and other beneficial uses. (3-18-11)

**c. Public Hearing.** A public hearing(s) may be held at the board's discretion on any stream segment nominated for ORW designation. Public notice will be given if a hearing is held. The decision to hold a hearing may be based on the following criteria: (3-18-11)

- i. One (1) or more requests contain supporting documentation and valid reasons for designation; (3-18-11)
- ii. A stream segment is generally recognized as constituting an outstanding national resource, such as waters of national and state parks, and wildlife refuges; (3-18-11)
- iii. A stream segment is generally recognized as waters of exceptional recreational or ecological significance; (3-18-11)
- iv. The board shall give special consideration to holding a hearing and to recommending for designation by the legislature, waters which meet criteria found in Subsections 052.09.c.ii. and 052.09.c.iii.; (3-29-12)

v. Requests for a hearing will be given due consideration by the board. Public hearings may be held at the board's discretion. (3-18-11)

d. Board Review. The board shall review the stream segments nominated for ORW designation and based on the hearing or other written record, determine the segments to recommend as ORWs to the legislature. The board shall submit a report for each stream segment it recommends for ORW designation. The report shall contain the information specified in Subsection 052.09.a. and information from the hearing record or other written record concerning the impacts the designation would have on socioeconomic conditions; fish, wildlife and recreational values; and other beneficial uses. The Department shall then prepare legislation for each segment that will be recommended to the legislature as an ORW. The legislation shall provide for the listing of designated segments in these rules without the need for formal rulemaking procedures, pursuant to Sections 67-5201, et seq., Idaho Code. (3-29-12)

e. Designated Waters. Those stream segments designated by the legislature as ORWs are listed in Sections 110 through 160. (3-18-11)

f. Restriction of Nonpoint Source Activities on ORWs. Nonpoint source activities on ORWs shall be restricted as follows: (3-18-11)

i. The water quality of ORWs shall be maintained and protected. After the legislature has designated a stream segment as an outstanding resource water, no person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of that ORW, except for conducting short term or temporary nonpoint source activities which do not alter the essential character or special uses of a segment, allocation of water rights, or operation of water diversions or impoundments. Stream segments not designated as ORWs that discharge directly into an ORW shall not be subject to the same restrictions as an ORW, nor shall the ORW mixing zone be subject to the same restrictions as an ORW. A person may conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of a tributary or stream segment, which discharges directly into an ORW or an ORW mixing zone, provided that the water quality of that ORW below the mixing zone shall not be lowered. (3-18-11)

ii. After the legislature has designated a stream segment as an outstanding resource water as outlined in Subsection 052.09.e., existing nonpoint source activities may continue and shall be conducted in a manner that maintains and protects the current water quality of an ORW. The provisions of this section shall not affect short term or temporary activities that do not alter the essential character or special uses of a segment, allocation of water rights, or operations of water diversions or impoundments, provided that such activities shall be conducted in conformance with applicable laws and regulations. (3-29-12)

g. Restriction of Point Source Discharges to ORWs. The water quality of ORWs shall be maintained and protected. Point source discharges that may cause degradation to ORWs may be allowed only if they are offset by reductions in other discharges per Subsection 052.06.c. (3-29-12)

**(BREAK IN CONTINUITY OF SECTIONS)**

**055. WATER QUALITY LIMITED WATERS AND TMDLS.**

01. ~~After Determining That Reporting~~ Water Body ~~Does Not Support~~ Use **Support Status**. ~~After determining that a water body does not fully support designated or existing beneficial uses in accordance with Section 054, the Department, in consultation with the applicable basin and watershed advisory groups, shall evaluate whether the application of required pollution controls to sources of pollution affecting the impaired water body would restore the water body to full support status. This evaluation may include the following:~~ After using the provisions in Section 054, and after consultation with the appropriate basin and watershed advisory groups, the Department shall identify water bodies in the appropriate category in the Integrated Report. The Integrated Report shall be published periodically by the Department in accordance with the applicable provisions of the Clean Water Act and shall be subject to public review and comment prior to submission to EPA for approval. (3-18-11)( )

- ~~a. Identification of significant sources of pollution affecting the water body by past and present activities; (3-20-97)~~
- ~~b. Determination of whether the application of required or cost effective interim pollution control strategies to the identified sources of pollution would restore the water body to full support status within a reasonable period of time; (3-20-97)~~
- ~~c. Consultation with appropriate basin and watershed advisory groups, designated agencies and landowners to determine the feasibility of, and assurance that required or cost effective interim pollution control strategies can be effectively applied to the sources of pollution to achieve full support status within a reasonable period of time; (3-20-97)~~
- ~~d. If pollution control strategies are applied as set forth in this Section, the Department shall subsequently monitor the water body to determine whether application of such pollution controls were successful in restoring the water body to full support status. (3-20-97)~~

**02. Water Bodies ~~Not Fully Supporting Beneficial Uses~~ Needing Development of a Total Maximum Daily Load (TMDL). ( )**

~~a. After following the process identified in Subsection 055.01, The Department shall develop TMDLs or other equivalent processes, as required under Section 303(d)(1) of the Clean Water Act, for those water bodies identified in the Integrated Report as not fully supporting designated or existing beneficial uses and not meeting applicable water quality standards despite the application of required pollution controls shall be identified by the Department as water quality limited water bodies, and shall require the development of TMDLs or other equivalent processes, as described under Section 303(d)(1) of the Clean Water Act. A list of water quality limited water bodies shall be published periodically by the Department in accordance with Section 303(d) of the Clean Water Act and be subject to public review prior to submission to EPA for approval. ( )~~

~~b. Informational TMDLs may be developed for water bodies fully supporting beneficial uses as described under Section 303(d)(3) of the Clean Water Act, however, they will not be subject to the provisions of this Section. (3-18-11)~~

~~c. TMDLs do not need to be developed for water bodies where other pollutant control requirements are expected to achieve full support of uses and compliance with water quality standards in a reasonable period of time. Such water bodies shall be identified as Category 4(b) waters in the Integrated Report. ( )~~

**03. Priority of TMDL Development.** The priority of TMDL development for water quality limited water bodies identified in ~~Subsection 055.02~~ the Integrated Report shall be determined by the Director ~~in consultation with the Basin Advisory Groups as described in Sections 39-3601, et seq., Idaho Code,~~ depending upon the severity of pollution and the uses of the water body, including those of unique ecological significance. In determining the severity of pollution and the effect on uses, the Director shall apply the factors set forth in Section 39-3609, Idaho Code. Water bodies identified as a high priority through this process will be the first to be targeted for development of a TMDL or equivalent process. ~~(3-18-11)~~( )

**04. ~~High Priority Provisions.~~ Protection of Uses Prior to Completion of TMDLs.** ~~Until a TMDL or equivalent process is completed for a high priority water quality limited water body, new or increased discharge of pollutants which have caused the water quality limited listing may be allowed if interim changes, such as pollutant trading, or some other approach for the pollutant(s) of concern are implemented and the total load remains constant or decreases within the watershed. Interim changes shall maximize the use of cost effective measures to cap or decrease controllable human caused discharges from point and nonpoint sources. Once the TMDL or equivalent process is completed, any new or increased discharge of causative pollutants will be allowed only if consistent with the approved TMDL.~~ Prior to the completion of a TMDL or equivalent process for water quality limited water bodies, the Department shall take those actions required by the antidegradation policy (Section 051), the antidegradation implementation procedures (Section 052), and the provisions in Section 39-3610, Idaho Code. Nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis. (3-20-97)( )



05. ~~Medium and Low Priority Provisions.~~ ~~Until TMDLs or equivalent processes are developed for water quality limited water bodies identified as medium or low priority, the Department shall require interim changes in permitted discharges from point sources and best management practices for nonpoint sources deemed necessary to prohibit further impairment of the designated or existing beneficial uses.~~ **Consistency with TMDLs.** Once a TMDL or equivalent process is completed, discharges of causative pollutants shall be consistent with the allocations in the TMDL. Nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis. (3-20-97)(    )

~~a. In determining the necessity for interim changes to existing activities and limitations upon proposed activities, the Department, in consultation with basin and watershed advisory groups, shall evaluate the water quality impacts caused by past regulated and unregulated activities in the affected watershed. (3-20-97)~~

~~b. Consideration of interim changes shall maximize the use of cost effective and timely measures to ensure no further impairment of designated or existing uses. (3-20-97)~~

06. **Pollutant Trading.** Development of TMDLs or equivalent processes or interim changes under these rules may include pollutant trading with the goal of restoring water quality limited water bodies to compliance with water quality standards. (3-20-97)

07. **Idaho Agriculture Pollution Abatement Plan.** Use of best management practices by agricultural activities is strongly encouraged in high, medium and low priority watersheds. The Idaho Agriculture Pollution Abatement Plan is the source for best management practices for the control of nonpoint sources of pollution for agriculture. (3-20-97)

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.02 - WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-third Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

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

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 3, 2014, [Vol. 14-9, pages 409 through 423](#). After consideration of public comments, the rule has been revised at Sections 010 and 060. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov/58-0102-1401](http://www.deq.idaho.gov/58-0102-1401) or by contacting the undersigned.

**IDAHO CODE SECTION 39-107D STATEMENT:** The standards included in this rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Don Essig at [don.essig@deq.idaho.gov](mailto:don.essig@deq.idaho.gov), (208)373-0119.

Dated this 19th Day of November, 2014.

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

#### THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

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

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 19, 2014. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** This rulemaking docket has been initiated to update DEQ's Mixing Zone Policy in the Water Quality Standards to take into account modern tools for evaluating mixing, lessons learned from years of implementation, and to provide greater clarity for DEQ and the regulated community.

A mixing zone is defined as “an area or volume of the receiving water surrounding or adjacent to a point source discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards” (IDAPA 58.01.02.010.61). Mixing zones are granted to NPDES dischargers to calculate the “reasonable potential to exceed” (RPTE) water quality criteria, which serve as the basis for effluent limits in discharge permits. If a mixing zone is not granted by DEQ, the discharger receives end-of-pipe limits. End-of-pipe limits are much more stringent and typically require facilities to undertake technology upgrades, which can be very resource intensive. Mixing zones are used as a tool to help meet the goals of the Clean Water Act (CWA) while also giving the regulated community reprieve from meeting more stringent, and often very costly, effluent limits. Use of mixing zones is recognition that usually it is not necessary to meet ambient water quality everywhere in the receiving water in order to support beneficial uses.

DEQ's current Mixing Zone Policy (IDAPA 58.01.02.060) was adopted over 20 years ago (1991) and contains language that is outdated and/or is no longer relevant. Since the inception of DEQ's Mixing Zone Policy in 1991, numerous updates to Idaho's water quality standards have been made. DEQ recognizes that some parts of the current rule need to be revised in order to meet the intent of related policies. DEQ has also determined from working with dischargers that the current mixing zone rule is ambiguous and does not clearly articulate mixing zone requirements.

In recent years, there has been an increasing interest in, and investigation of, the agency's methods for establishing mixing zones. As technology and information availability have expanded and improved, the methods for establishing mixing zones have also changed. Changes to the rule were made to be reflective of current procedures and tools used to appraise the biological, chemical, and physical properties of the receiving water, and the proposed discharge, in order to best establish mixing zones.

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

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2014 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2015 legislative session if adopted by the Board and approved by the Legislature.

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

**NEGOTIATED RULEMAKING:** The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the April 2014 Idaho Administrative Bulletin, **Vol. 14-4, pages 19 and 20**, and a preliminary draft rule was made available for public review. Meetings were held on May 1, June 12, and July 10, 2014. Several members of the public participated in this negotiated rulemaking process by attending the meetings and by submitting written comments. A record of the negotiated rule drafts, written comments received, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary is available at [www.deq.idaho.gov/58-0102-1401](http://www.deq.idaho.gov/58-0102-1401).

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions that resulted in drafting the proposed rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final rule draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule.

**IDAHO CODE SECTION 39-107D STATEMENT:** The standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

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

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Mary Anne Nelson at [Mary.anne.nelson@deq.idaho.gov](mailto:Mary.anne.nelson@deq.idaho.gov), (208)373-0173.

Anyone may submit written comments by mail, fax or email at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 3, 2014.

DATED this 8th day of August, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-1401**

**010. DEFINITIONS.**

For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards," the following definitions apply: (4-11-06)

**01. Activity.** For purposes of antidegradation review, an activity that causes a discharge to a water subject to the jurisdiction of the Clean Water Act. (3-18-11)

**02. Acute.** A stimulus severe enough to induce a rapid response. In aquatic toxicity tests, acute refers to a single or short-term (i.e., ninety-six (96) hours or less) exposure to a concentration of a toxic substance or effluent which results in death to fifty percent (50%) of the test organisms. When referring to human health, an acute effect is not always measured in terms of lethality. (3-30-07)

**03. Acute Criteria.** Unless otherwise specified in these rules, the maximum instantaneous or one (1) hour average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from acute toxicity due to exposure to the toxic substance or effluent. Acute criteria are expected to adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. This is also known as the Criterion Maximum Concentration (CMC). There are no specific acute criteria for human health; however, the human health criteria are based on chronic health effects and are expected to adequately protect against acute effects. (3-30-07)

**04. Aquatic Species.** Any plant or animal that lives at least part of its life in the water column or benthic portion of waters of the state. (8-24-94)

**05. Assigned Criteria.** Criteria associated with beneficial uses from Section 100 of these rules. (3-18-11)

**06. Background.** The biological, chemical or physical condition of waters measured at a point immediately upstream (up-gradient) of the influence of an individual point or nonpoint source discharge. If several discharges to the water exist or if an adequate upstream point of measurement is absent, the Department will determine where background conditions should be measured. (8-24-94)

**07. Basin Advisory Group.** No less than one (1) advisory group named by the Director, in

consultation with the designated agencies, for each of the state's six (6) major river basins which shall generally advise the Director on water quality objectives for each basin, work in a cooperative manner with the Director to achieve these objectives, and provide general coordination of the water quality programs of all public agencies pertinent to each basin. Each basin advisory group named by the Director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include representatives from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. (3-20-97)

**08. Beneficial Use.** Any of the various uses which may be made of the water of Idaho, including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use is dependent upon actual use, the ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. (8-24-94)

**09. Best Management Practice.** A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals. (3-20-97)

**10. Bioaccumulation.** The process by which a compound is taken up by, and accumulated in the tissues of an aquatic organism from the environment, both from water and through food. (8-24-94)

**11. Bioaccumulative Pollutants.** A compound with a bioaccumulation factor of greater than one thousand (1,000) or a bioconcentration factor of greater than one thousand (1,000). ( )

**12. Biological Monitoring or Biomonitoring.** The use of a biological entity as a detector and its response as a measure to determine environmental conditions. Toxicity tests and biological surveys, including habitat monitoring, are common biomonitoring methods. (8-24-94)

**13. Board.** The Idaho Board of Environmental Quality. (7-1-93)

**14. Chronic.** A stimulus that persists or continues for a long period of time relative to the life span of an organism. In aquatic toxicity tests, chronic refers to continuous exposure to a concentration of a toxic substance or effluent which results in mortality, injury, reduced growth, impaired reproduction, or other adverse effect to aquatic organisms. The test duration is long enough that sub-lethal effects can be reliably measured. When referring to human health, a chronic effect is usually measured in terms of estimated changes in rates (# of cases/ 1000 persons) of illness over a lifetime of exposure. (3-30-07)

**15. Chronic Criteria.** Unless otherwise specified in these rules, the four (4) day average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from chronic toxicity due to exposure to the toxic substance or effluent. Chronic criteria are expected to adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. This is also known as the Criterion Continuous Concentration (CCC). Human health chronic criteria are based on lifetime exposure. (3-30-07)

**16. Compliance Schedule or Schedule Of Compliance.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard. (8-24-94)

**17. Cost-Effective and Reasonable Best Management Practices (BMPs) for Nonpoint Sources.** All approved BMPs specified in Subsections 350.03 and 055.07 of these rules. BMPs for activities not specified are, in accordance with Section 350, determined on a case-by-case basis. (3-18-11)

**18. Daily Maximum (Minimum).** The highest (lowest) value measured during one (1) calendar day or a twenty-four (24) hour period, as appropriate. For ambient monitoring of dissolved oxygen, pH, and temperature, multiple measurements should be obtained at intervals short enough that the difference between consecutive measurements around the daily maximum (minimum) is less than zero point two (0.2) ppm for dissolved oxygen,

zero point one (0.1) SU for pH, or zero point five (0.5) degree C for temperature. (3-30-07)

**189. Daily Mean.** The average of at least two (2) appropriately spaced measurements, acceptable to the Department, calculated over a period of one (1) day: (3-20-97)

**a.** Confidence bounds around the point estimate of the mean may be required to determine the sample size necessary to calculate a daily mean; (8-24-94)

**b.** If any measurement is greater or less than five-tenths (0.5) times the average, additional measurements over the one-day period may be needed to obtain a more representative average; (3-20-97)

**c.** In calculating the daily mean for dissolved oxygen, values used in the calculation shall not exceed the dissolved oxygen saturation value. If a measured value exceeds the dissolved oxygen saturation value, then the dissolved oxygen saturation value will be used in calculating the daily mean. (8-24-94)

**d.** For ambient monitoring of temperature, the daily mean should be calculated from equally spaced measurements, at intervals such that the difference between any two (2) consecutive measurements does not exceed one point zero (1.0) degree C. (3-30-07)

**190. Degradation or Lower Water Quality.** “Degradation” or “lower water quality” means, for purposes of antidegradation review, a change in a pollutant that is adverse to designated or existing uses, as calculated for a new point source, and based upon monitoring or calculated information for an existing point source increasing its discharge. Such degradation shall be calculated or measured after appropriate mixing of the discharge and receiving water body. (3-29-12)

**201. Deleterious Material.** Any nontoxic substance which may cause the tainting of edible species of fish, taste and odors in drinking water supplies, or the reduction of the usability of water without causing physical injury to water users or aquatic and terrestrial organisms. (8-24-94)

**212. Department.** The Idaho Department of Environmental Quality. (7-1-93)

**223. Design Flow.** The critical flow used for steady-state wasteload allocation modeling. (8-24-94)

**234. Designated Agency.** The department of lands for timber harvest activities, oil and gas exploration and development, and mining activities; the soil conservation commission for grazing and agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the Department’s division of environmental quality for all other activities. (3-20-97)

**245. Designated Beneficial Use or Designated Use.** Those beneficial uses assigned to identified waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards and Wastewater Treatment Requirements,” Sections 110 through 160, whether or not the uses are being attained. (4-5-00)

**256. Desirable Species.** Species indigenous to the area or those introduced species identified as desirable by the Idaho Department of Fish and Game. (3-15-02)

**267. Director.** The Director of the Idaho Department of Environmental Quality or his authorized agent. (7-1-93)

**278. Discharge.** When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For purposes of antidegradation review, means “discharge” as used in Section 401 of the Clean Water Act. (3-18-11)

**289. Dissolved Oxygen (DO).** The measure of the amount of oxygen dissolved in the water, usually expressed in mg/l. (7-1-93)

**2930. Dissolved Product.** Petroleum product constituents found in solution with water. (8-24-94)

- 301. Dynamic Model.** A computer simulation model that uses real or derived time series data to predict a time series of observed or derived receiving water concentrations. Dynamic modeling methods include continuous simulation, Monte Carlo simulations, lognormal probability modeling, or other similar statistical or deterministic techniques. (8-24-94)
- 342. E. coli (Escherichia coli).** A common fecal and intestinal organism of the coliform group of bacteria found in warm-blooded animals. (4-5-00)
- 323. Effluent.** Any wastewater discharged from a treatment facility. (7-1-93)
- 334. Effluent Biomonitoring.** The measurement of the biological effects of effluents (e.g., toxicity, biostimulation, bioaccumulation, etc.). (8-24-94)
- 345. EPA.** The United States Environmental Protection Agency. (7-1-93)
- 356. Ephemeral Waters.** A stream, reach, or water body that flows naturally only in direct response to precipitation in the immediate watershed and whose channel is at all times above the water table. (4-11-06)
- 367. Existing Activity or Discharge.** An activity or discharge that has been previously authorized or did not previously require authorization. (3-18-11)
- 378. Existing Beneficial Use Or Existing Use.** Those beneficial uses actually attained in waters on or after November 28, 1975, whether or not they are designated for those waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards." (4-11-06)
- 389. Facility.** As used in Section 850 only, any building, structure, installation, equipment, pipe or pipeline, well pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, area, place or property from which an unauthorized release of hazardous materials has occurred. (8-24-94)
- 3940. Four Day Average.** The average of all measurements within a period of ninety-six (96) consecutive hours. While a minimum of one (1) measurement per each twenty-four (24) hours is preferred, for toxic chemicals in Section 210, any number of data points is acceptable. (3-30-07)
- 401. Free Product.** A petroleum product that is present as a nonaqueous phase liquid. Free product includes the presence of petroleum greater than one-tenth (0.1) inch as measured on the water surface for surface water or the water table for ground water. (7-1-93)
- 442. Full Protection, Full Support, or Full Maintenance of Designated Beneficial Uses of Water.** Compliance with those levels of water quality criteria listed in Sections 200, 210, 250, 251, 252, 253, and 275 (if applicable) or where no major biological group such as fish, macroinvertebrates, or algae has been modified by human activities significantly beyond the natural range of the reference streams or conditions approved by the Director in consultation with the appropriate basin advisory group. (3-15-02)
- 423. General Permit.** An NPDES permit issued by the U.S. Environmental Protection Agency authorizing a category of discharges under the federal Clean Water Act or a nationwide or regional permit issued by the U.S. Army Corps of Engineers under the federal Clean Water Act. (3-29-12)
- 434. Geometric Mean.** The geometric mean of "n" quantities is the "nth" root of the product of the quantities. (7-1-93)
- 445. Ground Water.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (3-30-07)
- 456. Harmonic Mean Flow.** The number of daily flow measurements divided by the sum of the reciprocals of the flows (i.e., the reciprocal of the mean of reciprocals). (8-24-94)
- 467. Hazardous Material.** A material or combination of materials which, when discharged in any

quantity into state waters, presents a substantial present or potential hazard to human health, the public health, or the environment. Unless otherwise specified, published guides such as Quality Criteria for Water (1976) by EPA, Water Quality Criteria (Second Edition, 1963) by the state of California Water Quality Control Board, their subsequent revisions, and more recent research papers, regulations and guidelines will be used in identifying individual and specific materials and in evaluating the tolerances of the identified materials for the beneficial uses indicated. (7-1-93)

**478. Highest Statutory and Regulatory Requirements for Point Sources.** All applicable effluent limits required by the Clean Water Act and other permit conditions. It also includes any compliance schedules or consent orders requiring measures to achieve applicable effluent limits and other permit conditions required by the Clean Water Act. (3-18-11)

**489. Hydrologic Unit Code (HUC).** A unique eight (8) digit number identifying a subbasin. A subbasin is a United States Geological Survey cataloging unit comprised of water body units. (4-5-00)

**4950. Hydrologically-Based Design Flow.** A statistically derived receiving water design flow based on the selection and identification of an extreme value (e.g., 1Q10, 7Q10). The underlying assumption is that the design flow will occur X number of times in Y years, and limits the number of years in which one (1) or more excursions below the design flow can occur. (8-24-94)

**501. Hypolimnion.** The bottom layer in a thermally-stratified body of water. It is fairly uniform in temperature and lays beneath a zone of water which exhibits a rapid temperature drop with depth such that mixing with overlying water is inhibited. (3-30-07)

**542. Integrated Report.** Refers to the consolidated listing and reporting of the state's water quality status pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act. (3-18-11)

**523. Inter-Departmental Coordination.** Consultation with those agencies responsible for enforcing or administering the practices listed as approved best management practices in Subsection 350.03. (7-1-93)

**534. Intermittent Waters.** A stream, reach, or water body which naturally has a period of zero (0) flow for at least one (1) week during most years. Where flow records are available, a stream with a 7Q2 hydrologically-based unregulated flow of less than one-tenth (0.1) cubic feet per second (cfs) is considered intermittent. Streams with natural perennial pools containing significant aquatic life uses are not intermittent. (4-11-06)

~~**54. LC-50.** *The toxicant concentration killing fifty percent (50%) of exposed organisms at a specific time of observation (e.g., ninety-six (96) hours).* (3-20-97)~~

**55. Load Allocation (LA).** The portion of a receiving water's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. (8-24-94)

**56. Loading Capacity.** The greatest amount of pollutant loading that a water can receive without violating water quality standards. (8-24-94)

**57. Lowest Observed Effect Concentration (LOEC).** The lowest concentration of a toxic substance or an effluent that results in observable adverse effects in the aquatic test population. (3-30-07)

**58. Man-Made Waterways.** Canals, flumes, ditches, wasteways, drains, laterals, and/or associated features, constructed for the purpose of water conveyance. This may include channels modified for such purposes prior to November 28, 1975. These waterways may have uniform and rectangular cross-sections, straight channels, follow rather than cross topographic contours, be lined to reduce water loss, and be operated or maintained to promote water conveyance. (3-30-07)

**59. Maximum Weekly Maximum Temperature (MWMT).** The weekly maximum temperature (WMT) is the mean of daily maximum temperatures measured over a consecutive seven (7) day period ending on the day of calculation. When used seasonally, e.g., spawning periods, the first applicable WMT occurs on the seventh day into the time period. The MWMT is the single highest WMT that occurs during a given year or other period of



interest, e.g., a spawning period. (3-30-07)

**60. Milligrams Per Liter (mg/l).** Milligrams of solute per liter of solution, equivalent to parts per million, assuming unit density. (7-1-93)

**61. Mixing Zone.** A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. (7-1-93)

**62. National Pollutant Discharge Elimination System (NPDES).** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act. (8-24-94)

**63. Natural Background Conditions.** The physical, chemical, biological, or radiological conditions existing in a water body without human sources of pollution within the watershed. Natural disturbances including, but not limited to, wildfire, geologic disturbance, diseased vegetation, or flow extremes that affect the physical, chemical, and biological integrity of the water are part of natural background conditions. Natural background conditions should be described and evaluated taking into account this inherent variability with time and place. (3-30-07)

**64. Nephelometric Turbidity Units (NTU).** A measure of turbidity based on a comparison of the intensity of the light scattered by the sample under defined conditions with the intensity of the light scattered by a standard reference suspension under the same conditions. (8-24-94)

**65. New Activity or Discharge.** An activity or discharge that has not been previously authorized. Existing activities or discharges not currently permitted or licensed will be presumed to be new unless the Director determines to the contrary based on review of available evidence. An activity or discharge that has previously taken place without need for a license or permit is not a new activity or discharge when first licensed or permitted. (3-18-11)

**66. Nonpoint Source Activities.** Activities on a geographical area on which pollutants are deposited or dissolved or suspended in water applied to or incident on that area, the resultant mixture being discharged into the waters of the state. Nonpoint source activities on ORWs do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments. Nonpoint sources activities include, but are not limited to: (3-20-97)

- a.** Irrigated and nonirrigated lands used for: (7-1-93)
  - i.** Grazing; (7-1-93)
  - ii.** Crop production; (7-1-93)
  - iii.** Silviculture; (7-1-93)
- b.** Log storage or rafting; (7-1-93)
- c.** Construction sites; (7-1-93)
- d.** Recreation sites; (3-20-97)
- e.** Septic tank disposal fields. (8-24-94)
- f.** Mining; (3-20-97)
- g.** Runoff from storms or other weather related events; and (3-20-97)
- h.** Other activities not subject to regulation under the federal national pollutant discharge elimination system. (3-20-97)

**67. Nuisance.** Anything which is injurious to the public health or an obstruction to the free use, in the customary manner, of any waters of the state. (7-1-93)

**68. Nutrients.** The major substances necessary for the growth and reproduction of aquatic plant life, consisting of nitrogen, phosphorus, and carbon compounds. (7-1-93)

**69. One Day Minimum.** The lowest daily instantaneous value measured. (3-20-97)

**70. One Hour Average.** The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of one (1) hour. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the one-hour period may be needed to obtain a more representative mean. (3-20-97)

**71. Operator.** For purposes of Sections 851 and 852, any person presently or who was at any time during a release in control of, or having responsibility for, the daily operation of the petroleum storage tank (PST) system. (4-2-03)

**72. Outstanding Resource Water (ORW).** A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been designated by the legislature and subsequently listed in this chapter. ORW constitutes an outstanding national or state resource that requires protection from point and nonpoint source activities that may lower water quality. (3-20-97)

~~**73. Outstanding Resource Water Mixing Zone.** An area or volume of an ORW where pollutants are allowed to mix with the ORW receiving water at a location distinct from the sampling point where compliance with ORW quality standards is measured. An ORW mixing zone will be downstream from the discharge of a tributary or a segment immediately upstream which contains man caused pollutants as a result of nonpoint source activities occurring on that tributary or segment. As a result of the discharge, the mixing zone may not meet all water quality standards applicable to the ORW, but shall still be protected for existing beneficial uses. The Department, after consideration of input from interested parties, will determine the size, configuration and location of mixing zones which are necessary to meet the requirements of this chapter. (7-1-93)~~

**743. Owner.** For purposes of Sections 851 and 852, any person who owns or owned a petroleum storage tank (PST) system any time during a release and the current owner of the property where the PST system is or was located. (4-2-03)

**754. Permit or License.** A permit or license for an activity that is subject to certification by the state under Section 401 of the Clean Water Act, including, for example, NPDES permits, dredge and fill permits, and FERC licenses. (3-18-11)

**765. Person.** An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, which is recognized by law as the subject of rights and duties. (3-20-97)

**776. Petroleum Products.** Products derived from petroleum through various refining processes. (7-1-93)

**787. Petroleum Storage Tank (PST) System.** Any one (1) or combination of storage tanks or other containers, including pipes connected thereto, dispensing equipment, and other connected ancillary equipment, and stationary or mobile equipment, that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. (7-1-93)

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

source or activity considered a nonpoint source by definition. (7-1-93)

**8079. Pollutant.** Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged to water in excessive quantities, cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities. (3-20-97)

**810. Project Plans.** Documents which describe actions to be taken under a proposed activity. These documents include environmental impact statements, environmental assessments, and other land use or resource management plans. (7-1-93)

**821. Public Swimming Beaches.** Areas indicated by features such as signs, swimming docks, diving boards, slides, or the like, boater exclusion zones, map legends, collection of a fee for beach use, or any other unambiguous invitation to public swimming. Privately owned swimming docks or the like which are not open to the general public are not included in this definition. (4-11-06)

**832. Receiving Waters.** Those waters which receive pollutants from point or nonpoint sources. (7-1-93)

**843. Reference Stream or Condition.** A water body which represents the minimum conditions necessary to fully support the applicable designated beneficial uses as further specified in these rules, or natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin. In highly mineralized areas or in the absence of such reference streams or water bodies, the Director, in consultation with the basin advisory group and the technical advisors to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported. (3-20-97)

**854. Release.** Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (8-24-94)

**865. Resident Species.** Those species that commonly occur in a site including those that occur only seasonally or intermittently. This includes the species, genera, families, orders, classes, and phyla that: (8-24-94)

- a. Are usually present at the site; (8-24-94)
- b. Are present only seasonally due to migration; (8-24-94)
- c. Are present intermittently because they periodically return or extend their ranges into the site; (8-24-94)
- d. Were present at the site in the past but are not currently due to degraded conditions, and are expected to be present at the site when conditions improve; and (8-24-94)
- e. Are present in nearby bodies of water but are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve. (8-24-94)

**876. Responsible Persons in Charge.** Any person who: (8-24-94)

- a. By any acts or omissions, caused, contributed to or exacerbated an unauthorized release of hazardous materials; (8-24-94)
- b. Owns or owned the facility from which the unauthorized release occurred and the current owner of the property where the facility is or was located; or (8-24-94)
- c. Presently or who was at any time during an unauthorized release in control of, or had responsibility for, the daily operation of the facility from which an unauthorized release occurred. (8-24-94)

- ~~88~~7. **Sediment.** Undissolved inorganic matter. (3-30-07)
- ~~89~~8. **Seven Day Mean.** The average of the daily mean values calculated over a period of seven (7) consecutive days. (3-20-97)
- ~~90~~89. **Sewage.** The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (8-24-94)
- ~~91~~0. **Short-Term or Temporary Activity.** An activity which is as short as possible but lasts for no more than one (1) year, is limited in scope and is expected to have only minimal impact on water quality as determined by the Director. Short-term or temporary activities include, but are not limited to, those activities described in Subsection 080.02. (3-30-07)
- ~~92~~1. **Silviculture.** Those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber. (3-20-97)
- ~~93~~2. **Sludge.** The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. (7-1-93)
- ~~94~~3. **Specialized Best Management Practices.** Those practices designed with consideration of geology, land type, soil type, erosion hazard, climate and cumulative effects in order to fully protect the beneficial uses of water, and to prevent or reduce the pollution generated by nonpoint sources. (3-3-87)
- ~~95~~4. **State.** The state of Idaho. (7-1-93)
- ~~96~~5. **State Water Quality Management Plan.** The state management plan developed and updated by the Department in accordance with Sections 205, 208, and 303 of the Clean Water Act. (3-20-97)
- ~~97~~6. **Suspended Sediment.** The undissolved inorganic fraction of matter suspended in surface water. (3-30-07)
- ~~98~~7. **Suspended Solids.** The undissolved organic and inorganic matter suspended in surface water. (3-30-07)
- ~~99~~98. **Technology-Based Effluent Limitation.** Treatment requirements under Section 301(b) of the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under Section 402 of the Clean Water Act. (8-24-94)
- ~~99~~9. **Thermal Shock.** A rapid temperature change that causes aquatic life to become disoriented or more susceptible to predation or disease. ( )
- 100. Total Maximum Daily Load (TMDL).** The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, and natural background. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. (8-24-94)
- 101. Toxicity Test.** A procedure used to determine the toxicity of a chemical or an effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent. (8-24-94)

**102. Toxic Substance.** Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the State and upon exposure, ingestion, inhalation or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic substances include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA pursuant to Section 307(a) of the federal Clean Water Act. (8-24-94)

**103. Treatment.** A process or activity conducted for the purpose of removing pollutants from wastewater. (7-1-93)

**104. Treatment System.** Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishing thereof and their appurtenances. A treatment system may also be known as a treatment facility. (4-11-06)

**105. Twenty-Four Hour Average.** The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of twenty-four (24) consecutive hours. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the twenty-four (24)-hour period may be needed to obtain a more representative mean. (3-20-97)

**106. Unique Ecological Significance.** The attribute of any stream or water body which is inhabited or supports an endangered or threatened species of plant or animal or a species of special concern identified by the Idaho Department of Fish and Game, which provides anadromous fish passage, or which provides spawning or rearing habitat for anadromous or desirable species of lake dwelling fishes. (8-24-94)

**107. Wasteload Allocation (WLA).** The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. (8-24-94)

**108. Wastewater.** Unless otherwise specified, sewage, industrial waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present. (7-1-93)

**109. Water Body Unit.** Includes all named and unnamed tributaries within a drainage and is considered a single unit unless designated otherwise. (4-5-00)

**110. Water Pollution.** Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. (8-24-94)

**111. Water Quality-Based Effluent Limitation.** An effluent limitation that refers to specific levels of water quality that are expected to render a body of water suitable for its designated or existing beneficial uses. (8-24-94)

**112. Water Quality Limited Water Body.** After monitoring, evaluation of required pollution controls, and consultation with the appropriate basin and watershed advisory groups, a water body identified by the Department, which does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards after the application of required pollution controls. A water body identified as water quality limited shall require the development of a TMDL or other equivalent process in accordance with Section 303 of the Clean Water Act and Sections 39-3601 et seq., Idaho Code. (3-20-97)

**113. Waters and Waters Of The State.** All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (7-1-93)

**114. Watershed.** The land area from which water flows into a stream or other body of water which drains the area. (3-20-97)

**115. Watershed Advisory Group.** An advisory group appointed by the Director, with the advice of the appropriate Basin Advisory Group, which will recommend to the Department those specific actions needed to control point and nonpoint sources of pollution affecting water quality limited water bodies within the watershed. Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed, along with representatives of local government and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it. (3-20-97)

**116. Whole-Effluent Toxicity.** The aggregate toxic effect of an effluent measured directly with a toxicity test. (8-24-94)

**117. Zone of Initial Dilution (ZID).** An area within a Department authorized mixing zone where acute criteria may be exceeded. This area ~~should be as small as practicable~~ shall be no larger than necessary and assure shall be sized to prevent lethality to swimming or drifting organisms by ensuring that drifting organisms are not exposed to acute concentrations exceeding acute criteria for more than one (1) hour more than once in three (3) years. The actual size of the ZID will be determined by the Department for a discharge on a case-by-case basis, taking into consideration mixing zone modeling and associated size recommendations and any other pertinent chemical, physical, and biological data available. (4-11-06)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**060. MIXING ZONE POLICY.**

~~**01. Mixing Zones for Point Source Wastewater Discharges.** After a biological, chemical, and physical appraisal of the receiving water and the proposed discharge and after consultation with the person(s) responsible for the wastewater discharge, the Department will determine the applicability of a mixing zone and, if applicable, its size, configuration, and location. In defining a mixing zone, the Department will consider the following principles:~~ (7-1-93)

~~**a.** The mixing zone may receive wastewater through a submerged pipe, conduit or diffuser. (7-1-93)~~

~~**b.** The mixing zone is to be located so it does not cause unreasonable interference with or danger to existing beneficial uses. (7-1-93)~~

~~**c.** When two (2) or more individual mixing zones are needed for a single activity, the sum of the areas and volumes of the several mixing zones is not to exceed the area and volume which would be allowed for a single zone. (7-1-93)~~

~~**d.** Multiple mixing zones can be established for a single discharge, each being specific for one (1) or more pollutants contained within the discharged wastewater. (7-1-93)~~

~~**e.** Mixing zones in flowing receiving waters are to be limited to the following: (7-1-93)~~

~~**i.** The cumulative width of adjacent mixing zones when measured across the receiving water is not to exceed fifty percent (50%) of the total width of the receiving water at that point. (7-1-93)~~

~~**ii.** The width of a mixing zone is not to exceed twenty five percent (25%) of the stream width or three hundred (300) meters plus the horizontal length of the diffuser as measured perpendicularly to the stream flow, whichever is less. (7-1-93)~~

~~**iii.** The mixing zone is to be no closer to the ten (10) year, seven (7) day low flow shoreline than fifteen percent (15%) of the stream width. (7-1-93)~~

- ~~flow;~~
- ~~iv. The mixing zone is not to include more than twenty five percent (25%) of the volume of the stream (7-1-93)~~
  - ~~f. Mixing zones in reservoirs and lakes are to be limited to the following: (7-1-93)~~
    - ~~i. The total horizontal area allocated to mixing zones is not to exceed ten percent (10%) of the surface area of the lake; (7-1-93)~~
    - ~~ii. Adjacent mixing zones are to be no closer than the greatest horizontal dimension of any of the individual zones; (7-1-93)~~
  - ~~g. The water quality within a mixing zone may exceed chronic water quality criteria so long as chronic water quality criteria are met at the boundary of any approved mixing zone. Acute water quality criteria may be exceeded within a zone of initial dilution inside the mixing zone if approved by the Department. (3-23-98)~~
  - ~~h. Concentrations of hazardous materials within the mixing zone must not exceed the ninety six (96) hour LC50 for biota significant to the receiving water's aquatic community. (7-1-93)~~

~~02. **Mixing Zones for Outstanding Resource Waters.** An ORW mixing zone will be downstream from the discharge of a tributary or segment immediately upstream which contains man caused pollutants as a result of nonpoint source activities occurring on that tributary or segment. As a result of the discharge, the mixing zone may not meet all water quality standards applicable to the ORW, but shall still be protected for existing beneficial uses. The Department, after consideration of input from interested parties, will determine the size, configuration and location of mixing zones which are necessary to meet the requirements of these rules. (8-24-94)~~

**01. Mixing Zones for Point Source Discharges. Whether a mixing zone is authorized, and its size, configuration and location, is determined by the Department on a case-by-case basis. This determination is made in accordance with the provisions of Section 060 at the time a permit is issued, renewed, or materially modified and is in effect as long as the permit remains in effect. Such an authorization is required before a mixing zone can be used to determine the need for, or level of, effluent limits for a particular pollutant. ( )**

**a. Mixing zones shall not be authorized for a given pollutant when the receiving water does not meet water quality criteria for that pollutant; provided, however, the Department may authorize a mixing zone when the permitted discharge is consistent with an approved TMDL allocation or other applicable plans or analyses (such as 4b implementation plans, watershed loading analyses, or facility-specific water quality pollutant management plans) that demonstrate that there is available assimilative capacity and authorizing a mixing zone is consistent with achieving compliance with water quality standards in the receiving water. ( )**

**b. Water quality within an authorized mixing zone is allowed to exceed chronic water quality criteria for those parameters approved by the Department. If approved by the Department, acute water quality criteria for one (1) or more parameters may be exceeded within the zone of initial dilution inside the mixing zone. Narrative criteria in Subsections 200.03 and 200.05 apply within the mixing zone. All water quality criteria must be met at the boundary of any mixing zone under its design conditions. ( )**

**c. The size of mixing zone(s) and the concentration of pollutant(s) present shall be evaluated based on the permitted design flow. The Department shall not authorize a mixing zone that is determined to be larger than is necessary considering siting, technological, and managerial options available to the discharger. ( )**

**d. Mixing zones, individually or in combination with other mixing zones, shall not cause unreasonable interference with, or danger to, beneficial uses. Unreasonable interference with, or danger to, beneficial uses includes, but is not limited to, the following: ( )**

**i. Impairment to the integrity of the aquatic community, including interfering with successful spawning, egg incubation, rearing, or passage of aquatic life. ( )**

- ii. Heat in the discharge that causes thermal shock, lethality, or loss of cold water refugia. ( )
- iii. Bioaccumulation of pollutants (as defined in Section 010) resulting in tissue levels in aquatic organisms that exceed levels protective of human health or aquatic life. ( )
- iv. Lethality to aquatic life passing through the mixing zone. ( )
- v. Concentrations of pollutants that exceed Maximum Contaminant Levels at drinking water intake structures. ( )
- vi. Conditions which impede or prohibit recreation in or on the water body. Mixing zones shall not be authorized for E. coli. ( )
- e. Multiple nested mixing zones may be established for a single point of discharge, each being specific for one (1) or more pollutants contained within the discharge. ( )
- f. Multiple mixing zones may be established for a single activity with multiple points of discharge. When these individual mixing zones overlap or merge, their combined area and volume shall not exceed that which would be allowed if there was a single point of discharge. When these individual mixing zones do not overlap or merge, they may be authorized as individual mixing zones. ( )
- g. Adjacent mixing zones of independent activities shall not overlap. ( )
- h. Mixing zones shall meet the following restrictions; provided, however, that the Department may authorize mixing zones that vary from the restrictions under the circumstances set forth in Subsection 060.01.i. below: ( )
- i. For flowing waters: ( )
- (1) The width of a mixing zone is not to exceed twenty-five percent (25%) of the stream width; and ( )
- (2) The mixing zone shall not include more than twenty-five percent (25%) of the low flow design discharge conditions as set forth in Subsection 210.03.b. of these rules. ( )
- ii. For all new discharges to nonflowing waters authorized after July 1, 2015: ( )
- (1) The size of the mixing zone is not to exceed five percent (5%) of the total open surface area of the water body or one hundred (100) meters from the point of discharge, whichever is smaller; ( )
- (2) Shore-hugging plumes are not allowed; and ( )
- (3) Diffusers shall be used. ( )
- iii. For all existing discharges to nonflowing waters authorized prior to July 1, 2015, the total horizontal area allocated to the mixing zone is not to exceed ten percent (10%) of the surface area of the lake. ( )
- iv. Lakes and reservoirs with a mean detention time of fifteen (15) days or greater shall be considered nonflowing waters for this purpose. Detention time will be calculated as the mean annual storage volume divided by the mean annual flow rate out of the reservoir for the same time period. ( )
- i. The Department may authorize a mixing zone that varies from the limits in Subsection 060.01.h. if it is established that: ( )
- i. A smaller mixing zone is needed to avoid an unreasonable interference with, or danger to,



beneficial uses as described in Subsection 060.01.d., and the mixing zone meets the other requirements set forth in Section 060; or ( )

ii. A larger mixing zone is needed by the discharger and does not cause an unreasonable interference with, or danger to, beneficial uses as described in Subsection 060.01.d., and the mixing zone meets the other requirements set forth in Section 060. The discharger shall provide to the Department an analysis that demonstrates a larger mixing zone is needed given siting, technological, and managerial options. ( )

j. The following elements shall be considered when designing an outfall: ( )

i. Encourage rapid mixing to the extent possible. This may be done through careful location and design of the outfall; and ( )

ii. Avoid shore-hugging plumes in those water bodies where the littoral zone is a major supply of food and cover for migrating fish and other aquatic life or where recreational activities are impacted by the plume. ( )

**02. Points of Compliance as Alternatives to Mixing Zones.** Specification of mixing zones for some 404 dredge and fill activities, stormwater, and nonpoint source discharges may not be practicable due to the generally intermittent and diffuse nature of these discharges. Rather, the Department may allow limited dilution of the discharge by establishing points for monitoring compliance with ambient water quality criteria. These alternatives to a mixing zone are still subject to requirements outlined in Subsections 060.01.a., 060.01.d., 200.03, and 200.05. ( )

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.10 - RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

DOCKET NO. 58-0110-1401

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** The temporary rule is effective December 3, 2014, and remains in effect until the adjournment of the 2015 legislative session unless rescinded by the agency. This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Sixty-third Idaho Legislature unless prior to that date the rule is rejected in whole or in part by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Sections 67-5226 and 67-5224, Idaho Code, notice is hereby given that the Board has adopted a temporary and pending rule. This action is authorized by Section 39-4405, Idaho Code. This legislation is consistent with the language in the pending rule.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, June 4, 2014, **Vol. 14-6, pages 115 through 118**. DEQ received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at [www.deq.idaho.gov/58-0110-1401](http://www.deq.idaho.gov/58-0110-1401) or by contacting the undersigned.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to confer a benefit. The State of Idaho would be conferred a benefit on the additional tipping fees to the General Fund of approximately \$100,000. A portion of these tipping fees allows for maintenance of roads leading to the facility and are directed to the Idaho Transportation Department and the County Highway District. Owyhee County also receives a portion of the tipping fee to supplement emergency services. This rulemaking would allow several additional federal agencies to utilize the existing Idaho DEQ permitted disposal capacity of the U.S. Ecology Idaho, Inc. Grand View facility for environmentally protective, secure disposal of these materials.

**IDAHO CODE SECTION 39-107D STATEMENT:** This rule does regulate an activity not regulated by the federal government but is consistent with the legislative directive in Senate Bill 1260 (codified at Section 39-4403, Idaho Code).

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact John Brueck at [john.brueck@deq.idaho.gov](mailto:john.brueck@deq.idaho.gov) or (208) 373-0458.

Dated this 19th Day of November, 2014.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
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**THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Section 39-4405, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before June 18, 2014. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** The purpose of this rulemaking is to implement Senate Bill 1260 (2014), wherein the Idaho Legislature revised the definition of “restricted hazardous waste” in Section 39-4403, Idaho Code. This amendment to the Idaho Hazardous Waste Management Act clarifies the definition of “restricted hazardous waste” found at Section 39-4403(17), Idaho Code. This portion of the Idaho Code outlines which waste types are prohibited from disposal in a commercial hazardous waste disposal facility located in Idaho, as well as providing exceptions to the definition for wastes not regulated under the federal Atomic Energy Act of 1954, as amended. The proposed clarification is designed to harmonize the Idaho Code with existing federal statutes and regulation while providing a more concise definition of “restricted hazardous waste.” The clarification would also allow several federal agencies to utilize the Grand View facility.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality at the October 2014 Board meeting for adoption as a pending and temporary rule. If adopted by the Board, the temporary rule will become effective on November 5, 2014. The pending rule is expected to be final upon adjournment of the 2015 legislative session if approved by the Idaho Legislature. Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to confer a benefit. The State of Idaho would be conferred a benefit on the additional tipping fees to the General Fund of approximately \$100,000. A portion of these tipping fees allows for maintenance of roads leading to the facility and are directed to the Idaho Transportation Department and the County Highway District. Owyhee County also receives a portion of the tipping fee to supplement emergency services. This rulemaking would allow several additional federal agencies to utilize the existing Idaho DEQ permitted disposal capacity of the U.S. Ecology Idaho, Inc. Grand View facility for environmentally protective, secure disposal of these materials.

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

Incorporation by reference is necessary to ensure that the state rules are consistent with federal regulations. Information for obtaining a copy of the federal regulations is included in the rule.

**NEGOTIATED RULEMAKING:** Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking was not feasible due to the simple nature of this rulemaking and because DEQ has no discretion with respect to implementing Idaho Code provisions. The purpose of this rulemaking is to make the rule consistent with recent changes to the definition of “restricted hazardous waste” in Section 39-4403, Idaho Code.

**IDAHO CODE SECTION 39-107D STATEMENT:** This proposed rule does regulate an activity not regulated by the federal government but is consistent with the legislative directive in Senate Bill 1260 (codified at Section 39-4403, Idaho Code).

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

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact John Brueck at [john.brueck@deq.idaho.gov](mailto:john.brueck@deq.idaho.gov) or (208)373-0458.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before July 2, 2014.

DATED this 9th day of May, 2014.

**LSO RULES ANALYSIS MEMO**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0110-1401**

**004. INCORPORATION BY REFERENCE.**

**01. General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 004.02 shall constitute the full adoption by reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (3-15-02)

**02. Documents Incorporated by Reference.** The following documents are incorporated by reference into these rules: (3-15-02)

- a. 10 CFR 30.14 through 30.15, revised as of January 1, 201~~4~~. (~~3-29-12~~)( )
- b. 10 CFR 30.18 through 30.21, revised as of January 1, 201~~4~~. (~~3-29-12~~)( )
- c. 10 CFR 32.11, revised as of January 1, 201~~4~~. (~~3-29-12~~)( )
- d. 10 CFR 32.18, revised as of January 1, 201~~4~~. (~~3-29-12~~)( )
- e. 10 CFR 40.13, revised as of January 1, 201~~4~~. (~~3-29-12~~)( )

**03. Availability of Referenced Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: (3-15-02)

- a. Department of Environmental Quality, 1410 N. Hilton, Boise ID 83706-1255. (3-15-02)
- b. Idaho State Law Library, 451 W. State Street, P.O. Box 83720, Boise ID 83720-0051. (3-15-02)
- c. U.S. Government Printing Office, [www.ecfr.gov](http://www.ecfr.gov). (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. DEFINITIONS.**

**01. Accelerator-Produced Radioactive Material.** Any material made radioactive by a particle accelerator. (3-29-12)

**02. Board.** The Idaho Board of Environmental Quality. (3-15-02)

**03. Byproduct Material.** Byproduct Material means: (3-15-02)

- a.** Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material; and (3-15-02)
- b.** The tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content. (3-15-02)
- c.** Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or any material that: (3-29-12)
- i.** Has been made radioactive by use of a particle accelerator; and (3-29-12)
- ii.** Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and (3-29-12)
- d.** Any discrete source of naturally occurring radioactive material, other than source material, that: (3-29-12)
- i.** The U.S. Nuclear Regulatory Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium- 226 to the public health and safety or the common defense and security; and (3-29-12)
- ii.** Before, on, or after August 8, 2005, is extracted for use in a commercial, medical, or research activity. (3-29-12)
- 04. Department.** The Idaho Department of Environmental Quality. (3-15-02)
- 05. Exempt Quantities and Concentrations of Byproduct Materials.** Radioactive materials defined as exempt byproduct materials by the U.S. Nuclear Regulatory Commission (10 CFR 30.14 through 30.15, 10 CFR 30.18 through 30.21, 10 CFR 32.11 and 10 CFR 32.18). (3-29-12)
- 06. Naturally Occurring Radioactive Material (NORM).** Any material containing natural radionuclides at natural background concentrations, where human intervention has not concentrated the naturally occurring radioactive material or altered its potential for causing human exposure. NORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)
- 07. Operator.** Any person(s) currently responsible, or responsible at the time of disposal, for the overall operation of a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)
- 08. Owner.** Any person(s) who currently owns, or owned at the time of disposal, a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)
- 09. Person.** Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties. (3-15-02)
- 10. Radioactive Material.** Radioactive Material includes: (3-15-02)
- a.** Technologically Enhanced Naturally Occurring Radioactive Material; (3-15-02)
- b.** Byproduct material authorized for disposal pursuant to 10 CFR 20.2008(b); (3-29-12)
- c.** Exempt Quantities and Concentrations of Byproduct Materials; (4-2-08)

- d.** Unimportant Quantities of Source Material; and (4-2-08)
- e.** Any other byproduct, source material, or special nuclear material or devices or equipment utilizing such material, which has been *declared* exempted or released from radiological control or regulation under the Atomic Energy Act of 1954, as amended, *for the purposes of disposal pursuant to 10 CFR 30.11, 10 CFR 40.14, 10 CFR 70.17 to be disposed of in a commercial hazardous waste facility as regulated pursuant to the rules, permit requirements, and acceptance criteria provided for by Chapter 44, Title 39, Idaho Code.* (4-2-08)( )
- 11. Reasonably Maximally Exposed Individual.** That individual or group of individuals who by reason of location has been determined, through the use of environmental transport modeling and dose calculation, to receive the highest total effective dose equivalent from radiation emitted from the site and/or radioactive material transported off-site. (3-15-02)
- 12. Source Material.** Source material means: (3-15-02)
- a.** Uranium or thorium, or any combination thereof, in any physical or chemical form; or (3-15-02)
- b.** Ores which contain by weight one-twentieth of one percent (0.05%) or more of: (3-15-02)
- i.** Uranium; (3-15-02)
- ii.** Thorium; or (3-15-02)
- iii.** Any combination thereof. (3-15-02)
- c.** Source material does not include special nuclear material. (3-15-02)
- 13. Special Nuclear Material.** Special Nuclear Material means: (3-15-02)
- a.** Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the U.S. Nuclear Regulatory Commission determines to be special nuclear material. (3-15-02)
- b.** Any material artificially enriched by any of the material listed in Subsection 010.12.a. (3-15-02)
- 14. Technologically Enhanced Naturally Occurring Radioactive Material (TENORM).** Any naturally occurring radioactive materials not subject to regulation under the Atomic Energy Act whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities. TENORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)
- 15. Unimportant Quantities of Source Material.** Radioactive materials defined as unimportant quantities of source materials by the U.S. Nuclear Regulatory Commission (10 CFR 40.13). (3-15-02)