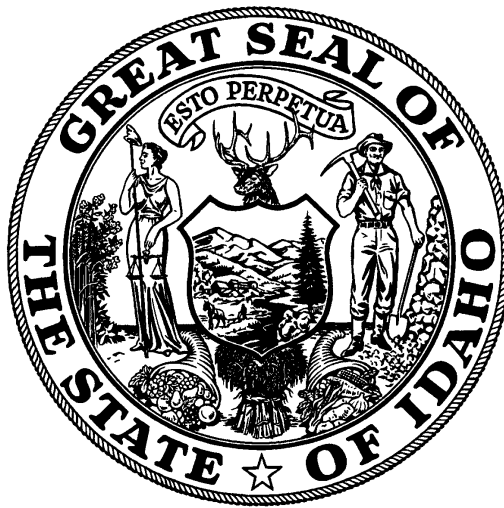


PENDING RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
Senate Resources &
Environment Committee
64th Idaho Legislature
Second Regular Session – 2018



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

January 2018

SENATE RESOURCES & ENVIRONMENT COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2018 Legislative Session

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IDAPA 13 – DEPARTMENT OF FISH AND GAME

13.01.04 – RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1701

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 36-408, 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 rules put certain limitations on use of the special big game hunt tags, create an application and draw process when eligible applications exceed the number of tags, and to designate one (1) disabled veterans big game tag to the Idaho Division of Veterans Services to sponsor a resident applicant.

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 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 193-196](#).

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 will be no negative fiscal impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sharon W. Kiefer at (208) 334-3771.

DATED this 20st day of November, 2017.

Sharon W. Kiefer
Deputy Director
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Boise, Idaho 83707
Tel: (208) 334-3771
Fax: (208) 334-4885

<p>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</p>

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 36-408, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

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:

It is being proposed that Sections 900 and 901 be changed to put certain limitations on use of the special big game hunt tags, create an application and draw process when eligible applications exceed the number of tags, and to designate one (1) disabled veterans special big game tag to the Idaho Division of Veterans Services to sponsor a resident applicant.

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

The proposed rules have no associated fee.

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:

The proposed rules will have no impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted for changes proposed in Sections 900 and 901 because the Department of Fish and Game received 477 responses via on-line submissions and one letter in response to the notice of intent for negotiated rulemaking. Many comments were not within the scope of the proposed rules. Comments within the scope of rulemaking did not identify issues for negotiation among commenters. Further negotiation of the proposed rule among all stakeholders was deemed infeasible.

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

The proposed rules do not include incorporation by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules for Sections 900 and 901, contact Sharon W. Kiefer at (208) 334-3771.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2017.

DATED this 1st day of September, 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-1701

900. CHILDREN WITH SPECIAL NEEDS BIG GAME TAG.

01. Availability. The Department shall make up to five (5) big game tags available for children with life threatening medical conditions each year. (3-29-10)

a. Any of the five (5) big game tags described in Section 901 that have not been issued by July 15 each year may also be available for children with life threatening conditions. (3-29-10)

02. Issuance. The Commission delegates ~~discretionary~~ authority to issue ~~a~~ each special needs tag to the Director. ~~(3-29-10)~~()

03. Eligibility. In order to receive a special needs big game tag, a resident or nonresident minor (seventeen (17) years of age or younger) must have a life threatening medical condition as certified by a qualified and licensed physician. (3-29-10)

a. A qualified applicant must be sponsored by a nonprofit organization that is qualified under section 501(c) (3) of the Internal Revenue code. (3-8-07)

b. The primary mission of the sponsoring organization must be to offer opportunities and experiences to minor children with life threatening medical conditions. (3-8-07)

c. Minimum age requirements and hunter education requirements are waived for individuals applying for or receiving a special needs big game tag. (3-29-10)

04. Validity of Tag. ~~The~~ Each special needs tag shall be valid for only one (1) of the following species: deer, ~~one (1)~~ elk, ~~one (1)~~ pronghorn, ~~one (1)~~ moose, ~~one (1)~~ black bear, or ~~one (1)~~ mountain lion as allowed by Commission proclamation. ~~(4-7-11)~~()

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

b. The special needs tag is valid in any open hunt, controlled or general, as provided by Commission proclamation, EXCEPT the use of the special needs tag is restricted from use in any Controlled Hunt with less than five (5) controlled hunt tags. ~~(3-29-10)~~()

c. Applicants may only receive one (1) special needs tag in a lifetime. (3-29-10)

d. In exercising hunting privileges, the ~~holder~~ recipient of a special needs tag must be accompanied by an adult in possession of a valid Idaho big game hunting license. ~~(3-29-10)~~()

05. Application. Applications shall be on a form as prescribed by the Director. (3-8-07)

a. Applications shall be submitted on behalf of applicants by an eligible nonprofit organization and must be received by the Department on January 2 through January 31 of the calendar year for the hunt to be considered eligible. ~~(3-8-07)~~()

b. Applications received by the Department after January 31 may be considered on a first come basis

if there are not sufficient eligible applications. ()

- ~~b.c.~~ A copy of the nonprofit organization's IRS determination letter must accompany the application. (3-8-07)

06. Fees. All fees associated with applying for and receiving a special needs tag shall be waived. (3-29-10)

07. Random Draw. Eligible applications will be randomly drawn for tag issuance if the number of applications exceed the number of tags available. ()

08. Nonresident Tag Limitation. Not more than one (1) special needs tag will be issued to a nonresident unless there are insufficient applications for resident applicants. ()

~~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 special needs tag are waived. (3-29-10)

~~08~~10. **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~~ any recipient of a special needs big game tag. ~~(3-8-07)~~ ()

901. DISABLED VETERANS SPECIAL BIG GAME TAG.

01. **Availability.** The Department shall make up to five (5) big game tags available for disabled veterans, of which one (1) tag will be designated to the Idaho Division of Veterans Services for a resident applicant. ~~(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~~ each 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. (4-11-15)

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~~ Each disabled veterans special big game tag shall be valid for only one (1) of the following species: 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, EXCEPT the use of the disabled veterans big game tag is restricted from use in any Controlled Hunt with less than 5 controlled hunt tags. ~~(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 and must be received by the Department on January 2 through January 31 of the calendar year for the hunt to be considered eligible. ~~(3-29-10)~~ ()
- b. Applications received by the department after January 31 may be considered on a first come basis if there are not sufficient eligible applications. ()
- ~~b.c.~~ 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. Random Draw.** Eligible applications will be randomly drawn for tag issuance if the number of applications exceed the number of tags available. ()
- 08. Nonresident Tag Limitation.** Not more than one (1) disabled veterans special big game tag will be issued to a nonresident unless there are insufficient applications for resident applicants. ()
- ~~0-9.~~ **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)
- ~~0810.~~ **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~~ any recipient of a disabled veterans special big game tag. ~~(3-29-10)~~ ()

IDAPA 13 – DEPARTMENT OF FISH AND GAME

13.01.04 – RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1702

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 36-408, 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 rules change all of Controlled Hunt Area 11 for the bighorn sheep auction and lottery tags to be consistent with the general controlled hunt tag for this hunt.

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 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 197-199](#).

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 will be no negative fiscal impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sharon W. Kiefer at (208) 334-3771.

DATED this 20st day of November, 2017.

Sharon W. Kiefer
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<p>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</p>

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 36-408, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

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:

It is being proposed that Sections 700 and 800 be changed to include all of Controlled Hunt Area 11 for the bighorn sheep auction and lottery tags to be consistent with the general controlled hunt tag for this hunt.

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

The proposed rules have no associated fee.

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:

The proposed rules will have no impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted for changes proposed in Sections 700 and 800 because the Department of Fish and Game received 145 responses via on-line comments in response to the notice of intent for negotiated rulemaking. Comments received did not identify issues for negotiation. Further negotiation of the proposed rule among all stakeholders was deemed infeasible.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: The proposed rules do not include incorporation by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules for Sections 700 and 800 contact Jon Rachael at (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 25, 2017.

DATED this 1st day of September, 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-1702

700. BIGHORN SHEEP AUCTION TAG.

01. Eligibility. In order to be eligible to bid on the bighorn sheep auction tag, a person must be eligible to purchase an Idaho hunting or combination license. (3-29-12)

02. Validity of Tag. The Bighorn Sheep Auction Tag shall be valid in ~~Unit~~ Controlled Hunt Area 11 only during odd-numbered years and during even-numbered years when the Bighorn Sheep Lottery Tag holder chooses not to hunt in ~~Unit~~ Controlled Hunt Area 11. ~~(3-29-12)~~ ()

03. License and Controlled Hunt Tag. (3-29-12)

a. A hunting license and controlled hunt tag will be provided to the successful bidder from the net proceeds of the auction. (4-7-11)

b. The successful bidder for the Bighorn Sheep Auction Tag must file a notarized affidavit within fifteen (15) days of the successful bid if the hunting license and tag are to be designated to another individual. (3-29-12)

04. Application of Big Game Rules. All rules governing the Taking of Big Game Animals, IDAPA 13.01.08, shall apply to the eligible and successful bidders other than as specified herein. (7-1-93)

a. No successful bidder shall be eligible to apply for a bighorn sheep controlled hunt tag the same year the bidder is issued a Bighorn Sheep Auction Tag. (3-29-12)

b. A person receiving a Bighorn Sheep Auction Tag, but who is unsuccessful in taking a bighorn sheep, shall be eligible to bid the following year for another Bighorn Sheep Auction Tag. (3-29-12)

c. A person successful in taking a bighorn sheep with a bighorn sheep tag shall be eligible to bid the following year. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

800. BIGHORN SHEEP LOTTERY TAG.

01. Eligibility. (7-1-93)

a. In order to win and be issued the Bighorn Sheep Lottery Tag, a person must be eligible to purchase an Idaho hunting or combination license. (4-7-11)

b. If any person wins the Bighorn Sheep Lottery Tag and has already been drawn for a bighorn sheep controlled hunt tag for the same year, the controlled hunt tag shall be returned to the Department and voided and the tag fees refunded. The lottery tag will be valid to hunt bighorn sheep that year. (4-7-11)

02. Validity of Tag. The Bighorn Sheep Lottery Tag shall be valid in ~~Unit~~ Controlled Hunt Area 11 only during even-numbered years and during odd-numbered years when the Bighorn Sheep Auction Tag holder chooses not to hunt in ~~Unit~~ Controlled Hunt Area 11. ~~(3-29-12)~~ ()

03. Tag. (3-29-12)

a. A hunting license (if needed) and a controlled hunt tag will be provided to the lottery tag winner from the net proceeds of the lottery. (3-29-12)

b. Lottery tickets are not transferable. The Bighorn Sheep Lottery Tag shall be issued to the person whose name appears on the winning ticket, and may not be transferred to another individual. (3-29-12)

04. Application of Big Game Rules. All Rules Governing the Taking of Big Game Animals shall apply to the eligible ticket purchasers and lottery tag winner, other than as specified herein. (7-1-93)

a. A person receiving a bighorn sheep lottery tag shall be eligible to purchase lottery tickets the following year for another bighorn sheep lottery tag. (3-30-01)

b. A person successful in taking a bighorn sheep with a bighorn sheep lottery tag shall be eligible to purchase lottery tickets the following year. (3-20-04)

c. Any person who wins a Bighorn Sheep Lottery Tag, and who is otherwise eligible to apply for a deer, elk or pronghorn controlled hunt tag and who has drawn such a tag, shall be allowed to hunt for those species during the same year the Bighorn Sheep Lottery Tag is valid. (3-29-12)

IDAPA 13 – DEPARTMENT OF FISH AND GAME

13.01.04 – RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1703

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 36-408, 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 rule allows the Fish and Game Commission the flexibility to create an outfitter allocation of big game tags for an unlimited controlled hunt when a nonresident big game tag limitation is established. The purpose of this change is to maintain nonresident clientele for outfitters participating in unlimited controlled hunts.

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 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 200-202](#).

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 will be no negative fiscal impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sharon W. Kiefer at (208) 334-3771.

DATED this 20st day of November, 2017.

Sharon W. Kiefer
Deputy Director
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Boise, Idaho 83707
Tel: (208) 334-3771
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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 36-408, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

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:

It is being proposed that Section 505 be changed to allow the Fish and Game Commission the flexibility to create an outfitter allocation of big game tags for an unlimited controlled hunt when a nonresident big game tag limitation is established. The purpose of this change is to maintain nonresident clientele for outfitters participating in unlimited controlled hunts.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The proposed rules have no associated fee.

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: The proposed rules will have no impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted for changes proposed in Section 505 because the Department of Fish and Game received 848 responses via on-line submissions and several additional letters and messages via email in response to the notice of intent for negotiated rulemaking. Comments received indicated a polarity of opinion not subject to negotiation. Further negotiation of the proposed rule among all stakeholders was deemed infeasible.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: The proposed rules do not include incorporation by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules for Section 505 contact Jon Rachael at (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 25, 2017.

DATED this 1st day of September, 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-1703

505. DEER AND ELK TAG ALLOCATION.

01. Allocation of Tags **for Capped General Hunt Units of Zones**. Pursuant to Section 36-408, Idaho Code, the Fish and Game Commission may allocate a number of deer and/or elk tags for use by hunters with signed agreements with licensed outfitters in zones with limited numbers of tags. (3-25-13)()

a. When the number of hunters in a general hunt unit or zone becomes restricted, the Department will calculate the initial number of allocated tags for each zone using the Idaho Outfitters and Guides Licensing Board's records of average historic use during the previous five (5) year period. Where it is biologically feasible, any reductions in the number of tags available within a zone which exceeds twenty percent (20%) will be spread over a three (3) year period with a maximum reduction of fifty percent (50%) taken in the first year and twenty-five percent (25%) in the second year. (3-25-13)

b. The allocation of tags will be calculated on a zone basis. Any reduction or increase in hunting opportunities will be proportionate among non-outfitted hunters and outfitted hunters and will be proportionate among resident and non-resident hunters; EXCEPT where such reduction would result in an allocation of greater than twenty-five percent (25%) for non-resident hunters, the Commission may reduce the allocation for non-resident hunters to a percentage of not less than twenty-five percent (25%). (3-25-13)

02. **Allocation of Tags for Controlled Hunt Areas.** ~~The commission may set a nonresident tag limit for any controlled hunt area, including an area where tags available to residents are unlimited. The Commission may only those allocate outfitter tags in~~ controlled hunt areas with historic licensed deer and/or elk outfitted area(s) ~~may be considered for a tag allocation.~~ Hunt application and eligibility rules will apply to allocated tags in controlled hunts. ~~The allocation will be calculated on a controlled hunt area basis with reductions or increases in hunting opportunities to be proportionate among resident hunters, non-outfitted nonresident hunters, and outfitted hunters.~~ (3-25-13)()

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

b. Prior to submitting an application for an outfitter allocated controlled hunt, the applicant must have a written agreement with an outfitter licensed in the hunt area. Successful applicants of an outfitter allocated controlled hunt must hunt with an outfitter licensed for the hunt area. The outfitter must purchase the successful applicant's controlled hunt tag by August 20. (4-7-11)

c. Successful applicants who do not want to participate in the outfitted hunt can decline the hunt upon written notification to the Department. Those declining the hunt will then be eligible to participate in a general season or leftover controlled hunt. Those drawing an outfitted controlled hunt and then declining the controlled hunt will be subject to the appropriate waiting period. (5-3-03)

d. Successful applicants that do not secure the services of an Idaho licensed outfitter and have not purchased the controlled hunt tag by August 20 will forfeit the opportunity to purchase a controlled hunt tag. The forfeited controlled hunt tag will then be listed as a leftover controlled hunt tag. The Department will inform the Idaho Outfitters and Guides Board that a leftover controlled hunt tag is available. After securing a client, the outfitter(s) may then purchase the leftover controlled hunt tag at a Department regional or headquarters office. (4-7-11)

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

- i. ~~The number of allocated tags available within the controlled hunt area will be n~~ No less than one (1) tag and no more than three percent (3%) ~~of the total tags~~; or ~~(4-7-11)~~()
- ii. ~~The~~ Δ number ~~of tags available within the controlled hunt area will be~~ based on the average historic use during the previous five (5) year period ~~and calculated tag numbers will be~~ to be rounded up when ~~controlled hunt tags~~ a decimal equals or exceeds zero point six (0.6) and rounded down when ~~controlled hunt tags are~~ a decimal is less than zero point six (0.6); or ~~(4-7-11)~~()
- iii. An unlimited number of allocated tags or a number of allocated tags based on historic use as alternatives only for controlled hunt areas with limited nonresident tags and unlimited resident tags; or ()
- ~~iv.~~ v. No tags will be allocated. (7-1-99)

IDAPA 13 – DEPARTMENT OF FISH AND GAME

13.01.06 – RULES GOVERNING CLASSIFICATION AND PROTECTION OF WILDLIFE

DOCKET NO. 13-0106-1701

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

This rule reclassifies Red Squirrel from a Protected Nongame Species to an Upland Game Animal which will allow the Fish and Game Commission to set a harvest season.

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 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 203-205](#).

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 will be no negative fiscal impact on the state general fund. It would have an estimated positive fiscal impact of less than five hundred dollars (\$500) to the fish and game dedicated fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sharon W. Kiefer at (208) 334-3771.

DATED this 20st day of November, 2017.

Sharon W. Kiefer
Deputy Director
600 S. Walnut, P.O. Box 25
Idaho Department of Fish and Game
Boise, Idaho 83707
Tel: (208) 334-3771
Fax: (208) 334-4885

<p>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</p>

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104 and 36-201, 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 18, 2017.

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 proposed rule reclassifies Red Squirrel from a Protected Nongame Species to an Upland Game Animal which will allow the Fish and Game Commission to set a harvest season.

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

This proposed rule has no associated fee.

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 proposed rule change will have no impact to the state general fund. It would have an estimated positive fiscal impact of less than five hundred dollars (\$500) to the fish and game dedicated fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature.

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:

This proposed rule does not include an incorporation by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sharon W. Kiefer, (208) 334-3771.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2017.

DATED this 31st day of August, 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0106-1701

101. CLASSIFICATION OF WILDLIFE - UPLAND GAME ANIMALS.

01. Upland Game Animals. (7-1-93)
- a. Mountain cottontail - *sylvilagus nuttallii*. (4-6-05)
- b. Pygmy rabbit - *brachylagus idahoensis*. (7-1-93)
- c. Snowshoe hare - *lepus americanus*. (7-1-93)
- ~~d. Red squirrel – *tamiasciurus hudsonicus*. ()~~

(BREAK IN CONTINUITY OF SECTIONS)

200. PROTECTED NONGAME SPECIES.

01. Mammals. (7-1-93)
- a. American pika - *ochotona princeps*. (4-6-05)
- b. Bats - all species. (4-6-05)
- c. Chipmunks - *neotamias spp.* (4-6-05)
- d. Columbia Plateau (Merriam's) ground squirrel - *spermophilus canus vigilis*. (4-6-05)
- e. Golden-mantled ground squirrel - *spermophilus lateralis*. (7-1-93)
- f. Great Basin (piute) ground squirrel - *spermophilus canus vigilis*. (4-6-05)
- g. Kit fox - *vulpes macrotis*. (7-1-93)
- h. North American wolverine - *gulo gulo luscus*. (4-6-05)
- i. Northern flying squirrel - *glaucomys sabrinus*. (7-1-93)
- ~~j. Red squirrel – *tamiasciurus hudsonicus*. (7-1-93)~~
- ~~k. Rock squirrel - *spermophilus variegatus*. (4-6-05)~~
- ~~l. Southern Idaho ground squirrel - *spermophilus brunneus endemicus*. (4-6-05)~~
- ~~m. Wyoming ground squirrel - *spermophilus elegans nevadensis*. (4-6-05)~~
02. Birds. (3-29-10)
- a. Bald eagle - *haliaeetus leucocephalus*. (3-29-10)

- b.** Peregrine falcon - *falco peregrinus*. (3-29-10)
- c.** All native species, except game birds and threatened and endangered wildlife. (3-29-10)
- 03. Amphibians.** All native species (4-6-05)
- 04. Reptiles.** All native species. (4-6-05)
- 05. Fish.** (4-6-05)
- a.** Bear Lake sculpin - *cottus extensus*. (4-6-05)
- b.** Northern leatherside chub - *lepidomeda copei*. (3-29-12)
- c.** Sand roller - *percopsis transmontana*. (4-6-05)
- d.** Shoshone sculpin - *cottus greenei*. (4-6-05)
- e.** Wood River sculpin - *cottus leiopomus*. (4-6-05)
- f.** Bluehead sucker - *catostomus discobolus*. (3-29-12)

IDAPA 13 – DEPARTMENT OF FISH AND GAME

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

DOCKET NO. 13-0108-1704

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

This rule change allows the Fish and Game Commission the flexibility to proportionately limit the number of non-outfitted, nonresident big game tags allocated in an unlimited controlled hunt. These restrictions would establish during the time of the Fish and Game Commission's annual season setting. The purpose is to reduce hunter crowding to support continued resident participation and quality hunt experience.

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 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 206-212](#).

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 will be no negative fiscal impact on the state general fund. Potential impact to the Department of Fish and Game may occur in the form of a loss of non-resident tag revenue if nonresident tags are limited and the nonresident chooses not to purchase an Idaho tag.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sharon W. Kiefer at (208) 334-3771.

DATED this 20st day of November, 2017.

Sharon W. Kiefer
Deputy Director
600 S. Walnut, P.O. Box 25
Idaho Department of Fish and Game
Boise, Idaho 83707
Tel: (208) 334-3771
Fax: (208) 334-4885

<p>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</p>

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 36-408, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2017.

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:

It is being proposed that IDAPA 13.01.08, Section 260, be changed to allow the Fish and Game Commission the flexibility to proportionally limit the number of non-outfitted, nonresident big game tags allocated in an unlimited controlled hunt. These restrictions would be established during at the time of the Fish and Game Commission's annual season setting. The purpose is to reduce hunter crowding to support continued resident participation and quality hunt experience.

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

This proposed rule change has no associated fee.

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:

The proposed rule change will have no impact on the state general fund. Potential impact to the Department of Fish and Game may occur in the form of a loss of non-resident tag revenue if nonresident tags are limited and the nonresident chooses not to purchase an Idaho tag.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Department of Fish and Game received 848 responses via on-line submissions and several additional letters and messages via mail or email during the notice of intent for negotiated rulemaking comment period. Comments received indicated a polarity of opinion not subject to negotiation. Further negotiation of the proposed rule among all stakeholders was deemed infeasible.

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:

This proposed rule does not include an incorporation by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jon Rachael at (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 25, 2017.

DATED this 31st day of August, 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1704

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, except that 260.03.d., 03.f., 03.g. and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-25-16)

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 nonresident adult person who possesses and designates his or her control hunt tag to his or her nonresident minor child or grandchild. Rules for eligibility in Section 260 apply to any nonresident adult person who possesses and designates a control hunt tag and to the designated nonresident minor child or grandchild except that 260.03.d., 03.f., 03.g., and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated nonresident minor child or grandchild. (3-25-16)

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. In unlimited controlled hunts, the Commission may limit the number of tags available for nonresident hunters to no less than ten percent (10%) of the average number of tags drawn annually during the previous five (5) year period. ()

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

~~d.~~ 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.e.~~ 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 who has killed a grizzly bear in Idaho may not apply for a grizzly bear tag. (3-29-17)

j. 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)

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

l. 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)

m. 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)

n. The Commission establishes youth only controlled hunts by proclamation. Only hunters ten (10) 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 or a nonresident disabled American Veteran hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (3-25-16)

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 canceled 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, spring grizzly bear -- Application period - January 15 - February 15. (3-29-17)
- 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, fall grizzly bear, and gray wolves -- Application period for first drawing -- May 1-June 5. (3-29-17)
- 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, fall grizzly bear, and gray wolves -- Application period for second drawing -- August 5-15. (3-29-17)

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. (4-11-15)

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 – DEPARTMENT OF FISH AND GAME

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

DOCKET NO. 13-0108-1706

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2018 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 36-408, 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 rule changes delete reference to the Supertag drawing for hunters that comply with Mandatory Report requirements because the drawing has not been effective in increasing reporting compliance and the Department is utilizing multiple methods to collect harvest information and help hunters comply with mandatory reporting. The Department of Fish and Game has streamlined the mandatory hunter orientation process for controlled archery-only hunts that require hunter orientation and no longer requires hunters to attend a class. The rule changes also remove duplicate language regarding Mandatory Reports, update the rule to reflect current reporting procedure, and to delete reference to the Supertag drawing for hunters that comply with Mandatory Report requirements. The rule changes also delete the mandatory requirement that successful wolf hunters must report wolf harvest with a telephone report because the telephone report no longer has application for in-season management. Mandatory harvest report and animal check for successful wolf hunters are not modified by the rule changes.

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 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 220-227](#).

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 will be no negative fiscal impact on the state general fund. There is no measurable impact to the fish and game dedicated fund because the proposed rules do not prescribe new actions or substantively affect license sales or fees.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sharon W. Kiefer at (208) 334-3771.

DATED this 20st day of November, 2017.

Sharon W. Kiefer
Deputy Director
600 S. Walnut, P.O. Box 25
Idaho Department of Fish and Game
Boise, Idaho 83707
Tel: (208) 334-3771
Fax: (208) 334-4885

<p>THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE</p>

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104, 36-408, 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 18, 2017.

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:

It is being proposed that IDAPA 13.01.08, Section 260, be changed to delete reference to the Supertag drawing for hunters that comply with Mandatory Report requirements because the drawing has not been effective in increasing reporting compliance and the Department is utilizing multiple methods to collect harvest information and help hunters comply with mandatory reporting. It is being proposed that Section 270 be changed because the Department of Fish and Game has streamlined the mandatory hunter orientation process for controlled archery-only hunts that require hunter orientation and no longer requires hunters to attend a class. It is being proposed that Section 421 be changed to remove duplicate language regarding Mandatory Reports, update the rule to reflect current reporting procedure, and to delete reference to the Supertag drawing for hunters that comply with Mandatory Report requirements. It is being proposed that Section 422 be revised to delete the mandatory requirement that successful wolf hunters must report wolf harvest with a telephone report because the telephone report no longer has application for in-season management. Mandatory harvest report and animal check for successful wolf hunters are not being modified in this proposed rule.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The proposed rules have no associated fee.

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:

The proposed rules will have no impact on the state general fund. There is no measurable impact to the fish and game dedicated fund because the proposed rules do not prescribe new actions or substantively affect license sales or fees.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these rules were simple in nature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: The proposed rules do not include incorporation by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sharon W. Kiefer at (208) 334-3771.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2017.

DATED this 1st Day of September, 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-1706

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, except that 260.03.d., 03.f., 03.g. and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-25-16)

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 nonresident adult person who possesses and designates his or her control hunt tag to his or her nonresident minor child or grandchild. Rules for eligibility in Section 260 apply to any nonresident adult person who possesses and designates a control hunt tag and

to the designated nonresident minor child or grandchild except that 260.03.d., 03.f., 03.g., and 03.h. apply to the designated child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated nonresident minor child or grandchild. (3-25-16)

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 who has killed a grizzly bear in Idaho may not apply for a grizzly bear tag. (3-29-17)

j. 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)

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

l. 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)

m. 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)

n. The Commission establishes youth only controlled hunts by proclamation. Only hunters ten (10) 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 or a nonresident disabled American Veteran hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (3-25-16)

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 canceled 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, spring grizzly bear -- Application period - January 15 - February 15. (3-29-17)
- 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, fall grizzly bear, and gray wolves -- Application period for first drawing -- May 1-June 5. (3-29-17)
- 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, fall grizzly bear, and gray wolves -- Application period for second drawing -- August 5-15. (3-29-17)

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. (4-11-15)

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)

(BREAK IN CONTINUITY OF SECTIONS)

270. MANDATORY ~~SCHOOL~~ HUNTER ORIENTATION.

Anyone drawing a controlled archery-only hunt tag that requires a mandatory hunter orientation ~~class~~ as denoted in the season proclamations ~~must attend the mandatory hunter orientation class. The class is three (3) hours long and will be offered at times specified by the Department. The orientation classes will be offered on ten (10) dates between October 15 and November 15. Since classroom size is limited, each hunter must schedule a time to attend a class prior to October 15. Attendees will be issued a~~ will receive orientation information that includes hunt boundaries, legal restrictions, and hunter ethics. Tag holders must sign and return an affidavit that they have reviewed and understand the orientation to receive a eCertificate of eCompletion, which must be carried by the hunter during the hunt. Holders of "Certificates of Completion" from previous hunts are not required to ~~attend repeat~~ this orientation ~~class and will be provided with updated Certificates of Completion to participate in the hunt.~~ (4-7-11)()

(BREAK IN CONTINUITY OF SECTIONS)

421. MANDATORY ~~PRONGHORN~~, DEER, AND ELK REPORT REQUIREMENTS.

~~01. Mandatory Report Form. After a pronghorn, deer and/or elk is killed, the hunter must accurately complete a Mandatory Report as provided by the Director.~~ (4-7-11)

~~02. Mandatory Report.~~ Any hunter that obtains a pronghorn, deer and/or elk tag and kills a pronghorn, deer and/or elk, must submit an accurately completed Mandatory Report as provided by the Director to the Department or authorized agent, WITHIN TEN (10) DAYS OF KILL. Any hunter that obtains a pronghorn, deer and/or elk tag and does not successfully kill a pronghorn, deer and/or elk must submit a completed Mandatory Report Form to the Department or authorized agent WITHIN TEN (10) DAYS OF THE CLOSING DATE OF THE APPROPRIATE SEASON. (4-7-11)()

~~03. Failure to Report.~~ ~~Failure~~ Any hunter who fails to submit the required pronghorn, deer and/or elk Mandatory Report by January 31 of the following year as required in Subsection 421.021 ~~will render the hunter ineligible to obtain any subsequent year's license until~~ or by January 31 of the following year can be required to file a late Mandatory Report permit is filed with the Department or authorized agent prior to obtaining any subsequent year's license. (4-7-11)()

~~04. Drawing for "Super" Tag. 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. Each hunter drawn for a "Super" controlled pronghorn/deer/elk hunt must notify the Department by May 1 of which species they have selected to hunt. The "Super" controlled hunt tag is valid for the selected species and allows the hunter to hunt in any open general and/or controlled hunt for the selected species in the following season.~~ (4-7-11)

422. MANDATORY TELEPHONE REPORT.

~~01. Gray Wolf. In addition to other check and reporting requirements, any hunter killing a gray wolf must report the harvest within seventy-two (72) hours by calling the Wolf Reporting Number, a toll-free telephone number published in the big game seasons and rules brochure available at Department offices and license vendors.~~ (3-29-17)

~~02. Grizzly Bear.~~ In addition to other check and reporting requirements, any hunter killing a grizzly bear must report the harvest within twenty-four (24) hours by calling the Grizzly Bear Reporting Number, a toll-free telephone number published in the grizzly bear season and rules brochure available at Department offices and on the Department website. (3-29-17)()

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1502

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 2018 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Sixty-fourth 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 6, 2017, [Vol. 17-9, pages 294 through 309](#). After consideration of public comments, Subsections 004.01 and 210.03.c.v. have been revised. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov/58-0102-1502 or by contacting the undersigned.

IDAHO CODE SECTION 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Jason Pappani at Jason.pappani@deq.idaho.gov, (208) 373-0515.

DATED this 3rd day of January, 2018.

Paula J. Wilson
DEQ Administrative Rules Coordinator
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 22, 2017. If no such written request is received, a public hearing pursuant to Section 67-5222(2), Idaho Code, will not be held. The public will have the opportunity to provide oral comments on the proposed rule during the November 16, 2017, meeting of the Idaho Board of Environmental Quality (Board).

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to update DEQ's existing hardness dependent criteria by using EPA's 2007 304(a) copper criteria. This update is a Reasonable and Prudent Alternative identified in National Oceanic and Atmospheric Administration's (NOAA) biological opinion (BiOp) on Idaho's criteria for toxic substances to support aquatic life.

The toxicity of copper to aquatic life is highly variable depending on physicochemical factors within a water body. The effect of hardness on metal toxicity has long been acknowledged as one such factor and is reflected in DEQ's current hardness dependent criteria, whereby the acute and chronic criteria are determined based on the total hardness of the receiving water body. However, DEQ's current hardness dependent criteria do not take into account the effects of other physicochemical properties of the receiving water body which affect toxicity, leading to DEQ's current criteria being either over- or under-protective of aquatic life.

This action is identified in NOAA's BiOp on Idaho's criteria for toxic substances to support aquatic life. This BiOp concluded that the current copper criteria were not always protective of aquatic life and would result in adverse modification of critical habitat. NOAA's recommendation is to use EPA's 2007 304(a) copper criteria, which uses other physicochemical properties of the water (e.g., pH, dissolved organic carbon, etc.) to predict water-body specific criteria known as the Biotic Ligand Model (BLM). NOAA has called for state adoption and EPA approval or EPA promulgation of these criteria by May 2017. Because of this, DEQ's 2014 triennial review identified revision of the aquatic life criteria for copper as a high priority. By adopting a copper criterion based on the BLM, DEQ will be able to use the most current state of the science to ensure that the criteria are more precise and are neither unnecessarily burdening dischargers nor increasing risk to aquatic life.

This proposed rule replaces the existing hardness dependent criteria for copper with a similar, albeit more detailed, modeled approach. Additionally, the proposed rule references the "Implementation Guidance for the Idaho Copper Criteria for Aquatic Life: Using the Biotic Ligand Model" which details procedures for implementing the criteria including determining minimum data requirements for BLM inputs and guidance for estimating protective criteria when data are incomplete or absent.

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. After consideration of public comments, DEQ intends to present the final proposal to the Board on November 16, 2017, for adoption of a pending rule. The rule is expected to become final and effective upon the conclusion of the 2018 legislative session if adopted by the Board and approved by the Legislature.

EFFECTIVE FOR CLEAN WATER ACT PURPOSES: Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see [40 CFR 131.21](#)). This is known as the Alaska Rule. This rulemaking will be promulgated so that the existing rule, which continues to be effective for CWA purposes, remains in the Idaho Administrative Code until EPA approves the rule revisions. Notations explaining the effectiveness of the rule sections are also included. Upon EPA approval, the

revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. Information regarding the status of EPA review will be posted at <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary:

EPA national recommended criteria, “**Aquatic Life Ambient Freshwater Quality Criteria – Copper**”: EPA-822-R-07-001 (February 2007), is incorporated by reference in the proposed rule. This document provides guidance for calculating aquatic life criteria for copper using the Biotic Ligand Model software. Incorporation by reference benefits the regulated community by ensuring that the state rule is consistent with the EPA guidance. The alternative to incorporating by reference is to restate the document in the rule, which would be impractical and costly.

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the October 2015 issue of the Idaho Administrative Bulletin, and a preliminary draft rule was made available for public review. Nine negotiated rulemaking and guidance development meetings were held between October 28, 2015, and July 18, 2017. Key information was posted on the DEQ rulemaking web page and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. For comments that were not incorporated into the draft rule, DEQ’s response to those comments is included in the negotiated rulemaking summary. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule drafts, written public comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0102-1502.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Jason Pappani at Jason.Pappani@deq.idaho.gov, (208) 373-0515.

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 6, 2017.

Dated this 6th day of September, 2017

LSO Rules Analysis Memo

Italicized red text that is **double underscored** is new text that has been added to the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-1502

004. INCORPORATION BY REFERENCE.

Codes, standards and regulations may be incorporated by reference in these rules pursuant to Section 67-5229, Idaho Code. Such incorporation by reference shall constitute full adoption by reference, including any notes or appendices therein, unless expressly provided otherwise in these rules. Copies of the codes, standards or regulations adopted by reference throughout these rules are available in the following locations: (8-24-94)

01. Department. Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255, www.deq.idaho.gov; and ~~(4-5-00)~~ ()

~~02. Law Library.~~ State Law Library, 451 W. State Street, Boise, Idaho 83720. ~~(7-1-93)~~

~~032. Federal Documents~~ Code of Federal Regulations. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, www.ecfr.gov, and State Law Library, 451 W. State Street, Boise, Idaho 83720. ~~(4-11-06)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

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

Note: In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Subsection 210.01 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Subsection 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Subsections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

01. Criteria for Toxic Substances. The criteria of Section 210 apply to surface waters of the state as follows. (5-3-03)

- a. Columns B1 and B2 of the following table apply to waters designated for aquatic life use. (3-25-16)
- b. Column C2 of the following table applies to waters designated for primary or secondary contact recreation use. (3-25-16)
- c. Column C1 of the following table applies to waters designated for domestic water supply use.

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2
1 Antimony	7440360				5.2 c	190 c
2 Arsenic	7440382	340 e	150 e	Y	10 dfq	10 dfq
Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water+fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2016, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016 EPA disapproved Idaho's adoption of 10 µg/L. Until new criteria are adopted, EPA will use criteria of 6.2 µg/L for exposure through fish consumption only and 0.02 µg/L for exposure through both drinking water + consumption of fish in its NPDES permitting actions. These criteria are published in 1996 Idaho Administrative Code (Subsections 250.01.c, 250.02.a.iv, 250.03.a.i). For more information, go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards .						
3 Beryllium	7440417				h	h
4 Cadmium	7440439	1.3 i	0.6 i		h	h
5a Chromium III	16065831	570 i	74 i		h	h
5b Chromium VI	18540299	16 e	11 e		h	h
6 Copper ¹	7440508	17 i	11 i		1,300 q	
¹ <u>Effective for CWA purposes. The CMC, CCC, and footnote are effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.</u>						
6 Copper ²	7440508	17 ^{12.3} i 1 r	11 ^{7.6} i 1 r		1,300 q	
² <u>Not yet effective for CWA purposes. The CMC, CCC, and footnote are not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.</u>						
7 Lead	7439921	65 i	2.5 i		h	h
8a Mercury	7439976	g	g			
Note: In 2005, Idaho adopted EPA's recommended methylmercury fish tissue criterion for protection of human health (docket 58-0102-0302). The decision was made to remove the old tissue-based aquatic life criteria and rely on the fish tissue criterion to provide protection for aquatic life as well as human health. Thus, current Idaho water quality standards do not have mercury water column criteria for the protection of aquatic life. While EPA approved Idaho's adoption of the fish tissue criterion in September 2005, it had withheld judgment on Idaho's removal of aquatic life criteria. On December 12, 2008, EPA disapproved Idaho's removal of the old aquatic life criteria. The water column criteria for total recoverable mercury published in 2004 Idaho Administrative Code continue to apply and are effective for CWA purposes. For more information go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards .						
8b Methylmercury	22967926					0.3 mg/kg p
9 Nickel	7440020	470 i	52 i		58 c	100 c

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2
10 Selenium	7782492	20 f	5 f		29 c	250 c
11 Silver	7440224	3.4 i				
12 Thallium	7440280				0.017 c	0.023 c
13 Zinc	7440666	120 i	120 i		870 c	1,500 c
14 Cyanide	57125	22 j	5.2 j		3.9 c	140 c
15 Asbestos	1332214				7,000,000 fibers/L q	
16 2, 3, 7, 8-TCDD Dioxin	1746016			Y	1.8E-08 cl	1.9E-08 cl
17 Acrolein	107028				3.2 c	120 c
18 Acrylonitrile	107131			Y	0.60 cl	22 cl
19 Benzene	71432				3.0 cl	28 c
20 Bromoform	75252			Y	62 cl	380 cl
21 Carbon Tetrachloride	56235			Y	3.6 cl	15 cl
22 Chlorobenzene	108907				89 c	270 c
23 Chlorodibromomethane	124481			Y	7.4 cl	67 cl
24 Chloroethane	75003				h	h
25 2-Chloroethylvinyl Ether	110758				h	h
26 Chloroform	67663				61 c	730 c
27 Dichlorobromomethane	75274			Y	8.8 cl	86 cl
28 1,1-Dichloroethane	75343				h	h
29 1,2-Dichloroethane	107062			Y	96 cl	2,000 cl
30 1,1-Dichloroethylene	75354				310 c	5,200 c
31 1,2-Dichloropropane	78875			Y	8.5 cl	98 cl
32 1,3-Dichloropropene	542756			Y	2.5 cl	38 cl
33 Ethylbenzene	100414				32 c	41 c
34 Methyl Bromide	74839				130 c	3,700 c
35 Methyl Chloride	74873				h	h

A			B Aquatic life			C Human health for consumption of:			
(Number) Compound		^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1		Fish only (µg/L) C2	
36	Methylene Chloride	75092				38	c	960	c
37	1,1,2,2-Tetrachloroethane	79345			Y	1.4	cl	8.6	cl
38	Tetrachloroethylene	127184				15	c	23	c
39	Toluene	108883				47	c	170	c
40	1,2-Trans-Dichloroethylene	156605				120	c	1,200	c
41	1,1,1-Trichloroethane	71556				11,000	c	56,000	c
42	1,1,2-Trichloroethane	79005			Y	4.9	cl	29	cl
43	Trichloroethylene	79016				2.6	c	11	c
44	Vinyl Chloride	75014			Y	0.21	cl	5.0	cl
45	2-Chlorophenol	95578				30	c	260	c
46	2,4-Dichlorophenol	120832				9.6	c	19	c
47	2,4-Dimethylphenol	105679				110	c	820	c
48	2-Methyl-4,6-Dinitrophenol	534521				1.6	c	8.6	c
49	2,4-Dinitrophenol	51285				12	c	110	c
50	2-Nitrophenol	88755					h		h
51	4-Nitrophenol	100027					h		h
52	3-Methyl-4-Chlorophenol	59507				350	c	750	c
53	Pentachlorophenol	87865	20 m	13 m	Y	0.11	cl	0.12	cl
54	Phenol	108952				3,800	c	85,000	c
55	2,4,6-Trichlorophenol	88062				1.5	c	2.0	c
56	Acenaphthene	83329				26	c	28	c
57	Acenaphthylene	208968					h		h
58	Anthracene	120127				110	c	120	c
59	Benzidine	92875			Y	0.0014	cl	0.033	cl
60	Benzo(a)Anthracene	56553			Y	0.0042	cl	0.0042	cl
61	Benzo(a)Pyrene	50328			Y	0.00042	cl	0.00042	cl

A		B Aquatic life			C Human health for consumption of:			
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1		Fish only (µg/L) C2	
62 Benzo(b)Fluoranthene	205992			Y	0.0042	cl	0.0042	cl
63 Benzo(ghi)Perylene	191242					h		h
64 Benzo(k)Fluoranthene	207089			Y	0.042	cl	0.042	cl
65 Bis(2-Chloroethoxy) Methane	111911					h		h
66 Bis(2-Chloroethyl)Ether	111444			Y	0.29	cl	6.8	cl
67 Bis(2-Chloroisopropyl) Ether	108601				220	c	1,200	c
68 Bis(2-Ethylhexyl) Phthalate	117817			Y	1.2	cl	1.2	cl
69 4-Bromophenyl Phenyl Ether	101553					h		h
70 Butylbenzyl Phthalate	85687				0.33	c	0.33	c
71 2-Chloronaphthalene	91587				330	c	380	c
72 4-Chlorophenyl Phenyl Ether	7005723					h		h
73 Chrysene	218019			Y	0.42	cl	0.42	cl
74 Dibenzo (a,h) Anthracene	53703			Y	0.00042	cl	0.00042	cl
75 1,2-Dichlorobenzene	95501				700	c	1,100	c
76 1,3-Dichlorobenzene	541731				3.5	c	4.8	c
77 1,4-Dichlorobenzene	106467				180	c	300	c
78 3,3'-Dichlorobenzidine	91941			Y	0.29	cl	0.48	cl
79 Diethyl Phthalate	84662				200	c	210	c
80 Dimethyl Phthalate	131113				600	c	600	c
81 Di-n-Butyl Phthalate	84742				8.2	c	8.3	c
82 2,4-Dinitrotoluene	121142			Y	0.46	cl	5.5	cl
83 2,6-Dinitrotoluene	606202					h		h
84 Di-n-Octyl Phthalate	117840					h		h

A		B Aquatic life			C Human health for consumption of:		
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2	
85 1,2-Diphenylhydrazine	122667			Y	0.25 cl	0.65 cl	
86 Fluoranthene	206440				6.3 c	6.4 c	
87 Fluorene	86737				21 c	22 c	
88 Hexachlorobenzene	118741			Y	0.00026 cl	0.00026 cl	
89 Hexachlorobutadiene	87683			Y	0.031 cl	0.031 cl	
90 Hexachloro-cyclopentadiene	77474				1.3 c	1.3 c	
91 Hexachloroethane	67721				0.23 c	0.24 c	
92 Ideno (1,2,3-cd) Pyrene	193395			Y	0.0042 cl	0.0042 cl	
93 Isophorone	78591			Y	330 cl	6,000 cl	
94 Naphthalene	91203				h	h	
95 Nitrobenzene	98953				12 c	180 c	
96 N-Nitrosodimethylamine	62759			Y	0.0065 cl	9.1 cl	
97 N-Nitrosodi-n-Propylamine	621647			Y	0.046 cl	1.5 cl	
98 N-Nitrosodiphenylamine	86306			Y	3.14 cl	18 cl	
99 Phenanthrene	85018				h	h	
100 Pyrene	129000				8.1 c	8.4 c	
101 1,2,4-Trichlorobenzene	120821				0.24 c	0.24 c	
102 Aldrin	309002	3		Y	2.5E-06 cl	2.5E-06 cl	
103 alpha-BHC	319846			Y	0.0012 cl	0.0013 cl	
104 beta-BHC	319857			Y	0.036 cl	0.045 cl	
105 gamma-BHC (Lindane)	58899	2	0.08		1.4 c	1.4 c	
106 delta-BHC	319868				h	h	
107 Chlordane	57749	2.4	0.0043	Y	0.0010 cl	0.0010 cl	
108 4,4'-DDT	50293	1.1	0.001	Y	9.8E-05 cl	9.8E-05 cl	

A			B Aquatic life			C Human health for consumption of:			
(Number) Compound		^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen? C3	Water & fish (µg/L) C1		Fish only (µg/L) C2	
109	4,4'-DDE	72559			Y	5.5E-05	cl	5.5E-05	cl
110	4,4'-DDD	72548			Y	0.00042	cl	0.00042	cl
111	Dieldrin	60571	2.5	0.0019	Y	4.2E-06	cl	4.2E-06	cl
112	alpha-Endosulfan	959988	0.22	0.056		7.0	c	8.5	c
113	beta-Endosulfan	33213659	0.22	0.056		11	c	14	c
114	Endosulfan Sulfate	1031078				9.9	c	13	c
115	Endrin	72208	0.18	0.0023		0.011	c	0.011	c
116	Endrin Aldehyde	7421934				0.38	c	0.40	c
117	Heptachlor	76448	0.52	0.0038	Y	2.0E-05	cl	2.0E-05	cl
118	Heptachlor Epoxide	1024573	0.52	0.0038	Y	0.00010	cl	0.00010	cl
119	Polychlorinated Biphenyls PCBs:	n		0.014 n	Y	0.00019	clo	0.00019	clo
120	Toxaphene	8001352	0.73	0.0002	Y	0.0023	cl	0.0023	cl
121	Chlorine		19 k	11 k					
122	1,2,4,5-Tetrachlorobenzene	95943				0.0093	c	0.0094	c
123	2,4,5-Trichlorophenol	95954				140	c	190	c
124	Bis (Chloromethyl) Ether	542881			Y	0.0015	cl	0.055	cl
125	Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]	93721				82	c	130	c
126	Chlorophenoxy Herbicide (2,4-D)	94757				1,000	c	3,900	c
127	Dinitrophenols	25550587				13	c	320	c
128	Hexachlorocyclohexane (HCH)-Technical	608731			Y	0.027	cl	0.032	cl
129	Methoxychlor	72435				0.0054	c	0.0055	c
130	Pentachlorobenzene	608935				0.035	c	0.036	c
Table Footnotes									
a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.									

A		B Aquatic life		C Human health for consumption of:		
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2
<p>b. See definitions of Acute Criteria (CMC) and Chronic Criteria (CCC), Section 010 of these rules.</p> <p>c. This criterion is based on input values to human health criteria calculation specified in Idaho's Technical Support Document (TSD) for Human Health Criteria Calculations - 2015. Criteria for non-carcinogens are calculated using the formula:</p> $AWQC = RfD * RSC * \left(\frac{BW}{DI + (FI * BAF)} \right)$ <p>and criteria for carcinogens are calculated using the formula:</p> $AWQC = RSD * \left(\frac{BW}{DI + (FI * BAF)} \right)$ <p>Where: AWQC = Ambient water quality criterion (mg/L)</p> <p>BW = Human Body Weight (kg), 80 is used in these criteria DI = Drinking Water Intake, (L/day), 2.4 is used in these criteria FI = Fish Intake, (kg/day), 0.0665 is used in these criteria</p> <p>BAF = Bioaccumulation Factor, L/kg, chemical specific value, see TSD RfD = Reference dose (mg/kg-day), chemical specific value, see TSD</p> <p>RSD = $\frac{\text{Target Incremental Cancer Risk}}{\text{Cancer Potency Factor}}$ (mg/kg-day), chemical specific value, see TSD</p> <p>RSC = Relative Source Contribution, chemical specific value, see TSD</p>						
d. Inorganic forms only.						
<p>e. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = column B1 value X WER. CCC = column B2 value X WER.</p>						
f. Criterion expressed as total recoverable (unfiltered) concentrations.						
<p>g. No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.</p>						

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2
<p>h. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.</p>						
<p>i. Aquatic life criteria for these metals are a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the example values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).</p>						
<p>j. Criteria are expressed as weak acid dissociable (WAD) cyanide.</p>						
<p>k. Total chlorine residual concentrations.</p>						
<p>l. EPA guidance allows states to choose from a range of 10^{-4} to 10^{-6} for the incremental increase in cancer risk used in human health criteria calculation. Idaho has chosen to base this criterion on carcinogenicity of 10^{-5} risk.</p>						
<p>m. Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). CMC = $\exp(1.005(\text{pH})-4.830)$ CCC = $\exp(1.005(\text{pH})-5.290)$</p>						
<p>n. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.</p>						
<p>o. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).</p>						
<p>p. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: $\text{TRC} = [\text{BW} \times \{\text{RfD} - (\text{RSC} \times \text{RfD})\}] / \Sigma \text{TL}$. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.</p>						
<p>q. This criterion is based on the drinking water Maximum Contaminant Level (MCL).</p>						
<p>r. <u>Aquatic life criteria for copper shall be derived in accordance with Subsection 210.03.c.v. For comparative purposes only, the example values displayed in this table correspond to the Biotic Ligand Model output based on the following inputs: temperature = 14.9°C, pH = 8.16, dissolved organic carbon = 1.4 mg/L, humic acid fraction = 10%, calcium = 44.6 mg/L, magnesium = 11.0 mg/L, sodium = 11.7 mg/L, potassium = 2.12 mg/L, sulfate = 46.2 mg/L, chloride = 12.7 mg/L, alkalinity = 123 mg/L CaCO₃, and sulfide = 1.00×10^{-8} mg/L.</u></p>						

(3-25-16)()

Footnote r. is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.

02. Factors for Calculating Hardness Dependent Metals Criteria. Hardness dependent metals criteria are calculated using values from the following table in the equations: (5-3-03)

a. $CMC = WER \exp \{mA[\ln(\text{hardness})] + bA\}$ X Acute Conversion Factor. (5-3-03)

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

Metal	mA	bA	mc	bc	aAcute Conversion Factor	aChronic Conversion Factor
Arsenic	b	b	b	b	1.0	1.0
Cadmium	0.8367	-3.560	0.6247	-3.344	0.944 see footnote a	0.909
Chromium (III)	0.819	3.7256	0.8190	0.6848	0.316	0.860
Chromium (VI)	b	b	b	b	0.982	0.962
Copper	0.9422	-1.464	0.8545	-1.465	0.960	0.960

The values for calculating hardness dependent metal criteria for copper, set out in the Copper row above, are effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved. The Copper row will be deleted upon EPA approval.

Lead	1.273	-1.460	1.273	-4.705	0.791	0.791
Mercury	b	b	b	b	0.85	0.85
Nickel	0.846	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	-6.52	c	c	0.85	c
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

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

Footnotes to table:

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

Cadmium

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

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

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

b. Not applicable

c. No chronic criteria are available for silver.

(3-29-10)()

03. Applicability. The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications. Mixing zones may be applied to toxic substance criteria subject to the limitations set forth in Section 060 and set out below. (3-25-16)

a. For all waters for which the Department has determined mixing zones to be applicable, the toxic substance criteria apply at the boundary of the mixing zone(s) and beyond. Absent an authorized mixing zone, the toxic substance criteria apply throughout the waterbody including at the end of any discharge pipe, canal or other discharge point. (3-25-16)

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

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

(3-25-16)

i. Where "1Q10" is the lowest one-day flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

ii. Where "1B3" is biologically based and indicates an allowable exceedance of once every three (3) years. It may be determined by EPA's computerized method (DFLOW model); (5-3-03)

iii. Where "7Q10" is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

iv. Where "4B3" is biologically based and indicates an allowable exceedance for four (4) consecutive days once every three (3) years. It may be determined by EPA's computerized method (DFLOW model); (5-3-03)

v. Where the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows. (5-3-03)

c. Application of aquatic life metals criteria. (3-25-16)

i. For metals other than cadmium, for purposes of calculating hardness dependent aquatic life criteria from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. For cadmium, the minimum hardness for use in those equations shall not be less than ten (10) mg/l, as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, except as specified in Subsections 210.03.c.ii. and 210.03.c.iii., even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. (3-29-10)

ii. The hardness values used for calculating aquatic life criteria for metals at design discharge conditions shall be representative of the ambient hardnesses for a receiving water that occur at the design discharge conditions given in Subsection 210.03.b. (5-3-03)

iii. Except as otherwise noted, the aquatic life criteria for metals (compounds #1 through #13 in the criteria table of Subsection 210.02) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnotes e. and i. in the criteria table in Subsection 210.01, the water effect ratio is computed as a specific pollutant's acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio

shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of calculating water effects ratios, the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC50) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC50) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of calculating water effects ratios, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.c.ii. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. (4-6-05)

iv. Implementation Guidance for the Idaho Mercury Water Quality Criteria. (4-6-05)

(1) The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” describes in detail suggested methods for discharge related monitoring requirements, calculation of reasonable potential to exceed (RPTE) water quality criteria in determining need for mercury effluent limits, and use of fish tissue mercury data in calculating mercury load reductions. This guidance, or its updates, will provide assistance to the Department and the public when implementing the methylmercury criterion. The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” also provides basic background information on mercury in the environment, the novelty of a fish tissue criterion for water quality, the connection between human health and aquatic life protection, and the relation of environmental programs outside of Clean Water Act programs to reducing mercury contamination of the environment. The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at http://www.deq.idaho.gov/media/639808-idaho_mercury_wq_guidance.pdf. (4-6-05)

(2) The implementation of a fish tissue criterion in NPDES permits and TMDLs requires a non-traditional approach, as the basic criterion is not a concentration in water. In applying the methylmercury fish tissue criterion in the context of NPDES effluent limits and TMDL load reductions, the Department will assume change in fish tissue concentrations of methylmercury are proportional to change in water body loading of total mercury. Reasonable potential to exceed (RPTE) the fish tissue criterion for existing NPDES sources will be based on measured fish tissue concentrations potentially affected by the discharge exceeding a specified threshold value, based on uncertainty due to measurement variability. This threshold value is also used for TMDL decisions. Because measured fish tissue concentrations do not reflect the effect of proposed new or increased discharge of mercury, RPTE in these cases will be based upon an estimated fish tissue methylmercury concentration, using projected changes in waterbody loading of total mercury and a proportional response in fish tissue mercury. For the above purposes, mercury will be measured in the skinless filets of sport fish using techniques capable of detecting tissue concentrations down to point zero five (0.05) mg/kg. Total mercury analysis may be used, but will be assumed to be all methylmercury for purposes of implementing the criterion. (4-6-05)

v. Copper Criteria for Aquatic Life. ()

(1) Aquatic life criteria for copper shall be derived using: ()

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

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

(2) To calculate copper criteria using the BLM, the following parameters from each site shall be used: temperature, pH, dissolved organic carbon (DOC), calcium, magnesium, sodium, potassium, sulfate, chloride, and

alkalinity. The BLM inputs for humic acid (HA) as a proportion of DOC and sulfide shall be based on either measured values or the following default values: 10% HA as a proportion of DOC, 1.00×10^{-8} mg/L sulfide. Measured values shall supersede any estimate or default input. ()

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

(4) A criterion derived under Subsection 210.03.c.v.(1)(a) shall supersede any criterion derived under Subsection 210.03.c.v.(1)(b). Acceptable BLM software includes the "US EPA WQC Calculation" for copper in BLM Version 3.1.2.37 (October 2015). ()

(5) Implementation Guidance for the Idaho Copper Criteria for Aquatic Life. The "Implementation Guidance for the Idaho Copper Criteria for Aquatic Life: Using the Biotic Ligand Model" describes in detail methods for implementing the aquatic life criteria for copper using the BLM. This guidance, or its updates, will provide assistance to the Department and the public for determining minimum data requirements for BLM inputs and how to estimate criteria when data are incomplete or unavailable. The "Implementation Guidance for the Idaho Copper Criteria for Aquatic Life: Using the Biotic Ligand Model" is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at www.deq.idaho.gov/58-0102-1502. ()

<u>Subsection 210.03.c.v is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1502 have been approved.</u>

d. Application of toxics criteria. (3-25-16)

i. Frequency and duration for aquatic life toxics criteria. Column B1 criteria are concentrations not to be exceeded for a one-hour average more than once in three (3) years. Column B2 criteria are concentrations not to be exceeded for a four-day average more than once in three (3) years. (3-25-16)

ii. Frequency and duration for human health toxics criteria. Columns C1 and C2 criteria are not to be exceeded based on an annual harmonic mean. (3-25-16)

04. National Pollutant Discharge Elimination System Permitting. For the purposes of NPDES permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the following standards, that are hereby incorporated by reference, in addition to other scientifically defensible methods deemed appropriate by the Department; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02 of this rule. (5-3-03)

a. "Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria," EPA, October 1993, <http://www.deq.idaho.gov/media/827413-epa-guidance-dissolved-criteria-1093.pdf>. (4-5-00)

b. "Guidance Document on Dynamic Modeling and Translators," EPA, August 1993, <http://www.deq.idaho.gov/media/827417-epa-guidance-dynamic-modeling-translators-0893.pdf>. (4-5-00)

c. "Guidance Document on Clean Analytical Techniques and Monitoring," EPA, October 1993, <http://www.deq.idaho.gov/media/827421-epa-guidance-analytical-techniques-1093.pdf>. (4-5-00)

d. "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals," EPA, February 1994, <http://www.deq.idaho.gov/media/827409-epa-guidance-water-effect-ratios-for-metals-0294.pdf>. (4-5-00)

e. "Technical Support Document for Water Quality-Based Toxics Control." EPA, March 1991. <http://www.deq.idaho.gov/media/60177101/58-0102-1201-epa-technical-support-document-1991.pdf>. (3-25-16)

05. Development of Toxic Substance Criteria. (4-5-00)

a. Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not

identified in these rules for toxic substances, may be derived by the Department from the following information:

(4-5-00)

- i. Site-specific criteria developed pursuant to Section 275; (4-5-00)
 - ii. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (4-5-00)
 - iii. The most recent recommended criteria defined in EPA's ECOTOX database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (3-25-16)
 - iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (4-5-00)
- b. Human Health Criteria. (4-5-00)

Note: In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Section 210 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Section 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Sections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department using best available science on toxicity thresholds (i.e. reference dose or cancer slope factor), such as defined in EPA's Integrated Risk Information System (IRIS) or other peer-reviewed source acceptable to the Department. (3-25-16)

ii. When using toxicity thresholds to derive water quality criteria to protect human health, a fish consumption rate representative of the population to be protected, a mean adult body weight, an adult 90th percentile water ingestion rate, a trophic level weighted BAF or BCF, and a hazard quotient of one (1) for non-carcinogens or a cancer risk level of 10^{-5} for carcinogens shall be utilized. (3-25-16)

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1701

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 2018 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Sixty-fourth 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 6, 2017, [Vol. 17-9, pages 311 through 331](#). After consideration of public comments, Subsection 210.01., table footnote r, and Section 287 have been revised. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov/58-0102-1701 or by contacting the undersigned.

IDAHO CODE SECTION 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Stephanie Jenkins at stephanie.jenkins@deq.idaho.gov or (208) 373-0407.

DATED this 3rd day of January, 2018.

Paula J. Wilson
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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This rulemaking action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 22, 2017. If no such written request is received, a public hearing pursuant to Section 67-5222(2), Idaho Code, will not be held. The public will have the opportunity to provide oral comments on the proposed rule during the November 16, 2017, meeting of the Idaho Board of Environmental Quality (Board).

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to update the selenium criteria for aquatic life use. This proposed update is identified as a Reasonable and Prudent Alternative (RPA) in the National Oceanic and Atmospheric Administration's (NOAA) biological opinion (BiOp) on Idaho's criteria for toxic substances to support aquatic life. This BiOp concluded that the current selenium criterion was likely to adversely affect endangered species and would result in adverse modification of critical habitat. The NOAA recommendation is to use EPA's 2016 304(a) selenium criterion based on fish-tissue concentrations. NOAA has called for state adoption and EPA approval or EPA promulgation of this criterion by May 2018. In order to avoid EPA promulgating a federal selenium standard for Idaho, DEQ initiated this rulemaking for a revised selenium aquatic life criterion in Idaho's water quality standards. DEQ's 2014 triennial review identified revision of the aquatic life criteria for selenium as a medium priority.

Although selenium may cause acute toxicity at high concentrations, the most detrimental effect on aquatic organisms is due to its bioaccumulative properties. Aquatic organisms exposed to selenium accumulate it primarily through their diets and not directly through water. In fish, selenium toxicity occurs primarily through transfer to the eggs, reducing reproductive success and survival. Current criteria derived from water column concentrations do not take into account the effects of selenium bioaccumulation in aquatic systems and are generally under-protective of aquatic life. The proposed criterion is derived from the allowable concentration of selenium in fish tissue found to be protective of aquatic life. The fish-tissue concentration, in conjunction with site-specific bioaccumulation factors, can be used to determine the allowable concentration of selenium in ambient water. Aquatic communities are expected to be protected by this chronic criterion from any potential acute effects of selenium. By adopting the fish-tissue-derived criterion, DEQ will ensure that its criterion neither unnecessarily burdens dischargers nor increases risk to aquatic life.

This proposed rule replaces the existing water column based criteria for selenium with a four-part criterion. The recommended elements are (1) a fish egg-ovary element, (2) a fish whole-body and/or muscle element, (3) a water column element which includes one value for lentic (still water) and one value for lotic (running water) aquatic systems, and (4) a water column intermittent element to account for potential chronic effects from short-term exposures (one value for lentic and one value for lotic aquatic systems).

This proposed rule also includes the addition of Section 287, Site-Specific Aquatic Life Criteria for Selenium. Subsections 287.01 through 287.04 were negotiated in response to proposals for site-specific selenium criteria submitted by Nu-West Industries, Inc., and J.R. Simplot Company. Subsections 287.01 and 287.02 set out site-specific selenium criteria for Upper Blackfoot River and Georgetown Creek Watersheds. Subsections 287.03 and 287.04 set out the site-specific selenium criteria for Hoopes Spring, Sage Creek, and Crow Creek near the Smoky Canyon Mine. The negotiated rulemaking also included site-specific selenium criteria for portions of Idaho (Subsection 287.05). This proposed rule applies to all waters of the state except the main stems of the Kootenai, Salmon, and Snake Rivers within the historic range of white sturgeon, as well as subbasins flowing directly into the aforementioned rivers and those designated as critical salmonid habitat or bull trout habitat. Information regarding the site-specific selenium criteria includes (1) Nu-West Industries' Proposal for Site-Specific Selenium Criteria:

Upper Blackfoot River and Georgetown Creek Watersheds; (2) J.R. Simplot Company's Proposed Site-Specific Selenium Criterion for Hoopes Spring, Sage Creek, and Crow Creek near the Smoky Canyon Mine; and (3) DEQ's Justification for Site-Specific Selenium Criterion for Aquatic Life in Portions of Idaho. These documents are available at www.deq.idaho.gov/58-0102-1701.

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. After consideration of public comments, DEQ intends to present the final proposal to the Board on November 16, 2017, for adoption of a pending rule. The rule is expected to become final and effective upon the conclusion of the 2018 legislative session if adopted by the Board and approved by the Legislature.

EFFECTIVE FOR CLEAN WATER ACT PURPOSES: Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see [40 CFR 131.21](#)). This is known as the Alaska Rule. This rulemaking will be promulgated so that the existing rule, which continues to be effective for CWA purposes, remains in the Idaho Administrative Code until EPA approves the rule revisions. Notations explaining the effectiveness of the rule sections are also included. Upon EPA approval, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. Information regarding the status of EPA review will be posted at <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the April 2017 issue of the Idaho Administrative Bulletin, and a preliminary draft rule was made available for public review. Meetings were held on April 27, June 13, and July 25, 2017. Key information was posted on the DEQ rulemaking web page and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. For comments that were not incorporated into the draft rule, DEQ's response to those comments is included in the negotiated rulemaking summary. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule drafts, written public comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0102-1701.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Stephanie Jenkins at stephanie.jenkins@deq.idaho.gov or (208) 373-0407.

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 6, 2017.

Dated this 6th day of September, 2017

LSO Rules Analysis Memo

Italicized red text that is *double underscored* is new text that has been added to the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-1701

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

Note: In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Subsection 210.01 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Subsection 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Subsections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

01. Criteria for Toxic Substances. The criteria of Section 210 apply to surface waters of the state as follows. (5-3-03)

- a. Columns B1 and B2 of the following table apply to waters designated for aquatic life use. (3-25-16)
- b. Column C2 of the following table applies to waters designated for primary or secondary contact recreation use. (3-25-16)
- c. Column C1 of the following table applies to waters designated for domestic water supply use.

A		B Aquatic life		C Human health for consumption of:		
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2
1 Antimony	7440360				5.2 c	190 c
2 Arsenic	7440382	340 e	150 e	Y	10 dfq	10 dfq

Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water+fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2016, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016 EPA disapproved Idaho's adoption of 10 µg/L. Until new criteria are adopted, EPA will use criteria of 6.2 µg/L for exposure through fish consumption only and 0.02 µg/L for exposure through both drinking water + consumption of fish in its NPDES permitting actions. These criteria are published in [1996 Idaho Administrative Code](#) (Subsections 250.01.c, 250.02.a.iv, 250.03.a.i). For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

A		B Aquatic life		C Human health for consumption of:		
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2
3 Beryllium	7440417				h	h
4 Cadmium	7440439	1.3 i	0.6 i		h	h
5a Chromium III	16065831	570 i	74 i		h	h
5b Chromium VI	18540299	16 e	11 e		h	h
6 Copper	7440508	17 i	11 i		1,300 q	
7 Lead	7439921	65 i	2.5 i		h	h
8a Mercury	7439976	g	g			
Note: In 2005, Idaho adopted EPA's recommended methylmercury fish tissue criterion for protection of human health (docket 58-0102-0302). The decision was made to remove the old tissue-based aquatic life criteria and rely on the fish tissue criterion to provide protection for aquatic life as well as human health. Thus, current Idaho water quality standards do not have mercury water column criteria for the protection of aquatic life. While EPA approved Idaho's adoption of the fish tissue criterion in September 2005, it had withheld judgment on Idaho's removal of aquatic life criteria. On December 12, 2008, EPA disapproved Idaho's removal of the old aquatic life criteria. The water column criteria for total recoverable mercury published in 2004 Idaho Administrative Code continue to apply and are effective for CWA purposes. For more information go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards .						
8b Methylmercury	22967926					0.3 mg/kg p
9 Nickel	7440020	470 i	52 i		58 c	100 c
10 Selenium ¹	7782492	20 f	5 f		29 c	250 c
¹ Effective for CWA purposes. The CMC value and footnote and the CCC value are effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.						
10 Selenium ²	7782492	20 s f	5 r f		29 c	250 c
² Not yet effective for CWA purposes. CMC footnote s, and CCC footnote r, are not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.						
11 Silver	7440224	3.4 i				
12 Thallium	7440280				0.017 c	0.023 c
13 Zinc	7440666	120 i	120 i		870 c	1,500 c
14 Cyanide	57125	22 j	5.2 j		3.9 c	140 c
15 Asbestos	1332214				7,000,000 fibers/L q	
16 2, 3, 7, 8-TCDD Dioxin	1746016			Y	1.8E-08 cl	1.9E-08 cl
17 Acrolein	107028				3.2 c	120 c

A		B		C			
		Aquatic life		Human health for consumption of:			
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2	
18 Acrylonitrile	107131			Y	0.60 cl	22 cl	
19 Benzene	71432				3.0 cl	28 c	
20 Bromoform	75252			Y	62 cl	380 cl	
21 Carbon Tetrachloride	56235			Y	3.6 cl	15 cl	
22 Chlorobenzene	108907				89 c	270 c	
23 Chlorodibromomethane	124481			Y	7.4 cl	67 cl	
24 Chloroethane	75003				h	h	
25 2-Chloroethylvinyl Ether	110758				h	h	
26 Chloroform	67663				61 c	730 c	
27 Dichlorobromomethane	75274			Y	8.8 cl	86 cl	
28 1,1-Dichloroethane	75343				h	h	
29 1,2-Dichloroethane	107062			Y	96 cl	2,000 cl	
30 1,1-Dichloroethylene	75354				310 c	5,200 c	
31 1,2-Dichloropropane	78875			Y	8.5 cl	98 cl	
32 1,3-Dichloropropene	542756			Y	2.5 cl	38 cl	
33 Ethylbenzene	100414				32 c	41 c	
34 Methyl Bromide	74839				130 c	3,700 c	
35 Methyl Chloride	74873				h	h	
36 Methylene Chloride	75092				38 c	960 c	
37 1,1,2,2-Tetrachloroethane	79345			Y	1.4 cl	8.6 cl	
38 Tetrachloroethylene	127184				15 c	23 c	
39 Toluene	108883				47 c	170 c	
40 1,2-Trans-Dichloroethylene	156605				120 c	1,200 c	
41 1,1,1-Trichloroethane	71556				11,000 c	56,000 c	
42 1,1,2-Trichloroethane	79005			Y	4.9 cl	29 cl	
43 Trichloroethylene	79016				2.6 c	11 c	
44 Vinyl Chloride	75014			Y	0.21 cl	5.0 cl	
45 2-Chlorophenol	95578				30 c	260 c	

A		B Aquatic life		C Human health for consumption of:			
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2	
46 2,4-Dichlorophenol	120832				9.6 c	19 c	
47 2,4-Dimethylphenol	105679				110 c	820 c	
48 2-Methyl-4,6-Dinitrophenol	534521				1.6 c	8.6 c	
49 2,4-Dinitrophenol	51285				12 c	110 c	
50 2-Nitrophenol	88755				h	h	
51 4-Nitrophenol	100027				h	h	
52 3-Methyl-4-Chlorophenol	59507				350 c	750 c	
53 Pentachlorophenol	87865	20 m	13 m	Y	0.11 cl	0.12 cl	
54 Phenol	108952				3,800 c	85,000 c	
55 2,4,6-Trichlorophenol	88062				1.5 c	2.0 c	
56 Acenaphthene	83329				26 c	28 c	
57 Acenaphthylene	208968				h	h	
58 Anthracene	120127				110 c	120 c	
59 Benzidine	92875			Y	0.0014 cl	0.033 cl	
60 Benzo(a)Anthracene	56553			Y	0.0042 cl	0.0042 cl	
61 Benzo(a)Pyrene	50328			Y	0.00042 cl	0.00042 cl	
62 Benzo(b)Fluoranthene	205992			Y	0.0042 cl	0.0042 cl	
63 Benzo(ghi)Perylene	191242				h	h	
64 Benzo(k)Fluoranthene	207089			Y	0.042 cl	0.042 cl	
65 Bis(2-Chloroethoxy) Methane	111911				h	h	
66 Bis(2-Chloroethyl)Ether	111444			Y	0.29 cl	6.8 cl	
67 Bis(2-Chloroisopropyl) Ether	108601				220 c	1,200 c	
68 Bis(2-Ethylhexyl) Phthalate	117817			Y	1.2 cl	1.2 cl	
69 4-Bromophenyl Phenyl Ether	101553				h	h	
70 Butylbenzyl Phthalate	85687				0.33 c	0.33 c	
71 2-Chloronaphthalene	91587				330 c	380 c	

A		B Aquatic life		C Human health for consumption of:		
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2
72 4-Chlorophenyl Phenyl Ether	7005723				h	h
73 Chrysene	218019			Y	0.42 cl	0.42 cl
74 Dibenzo (a,h) Anthracene	53703			Y	0.00042 cl	0.00042 cl
75 1,2-Dichlorobenzene	95501				700 c	1,100 c
76 1,3-Dichlorobenzene	541731				3.5 c	4.8 c
77 1,4-Dichlorobenzene	106467				180 c	300 c
78 3,3'-Dichlorobenzidine	91941			Y	0.29 cl	0.48 cl
79 Diethyl Phthalate	84662				200 c	210 c
80 Dimethyl Phthalate	131113				600 c	600 c
81 Di-n-Butyl Phthalate	84742				8.2 c	8.3 c
82 2,4-Dinitrotoluene	121142			Y	0.46 cl	5.5 cl
83 2,6-Dinitrotoluene	606202				h	h
84 Di-n-Octyl Phthalate	117840				h	h
85 1,2-Diphenylhydrazine	122667			Y	0.25 cl	0.65 cl
86 Fluoranthene	206440				6.3 c	6.4 c
87 Fluorene	86737				21 c	22 c
88 Hexachlorobenzene	118741			Y	0.00026 cl	0.00026 cl
89 Hexachlorobutadiene	87683			Y	0.031 cl	0.031 cl
90 Hexachloro-cyclopentadiene	77474				1.3 c	1.3 c
91 Hexachloroethane	67721				0.23 c	0.24 c
92 Ideno (1,2,3-cd) Pyrene	193395			Y	0.0042 cl	0.0042 cl
93 Isophorone	78591			Y	330 cl	6,000 cl
94 Naphthalene	91203				h	h
95 Nitrobenzene	98953				12 c	180 c
96 N-Nitrosodimethylamine	62759			Y	0.0065 cl	9.1 cl
97 N-Nitrosodi-n-Propylamine	621647			Y	0.046 cl	1.5 cl

A		B		C			
		Aquatic life		Human health for consumption of:			
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2	
98 N-Nitrosodiphenylamine	86306			Y	3.14 cl	18	cl
99 Phenanthrene	85018				h		h
100 Pyrene	129000				8.1 c	8.4	c
101 1,2,4-Trichlorobenzene	120821				0.24 c	0.24	c
102 Aldrin	309002	3		Y	2.5E-06 cl	2.5E-06	cl
103 alpha-BHC	319846			Y	0.0012 cl	0.0013	cl
104 beta-BHC	319857			Y	0.036 cl	0.045	cl
105 gamma-BHC (Lindane)	58899	2	0.08		1.4 c	1.4	c
106 delta-BHC	319868				h		h
107 Chlordane	57749	2.4	0.0043	Y	0.0010 cl	0.0010	cl
108 4,4'-DDT	50293	1.1	0.001	Y	9.8E-05 cl	9.8E-05	cl
109 4,4'-DDE	72559			Y	5.5E-05 cl	5.5E-05	cl
110 4,4'-DDD	72548			Y	0.00042 cl	0.00042	cl
111 Dieldrin	60571	2.5	0.0019	Y	4.2E-06 cl	4.2E-06	cl
112 alpha-Endosulfan	959988	0.22	0.056		7.0 c	8.5	c
113 beta-Endosulfan	33213659	0.22	0.056		11 c	14	c
114 Endosulfan Sulfate	1031078				9.9 c	13	c
115 Endrin	72208	0.18	0.0023		0.011 c	0.011	c
116 Endrin Aldehyde	7421934				0.38 c	0.40	c
117 Heptachlor	76448	0.52	0.0038	Y	2.0E-05 cl	2.0E-05	cl
118 Heptachlor Epoxide	1024573	0.52	0.0038	Y	0.00010 cl	0.00010	cl
119 Polychlorinated Biphenyls PCBs:	n		0.014 n	Y	0.00019 clo	0.00019	clo
120 Toxaphene	8001352	0.73	0.0002	Y	0.0023 cl	0.0023	cl
121 Chlorine		19 k	11 k				
122 1,2,4,5-Tetrachlorobenzene	95943				0.0093 c	0.0094	c
123 2,4,5-Trichlorophenol	95954				140 c	190	c
124 Bis (Chloromethyl) Ether	542881			Y	0.0015 cl	0.055	cl

A		B Aquatic life		C Human health for consumption of:		
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2
125 Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]	93721				82 c	130 c
126 Chlorophenoxy Herbicide (2,4-D)	94757				1,000 c	3,900 c
127 Dinitrophenols	25550587				13 c	320 c
128 Hexachlorocyclohexane (HCH)-Technical	608731			Y	0.027 cl	0.032 cl
129 Methoxychlor	72435				0.0054 c	0.0055 c
130 Pentachlorobenzene	608935				0.035 c	0.036 c
Table Footnotes						
a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.						
b. See definitions of Acute Criteria (CMC) and Chronic Criteria (CCC), Section 010 of these rules.						

A		B Aquatic life		C Human health for consumption of:		
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2
<p>c. This criterion is based on input values to human health criteria calculation specified in Idaho's Technical Support Document (TSD) for Human Health Criteria Calculations - 2015. Criteria for non-carcinogens are calculated using the formula:</p> $AWQC = RfD * RSC * \left(\frac{BW}{DI + (FI * BAF)} \right)$ <p>and criteria for carcinogens are calculated using the formula:</p> $AWQC = RSD * \left(\frac{BW}{DI + (FI * BAF)} \right)$ <p>Where: AWQC = Ambient water quality criterion (mg/L)</p> <p>BW = Human Body Weight (kg), 80 is used in these criteria DI = Drinking Water Intake, (L/day), 2.4 is used in these criteria FI = Fish Intake, (kg/day), 0.0665 is used in these criteria</p> <p>BAF = Bioaccumulation Factor, L/kg, chemical specific value, see TSD RfD = Reference dose (mg/kg-day), chemical specific value, see TSD</p> <p>$RSD = \frac{\text{Target Incremental Cancer Risk}}{\text{Cancer Potency Factor}}$ (mg/kg-day), chemical specific value, see TSD</p> <p>RSC = Relative Source Contribution, chemical specific value, see TSD</p>						
d. Inorganic forms only.						
e. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = column B1 value X WER. CCC = column B2 value X WER.						
f. Criterion expressed as total recoverable (unfiltered) concentrations.						
g. No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.						

A		B Aquatic life		C Human health for consumption of:		
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2
<p>h. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.</p>						
<p>i. Aquatic life criteria for these metals are a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the example values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).</p>						
<p>j. Criteria are expressed as weak acid dissociable (WAD) cyanide.</p>						
<p>k. Total chlorine residual concentrations.</p>						
<p>l. EPA guidance allows states to choose from a range of 10⁻⁴ to 10⁻⁶ for the incremental increase in cancer risk used in human health criteria calculation. Idaho has chosen to base this criterion on carcinogenicity of 10⁻⁵ risk.</p>						
<p>m. Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). CMC = exp(1.005(pH)-4.830) CCC = exp(1.005(pH)-5.290)</p>						
<p>n. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.</p>						
<p>o. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).</p>						
<p>p. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: TRC = [BW x {RfD - (RSCxRfD)}] / Σ TL. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.</p>						
<p>q. This criterion is based on the drinking water Maximum Contaminant Level (MCL).</p>						
<p>r.</p>						

Chronic			Short-term		
Egg-Ovary (mg/kg dw)	Fish Tissue (mg/kg dw)		Water Column (µg/L)		Water Column (µg/L)
Egg-Ovary	Whole-Body	Muscle	Water Lentic	Water Lotic	Water

<u>15.1¹</u>	<u>8.5²</u>	<u>11.3²</u>	<u>1.5 (30 day average)³</u>	<u>3.1 (30 day average)³</u>	<u>Intermittent Exposure Equation^{3,4}</u>
<u>mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter</u>					
<p><u>1. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species. Not to be exceeded; DEQ will evaluate all representative egg-ovary data to determine compliance with this criterion element.</u></p> <p><u>2. Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual. Not to be exceeded; DEQ will evaluate all representative whole body or muscle data to determine compliance with this criterion element.</u></p> <p><u>3. Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, selenium concentrations in fish from the nearest downstream waters may be used to assess compliance using methods provided in Aquatic Life Ambient Water Quality Criterion for Selenium – Freshwater, EPA-822-R-16-006, Appendix K: Translation of a Selenium Fish Tissue Criterion Element to a Site-Specific Water Column Value (June 2016).</u></p> <p><u>4. Intermittent Exposure Equation=</u></p> $\frac{WQC - C_{bkgnd}(1 - f_{int})}{f_{int}}$ <p><u>where WQC is the applicable water column element, for either lentic or lotic waters; C_{bkgnd} is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to one day).</u></p>					

s. There is no specific acute criterion for aquatic life; however, the aquatic life criterion is based on chronic effects of selenium on aquatic life and is expected to adequately protect against acute effects

Footnotes r. and s. are not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.

~~(3-25-16)~~()

02. Factors for Calculating Hardness Dependent Metals Criteria. Hardness dependent metals criteria are calculated using values from the following table in the equations: (5-3-03)

- a. $CMC = WER \exp \{mA[\ln(\text{hardness})] + bA\}$ X Acute Conversion Factor. (5-3-03)
- b. $CCC = WER \exp \{mc[\ln(\text{hardness})] + bc\}$ X Chronic Conversion Factor.

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

Chromium (VI)	b	b	b	b	0.982	0.962
Copper	0.9422	-1.464	0.8545	-1.465	0.960	0.960
Lead	1.273	-1.460	1.273	-4.705	0.791	0.791
Mercury	b	b	b	b	0.85	0.85
Nickel	0.846	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	-6.52	c	c	0.85	c
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

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

Footnotes to table:

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

Cadmium

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

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

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

b. Not applicable

c. No chronic criteria are available for silver.

(3-29-10)

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

(3-25-16)

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

(3-25-16)

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

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

(3-25-16)

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

years determined hydrologically; (5-3-03)

ii. Where “1B3” is biologically based and indicates an allowable exceedance of once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model); (5-3-03)

iii. Where “7Q10” is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

iv. Where “4B3” is biologically based and indicates an allowable exceedance for four (4) consecutive days once every three (3) years. It may be determined by EPA’s computerized method (DFLOW model); (5-3-03)

v. Where the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows. (5-3-03)

c. Application of aquatic life metals criteria. (3-25-16)

i. For metals other than cadmium, for purposes of calculating hardness dependent aquatic life criteria from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. For cadmium, the minimum hardness for use in those equations shall not be less than ten (10) mg/l, as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, except as specified in Subsections 210.03.c.ii. and 210.03.c.iii., even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. (3-29-10)

ii. The hardness values used for calculating aquatic life criteria for metals at design discharge conditions shall be representative of the ambient hardnesses for a receiving water that occur at the design discharge conditions given in Subsection 210.03.b. (5-3-03)

iii. Except as otherwise noted, the aquatic life criteria for metals (compounds #1 through #13 in the criteria table of Subsection 210.02) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnotes e. and i. in the criteria table in Subsection 210.01, the water effect ratio is computed as a specific pollutant’s acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of calculating water effects ratios, the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC50) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC50) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of calculating water effects ratios, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.c.ii. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. (4-6-05)

iv. Implementation Guidance for the Idaho Mercury Water Quality Criteria. (4-6-05)

(1) The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” describes in detail suggested methods for discharge related monitoring requirements, calculation of reasonable potential to exceed (RPTE) water quality criteria in determining need for mercury effluent limits, and use of fish tissue mercury data in

calculating mercury load reductions. This guidance, or its updates, will provide assistance to the Department and the public when implementing the methylmercury criterion. The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” also provides basic background information on mercury in the environment, the novelty of a fish tissue criterion for water quality, the connection between human health and aquatic life protection, and the relation of environmental programs outside of Clean Water Act programs to reducing mercury contamination of the environment. The “Implementation Guidance for the Idaho Mercury Water Quality Criteria” is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at http://www.deq.idaho.gov/media/639808-idaho_mercury_wq_guidance.pdf. (4-6-05)

(2) The implementation of a fish tissue criterion in NPDES permits and TMDLs requires a non-traditional approach, as the basic criterion is not a concentration in water. In applying the methylmercury fish tissue criterion in the context of NPDES effluent limits and TMDL load reductions, the Department will assume change in fish tissue concentrations of methylmercury are proportional to change in water body loading of total mercury. Reasonable potential to exceed (RPTe) the fish tissue criterion for existing NPDES sources will be based on measured fish tissue concentrations potentially affected by the discharge exceeding a specified threshold value, based on uncertainty due to measurement variability. This threshold value is also used for TMDL decisions. Because measured fish tissue concentrations do not reflect the effect of proposed new or increased discharge of mercury, RPTe in these cases will be based upon an estimated fish tissue methylmercury concentration, using projected changes in waterbody loading of total mercury and a proportional response in fish tissue mercury. For the above purposes, mercury will be measured in the skinless filets of sport fish using techniques capable of detecting tissue concentrations down to point zero five (0.05) mg/kg. Total mercury analysis may be used, but will be assumed to be all methylmercury for purposes of implementing the criterion. (4-6-05)

d. Application of toxics criteria. (3-25-16)

i. Frequency and duration for aquatic life toxics criteria. Column B1 criteria are concentrations not to be exceeded for a one-hour average more than once in three (3) years unless otherwise specified. Column B2 criteria are concentrations not to be exceeded for a four-day average more than once in three (3) years unless otherwise specified. ~~(3-25-16)~~ ()

ii. Frequency and duration for human health toxics criteria. Columns C1 and C2 criteria are not to be exceeded based on an annual harmonic mean. (3-25-16)

04. National Pollutant Discharge Elimination System Permitting. For the purposes of NPDES permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the following standards, that are hereby incorporated by reference, in addition to other scientifically defensible methods deemed appropriate by the Department; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02 of this rule. (5-3-03)

a. “Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria,” EPA, October 1993, <http://www.deq.idaho.gov/media/827413-epa-guidance-dissolved-criteria-1093.pdf>. (4-5-00)

b. “Guidance Document on Dynamic Modeling and Translators,” EPA, August 1993, <http://www.deq.idaho.gov/media/827417-epa-guidance-dynamic-modeling-translators-0893.pdf>. (4-5-00)

c. “Guidance Document on Clean Analytical Techniques and Monitoring,” EPA, October 1993, <http://www.deq.idaho.gov/media/827421-epa-guidance-analytical-techniques-1093.pdf>. (4-5-00)

d. “Interim Guidance on Determination and Use of Water-Effect Ratios for Metals,” EPA, February 1994, <http://www.deq.idaho.gov/media/827409-epa-guidance-water-effect-ratios-for-metals-0294.pdf>. (4-5-00)

e. “Technical Support Document for Water Quality-Based Toxics Control.” EPA, March 1991. <http://www.deq.idaho.gov/media/60177101/58-0102-1201-epa-technical-support-document-1991.pdf>. (3-25-16)

05. Development of Toxic Substance Criteria. (4-5-00)

- a. Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not identified in these rules for toxic substances, may be derived by the Department from the following information: (4-5-00)
- i. Site-specific criteria developed pursuant to Section 275; (4-5-00)
 - ii. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (4-5-00)
 - iii. The most recent recommended criteria defined in EPA's ECOTOX database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (3-25-16)
 - iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (4-5-00)
- b. Human Health Criteria. (4-5-00)

Note: In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Section 210 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Section 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Sections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

- i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department using best available science on toxicity thresholds (i.e. reference dose or cancer slope factor), such as defined in EPA's Integrated Risk Information System (IRIS) or other peer-reviewed source acceptable to the Department. (3-25-16)
- ii. When using toxicity thresholds to derive water quality criteria to protect human health, a fish consumption rate representative of the population to be protected, a mean adult body weight, an adult 90th percentile water ingestion rate, a trophic level weighted BAF or BCF, and a hazard quotient of one (1) for non-carcinogens or a cancer risk level of 10^{-5} for carcinogens shall be utilized. (3-25-16)

(BREAK IN CONTINUITY OF SECTIONS)

287. SITE-SPECIFIC AQUATIC LIFE CRITERIA FOR SELENIUM.

Site-specific water column values (30-day average) are based on dissolved total selenium in water and are derived using a performance-based approach from fish tissue values via either the mechanistic modeling or empirical bioaccumulation factor (BAF) method in Aquatic Life Ambient Water Quality Criterion for Selenium – Freshwater, EPA-822-R-16-006, Appendix K: Translation of a Selenium Fish Tissue Criterion Element to a Site-Specific Water Column Value (June 2016). ()

01. Subsection of Blackfoot Subbasin. Blackfoot River - confluence of Lanes and Diamond Creeks to Blackfoot Reservoir (unit US-10), and all tributaries thereof. Site-specific egg-ovary, whole-body, and muscle criterion elements for these water bodies are set out in the following table. The lentic and short-term exposure water column criterion elements set out in Subsection 210.01., table footnote r, are also applicable to the water bodies identified in this subsection.

<u>Chronic</u>			
<u>Egg-Ovary (mg/kg dw)</u>	<u>Fish Tissue (mg/kg dw)</u>		<u>Water Column (µg/L)</u>
<u>Egg-Ovary</u>	<u>Whole-Body</u>	<u>Muscle</u>	<u>Water Lotic</u>
<u>24.5¹</u>	<u>12.5²</u>	<u>12.8²</u>	<u>11.9^{3,4,5}</u>
mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter			
<p>1. <u>Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species. Not to be exceeded; DEQ will evaluate all representative egg-ovary data to determine compliance with this criterion element.</u></p> <p>2. <u>Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual. Not to be exceeded; DEQ will evaluate all representative whole-body or muscle data to determine compliance with this criterion element.</u></p> <p>3. <u>Water column values are derived using the empirical BAF method. For comparative purposes only, the example value displayed in this table represents the lotic water column value for Sheep Creek based on the average BAF for Cutthroat Trout among all sampling locations and years.</u></p> <p>4. <u>Lotic Water Column Equation=</u></p> $\frac{\text{Tissue}_{\text{criterion}}}{\text{BAF}}$ <p><u>where Tissue_{criterion} is the fish tissue element (whole-body), and BAF is the bioaccumulation factor derived by dividing site-specific field-collected samples of fish tissue (whole-body) by site-specific field-collected samples of water.</u></p> <p>5. <u>Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, surface water from the fishless waters and fish tissue from the nearest downstream waters are used for bioaccumulation modeling. Fish tissue supersedes any site-specific water column values when fish are sampled downstream of fishless waters.</u></p>			

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02. Subsection of Bear Lake Subbasin. Georgetown Creek - source to mouth (unit B-22), and all tributaries thereof. Site-specific egg-ovary, whole-body, and muscle criterion elements for these water bodies are set out in the following table. The lotic and short-term water column criterion elements set out in Subsection 270.01., table footnote r, are also applicable to the water bodies identified in this subsection.

<u>Chronic</u>			
<u>Egg-Ovary (mg/kg dw)</u>	<u>Fish Tissue (mg/kg dw)</u>		<u>Water Column (µg/L)</u>
<u>Egg-Ovary</u>	<u>Whole-Body</u>	<u>Muscle</u>	<u>Water Lotic</u>
<u>21.0¹</u>	<u>12.5²</u>	<u>12.8²</u>	<u>3.8^{3,4,5}</u>
mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter			

1. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species. Not to be exceeded; DEQ will evaluate all representative egg-ovary data to determine compliance with this criterion element.
2. Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual. Not to be exceeded; DEQ will evaluate all representative whole-body and muscle data to determine compliance with this criterion element.
3. Water column values are derived using the empirical BAF method. For comparative purposes only, the example displayed in this table represents the lotic water column value for Georgetown Creek, upstream of the intermittent reach, based on the average BAF for Brook Trout in all sampling locations and years.
4. Lotic Water Column Equation=

$$\frac{\text{Tissue}_{\text{criterion}}}{\text{BAF}}$$
where Tissue_{criterion} is the fish tissue element (whole-body), and BAF is the bioaccumulation factor derived by dividing site-specific field-collected samples of fish tissue (whole-body) by site-specific field-collected samples of water.
5. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, surface water from the fishless waters and fish tissue from the nearest downstream waters are used for bioaccumulation modeling. Fish tissue supersedes any site-specific water column values when fish are sampled downstream of fishless waters.

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03. Subsection of Salt Subbasin — Sage Creek. Sage Creek – source to mouth (unit US-9) including, Hoopes Spring channel downstream of the spring complex, South Fork Sage Creek downstream of the spring complex, Sage Creek downstream of the confluence of Hoopes Spring with Sage Creek to its confluence with Crow Creek, North Fork Sage Creek and tributaries (including Pole Canyon Creek). Site-specific egg-ovary and whole-body criterion elements for these water bodies are set out in the following table. The muscle, lentic water column, and short-term water column criterion elements set out in Subsection 210.01., table footnote r, are also applicable to the water bodies identified in this subsection.

Chronic		
<u>Egg-Ovary (mg/kg dw)</u>	<u>Fish Tissue (mg/kg dw)</u>	<u>Water Column (µg/L)</u>
<u>Egg-Ovary</u>	<u>Whole-Body</u>	<u>Water Lotic</u>
<u>20.5¹</u>	<u>13.6²</u>	<u>16.7³</u>
<u>mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter</u>		

1. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species. Not to be exceeded; DEQ will evaluate all representative egg-ovary data to determine compliance with this criterion element.
2. Fish tissue supersedes water column element when both fish tissue (whole-body) and water concentrations are measured. Fish tissue elements are expressed as a single arithmetic average of tissue concentrations from at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual. Not to be exceeded; DEQ will evaluate all representative whole-body data to determine compliance with this criterion element.
3. Water column values are derived using the empirical BAF method. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, selenium concentrations in fish from the nearest downstream waters may be used to assess compliance.

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04. Subsection of Salt Subbasin — Crow Creek. Crow Creek – Downstream of Sage Creek confluence to Wyoming state line (US-8). Site-specific egg-ovary and whole-body criterion elements for these water bodies are set out in the following table. The muscle, lentic water column, and short-term water column criterion elements set out in Subsection 210.01., table footnote r, are also applicable to the water bodies identified in this subsection.

Chronic		
Egg-Ovary (mg/kg dw)	Fish Tissue (mg/kg dw)	Water Column (µg/L)
<u>Egg-Ovary</u>	<u>Whole-Body</u>	<u>Water Lotic</u>
<u>20.5¹</u>	<u>12.5²</u>	<u>4.2³</u>
<u>mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter</u>		
1. <u>Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species. Not to be exceeded; DEQ will evaluate all representative egg-ovary data to determine compliance with this criterion element.</u>		
2. <u>Fish tissue supersedes water column element when both fish tissue (whole-body) and water concentrations are measured. Fish tissue elements are expressed as a single arithmetic average of tissue concentrations from at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual. Not to be exceeded; DEQ will evaluate all representative whole-body data to determine compliance with this criterion element.</u>		
3. <u>Water column values are derived using the empirical BAF method. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, selenium concentrations in fish from the nearest downstream waters may be used to assess compliance.</u>		

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05. Portions of Idaho.

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a. This site-specific criterion applies in the HUC subbasins set out in the following table.

HUC	Subbasin	HUC	Subbasin
<u>16010102</u>	<u>Central Bear</u>	<u>17040208</u>	<u>Portneuf</u>
<u>16010201</u>	<u>Bear Lake</u>	<u>17040209</u>	<u>Lake Walcott</u>

<u>16010202</u>	<u>Middle Bear</u>		<u>17040210</u>	<u>Raft</u>
<u>16010203</u>	<u>Little Bear-Logan</u>		<u>17040211</u>	<u>Goose</u>
<u>16010204</u>	<u>Lower Bear-Malad</u>		<u>17040214</u>	<u>Beaver-Camas</u>
<u>16020309</u>	<u>Curlew Valley</u>		<u>17040215</u>	<u>Medicine Lodge</u>
<u>17010302</u>	<u>South Fork Coeur d Alene</u>		<u>17040216</u>	<u>Birch</u>
<u>17010306</u>	<u>Hangman</u>		<u>17040218</u>	<u>Big Lost</u>
<u>17010308</u>	<u>Little Spokane</u>		<u>17040220</u>	<u>Camas</u>
<u>17040104</u>	<u>Palisades</u>		<u>17040221</u>	<u>Little Wood</u>
<u>17040105</u>	<u>Salt</u>		<u>17050104</u>	<u>Upper Owyhee</u>
<u>17040201</u>	<u>Idaho Falls</u>		<u>17050105</u>	<u>South Fork Owyhee</u>
<u>17040202</u>	<u>Upper Henrys</u>		<u>17050106</u>	<u>East Little Owyhee</u>
<u>17040203</u>	<u>Lower Henrys</u>		<u>17050107</u>	<u>Middle Owyhee</u>
<u>17040204</u>	<u>Teton</u>		<u>17050108</u>	<u>Jordan</u>
<u>17040205</u>	<u>Willow</u>		<u>17060109</u>	<u>Rock</u>
<u>17040206</u>	<u>American Falls</u>			
<u>17040207</u>	<u>Blackfoot</u>			

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b. Site-specific egg-ovary, whole-body, and muscle criterion elements for the water bodies identified in Subsection 287.05.a. are set out in the following table. The water column criterion elements set out in Subsection 210.01., table footnote r, are also applicable to the water bodies identified in Subsection 287.05.a.

<u>Chronic</u>		
<u>Egg-Ovary (mg/kg dw)</u>	<u>Fish Tissue (mg/kg dw)</u>	
<u>Egg-Ovary</u>	<u>Whole-Body</u>	<u>Muscle</u>
<u>19.0¹</u>	<u>9.5²</u>	<u>13.1²</u>
<u>mg/kg dw – milligrams per kilogram dry weight, µg/L – micrograms per liter</u>		
<u>1. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species. Not to be exceeded; DEQ will evaluate all representative egg-ovary data to determine compliance with this criterion element.</u>		
<u>2. Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured. Single measurement of an average or composite sample of at least five (5) individuals of the same species where the smallest individual is no less than seventy-five percent (75%) of the total length (size) of the largest individual. Not to be exceeded; DEQ will evaluate all representative whole-body or muscle data to determine compliance with this criterion element.</u>		

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Section 287 is not effective for CWA purposes until the date EPA issues written notification that the revisions adopted under Rule Docket No. 58-0102-1701 have been approved.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 – WATER QUALITY STANDARDS

DOCKET NO. 58-0102-1702

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 2018 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Sixty-fourth 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, August 2, 2017, [Vol. 17-8, pages 128 through 159](#). After consideration of public comments, Section 007 has been revised. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov/58-0102-1702 or by contacting the undersigned.

In addition, as a result of public comments received, the information regarding arsenic criteria effective for Clean Water Act (CWA) purposes has been revised. This notation is inserted in the Subsection 210.01 table immediately below the row that contains the arsenic criteria for protection of human health. While the information provided in the note box is not rule text, the revisions were included in the final proposal for consideration by the Idaho Board of Environmental Quality as part of the rulemaking record.

Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water+fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2015, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016, EPA disapproved Idaho's adoption of 10 µg/L. Neither EPA nor the state of Idaho has promulgated replacement criteria. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

IDAHO CODE SECTION 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Paula Wilson at paula.wilson@deq.idaho.gov, (208) 373-0418.

DATED this 3rd day of January, 2018.

Paula J. Wilson
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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 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 August 18, 2017. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated for administrative purposes and to revise Subsection 210.01, Criteria for Toxic Substances, by streamlining and reorganizing the table that contains criteria for protection of aquatic life and human health.

Administrative Revisions:

Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see [40 CFR 131.21](#)). This is known as the Alaska Rule. DEQ proposes to add a new rule section setting out a rulemaking process which would retain the existing rule that continues to be effective for CWA purposes until EPA approves the rule revisions. Using this rulemaking process will allow the regulated community to stay informed of the status of rules effective for CWA purposes.

In addition, the proposal will clean up the water quality standards by deleting obsolete language in two definitions and by deleting Subsection 401.03. Subsection 401.03 is no longer necessary because total chlorine residual was adopted into Section 210 during previous rulemaking.

Streamlining Subsection 210.01, Criteria for Toxic Substances:

The table in Subsection 210.01, Criteria for Toxic Substances, contains criteria for protection of aquatic life and human health. DEQ proposes to simplify and streamline the existing table by moving the information into two separate tables. One table will contain the criteria for protection of aquatic life and one table will contain the criteria for protection of human health. As part of this process, the existing table will be deleted.

By drafting two separate tables, Subsection 210.01 will become more manageable and easier to follow. The existing table contains approximately 100 rows for which there are no aquatic life criteria. By moving the criteria for aquatic life into a separate table, the aquatic life criteria table will become much shorter. In addition, the compounds listed in both tables will be arranged alphabetically.

The proposed revisions are for organizational purposes only and are not substantive. Even though the existing table is struck out and the information contained in the two tables is underlined, this is simply a duplication of information that currently exists in the water quality standards. All criteria values remain the same.

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. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2017 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2018 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: N/A

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted. DEQ determined that negotiated rulemaking is not feasible due to the simple nature of this rulemaking. The proposed revisions are for administrative and organizational purposes and are not substantive.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Paula Wilson at paula.wilson@deq.idaho.gov, (208) 373-0418.

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 September 1, 2017.

DATED this 2nd day of August, 2017.

LSO Rules Analysis Memo

Italicized red text that is double underscored is new text that has been added to the pending rule.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0102-1702

007. EFFECTIVE FOR CLEAN WATER ACT PURPOSES.

01. Alaska Rule. Water quality standards adopted and submitted to EPA since May 30, 2000, are not effective for federal Clean Water Act (CWA) purposes until EPA approves them (see 40 CFR 131.21). This is known as the Alaska Rule. The process for revising the Idaho water quality standards subject to EPA review and approval, while also retaining the rules effective for CWA purposes, is set out in Subsections 007.02 and 007.03. ()

02. Existing Rule Retained for Clean Water Act Purposes Until EPA Approval of Rule Revisions. ()

a. When proposing revisions, the Department will make the proposed revisions using legislative format and, in the same rule docket, retain the existing rule that continues to be effective for CWA purposes until the date EPA issues written notification that the rule revisions have been approved. ()

b. Notations explaining the effectiveness of both versions of the rule will be included along with the rule text. ()

c. Upon the date EPA issues written notification that the rule revisions have been approved, the revised rule will become effective for CWA purposes and the previous rule and notations will be deleted from the Idaho Administrative Code. ()

d. In the event EPA issues written notification that the rule revisions have been disapproved, the ()

existing rule effective for CWA purposes will continue to apply. The disapproved rule revisions and notations will be deleted from the Idaho Administrative Code. ()

03. **Previously Approved Rules.** Pursuant to 40 CFR 131.21(e), previously approved rules remain in effect for CWA purposes until a replacement water quality standard is promulgated by the state and approved by EPA or a more stringent federal standard is promulgated. ()

04. **Information Regarding the Status of EPA Review.** Information regarding the status of EPA review will be posted at <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>. ()

~~0078.~~ -- 009. (RESERVED)

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). (4-11-15)

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)

19. 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)

20. 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)

21. 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)

22. Department. The Idaho Department of Environmental Quality. (7-1-93)

23. Design Flow. The critical flow used for steady-state wasteload allocation modeling. (8-24-94)

24. 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)

25. 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) ()

26. 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)

27. Director. The Director of the Idaho Department of Environmental Quality or his authorized agent. (7-1-93)

28. 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)

29. Dissolved Oxygen (DO). The measure of the amount of oxygen dissolved in the water, usually expressed in mg/l. (7-1-93)

30. Dissolved Product. Petroleum product constituents found in solution with water. (8-24-94)

31. 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)

32. E. coli (Escherichia coli). A common fecal and intestinal organism of the coliform group of bacteria found in warm-blooded animals. (4-5-00)

33. Effluent. Any wastewater discharged from a treatment facility. (7-1-93)

34. Effluent Biomonitoring. The measurement of the biological effects of effluents (e.g., toxicity, biostimulation, bioaccumulation, etc.). (8-24-94)

35. **EPA.** The United States Environmental Protection Agency. (7-1-93)
36. **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)
37. **Existing Activity or Discharge.** An activity or discharge that has been previously authorized or did not previously require authorization. (3-18-11)
38. **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)
39. **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)
40. **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)
41. **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)
42. **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)
43. **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)
44. **Geometric Mean.** The geometric mean of "n" quantities is the "nth" root of the product of the quantities. (7-1-93)
45. **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)
46. **Harmonic Mean.** The number of daily measurements divided by the sum of the reciprocals of the measurements (i.e., the reciprocal of the mean of reciprocals). (3-25-16)
47. **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)
48. **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)

49. 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)

50. 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)

51. 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)

52. 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)

53. 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)

54. 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)

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. 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. (3-2-03)

74. 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)

75. 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)

76. Petroleum Products. Products derived from petroleum through various refining processes. (7-1-93)

77. 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)

78. 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)

79. 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)

80. 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)

81. 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)

82. Receiving Waters. Those waters which receive pollutants from point or nonpoint sources. (7-1-93)

83. 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)

84. Release. Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (8-24-94)

85. 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)

86. 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)

87. Sediment. Undissolved inorganic matter. (3-30-07)

88. Seven Day Mean. The average of the daily mean values calculated over a period of seven (7) consecutive days. (3-20-97)

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)

90. 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)

91. 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)

~~**92. Sludge.** The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. (7-1-93)~~

932. 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)

943. State. The state of Idaho. (7-1-93)

954. 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)

965. Suspended Sediment. The undissolved inorganic fraction of matter suspended in surface water. (3-30-07)

976. Suspended Solids. The undissolved organic and inorganic matter suspended in surface water. (3-30-07)

987. 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)

998. Thermal Shock. A rapid temperature change that causes aquatic life to become disoriented or more susceptible to predation or disease. (4-11-15)

10099. 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)

1040. 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)

1021. 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)

1032. Treatment. A process or activity conducted for the purpose of removing pollutants from wastewater. (7-1-93)

1043. 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)

1054. 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)

1065. 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)

1076. Use Attainability Analysis. A structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in Subsection 102.02.a. (3-25-16)

1087. 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)

1098. 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)

1409. Water Body Unit. Includes all named and unnamed tributaries within a drainage and is considered a single unit unless designated otherwise. (4-5-00)

1140. 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)

1121. 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)

1132. 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)

1143. 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)

1154. Watershed. The land area from which water flows into a stream or other body of water which drains the area. (3-20-97)

1165. 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)

1176. Whole-Effluent Toxicity. The aggregate toxic effect of an effluent measured directly with a toxicity test. (8-24-94)

1187. Zone of Initial Dilution (ZID). An area within a Department authorized mixing zone where acute criteria may be exceeded. This area shall be no larger than necessary and shall be sized to prevent lethality to swimming or drifting organisms by ensuring that organisms are not exposed to 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. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

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

Note: In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Subsection 210.01 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Subsection 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Subsections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

~~01. Criteria for Toxic Substances. The criteria of Section 210 apply to surface waters of the state as follows. (5-3-03)~~

~~a. Columns B1 and B2 of the following table apply to waters designated for aquatic life use. (3-25-16)~~

~~b. Column C2 of the following table applies to waters designated for primary or secondary contact recreation use. (3-25-16)~~

~~c. Column C1 of the following table applies to waters designated for domestic water supply use.~~

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	^c Carcinogen? B3	Water & fish (µg/L) C1	Fish only (µg/L) C2
1 Antimony	7440360				5-2 e	100 e
2 Arsenic	7440382	340 e	150 e	Y	10 dfq	10 dfq
Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water + fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2016, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016 EPA disapproved Idaho's adoption of 10 µg/L. Until new criteria are adopted, EPA will use criteria of 6.2 µg/L for exposure through fish consumption only and 0.02 µg/L for exposure through both drinking water + consumption of fish in its NPDES permitting actions. These criteria are published in 1996 Idaho Administrative Code (Subsections 250.01-c, 250.02-a.iv, 250.03-a.i). For more information, go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards .						
3 Beryllium	7440417				h	h

A		B Aquatic life			C Human health for consumption of:		
(Number) Compound	^a CAS Number	^b CMG (µg/L) B1	^b CCG (µg/L) B2	Carcinogen? B3	Water & fish (µg/L) C1	Fish only (µg/L) C2	
4 Cadmium	7440439	1.3 i	0.6 i		h	h	
5a Chromium-III	16065831	570 i	74 i		h	h	
5b Chromium-VI	18540299	46 e	44 e		h	h	
6 Copper	7440508	17 i	44 i		1,300 q		
7 Lead	7439921	65 i	2.5 i		h	h	
8a Mercury	7439976	g	g				
<i>Note: In 2005, Idaho adopted EPA's recommended methylmercury fish tissue criterion for protection of human health (docket 58-0102-0302). The decision was made to remove the old tissue-based aquatic life criteria and rely on the fish tissue criterion to provide protection for aquatic life as well as human health. Thus, current Idaho water quality standards do not have mercury water column criteria for the protection of aquatic life. While EPA approved Idaho's adoption of the fish tissue criterion in September 2005, it had withheld judgment on Idaho's removal of aquatic life criteria. On December 12, 2008, EPA disapproved Idaho's removal of the old aquatic life criteria. The water column criteria for total recoverable mercury published in 2004 Idaho Administrative Code continue to apply and are effective for CWA purposes. For more information go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards.</i>							
8b Methylmercury	22967926					0.3 mg/kg p	
9 Nickel	7440020	470 i	52 i		58 e	100 e	
10 Selenium	7782492	20 f	5 f		29 e	250 e	
11 Silver	7440224	3.4 i					
12 Thallium	7440280				0.017 e	0.023 e	
13 Zinc	7440666	120 i	120 i		870 e	1,500 e	
14 Cyanide	57125	22 j	5.2 j		3.9 e	140 e	
15 Asbestos	1332214				7,000,000 fibers/L q		
16 2, 3, 7, 8-TCDD-Dioxin	1746016			Y	1.8E-08 el	1.9E-08 el	
17 Acrolein	107028				3.2 e	120 e	
18 Acrylonitrile	107131			Y	0.60 el	22 el	
19 Benzene	71432				3.0 el	28 e	
20 Bromoform	75252			Y	62 el	380 el	
21 Carbon Tetrachloride	56235			Y	3.6 el	15 el	
22 Chlorobenzene	108907				89 e	270 e	
23 Chlorodibromomethane	124481			Y	7.4 el	67 el	

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	^a CAS Number	^b GMC (µg/L) B1	^b CCG (µg/L) B2	Carcinogen? B3	Water & fish (µg/L) C1	Fish only (µg/L) C2
24 Chloroethane	75003				h	h
25 2-Chloroethylvinyl Ether	110758				h	h
26 Chloroform	67663				64 e	730 e
27 Dichlorobromomethane	75274			Y	8-8 el	86 el
28 1,1-Dichloroethane	75343				h	h
29 1,2-Dichloroethane	107062			Y	96 el	2,000 el
30 1,1-Dichloroethylene	75354				340 e	5,200 e
31 1,2-Dichloropropane	78875			Y	8-5 el	98 el
32 1,3-Dichloropropene	542756			Y	2-5 el	38 el
33 Ethylbenzene	100414				32 e	—41 e
34 Methyl Bromide	74839				130 e	3,700 e
35 Methyl Chloride	74873				h	h
36 Methylene Chloride	75092				38 e	960 e
37 1,1,2,2-Tetrachloroethane	79345			Y	1-4 el	8-6 el
38 Tetrachloroethylene	127184				15 e	23 e
39 Toluene	108883				47 e	170 e
40 1,2-Trans-Dichloroethylene	156605				120 e	1,200 e
41 1,1,1-Trichloroethane	71556				11,000 e	56,000 e
42 1,1,2-Trichloroethane	79005			Y	4-9 el	29 el
43 Trichloroethylene	79016				2-6 e	11 e
44 Vinyl Chloride	75014			Y	0-21 el	5-0 el
45 2-Chlorophenol	95578				30 e	260 e
46 2,4-Dichlorophenol	120832				9-6 e	19 e
47 2,4-Dimethylphenol	105679				110 e	820 e
48 2-Methyl-4,6-Dinitrophenol	534521				1-6 e	8-6 e
49 2,4-Dinitrophenol	51285				12 e	110 e
50 2-Nitrophenol	88755				h	h

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	^a CAS Number	^b GMC (µg/L) B1	^b CCG (µg/L) B2	Carcinogen? B3	Water & fish (µg/L) C1	Fish only (µg/L) C2
51 4-Nitrophenol	100027				h	h
52 3-Methyl-4-Chlorophenol	59507				350 e	750 e
53 Pentachlorophenol	87865	20 m	13 m	Y	0.11 el	0.12 el
54 Phenol	108952				3,800 e	85,000 e
55 2,4,6-Trichlorophenol	88062				1.5 e	2.0 e
56 Acenaphthene	83329				26 e	28 e
57 Acenaphthylene	208968				h	h
58 Anthracene	120127				110 e	120 e
59 Benzidine	92875			Y	0.0014 el	0.033 el
60 Benzo(a)Anthracene	56553			Y	0.0042 el	0.0042 el
61 Benzo(a)Pyrene	50328			Y	0.00042 el	0.00042 el
62 Benzo(b)Fluoranthene	205992			Y	0.0042 el	0.0042 el
63 Benzo(ghi)Perylene	191242				h	h
64 Benzo(k)Fluoranthene	207089			Y	0.042 el	0.042 el
65 Bis(2-Chloroethoxy)-Methane	111911				h	h
66 Bis(2-Chloroethyl)Ether	111444			Y	0.29 el	6.8 el
67 Bis(2-Chloroisopropyl) Ether	108601				220 e	1,200 e
68 Bis(2-Ethylhexyl)-Phthalate	117817			Y	1.2 el	1.2 el
69 4-Bromophenyl-Phenyl Ether	101553				h	h
70 Butylbenzyl-Phthalate	85687				0.33 e	0.33 e
71 2-Chloronaphthalene	91587				330 e	380 e
72 4-Chlorophenyl-Phenyl Ether	7005723				h	h
73 Chrysene	218019			Y	0.42 el	0.42 el

A		B Aquatic life			C Human health for consumption of:			
(Number) Compound	^a -CAS- Number	^b -CMC (µg/L) B1	^b -CCG (µg/L) B2	Carcinogen? B3	Water & fish- (µg/L) C1		Fish-only (µg/L) C2	
74 Dibenzo (a,h)- Anthracene	53703			Y	0.00042	cl	0.00042	cl
75 1,2-Dichlorobenzene	95501				700	e	1,100	e
76 1,3-Dichlorobenzene	541731				3-5	e	4-8	e
77 1,4-Dichlorobenzene	106467				180	e	300	e
78 3,3'-Dichlorobenzidine	91941			Y	0.29	cl	0.48	cl
79 Diethyl-Phthalate	84662				200	e	210	e
80 Dimethyl-Phthalate	131113				600	e	600	e
81 Di-n-Butyl-Phthalate	84742				8-2	e	8-3	e
82 2,4-Dinitrotoluene	121142			Y	0.46	cl	5-5	cl
83 2,6-Dinitrotoluene	606202					h		h
84 Di-n-Octyl-Phthalate	117840					h		h
85 1,2-Diphenylhydrazine	122667			Y	0.25	cl	0.65	cl
86 Fluoranthene	206440				6-3	e	6-4	e
87 Fluorene	86737				21	e	22	e
88 Hexachlorobenzene	118741			Y	0.00026	cl	0.00026	cl
89 Hexachlorobutadiene	87683			Y	0.031	cl	0.031	cl
90 Hexachloro- cyclopentadiene	77474				1-3	e	1-3	e
91 Hexachloroethane	67721				0.23	e	0.24	e
92 Ideno (1,2,3-cd)- Pyrene	193395			Y	0.0042	cl	0.0042	cl
93 Isophorone	78591			Y	330	cl	6,000	cl
94 Naphthalene	91203					h		h
95 Nitrobenzene	98953				12	e	180	e
96 N-Nitrosodimethylamine	62759			Y	0.0065	cl	9-1	cl
97 N-Nitrosodi-n- Propylamine	621647			Y	0.046	cl	1-5	cl
98 N-Nitrosodiphenylamine	86306			Y	3.14	cl	18	cl

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	^a CAS Number	^b GCMC (µg/L) B1	^b CCG (µg/L) B2	Carcinogen? B3	Water & fish (µg/L) C1	Fish only (µg/L) C2
99 Phenanthrene	85018				h	h
100 Pyrene	129000				8.4 e	8.4 e
101 1,2,4-Trichlorobenzene	120821				0.24 e	0.24 e
102 Aldrin	309002	3		Y	2.5E-06 el	2.5E-06 el
103 alpha-BHC	319846			Y	0.0012 el	0.0013 el
104 beta-BHC	319857			Y	0.036 el	0.045 el
105 gamma-BHC (Lindane)	58899	2	0.08		1.4 e	1.4 e
106 delta-BHC	319868				h	h
107 Chlordane	57749	2.4	0.0043	Y	0.0010 el	0.0010 el
108 4,4'-DDT	50293	1.1	0.001	Y	9.8E-05 el	9.8E-05 el
109 4,4'-DDE	72559			Y	5.5E-05 el	5.5E-05 el
110 4,4'-DDD	72548			Y	0.00042 el	0.00042 el
111 Dieldrin	60571	2.5	0.0019	Y	4.2E-06 el	4.2E-06 el
112 alpha-Endosulfan	959988	0.22	0.056		7.0 e	8.5 e
113 beta-Endosulfan	33213659	0.22	0.056		11 e	14 e
114 Endosulfan Sulfate	1031078				9.9 e	13 e
115 Endrin	72208	0.18	0.0023		0.011 e	0.011 e
116 Endrin Aldehyde	7421934				0.38 e	0.40 e
117 Heptachlor	76448	0.52	0.0038	Y	2.0E-05 el	2.0E-05 el
118 Heptachlor Epoxide	1024573	0.52	0.0038	Y	0.00010 el	0.00010 el
119 Polychlorinated-Biphenyls PCBs:	n		0.014 n	Y	0.00019 elo	0.00019 elo
120 Toxaphene	8001352	0.73	0.0002	Y	0.0023 el	0.0023 el
121 Chlorine		19 k	11 k			
122 1,2,4,5-Tetrachlorobenzene	95943				0.0093 e	0.0094 e
123 2,4,5-Trichlorophenol	95954				140 e	190 e
124 Bis (Chloromethyl)-Ether	542881			Y	0.0015 el	0.055 el

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	^a CAS Number	^b GMC (µg/L) B1	^b CGC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2
125 Chlorophenoxy-Herbicide (2,4,5-TP) [Silvex]	93724				82 €	130 €
126 Chlorophenoxy-Herbicide (2,4-D)	94757				1,000 €	3,900 €
127 Dinitrophenols	25550587				13 €	320 €
128 Hexachlorocyclohexane (HCH) Technical	608734			Y	0.027 €	0.032 €
129 Methoxychlor	72435				0.0054 €	0.0055 €
130 Pentachlorobenzene	608935				0.035 €	0.036 €
Table Footnotes						
a. Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.						
b. See definitions of Acute Criteria (GMC) and Chronic Criteria (CGC), Section 010 of these rules.						

A		B Aquatic life		C Human health for consumption of:		
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen?	Water & fish (µg/L) C1	Fish only (µg/L) C2
<p>c. This criterion is based on input values to human health criteria calculation specified in Idaho's Technical Support Document (TSD) for Human Health Criteria Calculations—2015. Criteria for non-carcinogens are calculated using the formula:</p> $AWQC = \frac{RfD * RSC * \left(\frac{BW}{DI + (FI * BAF)} \right)}{1}$ <p>and criteria for carcinogens are calculated using the formula:</p> $AWQC = \frac{RSD * \left(\frac{BW}{DI + (FI * BAF)} \right)}{1}$ <p>Where: AWQC = Ambient water quality criterion (mg/L)</p> <p>BW = Human Body Weight (kg), 80 is used in these criteria DI = Drinking Water Intake, (L/day), 2.4 is used in these criteria FI = Fish Intake, (kg/day), 0.0665 is used in these criteria</p> <p>BAF = Bioaccumulation Factor, L/kg, chemical specific value, see TSD RfD = Reference dose (mg/kg-day), chemical specific value, see TSD</p> <p>RSD = $\frac{\text{Target Incremental Cancer Risk}}{\text{Cancer Potency Factor}}$ (mg/kg-day), chemical specific value, see TSD</p> <p>RSC = Relative Source Contribution, chemical specific value, see TSD</p>						
d. Inorganic forms only.						
e. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = column B1 value X WER. CCC = column B2 value X WER.						
f. Criterion expressed as total recoverable (unfiltered) concentrations.						
g. No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.						

A		B Aquatic life			C Human health for consumption of:	
(Number) Compound	^a CAS Number	^b CMC (µg/L) B1	^b CCC (µg/L) B2	Carcinogen? B3	Water & fish (µg/L) C1	Fish only (µg/L) C2
h. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.						
i. Aquatic life criteria for these metals are a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the example values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).						
j. Criteria are expressed as weak acid dissociable (WAD) cyanide.						
k. Total chlorine residual concentrations.						
l. EPA guidance allows states to choose from a range of 10 ⁻⁴ to 10 ⁻⁶ for the incremental increase in cancer risk used in human health criteria calculation. Idaho has chosen to base this criterion on carcinogenicity of 10 ⁻⁵ risk.						
m. Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). $CMC = \exp(1.005(pH) - 4.830)$ $CCC = \exp(1.005(pH) - 5.290)$						
n. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.						
o. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).						
p. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: $TRC = [BW \times (RfD - (RSC \times RfD))] / \Sigma TL$. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.						
q. This criterion is based on the drinking water Maximum Contaminant Level (MCL).						

(3-25-16)

02. Factors for Calculating Hardness Dependent Metals Criteria. Hardness dependent metals criteria are calculated using values from the following table in the equations: (5-3-03)

a. $CMC = WER \exp(mA[\ln(\text{hardness})] + bA) \times \text{Acute Conversion Factor}$ (5-3-03)

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

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

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

Table 1. Criteria for Protection of Aquatic Life					
Compound	^a CAS Number	^b CMC (µg/L)		^b CCC (µg/L)	
Inorganic Compounds/Metals					
Arsenic	7440382	340	c	150	c
Cadmium	7440439	1.3	f	0.6	f
Chromium III	16065831	570	f	74	f
Chromium VI	18540299	16	c	11	c
Copper	7440508	17	f	11	f
Lead	7439921	65	f	2.5	f
Mercury	7439976		e		e
Note: In 2005, Idaho adopted EPA's recommended methylmercury fish tissue criterion for protection of human health (docket 58-0102-0302). The decision was made to remove the old tissue-based aquatic life criteria and rely on the fish tissue criterion to provide protection for aquatic life as well as human health. Thus, current Idaho water quality standards do not have mercury water column criteria for the protection of aquatic life. While EPA approved Idaho's adoption of the fish tissue criterion in September 2005, it had withheld judgment on Idaho's removal of aquatic life criteria. On December 12, 2008, EPA disapproved Idaho's removal of the old aquatic life criteria. The water column criteria for total recoverable mercury published in 2004 Idaho Administrative Code continue to apply and are effective for CWA purposes. For more information go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards .					
Nickel	7440020	470	f	52	f
Selenium	7782492	20	d	5	d
Silver	7440224	3.4	f		
Zinc	7440666	120	f	120	f
Inorganic Compounds/Non-Metals					
Chlorine		19	h	11	h
Cyanide	57125	22	g	5.2	g
Organic Compounds					
Aldrin	39002	3			
gamma-BHC (Lindane)	58899	2		0.08	
Chlordane	57749	2.4		0.0043	
4,4'-DDT	50293	1.1		0.001	
Dieldrin	60571	2.5		0.0019	

Table 1. Criteria for Protection of Aquatic Life					
Compound	^a CAS Number	^b CMC (µg/L)		^b CCC (µg/L)	
<u>alpha-Endosulfan</u>	<u>959988</u>	<u>0.22</u>		<u>0.056</u>	
<u>beta-Endosulfan</u>	<u>33213659</u>	<u>0.22</u>		<u>0.056</u>	
<u>Endrin</u>	<u>72208</u>	<u>0.18</u>		<u>0.0023</u>	
<u>Heptachlor</u>	<u>76448</u>	<u>0.52</u>		<u>0.0038</u>	
<u>Heptachlor Epoxide</u>	<u>1024573</u>	<u>0.52</u>		<u>0.0038</u>	
<u>Pentachlorophenol</u>	<u>87865</u>	<u>20</u>	<u>i</u>	<u>13</u>	<u>i</u>
<u>Polychlorinated Biphenyls PCBs</u>	<u>j</u>			<u>0.014</u>	<u>j</u>
<u>Toxaphene</u>	<u>8001352</u>	<u>0.73</u>		<u>0.0002</u>	
Footnotes for Table 1. Criteria for Protection of Aquatic Life					
a. <u>Chemical Abstracts Service (CAS) registry numbers which provide a unique identification for each chemical.</u>					
b. <u>See definitions of Acute Criteria (CMC) and Chronic Criteria (CCC), Section 010 of these rules.</u>					
c. <u>Criterion or these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = CMC column value X WER. CCC = CCC column value X WER.</u>					
d. <u>Criterion expressed as total recoverable (unfiltered) concentrations.</u>					
e. <u>No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.</u>					
f. <u>Aquatic life criteria for these metals are a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii. and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the example values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).</u>					
g. <u>Criteria are expressed as weak acid dissociable (WAD) cyanide.</u>					
h. <u>Total chlorine residual concentrations.</u>					
i. <u>Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). CMC = exp(1.005(pH)-4.830) CCC = exp(1.005(pH)-5.290)</u>					
j. <u>PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.</u>					

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

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Table 2. Criteria for Protection of Human Health (based on consumption of:)						
Compound	^a CAS Number	Carcinogen?	Water & Fish (µg/L)	Fish Only (µg/L)		
Inorganic Compounds/Metals						
Antimony	7440360		5.2	b	190	b
Arsenic	7440382	Y	10	cdj	10	cdj
Note: In 2008, Idaho adopted 10 µg/L as its CWA arsenic criterion for both exposure through fish consumption only and exposure through drinking water+fish consumption, choosing the SDWA MCL due to concerns about background levels that exceed EPA's 304(a) criteria (docket 58-0102-0801). EPA approved this action in 2010. In June 2015, Northwest Environmental Advocates challenged EPA's 2010 approval. Court remanded action back to EPA. On September 15, 2016, EPA disapproved Idaho's adoption of 10 µg/L. Neither EPA nor the state of Idaho has promulgated replacement criteria. For more information, go to http://www.deq.idaho.gov/epa-actions-on-proposed-standards .						
Beryllium	7440417			e		e
Cadmium	7440439			e		e
Chromium III	16065831			e		e
Chromium VI	18540299			e		e
Copper	7440508		1300	j		
Lead	7439921			e		e
Methylmercury	22967926				0.3mg/kg	i
Nickel	7440020		58	b	100	b
Selenium	7782492		29	b	250	b
Thallium	7440280		0.017	b	0.023	b
Zinc	7440666		870	b	1,500	b
Inorganic Compounds/Non-Metals						
Cyanide	57125		3.9	b	140	b
Asbestos	1332214		7,000,000 Fibers/L	i		
Organic Compounds						
Acenaphthene	83329		26	b	28	b
Acenaphthylene	208968			e		e
Acrolein	107028		3.2	b	120	b
Acrylonitrile	107131	Y	0.60	bf	22	bf
Aldrin	309002	Y	2.5E-06	bf	2.5E-06	bf
Anthracene	120127		110	b	120	b
alpha-BHC	319846	Y	0.0012	bf	0.0013	bf

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

Compound	^a CAS Number	Carcinogen?	Water & Fish (µg/L)		Fish Only (µg/L)	
beta-BHC	319857	Y	0.036	bf	0.045	bf
gamma-BHC (Lindane)	58899		1.4	b	1.4	b
delta-BHC	319868			e		e
Benzene	71432		3.0	bf	28	b
Benzidine	92875	Y	0.0014	bf	0.033	bf
Benzo(a)Anthracene	56553	Y	0.0042	bf	0.0042	bf
Benzo(b)Fluoranthene	205992	Y	0.0042	bf	0.0042	bf
Benzo(k)Fluoranthene	207089	Y	0.042	bf	0.042	bf
Benzo(ghi)Perylene	191242			e		e
Benzo(a)Pyrene	50328	Y	0.00042	bf	0.00042	bf
Bis(2-Chloroethoxy) Methane	111911			e		e
Bis(2-Chloroethyl) Ether	111444	Y	0.29	bf	6.8	bf
Bis(2-Chloroisopropyl) Ether	108601		220	b	1,200	b
Bis(Chloromethyl) Ether	542881	Y	0.0015	bf	0.055	bf
Bis(2-Ethylhexyl) Phthalate	117817	Y	1.2	bf	1.2	bf
Bromoform	75252	Y	62	bf	380	bf
4-Bromophenyl Phenyl Ether	101553			e		e
Butylbenzyl Phthalate	85687		0.33	b	0.33	b
Carbon Tetrachloride	56235	Y	3.6	bf	15	bf
Chlorobenzene	108907		89	b	270	b
Chlordane	57749	Y	0.0010	bf	0.0010	bf
Chlorodibromomethane	124481	Y	7.4	bf	67	bf
Chloroethane	75003			e		e
2-Chloroethylvinyl Ether	110758			e		e
Chloroform	67663		61	b	730	b
2-Chloronaphthalene	91587		330	b	380	b
2-Chlorophenol	95578		30	b	260	b
Chlorophenoxy Herbicide (2,4-D)	94757		1,000	b	3,900	b

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

Compound	^a CAS Number	Carcinogen?	Water & Fish (µg/L)		Fish Only (µg/L)	
<u>Chlorophenoxy Herbicide (2,4,5-TP) [Silvex]</u>	<u>93721</u>		<u>82</u>	<u>b</u>	<u>130</u>	<u>b</u>
<u>4-Chlorophenyl Phenyl Ether</u>	<u>7005723</u>			<u>e</u>		<u>e</u>
<u>Chrysene</u>	<u>218019</u>	<u>Y</u>	<u>0.42</u>	<u>bf</u>	<u>0.42</u>	<u>bf</u>
<u>4,4'-DDD</u>	<u>72548</u>	<u>Y</u>	<u>0.00042</u>	<u>bf</u>	<u>0.00042</u>	<u>bf</u>
<u>4,4'-DDE</u>	<u>72559</u>	<u>Y</u>	<u>5.5E-05</u>	<u>bf</u>	<u>5.5E-05</u>	<u>bf</u>
<u>4,4'-DDT</u>	<u>50293</u>	<u>Y</u>	<u>9.8E-05</u>	<u>bf</u>	<u>9.8E-05</u>	<u>bf</u>
<u>Di-n-Butyl Phthalate</u>	<u>84742</u>		<u>8.2</u>	<u>b</u>	<u>8.3</u>	<u>b</u>
<u>Di-n-Octyl Phthalate</u>	<u>117840</u>			<u>e</u>		<u>e</u>
<u>Dibenzo (a,h) Anthracene</u>	<u>53703</u>	<u>Y</u>	<u>0.00042</u>	<u>bf</u>	<u>0.00042</u>	<u>bf</u>
<u>1,2-Dichlorobenzene</u>	<u>95501</u>		<u>700</u>	<u>b</u>	<u>1.100</u>	<u>b</u>
<u>1,3-Dichlorobenzene</u>	<u>541731</u>		<u>3.5</u>	<u>b</u>	<u>4.8</u>	<u>b</u>
<u>1,4-Dichlorobenzene</u>	<u>106467</u>		<u>180</u>	<u>b</u>	<u>300</u>	<u>b</u>
<u>3,3'-Dichlorobenzidine</u>	<u>91941</u>	<u>Y</u>	<u>0.29</u>	<u>bf</u>	<u>0.48</u>	<u>bf</u>
<u>Dichlorobromomethane</u>	<u>75274</u>	<u>Y</u>	<u>8.8</u>	<u>bf</u>	<u>86</u>	<u>bf</u>
<u>1,1-Dichloroethane</u>	<u>75343</u>			<u>e</u>		<u>e</u>
<u>1,2-Dichloroethane</u>	<u>107062</u>	<u>Y</u>	<u>96</u>	<u>bf</u>	<u>2.000</u>	<u>bf</u>
<u>1,1-Dichloroethylene</u>	<u>75354</u>		<u>310</u>	<u>b</u>	<u>5.200</u>	<u>b</u>
<u>2,4-Dichlorophenol</u>	<u>120832</u>		<u>9.6</u>	<u>b</u>	<u>19</u>	<u>b</u>
<u>1,2-Dichloropropane</u>	<u>78875</u>	<u>Y</u>	<u>8.5</u>	<u>bf</u>	<u>98</u>	<u>bf</u>
<u>1,3-Dichloropropene</u>	<u>542756</u>	<u>Y</u>	<u>2.5</u>	<u>bf</u>	<u>38</u>	<u>bf</u>
<u>Dieldrin</u>	<u>60571</u>	<u>Y</u>	<u>4.2E-06</u>	<u>bf</u>	<u>4.2E-06</u>	<u>bf</u>
<u>Diethyl Phthalate</u>	<u>84662</u>		<u>200</u>	<u>b</u>	<u>210</u>	<u>b</u>
<u>2,4-Dimethylphenol</u>	<u>105679</u>		<u>110</u>	<u>b</u>	<u>820</u>	<u>b</u>
<u>Dimethyl Phthalate</u>	<u>131113</u>		<u>600</u>	<u>b</u>	<u>600</u>	<u>b</u>
<u>Dinitrophenols</u>	<u>25550587</u>		<u>13</u>	<u>b</u>	<u>320</u>	<u>b</u>
<u>2,4-Dinitrophenol</u>	<u>51285</u>		<u>12</u>	<u>b</u>	<u>110</u>	<u>b</u>
<u>2,4-Dinitrotoluene</u>	<u>121142</u>	<u>Y</u>	<u>0.46</u>	<u>bf</u>	<u>5.5</u>	<u>bf</u>
<u>2,6-Dinitrotoluene</u>	<u>606202</u>			<u>e</u>		<u>e</u>
<u>1,2-Diphenylhydrazine</u>	<u>122667</u>	<u>Y</u>	<u>0.25</u>	<u>bf</u>	<u>0.65</u>	<u>bf</u>
<u>2, 3, 7, 8-TCDD Dioxin</u>	<u>1746016</u>	<u>Y</u>	<u>1.8E-08</u>	<u>bf</u>	<u>1.9E-08</u>	<u>bf</u>

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

Compound	^a CAS Number	Carcinogen?	Water & Fish (µg/L)		Fish Only (µg/L)	
alpha-Endosulfan	959988		7.0	b	8.5	b
beta-Endosulfan	33213659		11	b	14	b
Endosulfan Sulfate	1031078		9.9	b	13	b
Endrin	72208		0.011	b	0.011	b
Endrin Aldehyde	7421934		0.38	b	0.40	b
Ethylbenzene	100414		32	b	41	b
Fluoranthene	206440		6.3	b	6.4	b
Fluorene	86737		21	b	22	b
Heptachlor	76448	Y	2.0E-05	bf	2.0E-05	bf
Heptachlor Epoxide	1024573	Y	0.00010	bf	0.00010	bf
Hexachlorobenzene	118741	Y	0.00026	bf	0.00026	bf
Hexachlorobutadiene	87683	Y	0.031	bf	0.031	bf
Hexachlorocyclohexane (HCH)-Technical	608731	Y	0.027	bf	0.032	bf
Hexachloro- cyclopentadiene	77474		1.3	b	1.3	b
Hexachloroethane	67721		0.23	b	0.24	b
Ideno (1,2,3-cd) Pyrene	193395	Y	0.0042	bf	0.0042	bf
Isophorone	78591	Y	330	bf	6.000	bf
Methoxychlor	72435		0.0054	b	0.0055	b
Methyl Bromide	74839		130	b	3.700	b
Methyl Chloride	74873			e		e
3-Methyl-4-Chlorophenol	59507		350	b	750	b
2-Methyl-4,6-Dinitrophenol	534521		1.6	b	8.6	b
Methylene Chloride	75092		38	b	960	b
Naphthalene	91203			e		e
Nitrobenzene	98953		12	b	180	b
2-Nitrophenol	88755			e		e
4-Nitrophenol	100027			e		e
N-Nitrosodimethylamine	62759	Y	0.0065	bf	9.1	bf
N-Nitrosodi-n-Propylamine	621647	Y	0.046	bf	1.5	bf
N-Nitrosodiphenylamine	86306	Y	3.14	bf	18	bf

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

Compound	^a CAS Number	Carcinogen?	Water & Fish (µg/L)		Fish Only (µg/L)	
<u>Pentachlorobenzene</u>	<u>608935</u>		<u>0.035</u>	<u>b</u>	<u>0.036</u>	<u>b</u>
<u>Pentachlorophenol</u>	<u>87865</u>	<u>Y</u>	<u>0.11</u>	<u>bf</u>	<u>0.12</u>	<u>bf</u>
<u>Phenanthrene</u>	<u>85018</u>			<u>e</u>		<u>e</u>
<u>Phenol</u>	<u>108952</u>		<u>3,800</u>	<u>b</u>	<u>85,000</u>	<u>b</u>
<u>Polychlorinated Biphenyls PCBs</u>	<u>g</u>	<u>Y</u>	<u>0.00019</u>	<u>bfh</u>	<u>0.00019</u>	<u>bfh</u>
<u>Pyrene</u>	<u>129000</u>		<u>8.1</u>	<u>b</u>	<u>8.4</u>	<u>b</u>
<u>1,2,4,5-Tetrachlorobenzene</u>	<u>95943</u>		<u>0.0093</u>	<u>b</u>	<u>0.0094</u>	<u>b</u>
<u>1,1,2,2-Tetrachloroethane</u>	<u>79345</u>	<u>Y</u>	<u>1.4</u>	<u>bf</u>	<u>8.6</u>	<u>bf</u>
<u>Tetrachloroethylene</u>	<u>127184</u>		<u>15</u>	<u>b</u>	<u>23</u>	<u>b</u>
<u>Toluene</u>	<u>108883</u>		<u>47</u>	<u>b</u>	<u>170</u>	<u>b</u>
<u>Toxaphene</u>	<u>8001352</u>	<u>Y</u>	<u>0.0023</u>	<u>bf</u>	<u>0.0023</u>	<u>bf</u>
<u>1,2-Trans-Dichloroethylene</u>	<u>156605</u>		<u>120</u>	<u>b</u>	<u>1,200</u>	<u>b</u>
<u>1,2,4-Trichlorobenzene</u>	<u>120821</u>		<u>0.24</u>	<u>b</u>	<u>0.24</u>	<u>b</u>
<u>1,1,1-Trichloroethane</u>	<u>71556</u>		<u>11,000</u>	<u>b</u>	<u>56,000</u>	<u>b</u>
<u>1,1,2-Trichloroethane</u>	<u>79005</u>	<u>Y</u>	<u>4.9</u>	<u>bf</u>	<u>29</u>	<u>bf</u>
<u>Trichloroethylene</u>	<u>79016</u>		<u>2.6</u>	<u>b</u>	<u>11</u>	<u>b</u>
<u>2,4,5-Trichlorophenol</u>	<u>95954</u>		<u>140</u>	<u>b</u>	<u>190</u>	<u>b</u>
<u>2,4,6-Trichlorophenol</u>	<u>88062</u>		<u>1.5</u>	<u>b</u>	<u>2.0</u>	<u>b</u>
<u>Vinyl Chloride</u>	<u>75014</u>	<u>Y</u>	<u>0.21</u>	<u>bf</u>	<u>5.0</u>	<u>bf</u>

Footnotes for Table 2. Criteria for Protection of Human Health

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

b. This criterion is based on input values to human health criteria calculation specified in Idaho's Technical Support Document (TSD) for Human Health Criteria Calculations - 2015. Criteria for non-carcinogens are calculated using the formula:

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

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

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

<u>Compound</u>	<u>^a CAS Number</u>	<u>Carcinogen?</u>	<u>Water & Fish (µg/L)</u>	<u>Fish Only (µg/L)</u>
<p><u>i. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: $TRC = [BW \times \{RfD - (RSC \times RfD)\}] / \sum TL$. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.</u></p>				
<p><u>j. This criterion is based on the drinking water Maximum Containment Level (MCL).</u></p>				

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03. Applicability. The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications. Mixing zones may be applied to toxic substance criteria subject to the limitations set forth in Section 060 and set out below. (3-25-16)

a. For all waters for which the Department has determined mixing zones to be applicable, the toxic substance criteria apply at the boundary of the mixing zone(s) and beyond. Absent an authorized mixing zone, the toxic substance criteria apply throughout the waterbody including at the end of any discharge pipe, canal or other discharge point. (3-25-16)

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

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

(3-25-16)

i. Where "1Q10" is the lowest one-day flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

ii. Where "1B3" is biologically based and indicates an allowable exceedance of once every three (3) years. It may be determined by EPA's computerized method (DFLOW model); (5-3-03)

iii. Where "7Q10" is the lowest average seven (7) consecutive day low flow with an average recurrence frequency of once in ten (10) years determined hydrologically; (5-3-03)

iv. Where "4B3" is biologically based and indicates an allowable exceedance for four (4) consecutive days once every three (3) years. It may be determined by EPA's computerized method (DFLOW model); (5-3-03)

v. Where the harmonic mean flow is a long term mean flow value calculated by dividing the number of daily flows analyzed by the sum of the reciprocals of those daily flows. (5-3-03)

c. Application of aquatic life metals criteria. (3-25-16)

i. For metals other than cadmium, for purposes of calculating hardness dependent aquatic life criteria from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. For cadmium, the minimum hardness for use in those equations shall not be less than ten (10) mg/l, as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, except as specified in Subsections 210.03.c.ii. and 210.03.c.iii., even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. (3-29-10)

ii. The hardness values used for calculating aquatic life criteria for metals at design discharge conditions shall be representative of the ambient hardnesses for a receiving water that occur at the design discharge conditions given in Subsection 210.03.b. (5-3-03)

iii. Except as otherwise noted, the aquatic life criteria for metals (~~compounds #1 through #13~~ arsenic through zinc in ~~the criteria~~ Table 1 of in Subsection 210.02~~1~~) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnotes ~~ec.~~ and ~~ff.~~ in ~~the criteria~~ Table 1 in Subsection 210.01, the water effect ratio is computed as a specific pollutant's acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of calculating water effects ratios, the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC50) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC50) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of calculating water effects ratios, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.c.ii. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. ~~(4-6-05)~~ ()

iv. Implementation Guidance for the Idaho Mercury Water Quality Criteria. (4-6-05)

(1) The "Implementation Guidance for the Idaho Mercury Water Quality Criteria" describes in detail suggested methods for discharge related monitoring requirements, calculation of reasonable potential to exceed (RPTE) water quality criteria in determining need for mercury effluent limits, and use of fish tissue mercury data in calculating mercury load reductions. This guidance, or its updates, will provide assistance to the Department and the public when implementing the methylmercury criterion. The "Implementation Guidance for the Idaho Mercury Water Quality Criteria" also provides basic background information on mercury in the environment, the novelty of a fish tissue criterion for water quality, the connection between human health and aquatic life protection, and the relation of environmental programs outside of Clean Water Act programs to reducing mercury contamination of the environment. The "Implementation Guidance for the Idaho Mercury Water Quality Criteria" is available at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, and on the DEQ website at http://www.deq.idaho.gov/media/639808-idaho_mercury_wq_guidance.pdf. (4-6-05)

(2) The implementation of a fish tissue criterion in NPDES permits and TMDLs requires a non-traditional approach, as the basic criterion is not a concentration in water. In applying the methylmercury fish tissue criterion in the context of NPDES effluent limits and TMDL load reductions, the Department will assume change in fish tissue concentrations of methylmercury are proportional to change in water body loading of total mercury. Reasonable potential to exceed (RPTE) the fish tissue criterion for existing NPDES sources will be based on

measured fish tissue concentrations potentially affected by the discharge exceeding a specified threshold value, based on uncertainty due to measurement variability. This threshold value is also used for TMDL decisions. Because measured fish tissue concentrations do not reflect the effect of proposed new or increased discharge of mercury, RPTE in these cases will be based upon an estimated fish tissue methylmercury concentration, using projected changes in waterbody loading of total mercury and a proportional response in fish tissue mercury. For the above purposes, mercury will be measured in the skinless filets of sport fish using techniques capable of detecting tissue concentrations down to point zero five (0.05) mg/kg. Total mercury analysis may be used, but will be assumed to be all methylmercury for purposes of implementing the criterion. (4-6-05)

d. Application of toxics criteria. (3-25-16)

i. Frequency and duration for aquatic life toxics criteria. ~~Column B1~~ CMC column criteria in Table 1 in Subsection 210.01 are concentrations not to be exceeded for a one-hour average more than once in three (3) years. ~~Column B2~~ CCC column criteria in Table 1 in Subsection 210.01 are concentrations not to be exceeded for a four-day average more than once in three (3) years. (3-25-16)()

ii. Frequency and duration for human health toxics criteria. ~~Columns C1 and C2-e~~ Criteria in Table 2 in Subsection 210.01 are not to be exceeded based on an annual harmonic mean. (3-25-16)()

04. National Pollutant Discharge Elimination System Permitting. For the purposes of NPDES permitting, interpretation and implementation of metals criteria listed in Subsection 210.02 should be governed by the following standards, that are hereby incorporated by reference, in addition to other scientifically defensible methods deemed appropriate by the Department; provided, however, any identified conversion factors within these documents are not incorporated by reference. Metals criteria conversion factors are identified in Subsection 210.02 of this rule. (5-3-03)

a. "Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria," EPA, October 1993, <http://www.deq.idaho.gov/media/827413-epa-guidance-dissolved-criteria-1093.pdf>. (4-5-00)

b. "Guidance Document on Dynamic Modeling and Translators," EPA, August 1993, <http://www.deq.idaho.gov/media/827417-epa-guidance-dynamic-modeling-translators-0893.pdf>. (4-5-00)

c. "Guidance Document on Clean Analytical Techniques and Monitoring," EPA, October 1993, <http://www.deq.idaho.gov/media/827421-epa-guidance-analytical-techniques-1093.pdf>. (4-5-00)

d. "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals," EPA, February 1994, <http://www.deq.idaho.gov/media/827409-epa-guidance-water-effect-ratios-for-metals-0294.pdf>. (4-5-00)

e. "Technical Support Document for Water Quality-Based Toxics Control." EPA, March 1991. <http://www.deq.idaho.gov/media/60177101/58-0102-1201-epa-technical-support-document-1991.pdf>. (3-25-16)

05. Development of Toxic Substance Criteria. (4-5-00)

a. Aquatic Life Communities Criteria. Numeric criteria for the protection of aquatic life uses not identified in these rules for toxic substances, may be derived by the Department from the following information: (4-5-00)

i. Site-specific criteria developed pursuant to Section 275; (4-5-00)

ii. Effluent biomonitoring, toxicity testing and whole-effluent toxicity determinations; (4-5-00)

iii. The most recent recommended criteria defined in EPA's ECOTOX database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (3-25-16)

iv. Scientific studies including, but not limited to, instream benthic assessment or rapid bioassessment. (4-5-00)

b. Human Health Criteria.

(4-5-00)

Note: In 2016, Idaho updated human health criteria for 104 toxic substances (10 of which are new). Final rule submitted to EPA on December 13, 2016 (docket 58-0102-1201). Until EPA approves the revisions in this rule docket, the human health criteria published in [2005 Idaho Administrative Code](#) in Section 210 continue to apply and are effective for CWA purposes. These criteria are listed in [Numeric Criteria for Toxic Substances \(2005\)](#). The previous human health criteria based on a fish consumption rate of 6.5 g/day published in [2005 Idaho Administrative Code](#) in Section 210.05.b.i. continue to apply and are effective for CWA purposes. Until EPA approves the revisions in this rule docket, the additional fish-plus-water criterion for copper; the revisions in Sections 070.08, 210.03, 210.04, 210.05.b.ii. and 400.06; and the definition of harmonic mean published in [2015 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department using best available science on toxicity thresholds (i.e. reference dose or cancer slope factor), such as defined in EPA's Integrated Risk Information System (IRIS) or other peer-reviewed source acceptable to the Department. (3-25-16)

ii. When using toxicity thresholds to derive water quality criteria to protect human health, a fish consumption rate representative of the population to be protected, a mean adult body weight, an adult 90th percentile water ingestion rate, a trophic level weighted BAF or BCF, and a hazard quotient of one (1) for non-carcinogens or a cancer risk level of 10^{-5} for carcinogens shall be utilized. (3-25-16)

(BREAK IN CONTINUITY OF SECTIONS)

401. POINT SOURCE WASTEWATER TREATMENT REQUIREMENTS.

Unless more stringent limitations are necessary to meet the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02, wastewaters discharged into surface waters of the state must have the following characteristics: (4-11-06)

01. Temperature. The wastewater must not affect the receiving water outside the mixing zone so that: (7-1-93)

a. The temperature of the receiving water or of downstream waters will interfere with designated beneficial uses. (7-1-93)

b. Daily and seasonal temperature cycles characteristic of the water body are not maintained. (7-1-93)

c. If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge due to natural background conditions, then wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C. (3-29-12)

Note: Submitted to EPA as a temporary rule on July 20, 2011, and as a final rule on August 7, 2012 (docket 58-0102-1101). This revision removed the numeric limits on point source induced changes in receiving water temperature. Until EPA approves this revision, the previous treatment requirements published in [2011 Idaho Administrative Code](#) continue to apply and are effective for CWA purposes. For more information, go to <http://www.deq.idaho.gov/epa-actions-on-proposed-standards>.

02. Turbidity. The wastewater must not increase the turbidity of the receiving water outside the mixing zone by: (7-1-93)

a. More than five (5) NTU (Nephelometric Turbidity Units) over background turbidity, when background turbidity is fifty (50) NTU or less; or (7-1-93)

b. More than ten percent (10%) increase in turbidity when background turbidity is more than fifty (50) NTU, not to exceed a maximum increase of twenty-five (25) NTU. (7-1-93)

~~**03. Total Chlorine Residual.** The wastewater must not affect the receiving water outside the mixing zone so that its total chlorine residual concentration exceeds eleven one thousandths (0.011) mg/l. (1-1-89)~~

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.25 – RULES REGULATING THE IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM

DOCKET NO. 58-0125-1701

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 2018 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Sixty-fourth 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 39-175C, 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, August 2, 2017, **Vol. 17-8, pages 167 through 252**. 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/58-0125-1701 or by contacting the undersigned.

IDAHO CODE SECTION 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Paula Wilson at paula.wilson@deq.idaho.gov, (208) 373-0418.

DATED this 3rd day of January, 2018.

Paula J. Wilson
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THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 39-175C, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before August 18, 2017. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to ensure that the Rules Regulating the Idaho Pollutant Discharge Elimination System Program (IPDES), IDAPA 58.01.25, remain consistent with federal regulations. This rulemaking proposes changes to the current rules to provide a smoother transition for the regulated community when DEQ becomes the permitting authority. The federal regulations incorporated by reference will be updated with the July 1, 2017 Code of Federal Regulations (CFR) effective date. The July 1, 2017 CFR is a codification of federal regulations published in the Federal Register as of July 1, 2017. In addition to updating the incorporated by reference date, this rulemaking proposes changes to the IPDES rules based on the following federal rulemakings.

In December 2015, EPA's rule on electronic reporting (eReporting Rule) became effective for NPDES permitting authorities. This rule requires commensurate changes to portions of the IPDES rules with regard to updating electronic reporting requirements for the state and for facilities permitted under the program. DEQ is proposing to update those portions of the IPDES rules affected by this federal rulemaking by including the electronic reporting requirements found in 40 CFR Part 127.

On January 9, 2017, EPA's small Municipal Separate Storm Sewer System (MS4) remand rule became effective. Changes to these regulations are in response to the remand from the US Court of Appeals for the Ninth Circuit. These changes allow for the state to select an approach for permitting these discharges and establishing the method for permittees to meet the maximum extent practicable standards established by the Clean Water Act.

Additional changes to the federal regulations include updates to effluent limitation guidelines for steam electric generating point sources, oil and gas point sources, and approved test methods for analysis of parameters in effluent discharges. The IPDES rules will also be updated to delete references to the vessel general permit. The agency will not be taking over responsibility for this element of the NPDES program. No state has implemented the vessel general permit portion of the NPDES program. These permits primarily regulate commercial vessels in the Snake River and large lakes.

DEQ also proposes to include nonsubstantive revisions to make typographical corrections, provide clarity, and maintain consistency with state and federal law.

Major and minor municipal dischargers; industrial dischargers; facilities, organizations and individuals seeking coverage under a general permit; facilities that currently have or will have a pretreatment permit to a wastewater facility; and other groups interested in point source discharges to Idaho's surface 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 2017 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2018 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:

It is necessary to update the IPDES rules to maintain consistency with federal regulations implementing the Clean Water Act. Adoption of federal regulations is necessary for EPA approval of the IPDES program and delegated state authority of Clean Water Act programs.

Incorporating the federal regulations by reference benefits the agency and simplifies the overall rule chapter by incorporating those sections of the federal regulations that must be adhered to in the course of developing an IPDES program. The alternative to incorporating the federal regulations by reference is to restate the federal regulations in the IPDES rules. Incorporation by reference saves the agency the administrative costs associated with maintaining rules. Incorporation by reference is estimated to reduce the number of rule pages by 1,219 and results in an administrative rule publication cost savings of \$61,000 annually.

In compliance with Idaho Code 67-5223(4), DEQ prepared a brief synopsis detailing the latest revised edition or version of the incorporated material being proposed for incorporation by reference. The Overview of Incorporations by Reference is available at www.deq.idaho.gov/58-0125-1701 or by contacting the undersigned.

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the May 2017 issue of the Idaho Administrative Bulletin, and a preliminary draft rule was made available for public review. Meetings were held on May 25 and July 11, 2017. Key information was posted on the DEQ rulemaking web page and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule drafts, written public comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0125-1701.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

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

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Paula Wilson at paula.wilson@deq.idaho.gov, (208) 373-0418.

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 September 1, 2017.

DATED this 2nd day of August, 2017.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0125-1701

003. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

01. Availability of Reference Material. Codes, standards and regulations may be incorporated by reference in this rule pursuant to Section 67-5229, Idaho Code. Codes, standards or regulations adopted by reference throughout this rule are available in the following locations: (3-24-16)

a. Department of Environmental Quality. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. (3-24-16)

b. Law Library. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051. (3-24-16)

c. Electronic Code of Federal Regulations (eCFR) <http://www.ecfr.gov/cgi-bin/ECFR>. (3-24-16)

02. Incorporation by Reference. The following documents are incorporated by reference into these rules. Any reference in these rules to requirements, procedures, or specific forms contained in any section or subsection shall constitute the full adoption by reference of that section or subsection, including any notes and appendices therein, unless expressly provided otherwise in these rules: (3-24-16)

a. 40 CFR 122.21(r), revised as of July 1, 2015~~7~~ (Application Requirements for Facilities with Cooling Water Intake Structures); ~~(3-24-16)~~()

b. 40 CFR 122.23, revised as of July 1, 2015~~7~~ (Concentrated Animal Feeding Operations); ~~(3-24-16)~~()

c. 40 CFR 122.24, revised as of July 1, 2015~~7~~ (Concentrated Aquatic Animal Production Facilities); ~~(3-24-16)~~()

d. 40 CFR 122.25, revised as of July 1, 2015~~7~~ (Aquaculture Projects); ~~(3-24-16)~~()

e. 40 CFR 122.26(a) through (b) and 40 CFR 122.26(e) through (g), revised as of July 1, 2015~~7~~ (Storm Water Discharges); ~~(3-24-16)~~()

f. 40 CFR 122.27, revised as of July 1, 2015~~7~~ (Silvicultural Activities); ~~(3-24-16)~~()

g. 40 CFR 122.29(d), revised as of July 1, 2015~~7~~ (Effect of Compliance with New Source Performance Standards); ~~(3-24-16)~~()

h. 40 CFR 122.30 and 40 CFR 122.32 through 40 CFR 122.37, revised as of July 1, 2015~~7~~ (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems); ~~(3-24-16)~~()

i. 40 CFR 122.42(e), revised as of July 1, 2015~~7~~ (Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations); ~~(3-24-16)~~()

j. Appendix A to 40 CFR 122, revised as of July 1, 2015~~7~~ (NPDES Primary Industry Categories); ~~(3-24-16)~~()

k. Appendix C to 40 CFR 122, revised as of July 1, 2015~~7~~ (Criteria for Determining a Concentrated Aquatic Animal Production Facility); ~~(3-24-16)~~()

- l.** [Appendix D to 40 CFR 122](#), revised as of July 1, 201~~5~~⁷ (NPDES Permit Application Testing Requirements); [\(3-24-16\)](#)()
- m.** [Appendix J to 40 CFR 122](#), revised as of July 1, 201~~5~~⁷ (NPDES Permit Testing Requirements for Publicly Owned Treatment Works); [\(3-24-16\)](#)()
- n.** [40 CFR 125.1](#) through [40 CFR 125.3](#) (Subpart A), revised as of July 1, 201~~5~~⁷ (Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Clean Water Act); [\(3-24-16\)](#)()
- o.** [40 CFR 125.10](#) through [40 CFR 125.11](#) (Subpart B), revised as of July 1, 201~~5~~⁷ (Criteria for Issuance of Permits to Aquaculture Projects); [\(3-24-16\)](#)()
- p.** [40 CFR 125.30](#) through [40 CFR 125.32](#) (Subpart D), revised as of July 1, 201~~5~~⁷ (Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A) and 301(b)(2)(A) and (E) of the Clean Water Act); [\(3-24-16\)](#)()
- q.** [40 CFR 125.70](#) through [40 CFR 125.73](#) (Subpart H), revised as of July 1, 201~~5~~⁷ (Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Clean Water Act); [\(3-24-16\)](#)()
- r.** [40 CFR 125.80](#) through [40 CFR 125.89](#) (Subpart I), revised as of July 1, 201~~5~~⁷ (Requirements Applicable to Cooling Water Intake Structures for New Facilities Under Section 316(b) of the Clean Water Act); [\(3-24-16\)](#)()
- s.** [40 CFR 125.90](#) through [40 CFR 125.99](#) (Subpart J), revised as of July 1, 201~~5~~⁷ (Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities Under Section 316(b) of the Clean Water Act); [\(3-24-16\)](#)()
- t.** [40 CFR 127.11 through 40 CFR 127.16 \(Subpart B\), revised as of July 1, 2017 \(Electronic reporting of NPDES Information from NPDES-Regulated Facilities\);](#) ()
- u.** [40 CFR 129.1](#) through [40 CFR 129.105](#) (Subpart A), revised as of July 1, 201~~5~~⁷ (Toxic Pollutant Effluent Standards and Prohibitions); [\(3-24-16\)](#)()
- v.** [40 CFR 133.100](#) through [40 CFR 133.105](#), revised as of July 1, 201~~5~~⁷ (Secondary Treatment Regulation); [\(3-24-16\)](#)()
- w.** [40 CFR Part 136](#), revised as of July 1, 201~~5~~⁷ (Guidelines Establishing Test Procedures for the Analysis of Pollutants, including Appendices A, B, C, and D); [\(3-24-16\)](#)()
- x.** [40 CFR Part 401](#), revised as of July 1, 201~~5~~⁷ (General Provisions); [\(3-24-16\)](#)()
- y.** [40 CFR 403.1](#) through [40 CFR 403.3](#); [40 CFR 403.5](#) through [40 CFR 403.9](#); and [40 CFR 403.11](#) through [40 CFR 403.18](#), revised as of July 1, 201~~5~~⁷ (General Pretreatment Regulations for Existing and New Sources of Pollution, including Appendices D, E, and G); [\(3-24-16\)](#)()
- z.** [40 CFR Part 405](#) through [40 CFR Part 471](#), revised as of July 1, 201~~5~~⁷ (Effluent Limitations and Guidelines); and [\(3-24-16\)](#)()
- aa.** [40 CFR 503.2](#) through [40 CFR 503.48](#), revised as of July 1, 201~~5~~⁷ (Sewage Sludge, including Appendices A and B). [\(3-24-16\)](#)()
- bb.** The term “Waters of the United States or waters of the U.S.,” as defined in [40 CFR 122.2](#), revised as of August 28, 2015 by 80 Federal Register 37054-37127 (June 29, 2015), unless said revision is stayed, overturned or invalidated by a court of law or withdrawn by EPA, in which case the Department incorporates by reference the term “Waters of the United States or waters of the U.S.” as defined in [40 CFR 122.2](#), revised as of July 1, 2015. [\(3-24-16\)](#)

03. Term Interpretation. For the federal regulations incorporated by reference into these rules, unless the context in which a term is used clearly requires a different meaning, terms in this section have the following meanings: (3-24-16)

- a.** The term Administrator or Regional Administrator means the EPA Region 10 Administrator; (3-24-16)
- b.** The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program; (3-24-16)
- c.** The term Director or State Director means the Director of the Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act; (3-24-16)
- d.** The term National Pollutant Discharge Elimination System (NPDES) means the Idaho Pollutant Discharge Elimination System (IPDES); (3-24-16)
- e.** The term Permitting Authority (also preceded by the terms NPDES or State) means the Idaho Department of Environmental Quality with an NPDES permit program approved pursuant to section 402(b) of the Clean Water Act. (3-24-16)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program," the following definitions apply. Terms not expressly defined in this section shall have the meaning provided by IDAPA 58.01.02, Section 010, "Water Quality Standards," or IDAPA 58.01.16, Section 010, "Wastewater Rules." (3-24-16)()

01. Animal Feeding Operation. A lot or facility (other than an aquatic animal production facility) where the following conditions are met: (3-24-16)

- a.** Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12)-month period; and (3-24-16)
- b.** Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (3-24-16)

02. Applicable Standards and Limitations. All state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the Clean Water Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under the Clean Water Act sections 301, 302, 303, 304, 306, 307, 308, 402 and 405. (3-24-16)

03. Application. The IPDES forms for applying for a permit or the EPA equivalent standard national forms when deemed acceptable by the Department, including any additions, revisions or modifications to the forms. (3-24-16)

04. Approved Program or Approved State. A state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123. (3-24-16)

05. Aquaculture Project. A defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals. (3-24-16)

06. Average Monthly Discharge Limitation. The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month. (3-24-16)

07. Average Weekly Discharge Limitation. The highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week. (3-24-16)

08. 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. (3-24-16)

09. Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. (3-24-16)

10. Biochemical Oxygen Demand (BOD). The measure of the amount of oxygen necessary to satisfy the biochemical oxidation requirements of organic materials at the time the sample is collected; unless otherwise specified, this term will mean the five (5) day BOD incubated at twenty (20) degrees C. (3-24-16)

11. 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. (3-24-16)

12. Bypass. The intentional diversion of wastewater from any portion of a treatment facility. (3-24-16)

13. Chemical Oxygen Demand (COD). A bulk parameter that measures the oxygen-consuming capacity of organic and inorganic matter present in water or wastewater. It is expressed as the amount of oxygen consumed from a chemical oxidant in a specific test. (3-24-16)

14. Class I Sludge Management Facility. Any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including such POTWs where the Department has elected to assume local program responsibilities pursuant to 40 CFR 403.10(e)) and any other treatment works treating domestic sewage (TWTDS) classified as a Class I sludge management facility by the Department, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment. (3-24-16)

15. Clean Water Act. Formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972. Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 et seq. (3-24-16)

16. Clean Water Act and Regulations. The Clean Water Act and applicable regulations promulgated thereunder. In the case of an approved IPDES program, it includes Department program requirements. (3-24-16)

17. Compliance Schedule or Schedule of Compliance. A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Clean Water Act and these rules. (3-24-16)

18. Concentrated Animal Feeding Operation (CAFO). Animal feeding operation that is defined as a Large CAFO in accordance with 40 CFR 122.23(b)(4), as a Medium CAFO in accordance with 40 CFR 122.23(b)(6), or that is designated as a CAFO in accordance with 40 CFR 122.23(c). Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. (3-24-16)

- 19. Concentrated Aquatic Animal Production (CAAP).** A hatchery, fish farm, or other facility which meets the criteria in Appendix C of 40 CFR Part 122, or which the Department designates under 40 CFR 122.24(c). (3-24-16)
- 20. Continuous Discharge.** A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities. (3-24-16)
- 21. Daily Discharge.** The discharge of a pollutant measured during a calendar day or any twenty-four (24)-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day. (3-24-16)
- 22. Department.** The Idaho Department of Environmental Quality. (3-24-16)
- 23. Design Flow.** The average or maximum point source discharge volume per unit time that a facility or system is constructed to accommodate. (3-24-16)
- 24. Direct Discharge.** The discharge of a pollutant to waters of the United States. (3-24-16)
- 25. Director.** The Director of the Idaho Department of Environmental Quality or authorized agent. (3-24-16)
- 26. Discharge Monitoring Report (DMR).** The facility or activity report containing monitoring and discharge quality and quantity information and data required to be submitted periodically, as defined in the discharge permit. These reports must be submitted to the Department on a Department-approved format. (3-24-16)
- 27. Discharge.** When used without qualification means the discharge of a pollutant. (3-24-16)
- 28. Discharge of a Pollutant.** Any addition of any pollutant or combination of pollutants to waters of the United States from any point source. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger. (3-24-16)
- 29. Draft Permit.** A document prepared under these rules indicating the Department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in Subsections 107.01 and 203.02, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in Subsection 201.01, is not a draft permit. A proposed permit is not a draft permit. (3-24-16)
- 30. Effluent.** Any discharge of treated or untreated pollutants into waters of the United States. (3-24-16)
- 31. Effluent Limitation.** Any restriction imposed by the Department on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the United States, in accordance with these rules and the Clean Water Act. (3-24-16)
- 32. Effluent Limitations Guidelines.** A regulation published by the EPA under the Clean Water Act section 304(b) to adopt or revise effluent limitations. (3-24-16)
- 33. Electronic Signature.** Information in digital form that is included in or associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature. (3-24-16)

34. **Environmental Protection Agency (EPA).** The United States Environmental Protection Agency. (3-24-16)
35. **Equivalent Dwelling Unit (EDU).** A measure where one (1) equivalent dwelling unit is equivalent to wastewater generated from one (1) single-family residence. For the purposes of assessing fees associated with this rule, the number of EDUs must be is calculated from as the municipality's population served divided by the average number of people per household as defined in the most recent Census Bureau data (for that municipality, county, or average number of persons per household for the state of Idaho). (3-24-16)()
36. **Existing Source.** Any source which is not a new source or a new discharger. (3-24-16)
37. **Facilities or Equipment.** Buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source. (3-24-16)
38. **Facility or Activity.** Any point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the IPDES program. (3-24-16)
39. **Fundamentally Different Factors.** The factors relating to a discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national effluent limits. (3-24-16)
40. **General Permit.** An IPDES permit issued under Section 130 (General Permits) authorizing a category of discharges within a geographical area. (3-24-16)
41. **Hazardous Substance.** Any substance designated under 40 CFR Part 116 pursuant to the Clean Water Act section 311. (3-24-16)
42. **Idaho Pollutant Discharge Elimination System (IPDES).** Idaho's program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under these rules and the Clean Water Act sections 307, 402, 318, and 405. (3-24-16)
43. **Indian Country.** (3-24-16)
- a. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (3-24-16)
- b. All dependent Indian communities within the borders of the United States, whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of the state; and (3-24-16)
- c. All Indian allotments, the Indian titles to which have not been extinguished including rights-of-way running through the same. (3-24-16)
44. **Indian Tribe.** Any Indian tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation. (3-24-16)
45. **Indirect Discharger.** A nondomestic discharger introducing pollutants to a privately or publicly owned treatment works. (3-24-16)
46. **Industrial Wastewater.** Any waste, together with such water as is present that is the by-product of industrial processes including, but not limited to, food processing or food washing wastewater (see Process Wastewater). (3-24-16)

47. Infiltration. Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow. (3-24-16)

48. Inflow. Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration. (3-24-16)

49. Interstate Agency. An agency of two (2) or more states established by or under an agreement or compact, or any other agency of two (2) or more states having substantial powers or duties pertaining to the control of pollution. (3-24-16)

50. Load Allocation (LA). The portion of a receiving water body's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. (3-24-16)

51. Major Facility. A facility or activity that is: (3-24-16)

a. A publicly or privately owned treatment works with a design flow equal to or greater than one million gallons per day (1 MGD), or serves a population of ten thousand (10,000) or more, or causes significant water quality impacts; or (3-24-16)

b. A non-municipal facility that equals or exceeds the eighty (80) point accumulation as described in the Score Summary of the NPDES Non-Municipal Permit Rating Work Sheet (June 27, 1990) or the Department equivalent guidance document. (3-24-16)

52. Maximum Daily Discharge Limitation. The highest allowable daily discharge. (3-24-16)

53. Maximum Daily Flow. The largest volume of flow to be discharged during a continuous twenty-four-hour period expressed as a volume per unit time. (3-24-16)

54. 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. (3-24-16)

55. Municipality. A city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under the Clean Water Act section 208. (3-24-16)

56. National Pollutant Discharge Elimination System (NPDES). The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under the Clean Water Act sections 307, 402, 318, and 405. (3-24-16)

57. New Discharger. Any building, structure, facility, or installation: (3-24-16)

a. From which there is or may be a discharge of pollutants; (3-24-16)

b. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979; (3-24-16)

c. Which is not a new source; and (3-24-16)

d. Which has never received a finally effective NDPEs or IPDES permit for discharges at that site. (3-24-16)

e. This definition includes an indirect discharger which commences discharging into waters of the United States after August 13, 1979. It also includes any existing mobile point source such as an aggregate plant, that begins discharging at a site for which it does not have a permit; (3-24-16)

58. New Source. Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced: (3-24-16)

a. After promulgation of standards of performance under the Clean Water Act section 306 which are applicable to such source; or (3-24-16)

b. After proposal of standards of performance in accordance with the Clean Water Act section 306 which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within one hundred twenty (120) days of their proposal. (3-24-16)

59. Notice of Intent to Deny. A type of draft permit that shall convey to a permit applicant or permittee, the Department's intent to not issue or renew an IPDES permit. (3-24-16)

60. Notice of Intent to Obtain Coverage under an IPDES General Permit. An applicant seeking discharge coverage under an IPDES general permit shall submit a notice of intent to obtain coverage for discharges to waters of the United States under general permit classifications, including, but not limited to: (3-24-16)

a. Storm Water Construction General Permit (CGP); (3-24-16)

b. Multi-Sector General Permit (MSGP) for Industrial Storm Water Requirements; (3-24-16)

c. Municipal Separate Storm Sewer System (MS4) General Permit; (3-24-16)

d. Concentrated Animal Feeding Operation (CAFO) General Permit; (3-24-16)

e. Concentrated Aquatic Animal Production (CAAP) Facility General Permit; (3-24-16)

f. Ground Water Remediation General Permit; (3-24-16)

g. Suction Dredge General Permit; ~~or~~ (3-24-16)()

~~h. Vessel General Permit (VGP); or~~ (3-24-16)

~~i. Pesticide General Permit (PGP).~~ (3-24-16)

61. Notice of Intent to Terminate. A notice of intent to terminate shall: (3-24-16)

a. Convey to a permittee the Department's intent to terminate an existing IPDES permit for cause; or (3-24-16)

b. Convey to the Department a permittee's intent to terminate coverage for an activity under an Individual or General Permit. A construction general permit holder is obligated to submit a notice of intent to terminate upon completion of construction activities and, in the case of storm water control, that final stabilization has been achieved. (3-24-16)

62. Owner or Operator. The person, company, corporation, district, association, or other organizational entity that is an owner or operator of any facility or activity subject to regulation under the IPDES program. (3-24-16)

63. Permit. The authorization, license, or equivalent control document issued by the Department to implement the requirements of these rules. This does not include any permit which has not yet been the subject of final Department action, such as a draft permit or a proposed permit. (3-24-16)

64. 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, or an agent or employee thereof, which is recognized by law as the subject of rights and duties. (3-24-16)

65. Point Source. Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff. (3-24-16)

66. Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean: (3-24-16)

a. Sewage from vessels; or (3-24-16)

b. Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state in which the well is located, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources.

NOTE: Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. See *Train v. Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976). (3-24-16)

67. Potable Water. Water which is free from impurities in such amounts that it is safe for human consumption without treatment. (3-24-16)

68. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6(e). (3-24-16)

69. Primary Industry Category. Any industry category listed in Appendix A of 40 CFR Part 122. (3-24-16)

70. Privately Owned Treatment Works. Any device or system which is used to treat wastes and is not a Publicly Owned Treatment Works (POTW). (3-24-16)

71. Process Wastewater. Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product (see Industrial Wastewater definition). (3-24-16)

72. Proposed Permit. An IPDES permit prepared after the close of the public comment period (and, when applicable, any public meeting and administrative appeals) which is sent to EPA for review before final issuance by the Department. A proposed permit is not a draft permit. (3-24-16)

73. Publicly Owned Treatment Works (POTW). A treatment works as defined by the Clean Water Act section 212, which is owned by a state or municipality, as defined by the Clean Water Act section 502(4). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal

sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in the Clean Water Act section 502(4), which has jurisdiction over the indirect discharges to and the discharges from such a treatment works. (3-24-16)

74. **Receiving Waters.** Those waters of the United States to which there is a discharge of pollutants. (3-24-16)
75. **Recommencing Discharger.** A source which renews discharges after terminating operations. (3-24-16)
76. **Regional Administrator.** The Region 10 Administrator of the Environmental Protection Agency or the authorized representative of the Regional Administrator. (3-24-16)
77. **Secondary Industry Category.** Any industry category which is not a primary industry category. (3-24-16)
78. **Secondary Treatment.** Technology-based requirements for direct discharging POTWs, based on the expected performance of a combination of physical and biological processes typical for the treatment of pollutants in municipal sewage. Standards are expressed as a minimum level of effluent quality in terms of: BOD5, total suspended solids (TSS), and pH (except as provided by treatment equivalent to secondary treatment and other special considerations). (3-24-16)
79. **Secretary.** The Secretary of the Army, acting through the Chief of Engineers. (3-24-16)
80. **Septage.** The liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained. (3-24-16)
81. **Severe Property Damage.** Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. (3-24-16)
82. **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. (3-24-16)
83. **Sewage from Vessels.** Human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under the Clean Water Act section 312. (3-24-16)
84. **Sewage Sludge.** Any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge. (3-24-16)()
85. **Sewage Sludge Use or Disposal Practice.** The collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge. (3-24-16)
86. **Significant Industrial User.** (3-24-16)
- a. All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Parts 400 through 471; and (3-24-16)
- b. Any other industrial user that: (3-24-16)

- i. Discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); (3-24-16)
- ii. Contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or (3-24-16)
- iii. Is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement (in accordance with 40 CFR 403.8(f)(6)). (3-24-16)

87. Silvicultural Point Source. Any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a Clean Water Act section 404 permit. (3-24-16)

88. Site. The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity. (3-24-16)

89. Sludge. The semi-liquid mass produced and removed by the wastewater treatment process. ()

890. Sludge-Only Facility. Any TWTDS whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to the Clean Water Act section 405(d) and is required to obtain an IPDES permit. (3-24-16)

901. Source. Any building, structure, facility, or installation from which there is or may be discharge of pollutants. (3-24-16)

942. Standards for Sewage Sludge Use or Disposal. Regulations promulgated pursuant to the Clean Water Act section 405(d) and these rules which govern minimum requirements for sewage sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person. (3-24-16)()

923. State. The state of Idaho. (3-24-16)

934. State/EPA Agreement. An agreement between the EPA Regional Administrator and the state of Idaho which coordinates EPA and Department activities, responsibilities and programs including those under the Clean Water Act programs. (3-24-16)

945. Storm Water. Storm water runoff, snow melt runoff, and surface runoff and drainage. (3-24-16)

956. Technology-Based Effluent Limitation (TBEL). Treatment requirements under 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. (3-24-16)

967. Total Dissolved Solids. The total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136. (3-24-16)

978. Toxic Pollutant. Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the United States 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 pollutants include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA

pursuant to the Clean Water Act section 307(a), or in the case of sewage sludge use or disposal practices, any pollutant identified in regulations implementing the Clean Water Act section 405(d). (3-24-16)

~~989.~~ **Treatment.** A process or activity conducted for the purpose of removing pollutants from wastewater. (3-24-16)

~~99100.~~ **Treatment Facility.** Any physical facility or land area for the purpose of collecting, treating, neutralizing, or stabilizing pollutants including treatment plants; the necessary collecting, intercepting, outfall and outlet sewers; pumping stations integral to such plants or sewers; disposal or reuse facilities; equipment and furnishing thereof; and their appurtenances. For the purpose of these rules, a treatment facility may also be known as a treatment system, a wastewater system, wastewater treatment system, wastewater treatment facility, wastewater treatment plant, or privately or publicly owned treatment works. (3-24-16)

~~1001.~~ **Treatment Works Treating Domestic Sewage (TWTDS).** A POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. (3-24-16)

~~1042.~~ **Upset.** An exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. (3-24-16)

~~1023.~~ **User.** Any person served by a wastewater system. (3-24-16)

~~1034.~~ **Variance.** Any mechanism or provision under the Clean Water Act section 301 or 316 or under 40 CFR Part 125, or in the applicable effluent limitations guidelines allowing modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the Clean Water Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on Clean Water Act sections 301(c), 301(g), 301(h), 301(i), or 316(a). (3-24-16)

~~1045.~~ **Wasteload Allocation (WLA).** The portion of a receiving water's loading capacity that is allocated to one (1) of its existing or future point sources of pollution. (3-24-16)

~~1056.~~ **Wastewater.** Any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any ground water, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, gray water or commercial or industrial pollutants; and sewage. (3-24-16)

~~1067.~~ **Water Pollution.** Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the United States, or the discharge of any pollutant into the waters of the United States, 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. (3-24-16)

~~1078.~~ **Water Quality-Based Effluent Limitation (WQBEL).** An effluent limitation determined by selecting the most stringent of the effluent limits calculated using all applicable water quality criteria (e.g., aquatic life, human health, wildlife, translation of narrative criteria) for a specific point source to a specific receiving water. (3-24-16)

~~1089.~~ **Water Transfer.** An activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use. (3-24-16)

10910. Wetlands. Areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. (3-24-16)

1101. Whole Effluent Toxicity. The aggregate toxic effect of an effluent measured directly by a toxicity test. (3-24-16)

(BREAK IN CONTINUITY OF SECTIONS)

090. SIGNATURE REQUIREMENTS.

01. Permit Applications and Notices of Intent. All IPDES permit applications and notices of intent must be signed by a certifying official as follows: (3-24-16)

a. For a corporation, a responsible corporate officer shall sign the application or notice of intent. In this subsection, a responsible corporate officer means: (3-24-16)

i. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or (3-24-16)

ii. The manager of one (1) or more manufacturing, production, or operating facilities, if: (3-24-16)

(1) The manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental statutes and regulations; (3-24-16)

(2) The manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for IPDES permit application requirements; and (3-24-16)

(3) Authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; (3-24-16)

b. For a partnership or sole proprietorship, the general partner or the proprietor, respectively, shall sign the application; and (3-24-16)

c. For a municipality, state, or other public agency, either a principal executive officer or ranking elected official shall sign the application. In this subsection, a principal executive officer of an agency means: (3-24-16)

i. The chief executive officer of the agency; or (3-24-16)

ii. A senior executive officer having responsibility for the overall operations of a principal geographic unit or division of the agency. (3-24-16)

02. Reports and Other Information Submitted. Any report or information required by an IPDES permit, notice of intent, monitoring and reporting provisions, and any other information requested by the Department, must be signed by a person described in Subsection 090.01, or by a duly authorized representative of that person. A person is a duly authorized representative only if: (3-24-16)

a. The authorization is made in writing by a person described in Subsection 090.01; (3-24-16)

b. The authorization specifies either: (3-24-16)

- i. An individual or a position having responsibility for the overall operation of the regulated facility or activity, including the position of manager, operator, superintendent or position of equivalent responsibility; or (3-24-16)
 - ii. An individual or position having overall responsibility for environmental matters for the company; (3-24-16)
- and
- c. The written authorization is submitted to the Department. (3-24-16)

03. New Authorization. If an authorization is no longer accurate due to a change in staffing or personnel for the overall operation of the facility, a new authorization satisfying the requirements of Subsection 090.01 must be submitted to the Department before or together with any report, information, or application to be signed by an authorized representative. (3-24-16)

04. Certification. Any person signing a document under Subsections 090.01 or 090.02 shall certify as follows: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." (3-24-16)

05. Electronic Signatures. The Department may require any signed, certified, or authorized information required under these rules to be submitted electronically, with an electronic signature approved by the Department. (3-24-16)

06. Electronic Reporting. When documents described in Subsection 090.01 or 090.02 of this rule are submitted electronically by or on behalf of the IPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission. ()

(BREAK IN CONTINUITY OF SECTIONS)

105. APPLICATION FOR AN INDIVIDUAL IPDES PERMIT.

01. Electronic Submittals. The Department may require an applicant to electronically submit information required by this section, if the Department approves an electronic method of submittal. (3-24-16)

02. Application Retention Schedule. An applicant shall keep records of all data used to complete a permit application and any supplemental information submitted for a period of at least three (3) years from the date the application is signed. (3-24-16)

03. Time to Apply. Any person required under Subsections 102.01 through 102.03 to obtain an IPDES permit shall submit to the Department a complete application for a permit in compliance with the requirements of this subsection. A permit application must be signed and certified as required by Section 090 (Signature Requirements). (3-24-16)

a. A person proposing a new discharge shall submit an application at least one hundred eighty (180) days before the date on which the discharge is to commence, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. A facility proposing a new discharge of storm water associated with industrial activity shall submit an application one hundred eighty (180) days before that facility commences industrial activity that may result in a discharge of storm water associated with that industrial activity, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. (3-24-16)

b. Facilities described under 40 CFR 122.26(b)(14)(x) or (b)(15)(i) shall submit an application at least ninety (90) days before the date on which construction is to commence unless otherwise required by the terms of an applicable general permit. (3-24-16)

c. Any TWTDS that commences operations after promulgation of any applicable “standard for sewage sludge use or disposal” must submit an application to the Department at least one hundred eighty (180) days prior to the date proposed for commencing operations. (3-24-16)

d. A person discharging from a permitted facility with a currently effective permit shall submit a new application at least one hundred eighty (180) days before the expiration date of the existing permit, unless the Department has granted permission to submit the application on a later date as specified in Subsections 105.03.e. and f. (3-24-16)

e. Permission may be granted by the Department for submission of an application in less than one hundred eighty (180) days. The Department’s prior approval must be sought and obtained in advance of the one hundred eighty (180) days before expiration of the existing permit or commencement of new discharge. (3-24-16)

f. In no instance shall the application be accepted after the expiration date of the existing permit as an application for renewal of the permit. Any applications received after the expiration of the permit will be received and reviewed as an application for a new source or new discharger. (3-24-16)

04. Individual Permit Application Forms. An applicant must submit an application on one (1) or more Department-approved forms appropriate to the number and type of discharge or outfall at the applicant’s facility. A person required by Subsections 102.01 through 102.03 to obtain an individual IPDES permit shall submit an application to the Department providing the information required by this subsection and Subsections 105.05 through 105.19, as applicable. The application must be submitted on one (1) or more of the EPA forms listed in this subsection, or on the Department equivalent of the listed EPA form: (3-24-16)

a. All applicants, other than a POTW and other TWTDS (see Subsection 105.06), EPA Form 1, revised as of August 1, 1990, and the following additional forms, if applicable: (3-24-16)

i. Applicants for a concentrated animal feeding operation (CAFO; see Subsection 105.09) or concentrated aquatic animal production (CAAP; see Subsection 105.10) facility, EPA Form 2B, revised as of November 2008; (3-24-16)

ii. Applicants for an existing industrial facility, including manufacturing facilities, commercial facilities, mining activities, and silviculture activities (see Subsection 105.07), EPA Form 2C, revised as of August 1, 1990; (3-24-16)

iii. Applicants for a new industrial facility that discharges process wastewater (see Subsection 105.16), EPA Form 2D, revised as of August 1, 1990; (3-24-16)

iv. Applicants for a new or existing industrial facility that discharges only non-process wastewater (see Subsection 105.08.a.), EPA Form 2E, revised as of August 1, 1990; (3-24-16)

v. Applicants for a new or existing facility whose discharge is composed entirely of storm water associated with industrial activity (see Subsection 105.19), EPA Form 2F, revised May 31, 1992, unless the applicant is exempted by 40 CFR 122.26(c)(1)(ii). If the applicant’s discharge is composed of storm water and non-storm water (see Subsections 105.07, 105.08, and 105.16), EPA Forms 2C, 2D, or 2E, as appropriate, are also required; or (3-24-16)

vi. Applicants that operate a sludge-only facility (see Subsection 105.17), that currently does not have and is not applying for, an IPDES permit for a direct discharge to a surface water body, EPA Form 2S, revised January 14, 1999; (3-24-16)

b. For an applicant that is a new or existing POTW (see Subsections 105.11 through 105.15):

(3-24-16)

i. EPA Form 2A, revised January 14, 1999; and (3-24-16)

ii. EPA Form 2S, revised January 14, 1999, if applicable. (3-24-16)

05. Application Information for All Dischargers. In addition to the application information required for specific dischargers, the Department may require the submittal of any information necessary to ensure compliance with Section 103 (Permit Prohibitions). Such information includes, but is not limited to: (3-24-16)

a. Information required to determine compliance with the antidegradation policy and antidegradation implementation provisions set forth in IDAPA 58.01.02.051 and 052, “Water Quality Standards”; (3-24-16)

b. Information required to determine compliance with the mixing zone provisions set forth in IDAPA 58.01.02.060, “Water Quality Standards”; or (3-24-16)

c. Information necessary for the Department to authorize a compliance schedule under IDAPA 58.01.02.400, “Water Quality Standards.” (3-24-16)

06. Individual Permit Application Requirements for Dischargers Other than Treatment Works Treating Domestic Sewage (TWTDS) and Publicly Owned Treatment Works (POTWs). An applicant for an IPDES permit other than a POTW and other TWTDS, shall provide the following information to the Department, using the appropriate forms specified in Subsection 105.04: (3-24-16)

a. The applicant’s activity that requires an IPDES permit; (3-24-16)

b. The name, mailing address, electronic mail address, and location of the facility for which the application is submitted; (3-24-16)

c. Up to four (4) Standard Industrial Classification (SIC) codes that best identify the principal products or services provided by the facility; (3-24-16)

d. The operator’s name, mailing address, electronic mail address, telephone number, ownership status, Employer Identification Number (EIN), and status as federal, state, private, public, or other entity; (3-24-16)

e. A statement that the facility is located in Indian country, if applicable; (3-24-16)

f. A listing of all permits or construction approvals received or applied for under any of the following programs: (3-24-16)

i. Hazardous waste management program under IDAPA 58.01.05, “Rules and Standards for Hazardous Waste”; (3-24-16)

ii. Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, “Rules and Minimum Standards for the Construction and Use of Injection Wells”; (3-24-16)

iii. IPDES program under IDAPA 58.01.25 “Rules Regulating the Idaho Pollutant Discharge Elimination System Program”; (3-24-16)

iv. Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; (3-24-16)

v. Nonattainment program under IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; (3-24-16)

vi. National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under

IDAPA 58.01.01, “Rules for Control of Air Pollution in Idaho”; (3-24-16)

vii. Dredge or fill permits under the Clean Water Act section 404; or (3-24-16)

viii. Other relevant environmental permits, programs or activities, including those subject to state jurisdiction, approval, and permits; and (3-24-16)

g. A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting: (3-24-16)

i. The facility and each of its intake and discharge structures; (3-24-16)

ii. The location of the facility’s hazardous waste treatment, storage, or disposal areas; (3-24-16)

iii. The location of each well where fluids from the facility are injected underground; and (3-24-16)

iv. The location of wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known by the applicant to exist in the map area; and (3-24-16)

h. A brief description of the nature of the business. (3-24-16)

07. Individual Permit Application Requirements for Existing Manufacturing, Commercial, Mining and Silviculture Dischargers. (3-24-16)

a. Except for a facility subject to the requirements in Subsection 105.08, an applicant for an IPDES permit for an existing discharge from a manufacturing, commercial, mining, or silviculture facility or activity shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04: (3-24-16)

i. For each outfall: (3-24-16)

(1) The latitude and longitude to the nearest second and the name of each receiving water; (3-24-16)

(2) A narrative identifying each type of process, operation, or production area that contributes wastewater to the effluent from that outfall, including process wastewater, cooling water, and storm water runoff; processes, operations, or production areas may be described in general terms, such as dye-making reactor or distillation tower; (3-24-16)

(3) The average flow that each process contributes and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; (3-24-16)

(4) For a privately owned treatment works, the identity of each user of the treatment works; and (3-24-16)

(5) The average flow of point sources composed of storm water. For this subsection, the average flow may be estimated, and the basis for the rainfall event with the method of estimation must be submitted; (3-24-16)

ii. A description of the frequency, duration, and flow rate of each discharge occurrence for any of the discharges described in Subsection 105.07.a.i.(2). through 105.07.a.i.(5). that are intermittent or seasonal, except for storm water runoff, spillage, or leaks; (3-24-16)

iii. A reasonable measure of the applicant’s actual production reported in the units used in the applicable effluent guideline, if an effluent guideline promulgated under the Clean Water Act section 304 applies to the applicant and is expressed in terms of production or other measure of operation. The reported measure must reflect the actual production of the facility as required by Subsection 303.02.b.; (3-24-16)

iv. If the applicant is subject to any present requirements or compliance schedules for construction,

upgrading, or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates; (3-24-16)

v. A listing of any toxic pollutant that the applicant currently uses or manufactures as an intermediate or final product or byproduct, except that the Department may waive or modify this requirement; (3-24-16)

(1) If the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant; and (3-24-16)

(2) The Department has adequate information to issue the permit; (3-24-16)

vi. An identification of any biological toxicity tests that the applicant knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge; and (3-24-16)

vii. The identity of each laboratory or firm and the analyses performed, if a contract laboratory or consulting firm performed any of the analyses required by Subsection 105.07.c. through m. (3-24-16)

b. The owner or operator of a facility subject to this subsection shall submit, with an application, a line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. (3-24-16)

i. In the line drawing, similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under Subsection 105.07.a.i.(2) through 105.07.a.i.(5). (3-24-16)

ii. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. (3-24-16)

iii. If a water balance cannot be determined for certain activities, the applicant may instead provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures. (3-24-16)

c. In addition to the items of information listed in Subsections 105.07.a. through 105.07.b., and except for information on storm water discharges required by 40 CFR 122.26, an applicant for an IPDES permit for an existing facility described in Subsection 105.07.a. shall: (3-24-16)

i. Collect, prepare, and submit information regarding the effluent characteristics and discharge of pollutants specified in this section; and (3-24-16)

ii. When quantitative data for a pollutant are required, collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136, except that when no analytical method is approved, the applicant may use any suitable method but must describe the method. (3-24-16)

d. An applicant for an IPDES permit under this subsection shall: (3-24-16)

i. Use grab samples in providing information regarding cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including *E. coli*), Enterococci (previously known as fecal streptococcus), and volatile organics; temperature, pH, and residual chlorine effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; (3-24-16)

ii. For all other pollutants, use twenty-four (24) hour composite samples, except that a minimum of one (1) grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours; (3-24-16)

e. For purposes of Subsection 105.07.c., exceptions to testing and data provision requirements for effluent characteristics include: (3-24-16)

- i. When an applicant has two (2) or more outfalls with substantially identical effluents, the Department may allow the applicant to test only one (1) outfall and report that the quantitative data also apply to the substantially identical outfall; and (3-24-16)
- ii. An applicant's duty under Subsections 105.07.j., k., and l. to provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report that those pollutants are present. (3-24-16)
- f. For storm water discharges, associated with an existing facility described in Subsection 105.07.a., from storm events which yield more than one-tenth (0.1) inch of rainfall: (3-24-16)
 - i. All samples must be collected from the discharge resulting from a storm event and at least seventy-two (72) hours after the previously measurable storm event exceeding one-tenth (0.1) inch rainfall. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed fifty percent (50%) from the average or median rainfall event in that area; and (3-24-16)
 - ii. For all applicants, a flow-weighted composite sample must be taken for either the entire discharge or for the first three (3) hours of the discharge, except for the following: (3-24-16)
 - (1) The sampling may be conducted with a continuous sampler or as a combination of a minimum of three (3) sample aliquots taken in each hour of discharge for the entire discharge or for the first three (3) hours of the discharge, with each aliquot being separated by a minimum period of fifteen (15) minutes. If the Department approves, an applicant for a storm water discharge permit under Subsection 105.18 may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots; (3-24-16)
 - (2) A minimum of one (1) grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours; or (3-24-16)
 - (3) For a flow-weighted composite sample, only one (1) analysis of the composite of aliquots is required; (3-24-16)
 - iii. For samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty (30) minutes, or as soon thereafter as practicable, of the discharge for all pollutants specified in Subsection 105.19 except that for all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 40 CFR 122.26(a) through (b) and (e) through (g), Subsections 105.18 and 105.19, but not for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus; (3-24-16)
 - iv. The Department may, on a case-by-case basis, allow or establish appropriate site-specific sampling procedures or requirements, including: (3-24-16)
 - (1) Sampling locations; (3-24-16)
 - (2) The season in which the sampling takes place; (3-24-16)
 - (3) The minimum duration between the previous measurable storm event and the sampled storm event; (3-24-16)
 - (4) The minimum or maximum level of precipitation required for an appropriate storm event; (3-24-16)
 - (5) The form of precipitation sampled, whether snow melt or rain fall; (3-24-16)
 - (6) Protocols for collecting samples under 40 CFR Part 136; and (3-24-16)

- (7) Additional time for submitting data; and (3-24-16)
- v. An applicant is deemed to know or have reason to believe that a pollutant is present in an effluent if an evaluation of the expected use, production, or storage of the pollutant, or any previous analyses for the pollutant, show that pollutant's presence. (3-24-16)
- g. Unless a reporting requirement is waived under Subsection 105.07.h., every applicant subject to this subsection shall report quantitative data for the following pollutants for every outfall: (3-24-16)
- i. 5-day biochemical oxygen demand (BOD5); (3-24-16)
- ii. Chemical oxygen demand (COD); (3-24-16)
- iii. Total organic carbon (TOC); (3-24-16)
- iv. Total suspended solids (TSS); (3-24-16)
- v. Ammonia, as N; (3-24-16)
- vi. Temperature (both winter and summer); and (3-24-16)
- vii. pH. (3-24-16)
- h. The Department may waive the reporting requirements under Subsection 105.07.g. for individual point sources or for a particular industry category for one (1) or more of the pollutants listed in Subsection 105.07.g. if the applicant demonstrates that information adequate to support issuance of a permit can be obtained with less stringent requirements. (3-24-16)
- i. Except as provided in Subsection 105.07.n., an applicant with an existing facility described in Subsection 105.07.a. that has processes that qualify in one (1) or more of the primary industry categories shown in Appendix A to 40 CFR Part 122 contributing to a discharge, must report quantitative data for pollutants in each outfall containing process wastewater as follows: (3-24-16)
- i. Data for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part 122 in the fractions designated in Table I of Appendix D to 40 CFR Part 122. For purposes of this subsection: (3-24-16)
- (1) Table II of Appendix D to 40 CFR Part 122, lists the organic toxic pollutants in each fraction that result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry; and (3-24-16)
- (2) If the Department determines that an applicant falls within an industrial category for the purposes of selecting fractions for testing, that determination does not establish the applicant's category for any other purpose; see Notes 2 and 3 to 40 CFR 122.21; and (3-24-16)
- ii. Data for the toxic metals, cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122. (3-24-16)
- j. An applicant for an IPDES permit under this section must disclose, in an application, whether the applicant knows or has reason to believe that any of the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122 are discharged from each outfall. If an applicable effluent limitations guideline limits the pollutant either directly or indirectly by express limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged that is not limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged. (3-24-16)
- k. An applicant for an IPDES permit under this subsection must disclose, in an application, whether the applicant knows or has reason to believe that any of the organic toxic pollutants listed in Table II or the toxic metals, cyanide, or total phenols listed in Table III of Appendix D to 40 CFR Part 122 for which quantitative data are

not otherwise required under Subsection 105.07.i., are discharged from each outfall. Unless an applicant qualifies as a small business under Subsection 105.07.n., the applicant must: (3-24-16)

i. Report quantitative data for every pollutant expected to be discharged in concentrations of ten (10) parts per billion or greater; (3-24-16)

ii. Report quantitative data for acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, if any of these four (4) pollutants are expected to be discharged in concentrations of one hundred (100) parts per billion or greater; and (3-24-16)

iii. For every pollutant expected to be discharged in concentrations less than ten (10) parts per billion, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, in concentrations less than one hundred (100) parts per billion, either submit quantitative data, or briefly describe the reasons the pollutant is expected to be discharged and submit any supporting documentation. (3-24-16)

l. An applicant for an IPDES permit under this subsection must disclose, in an application, whether the applicant knows or has reason to believe that asbestos or any of the hazardous substances listed in Table V of Appendix D to 40 CFR Part 122 are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged and report any quantitative data it has for any pollutant. (3-24-16)

m. An applicant for an IPDES permit under this subsection must disclose, in an application, and report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7, 8-tetrachlorodibenzo-p-dioxin (TCDD) if the applicant: (3-24-16)

i. Uses or manufactures the following: (3-24-16)

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); (3-24-16)

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); (3-24-16)

(3) 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); (3-24-16)

(4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnell); (3-24-16)

(5) 2,4,5-trichlorophenol (TCP); or (3-24-16)

(6) Hexachlorophene (HCP); or (3-24-16)

ii. Knows or has reason to believe that TCDD is or may be present in an effluent. (3-24-16)

n. An applicant under this subsection is exempt from the quantitative data requirements in Subsections 105.07.i. or 105.07.j. for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part 122, if that applicant qualifies as a small business under one (1) of the following criteria: (3-24-16)

i. The applicant is a coal mine with an expected total annual production of less than one hundred thousand (100,000) tons per year; or (3-24-16)

ii. The applicant has gross total annual sales averaging less than two hundred eighty-seven thousand, three hundred dollars (\$287,300) per year in 2014 dollars. (3-24-16)

o. In addition to the information reported on the application form, an applicant under this subsection shall provide to the Department, at the Department's request, any other information that the Department may reasonably require to assess the discharges of the facility and to determine whether to issue an IPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and information required to determine the cause of the toxicity. (3-24-16)

08. Individual Permit Application Requirements for New or Existing Manufacturing, Commercial, Mining, and Silviculture Facilities that Discharge only Non-Process Wastewater. (3-24-16)

a. An applicant for an IPDES permit that is a manufacturing, commercial, mining, or silvicultural discharger that discharges only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the Department for all discharges, except for storm water discharges, using the applicable forms specified in Subsection 105.04: (3-24-16)

i. The number of each outfall, the latitude and longitude to the nearest second, and the name of each receiving water; (3-24-16)

ii. For a new discharger, the date of expected commencement of discharge; (3-24-16)

iii. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or non-contact cooling water; (3-24-16)

iv. An identification of cooling water additives, if any, that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available; (3-24-16)

v. Effluent characteristics prepared and submitted as described in Subsections 105.08.b. and 105.08.c.; (3-24-16)

vi. A description of the frequency of flow and duration of any seasonal or intermittent discharge, except for storm water runoff, leaks, or spills; (3-24-16)

vii. A brief description of any treatment system used or to be used; (3-24-16)

viii. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits under Subsection 303.07; and (3-24-16)

ix. The signature of the certifying official under Section 090 (Signature Requirements). (3-24-16)

b. Except as otherwise provided in Subsections 105.08.d. through g., an IPDES permit application for a discharger described in Subsection 105.08.a. must include quantitative data for the following pollutants or parameters: (3-24-16)

i. 5-day biochemical oxygen demand (BOD₅); (3-24-16)

ii. Total suspended solids (TSS); (3-24-16)

iii. Fecal coliform, if believed present or if sanitary waste is or will be discharged; (3-24-16)

iv. Total residual chlorine (TRC), if chlorine is used; (3-24-16)

v. Oil and grease; (3-24-16)

vi. Chemical oxygen demand (COD), if non-contact cooling water is or will be discharged; (3-24-16)

vii. Total organic carbon (TOC), if non-contact cooling water is or will be discharged; (3-24-16)

viii. Ammonia, as N; (3-24-16)

ix. Discharge flow; (3-24-16)

x. pH; and (3-24-16)

- xi. Temperature, both in winter and summer, respectively. (3-24-16)
- c. For purposes of the data required under Subsection 105.08.b.: (3-24-16)
 - i. Grab samples must be used for oil and grease, fecal coliform, and volatile organics. Temperature, pH, and TRC effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; (3-24-16)
 - ii. Twenty-four (24) hour composite samples must be used for pollutants listed in Subsection 105.08.b., other than those specified in Subsection 105.08.c.i. Twenty-four (24) hour composite samples must, at a minimum, be composed of four (4) grab samples, equally spaced through the twenty-four (24)-hour period, unless specified otherwise at 40 CFR Part 136. For a composite sample, only one (1) analysis of the composite aliquots is required; (3-24-16)
 - iii. The quantitative data may be collected over the past three hundred sixty-five (365) days, as long as the data is representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken; and (3-24-16)
 - iv. The applicant shall collect and analyze samples in accordance with 40 CFR Part 136. (3-24-16)
- d. The Department may waive the testing and reporting requirements for any of the pollutants or flow listed in Subsection 105.08.c. if the applicant requests a waiver with its application or earlier, and demonstrates that information adequate to support permit issuance can be obtained through less stringent requirements. (3-24-16)
- e. If the applicant is a new discharger, the applicant shall: (3-24-16)
 - i. Complete and submit Item IV of EPA Form 2E, or the Department equivalent, as required by Subsection 105.04.a.iv., by providing quantitative data in compliance with that section no later than two (2) years after the discharge commences, except that the applicant need not complete those portions of Item IV requiring tests that the applicant has already performed and reported under the discharge monitoring requirements of its IPDES or NPDES permit; and (3-24-16)
 - ii. Include estimates and the source of each estimate instead of sampling data for the pollutants or parameters listed in Subsection 105.08.b.; (3-24-16)
- f. For purposes of the data required under this subsection, all pollutant levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature. Submittal of all estimated data shall be accompanied by documents supporting the estimated value. (3-24-16)
- g. An applicant's duty, under Subsections 105.08.b., c. and e., to provide quantitative data or estimates of certain pollutants does not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant shall report the presence of those pollutants. If the requirements of Subsection 303.07 are met, net credit may be provided for the presence of pollutants in intake water. (3-24-16)

09. Individual Permit Application Requirements for New and Existing Concentrated Animal Feeding Operations (CAFO). An applicant for an IPDES permit for a new or existing CAFO, as defined in 40 CFR 122.23(b) shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04: (3-24-16)

- a. The name of the owner or operator; (3-24-16)
- b. The facility location and mailing addresses; (3-24-16)
- c. Latitude and longitude of the production area to the nearest second, measured at the entrance to the production area; (3-24-16)
- d. A topographic map of the geographic area in which the concentrated animal feeding operation is

located, showing the specific location of the production area; (3-24-16)

e. Specific information about the number and type of animals, including, if applicable: beef cattle, broilers, layers, swine weighing fifty-five (55) pounds or more, swine weighing less than fifty-five (55) pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, or other animals, whether in open confinement or housed under roof; (3-24-16)

f. The type of containment and total capacity in tons or gallons of any anaerobic lagoon, roofed storage shed, storage pond, under-floor pit, above-ground storage tank, below-ground storage tank, concrete pad, impervious soil pad, or other structure or area used for containment and storage of manure, litter, and process wastewater; (3-24-16)

g. The total number of acres available and under the applicant's control for land application of manure, litter, or process wastewater; (3-24-16)

h. Estimated amounts of manure, litter, and process wastewater generated per year in tons or gallons; (3-24-16)

i. Estimated amounts of manure, litter, and process wastewater transferred to other persons per year in tons or gallons; and (3-24-16)

j. A nutrient management plan that has been completed and will be implemented upon the date of permit coverage. A nutrient management plan must meet, at a minimum, the requirements specified in 40 CFR 122.42(e), including for all CAFOs subject to 40 CFR 412.30 through 412.37, 412.40 through 412.47, or the requirements of 40 CFR 412.4(c), as applicable. (3-24-16)

10. Individual Permit Application Requirements for New and Existing Concentrated Aquatic Animal Production (CAAP) Facilities. An applicant for an IPDES permit for a new or existing CAAP facility shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04: (3-24-16)

a. The maximum daily and average monthly flow from each outfall; (3-24-16)

b. The number of ponds, raceways, and similar structures; (3-24-16)

c. The name of the receiving water and the source of intake water; (3-24-16)

d. For each species of aquatic animal, the total yearly and maximum harvestable weight; and (3-24-16)

e. The calendar month of maximum feeding and the total mass of food fed during that month. (3-24-16)

11. Individual Permit Application Requirements for New and Existing POTWs and Other Dischargers Designated by the Department. (3-24-16)

a. Except as provided in Subsection 105.11.b., an applicant that is a POTW and any other discharger designated by the Department shall provide the information in this subsection to the Department, using the applicable forms specified in Subsection 105.04.b. A permit applicant under this subsection shall submit all information available at the time of permit application; however, an applicant may provide information by referencing information previously submitted to the Department. (3-24-16)

b. The Department may waive any requirement of this subsection if the Department has access to substantially identical information. The Department may also waive any requirement of this subsection if that information is not of material concern for a specific permit, if approved by the EPA Regional Administrator. The waiver request to the Regional Administrator must include the Department's justification for the waiver. A Regional Administrator's disapproval of a Department's proposed waiver does not constitute final agency action, but does

provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information. (3-24-16)

- c. An applicant under this subsection must provide the following information: (3-24-16)
 - i. Name, mailing address, and location of the facility for which the application is submitted; (3-24-16)
 - ii. Name, mailing address, electronic mail address, EIN, and telephone number of the applicant, and a statement whether the applicant is the facility's owner, operator, or both; (3-24-16)
 - iii. A list of all environmental permits or construction approvals received or applied for, including dates, under any of the following programs or types of activities: (3-24-16)
 - (1) Hazardous waste management program under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; (3-24-16)
 - (2) Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells"; (3-24-16)
 - (3) IPDES program under IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; (3-24-16)
 - (4) Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; (3-24-16)
 - (5) Nonattainment program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; (3-24-16)
 - (6) National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; (3-24-16)
 - (7) Dredge or fill permits under the Clean Water Act section 404; (3-24-16)
 - (8) Sludge Management Program under IDAPA 58.01.16.650, "Wastewater Rules," and Section 380 (Sewage Sludge) of these rules; and (3-24-16)
 - (9) Other relevant environmental permits, programs, or activities, including those subject to state jurisdiction, approval, and permits; (3-24-16)
 - iv. The name ~~and~~ population ~~or~~ and equivalent dwelling units (EDU) of each municipal entity served by the facility, including unincorporated connector districts, a statement whether each municipal entity owns or maintains the collection system and, if the information is available, whether the collection system is a separate sanitary sewer or a combined storm and sanitary sewer; ~~(3-24-16)~~ ()
 - v. A statement whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country; (3-24-16)
 - vi. The facility's design flow rate, or the wastewater flow rate the plant was built to handle, annual average daily flow rate, and maximum daily flow rate for each of the previous three (3) years; (3-24-16)
 - vii. A statement identifying the types of collection systems, either separate sanitary sewers or combined storm and sanitary sewers, used by the treatment works, and an estimate of the percent of sewer line that each type comprises; (3-24-16)
 - viii. The following information for outfalls to waters of the United States and other discharge or

disposal methods: (3-24-16)

(1) For effluent discharges to waters of the United States, the total number and types of outfalls including treated effluent, combined sewer overflows, bypasses, constructed emergency overflows; (3-24-16)

(2) For wastewater discharged to surface impoundments, the location of each surface impoundment, the average daily volume discharged to each surface impoundment, and a statement whether the discharge is continuous or intermittent; (3-24-16)

(3) For wastewater applied to the land, the location of each land application site, the size in acres of each land application site, the average daily volume in gallons per day applied to each land application site, and a statement whether the land application is continuous or intermittent; (3-24-16)

(4) For effluent sent to another facility for treatment prior to discharge, the means by which the effluent is transported, the name, mailing address, electronic mail address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant, the name, mailing address, electronic mail address, contact person, phone number, and IPDES or NPDES permit number, if any, of the receiving facility, and the average daily flow rate from this facility into the receiving facility in million gallons per day (MGD); and (3-24-16)

(5) For wastewater disposed of in a manner not included in Subsections 105.11.c.viii.(1) through (4), including underground percolation and underground injection, a description of the disposal method, the location and size of each disposal site, if applicable, the annual average daily volume in gallons per day disposed of by this method, and a statement whether disposal by this method is continuous or intermittent; and (3-24-16)

ix. The name, mailing address, electronic mail address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the POTW facility. (3-24-16)

d. In addition to the information described in Subsection 105.11.c., an applicant under this subsection with a design flow greater than or equal to zero point one (0.1) million gallons per day (MGD) must provide: (3-24-16)

i. The current average daily volume in gallons per day of inflow and infiltration, and a statement describing steps the facility is taking to minimize inflow and infiltration; (3-24-16)

ii. A topographic map, or other map if a topographic map is unavailable, extending at least one (1) mile beyond property boundaries of the treatment plant including all unit processes, and showing: (3-24-16)

(1) The treatment plant area and unit processes; (3-24-16)

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant, including outfalls from bypass piping, if applicable; (3-24-16)

(3) Each well where fluids from the treatment plant are injected underground; (3-24-16)

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within one-quarter (1/4) mile of the property boundaries of the treatment works; (3-24-16)

(5) Sewage sludge management facilities including on-site treatment, storage, and disposal sites; and (3-24-16)

(6) Each location at which waste classified as hazardous under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste," enters the treatment plant by truck, rail, or dedicated pipe; (3-24-16)

iii. A process flow diagram or schematic as follows: (3-24-16)

- (1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system, including a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points and approximate daily flow rates between treatment units; and (3-24-16)
- (2) A narrative description of the diagram; and (3-24-16)
- iv. The following information regarding scheduled improvements: (3-24-16)
- (1) The outfall number of each affected outfall; (3-24-16)
- (2) A narrative description of each required improvement; (3-24-16)
- (3) Scheduled dates for commencement and completion of construction, commencement of discharge and attainment of operational level, and actual completion date for any event listed in this subsection that has been completed; and (3-24-16)
- (4) A description of permits and ~~clearances~~ authorizations concerning other federal and state requirements. ~~(3-24-16)~~ ()
- e. An applicant under this subsection must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable: (3-24-16)
- i. For each outfall: (3-24-16)
- (1) The outfall number; (3-24-16)
- (2) The county, and city or town in which the outfall is located; (3-24-16)
- (3) The latitude and longitude, to the nearest second; (3-24-16)
- (4) The distance from shore and depth below surface; (3-24-16)
- (5) The average daily flow rate, in million gallons per day (MGD); (3-24-16)
- (6) If the outfall has a seasonal or periodic discharge, the number of times per year the discharge occurs, the duration of each discharge, the flow of each discharge, and the months in which discharge occurs; and (3-24-16)
- (7) A statement whether the outfall is equipped with a diffuser and the type of diffuser used, such as high-rate; (3-24-16)
- ii. For each outfall discharging effluent to waters of the United States, the following receiving water information, if the information is available: (3-24-16)
- (1) The name of each receiving water; (3-24-16)
- (2) The critical flow of each receiving stream; and (3-24-16)
- (3) The total hardness of the receiving stream at critical low flow; and (3-24-16)
- iii. For each outfall discharging to waters of the United States, the following information describing the treatment of the discharges: (3-24-16)
- (1) The highest level of treatment, including primary, equivalent to secondary, secondary, advanced, or other treatment level provided for: (3-24-16)

- (a) The design biochemical oxygen demand removal percentage; (3-24-16)
- (b) The design suspended solids removal percentage; (3-24-16)
- (c) The design phosphorus removal percentage; (3-24-16)
- (d) The design nitrogen removal percentage; and (3-24-16)
- (e) Any other removals that an advanced treatment system is designed to achieve; and (3-24-16)
- (2) A description of the type of disinfection used, and a statement whether the treatment plant de-chlorinates, if disinfection is accomplished through chlorination. (3-24-16)
- f. In addition to Subsection 105.11.a., and except as provided in Subsection 105.11.h., an applicant under this subsection shall undertake sampling and analysis and submit effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for combined sewer overflows, including the following if applicable: (3-24-16)
 - i. Sampling and analysis for the pollutants listed in Appendix J, Table 1A to 40 CFR Part 122; (3-24-16)
 - ii. For an applicant with a design flow greater than or equal to zero point one (0.1) million gallons per day (MGD), sampling and analysis for the pollutants listed in Appendix J, Table 1 to 40 CFR Part 122, except that a facility that does not use chlorine for disinfection, does not use chlorine elsewhere in the treatment process, and has no reasonable potential to discharge chlorine in the facility's effluent, is not required to sample or analyze chlorine; (3-24-16)
 - iii. Sampling and analysis for the pollutants listed in Appendix J, Table 2 to 40 CFR Part 122 and for any other pollutants for which the state or EPA has established water quality standards applicable to the receiving waters if the facility is: (3-24-16)
 - (1) A POTW that has a design flow rate equal to or greater than one (1) million gallons per day (MGD); (3-24-16)
 - (2) A POTW that has an approved pretreatment program; (3-24-16)
 - (3) A POTW that is required to develop a pretreatment program; or (3-24-16)
 - (4) Any POTW, as required by the Department to ensure compliance with these rules; (3-24-16)
 - iv. Sampling and analysis for additional pollutants, as the Department may require, on a case-by-case basis; (3-24-16)
 - v. Data from a minimum of three (3) samples taken within four and one-half (4 ½) years before the date of the permit application; to meet this requirement: (3-24-16)
 - (1) Samples must be representative of the seasonal variation in the discharge from each outfall; (3-24-16)
 - (2) Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application; and (3-24-16)
 - (3) Additional samples may be required by the Department on a case-by-case basis; and (3-24-16)
 - vi. All existing data for pollutants specified in Subsections 105.11.f.i. through iv. collected within four and one-half (4 ½) years of the application. This data must be included in the pollutant data summary submitted by the applicant, except that if the applicant samples for a specific pollutant on a monthly or more frequent basis, only

the data collected for that pollutant within one (1) year of the application must be provided. (3-24-16)

g. To meet the information requirements of Subsection 105.11.f., an applicant must: (3-24-16)

i. Collect samples of effluent and analyze the samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 unless an alternative is specified in the existing IPDES or NPDES permit; (3-24-16)

ii. Use the following methods: (3-24-16)

(1) Grab samples for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and volatile organics. Temperature, pH, and residual chlorine data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; (3-24-16)

(2) Twenty-four (24) hour composite samples for all other pollutants; for a composite sample, only one (1) analysis of the composite of aliquots is required; and (3-24-16)

iii. Provide at least the following information for each parameter: (3-24-16)

(1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values; (3-24-16)

(2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value; (3-24-16)

(3) The analytical method used; and (3-24-16)

(4) The threshold level, such as the method detection limit, minimum level, or other designated method endpoint for the analytical method used; and (3-24-16)

iv. Report metals as total recoverable, unless the Department requires otherwise. (3-24-16)

h. When an applicant under this subsection has two (2) or more outfalls with substantially identical effluent discharging to the same receiving water segment, the Department may, on a case-by-case basis, allow the applicant to submit sampling data for only one (1) outfall. The Department may also allow an applicant to composite samples from one (1) or more outfalls that discharge into the same mixing zone, pursuant to IDAPA 58.01.02, "Water Quality Standards." (3-24-16)

12. Whole Effluent Toxicity (WET) Monitoring for POTWs. (3-24-16)

a. An applicant for a permit under Subsection 105.11 shall submit information on effluent monitoring for WET, including an identification of any WET tests conducted during the four and one-half (4 ½) years before the date of the application on any of the applicant's discharges or on any receiving water near the discharge. (3-24-16)

b. An applicant under Subsection 105.11 shall submit to the Department, in compliance with Subsections 105.12.c. through f., the results of valid WET tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows, if the applicant: (3-24-16)

i. Has a design flow rate greater than or equal to one (1) million gallons per day (MGD); (3-24-16)

ii. Has an approved pretreatment program or is required to develop a pretreatment program; or (3-24-16)

iii. Is required to comply with this subsection by the Department, based on consideration of the following factors: (3-24-16)

- (1) The variability of the pollutants or pollutant parameters in the POTW effluent based on chemical-specific information, the type of treatment plant, and types of industrial contributors; (3-24-16)
 - (2) The ratio of effluent flow to receiving stream flow; (3-24-16)
 - (3) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW; (3-24-16)
 - (4) Receiving water characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource water; or (3-24-16)
 - (5) Other considerations, including the history of toxic impacts and compliance problems at the POTW that the Department determines could cause or contribute to adverse water quality impacts. (3-24-16)
- c.** When an applicant under Subsection 105.11 has two (2) or more outfalls with substantially identical effluent discharging to the same receiving water segment, the Department may, on a case-by-case basis, allow the applicant to submit whole effluent toxicity data for only one (1) outfall. The Department may also allow an applicant to composite samples from one (1) or more outfalls that discharge into the same mixing zone. (3-24-16)
- d.** An applicant under Subsection 105.12.b. that is required to perform WET testing must provide: (3-24-16)
- i. Results of a minimum of four (4) quarterly tests for a year, from the year preceding the permit application or results from four (4) tests performed at least annually in the four and one-half (4 ½) year period before the application, if the results show no appreciable toxicity using a safety factor determined by the Department; (3-24-16)
 - ii. The number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance; (3-24-16)
 - iii. The results using the form provided by the Department, or test summaries, if available and comprehensive, for each WET test conducted under this subsection for which the information has not been reported previously to the Department; (3-24-16)
 - iv. For WET data submitted to the Department within four and one-half (4 ½) years before the date of the application, the dates on which the data were submitted and a summary of the results; and (3-24-16)
 - v. Any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any WET test conducted within the past four and one-half (4 ½) years revealed toxicity. (3-24-16)
- e.** An applicant under Subsection 105.11 must conduct tests with no less than two (2) species, including fish, invertebrate, or plant, and test for acute or chronic toxicity, depending on the range of receiving water dilution. Unless the Department directs otherwise, an applicant shall conduct acute or chronic testing based on the following dilutions: (3-24-16)
- i. Acute toxicity testing if the dilution of the effluent is greater than a ratio of one thousand to one (1,000:1) at the edge of the mixing zone; (3-24-16)
 - ii. Acute or chronic toxicity testing, if the dilution of the effluent is between a ratio of one hundred to one (100:1) and one thousand to one (1,000:1) at the edge of the mixing zone; acute testing may be more appropriate at the higher end of this range (one thousand to one (1,000:1)), and chronic testing may be more appropriate at the lower end of this range (one hundred to one (100:1)); or (3-24-16)
 - iii. Chronic testing if the dilution of the effluent is less than a ratio of one hundred to one (100:1) at the edge of the mixing zone. (3-24-16)
- f.** For purposes of the WET testing required by this section, an applicant must conduct testing using

methods approved under 40 CFR Part 136. (3-24-16)

13. Individual Permit Application Requirements for POTWs Receiving Industrial Discharges. (3-24-16)

a. An applicant for an IPDES permit as a POTW under Subsection 105.11 shall state in its application the number of significant industrial users (SIU) and categorical industrial users (CIU) discharging to the POTW. A POTW with one (1) or more SIUs shall provide the following information for each SIU that discharges to the POTW: (3-24-16)

- i. The name and mailing address of the SIU; (3-24-16)
- ii. A description of all industrial processes that affect or contribute to the SIU's discharge; (3-24-16)
- iii. The principal products and raw materials of each SIU that affects or contributes to that SIU's discharge; (3-24-16)
- iv. The average daily volume of wastewater discharged by the SIU, indicating the amount attributable to process flow and non-process flow; (3-24-16)
- v. A statement whether the SIU is subject to local limits; (3-24-16)
- vi. A statement whether the SIU is subject to one (1) or more categorical standards, and if so, under which category and subcategory; and (3-24-16)
- vii. A statement whether any problems at the POTW, including upsets, pass-through, or interference have been attributed to the SIU in the past four and one-half (4 ½) years. (3-24-16)

b. The information required in Subsection 105.13.a. may be waived by the Department for a POTW with a pretreatment program if the applicant has submitted either of the following that contains information substantially identical to the information required in Subsection 105.13.a.: (3-24-16)

- i. An annual report submitted within one (1) year of the application; or (3-24-16)
- ii. A pretreatment program. (3-24-16)

14. Individual Permit Application Requirements for POTWs Receiving Discharges from Hazardous Waste Generators and from Waste Cleanup or Remediation Sites. (3-24-16)

a. A POTW receiving hazardous or corrective action wastes or wastes generated at another type of cleanup or remediation site must provide the following information: (3-24-16)

i. If the POTW receives, or has been notified that it will receive by truck, rail, or dedicated pipe, any wastes that are regulated as hazardous wastes under 40 CFR Part 261 and IDAPA 58.01.05, "Rules and Standards for Hazardous Waste," the applicant must report the following: (3-24-16)

(1) The method of delivery, including by truck, rail, or dedicated pipe, by which the waste is received; and (3-24-16)

(2) The applicable hazardous waste number designated in IDAPA 58.01.05, "Rules and Standards for Hazardous Waste" for the transported waste, and the amount received annually of each hazardous waste; and (3-24-16)

ii. If the POTW receives, or has been notified that it will receive, wastewater that originates from remedial activities, including those undertaken under Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act sections 3004(u) or 3008(h), the applicant must report the following: (3-24-16)

- (1) The identity and description of each site or facility at which the wastewater originates; (3-24-16)
- (2) The identity of any known hazardous constituents specified in IDAPA 58.01.05, "Rules and Standards for Hazardous Waste," in the wastewater; and (3-24-16)
- (3) The extent of any treatment the wastewater receives or will receive before entering the POTW. (3-24-16)

b. An applicant under this subsection is exempt from the requirements of Subsection 105.14.a.ii. if the applicant receives no more than fifteen (15) kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in IDAPA 58.01.05, "Rules and Standards for Hazardous Waste." (3-24-16)

15. Individual Permit Application Requirements for POTWs with Combined Sewer Systems and Overflows. A POTW applicant with a combined sewer system must provide the following information on the combined sewer system and outfalls: (3-24-16)

- a.** A system map indicating the location of: (3-24-16)
 - i. All combined sewer overflow discharge points; (3-24-16)
 - ii. Any sensitive use areas potentially affected by combined sewer overflows including beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems; (3-24-16)
 - iii. Outstanding national resource waters potentially affected by combined sewer overflows; and (3-24-16)
 - iv. Waters supporting threatened and endangered species potentially affected by combined sewer overflows; (3-24-16)
- b.** A system diagram of the combined sewer collection system that includes the locations of: (3-24-16)
 - i. Major sewer trunk lines, both combined and separate sanitary; (3-24-16)
 - ii. Points where separate sanitary sewers feed into the combined sewer system; (3-24-16)
 - iii. In-line and off-line storage structures; (3-24-16)
 - iv. Flow-regulating devices; and (3-24-16)
 - v. Pump stations; (3-24-16)
- c.** Information on each outfall for each combined sewer overflow discharge point covered by the permit application, including: (3-24-16)
 - i. The outfall number; (3-24-16)
 - ii. The county and city or town in which the outfall is located; (3-24-16)
 - iii. The latitude and longitude, to the nearest second; and (3-24-16)
 - iv. The distance from shore and depth below surface; (3-24-16)
- d.** A statement whether the applicant monitored any of the following in the past year for a combined sewer overflow: (3-24-16)

- i. Rainfall; (3-24-16)
 - ii. Overflow volume; (3-24-16)
 - iii. Overflow pollutant concentrations; (3-24-16)
 - iv. Receiving water quality; (3-24-16)
 - v. Overflow frequency; and (3-24-16)
 - vi. The number of storm events monitored in the past year; (3-24-16)
 - e. Information regarding the number of combined sewer overflows from each outfall in the past year and, if available: (3-24-16)
 - i. The average duration per event; (3-24-16)
 - ii. The average volume for each event; and (3-24-16)
 - iii. The minimum rainfall that caused a combined sewer overflow event in the last year; (3-24-16)
 - f. The name of each receiving water; (3-24-16)
 - g. A description of any known water quality impact caused by the combined sewer overflow operations, including permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or the exceedance of any applicable state water quality standard, on the receiving water; and (3-24-16)
 - h. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility. (3-24-16)
- 16. Individual Permit Application Requirements for New Sources and New Discharges.** (3-24-16)
- a. An applicant for an IPDES permit for a new manufacturing, commercial, mining, silviculture, or other discharge, except for a new discharge from a facility subject to the requirements of Subsection 105.08 or a new discharge of storm water associated with industrial activity that is subject to the requirements of Subsection 105.19, except as provided by Subsection 105.19.c., shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04.b.: (3-24-16)
 - i. The latitude and longitude to the nearest second of the expected outfall location and the name of each receiving water; (3-24-16)
 - ii. The expected date the discharge will commence; (3-24-16)
 - iii. The following information on flows, sources of pollution, and treatment technologies: (3-24-16)
 - (1) A narrative describing the treatment that the wastewater will receive, identifying all operations contributing wastewater to the effluent, stating the average flow contributed by each operation, and describing the ultimate disposal of any solid or liquid wastes not discharged; (3-24-16)
 - (2) A line drawing of the water flow through the facility with a water balance as described in Subsection 105.07.b.; and (3-24-16)
 - (3) If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration, and maximum daily flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks; (3-24-16)

iv. If a new source performance standard promulgated under the Clean Water Act section 306 or an effluent limitation guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable calculation of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard, as required by Subsection 303.02.b., for each of the first three (3) years. The applicant may submit alternative estimates if production is likely to vary; (3-24-16)

v. The effluent characteristics information as described in Subsection 105.16.b.; (3-24-16)

vi. The existence of any technical evaluation concerning the applicant's wastewater treatment, along with the name and location of similar plants of which the applicant has knowledge; (3-24-16)

vii. Any optional information the permittee wishes the Department to consider. (3-24-16)

b. An applicant under this section must provide the following effluent characteristics information: (3-24-16)

i. Estimated daily maximum, daily average, and the source of that information for each outfall for the following pollutants or parameters: (3-24-16)

(1) Five (5)-day biochemical oxygen demand (BOD5); (3-24-16)

(2) Chemical oxygen demand (COD); (3-24-16)

(3) Total organic carbon (TOC); (3-24-16)

(4) Total suspended solids (TSS); (3-24-16)

(5) Flow; (3-24-16)

(6) Ammonia, as N; (3-24-16)

(7) Temperature, in both winter and summer; and (3-24-16)

(8) pH. (3-24-16)

ii. Estimated daily maximum, daily average, and the source of that information for each outfall for all the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122, if the applicant knows or has reason to believe any of the pollutants will be present or if any of the pollutants are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant; (3-24-16)

iii. Estimated daily maximum, daily average, and the source of that information for the following pollutants for each outfall, if the applicant knows or has reason to believe the pollutants will be present in the discharge from any outfall: (3-24-16)

(1) All pollutants in Table IV of Appendix D to 40 CFR Part 122; (3-24-16)

(2) The toxic metals, total cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122; (3-24-16)

(3) The organic toxic pollutants in Table II of Appendix D to 40 CFR Part 122 except bis (chloromethyl) ether, dichlorofluoromethane, and trichlorofluoromethane; however, this requirement is waived for: (3-24-16)

(a) An applicant with expected gross sales of less than two hundred eighty-seven thousand three hundred dollars (\$287,300) per year in 2014 dollars for the next three (3) years (see also Subsection 105.07.n.ii.); or (3-24-16)

(b) A coal mine with expected average production of less than one hundred thousand (100,000) tons of coal per year (see also Subsection 105.07.n.i.); (3-24-16)

iv. The information that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) may be discharged if the applicant uses or manufactures one (1) of the following compounds, or if the applicant knows or has reason to believe that TCDD will or may be present in an effluent: (3-24-16)

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); Chemical Abstract Service (CAS) #93-76-5; (3-24-16)

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1); (3-24-16)

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4); (3-24-16)

(4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnell) (CAS #299-84-3); (3-24-16)

(5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or (3-24-16)

(6) Hexachlorophene (HCP) (CAS #70-30-4); and (3-24-16)

v. The potential presence of any of the pollutants listed in Table V of Appendix D to 40 CFR Part 122 if the applicant believes these pollutants will be present in any outfall, except that quantitative estimates are not required unless they are already available at the time the applicant applies for the permit. (3-24-16)

c. No later than two (2) years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of EPA application Form 2C or the Department equivalent. The applicant need not complete those portions of Item V or the Department equivalent requiring tests already performed and reported under the discharge monitoring requirements of its permit. (3-24-16)

d. The effluent characteristics requirements in Subsections 105.08.b., c., and e. that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report that a pollutant is present. For purposes of this subsection, net credits may be provided for the presence of pollutants in intake water if the requirements of Subsection 303.07 are met, and (except for discharge flow, temperature, and pH) all levels must be estimated as concentration and as total mass. (3-24-16)

e. The Department may waive the reporting requirements for any of the pollutants and parameters in Subsection 105.16.b. if the applicant requests a waiver with its application, or earlier, and demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements. (3-24-16)

17. Individual Permit Application Requirements for Treatment Works Treating Domestic Sewage (TWTDS). All TWTDS with a currently effective NPDES or IPDES permit must submit a permit application at the time of the next IPDES permit renewal application, using Form 2S or another application form approved by the Department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Department. (3-24-16)

a. The Department may waive any requirement of this subsection if there is access to substantially identical information. The Department may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the EPA Regional Administrator. The waiver request to the Regional Administrator must include the Department's justification for the waiver. A Regional Administrator's disapproval of a Department's proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information. (3-24-16)

b. All applicants must submit the following information: (3-24-16)

- i. The name, mailing address, and location of the TWTDS for which the application is submitted; (3-24-16)
- ii. The name, mailing address, EIN, and telephone number of the applicant and indication whether the applicant is the owner, operator, or both; (3-24-16)
- iii. Whether the facility is a Class I Sludge Management Facility; (3-24-16)
- iv. The design flow rate in million gallons per day (MGD); (3-24-16)
- v. The total population ~~or~~ **and** equivalent dwelling units (EDU) served; and ~~(3-24-16)~~ ()
- vi. The TWTDS's status as federal, state, private, public, or other entity. (3-24-16)
- c.** All applicants must submit the facility's NPDES or IPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs: (3-24-16)
 - i. Hazardous waste management program under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; (3-24-16)
 - ii. Underground injection control (UIC) program under the Idaho Department of Water Resources UIC program at IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells"; (3-24-16)
 - iii. IPDES program under IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; (3-24-16)
 - iv. Prevention of significant deterioration (PSD) program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; (3-24-16)
 - v. Nonattainment program under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; (3-24-16)
 - vi. National emission standards for hazardous pollutants (NESHAPS) preconstruction approval under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; (3-24-16)
 - vii. Dredge or fill permits under the Clean Water Act section 404; (3-24-16)
 - viii. Sludge Management Program under IDAPA 58.01.16.650, "Wastewater Rules," and Section 380 (Sewage Sludge) of these rules; and (3-24-16)
 - ix. Other relevant environmental permits, programs or activities, including those subject to state jurisdiction, approval, and permits. (3-24-16)
- d.** All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country. (3-24-16)
- e.** All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one (1) mile beyond property boundaries of the facility and showing the following information: (3-24-16)
 - i. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and (3-24-16)
 - ii. Wells, springs, and other surface water bodies that are within one-quarter (¼) mile of the property boundaries and listed in public records or otherwise known to the applicant. (3-24-16)

f. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction. (3-24-16)

g. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in 40 CFR Part 503 for the applicant's use or disposal practices on the date of permit application. (3-24-16)

i. The Department may require sampling for additional pollutants, as appropriate, on a case-by-case basis; (3-24-16)

ii. Applicants must provide data from a minimum of three (3) samples taken within four and one-half (4 ½) years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one (1) month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application; (3-24-16)

iii. Applicants must collect and analyze samples in accordance with analytical methods approved under SW-846 (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods) unless an alternative has been specified in an existing sewage sludge permit; and (3-24-16)

iv. The monitoring data provided must include at least the following information for each parameter: (3-24-16)

(1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values; (3-24-16)

(2) The analytical method used; and (3-24-16)

(3) The method detection level. (3-24-16)

h. If the applicant is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge, the following information must be provided: (3-24-16)

i. If the applicant's facility generates sewage sludge, the total dry metric tons per three hundred sixty-five (365)-day period generated at the facility; (3-24-16)

ii. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received: (3-24-16)

(1) The name, mailing address, and location of the other facility; (3-24-16)

(2) The total dry metric tons per three hundred sixty-five (365)-day period received from the other facility; and (3-24-16)

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics; (3-24-16)

iii. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information must be submitted: (3-24-16)

(1) Whether the Class A pathogen reduction requirements in 40 CFR 503.32(a) or the Class B pathogen reduction requirements in 40 CFR 503.32(b) are met, and a description of any treatment processes used to reduce pathogens in sewage sludge; (3-24-16)

(2) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(1) through (b)(8) are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and (3-24-16)

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge; (3-24-16)

iv. If sewage sludge from the applicant's facility meets the ceiling concentrations in 40 CFR 503.13(b)(1), the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one (1) of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8), and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is applied to the land; (3-24-16)

v. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to Subsection 105.17.h.iv., the applicant must provide the following information: (3-24-16)

(1) The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and (3-24-16)

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away; and (3-24-16)

vi. If sewage sludge from the applicant's facility is provided to another person who generates sewage sludge during the treatment of domestic sewage in a treatment works or a person who derives a material from sewage sludge, and the sewage sludge is not subject to Subsection 105.17.h.iv., the applicant must provide the following information for each facility receiving the sewage sludge: (3-24-16)

(1) The name and mailing address of the receiving facility; (3-24-16)

(2) The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility; (3-24-16)

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic; (3-24-16)

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 40 CFR 503.12(g); and (3-24-16)

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge. (3-24-16)

i. If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to Subsection 105.17.h.iv., v., or vi., the applicant must provide the following information: (3-24-16)

i. The total dry metric tons per three hundred sixty-five (365)-day period of sewage sludge subject to this subsection that is applied to the land; (3-24-16)

ii. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located; (3-24-16)

iii. The following information for each land application site that has been identified at the time of permit application: (3-24-16)

(1) The name (if any), and location for the land application site; (3-24-16)

- (2) The site's latitude and longitude to the nearest second, and method of determination; (3-24-16)
 - (3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location; (3-24-16)
 - (4) The name, mailing address, and telephone number of the site owner, if different from the applicant; (3-24-16)
 - (5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant; (3-24-16)
 - (6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 40 CFR 503.11; (3-24-16)
 - (7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation; (3-24-16)
 - (8) Whether either of the vector attraction reduction options of 40 CFR 503.33(b)(9) or (b)(10) is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and (3-24-16)
 - (9) Other information that describes how the site will be managed, as specified by the permitting authority. (3-24-16)
- iv. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site: (3-24-16)
- (1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 40 CFR 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to 40 CFR 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority; (3-24-16)
 - (2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site since July 20, 1993, if, based on the inquiry in Subsection 105.17.i.iv.(1) bulk sewage sludge subject to cumulative pollutant loading rates in 40 CFR 503.13(b)(2) has been applied to the site since July 20, 1993; (3-24-16)
- v. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum: (3-24-16)
- (1) Describes the geographical area covered by the plan; (3-24-16)
 - (2) Identifies the site selection criteria; (3-24-16)
 - (3) Describes how the site(s) will be managed; (3-24-16)
 - (4) Provides for advance notice to the permit authority of specific land application sites and reasonable time for the permit authority to object prior to land application of the sewage sludge; and (3-24-16)
 - (5) Provides for advance public notice of land application sites in the manner prescribed by state and local law. When state or local law does not require advance public notice, it must be provided in a manner reasonably calculated to apprise the general public of the planned land application. (3-24-16)
- j. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information: (3-24-16)

- i. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per three hundred sixty-five (365)-day period; (3-24-16)
- ii. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate: (3-24-16)
 - (1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and (3-24-16)
 - (2) The total dry metric tons from the applicant's facility per three hundred sixty-five (365)-day period placed on the surface disposal site; (3-24-16)
- iii. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates: (3-24-16)
 - (1) The name or number and the location of the active sewage sludge unit; (3-24-16)
 - (2) The unit's latitude and longitude to the nearest second, and method of determination; (3-24-16)
 - (3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location; (3-24-16)
 - (4) The total dry metric tons placed on the active sewage sludge unit per three hundred sixty-five (365)-day period; (3-24-16)
 - (5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit; (3-24-16)
 - (6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec; (3-24-16)
 - (7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal; (3-24-16)
 - (8) If the active sewage sludge unit is less than one hundred fifty (150) meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line; (3-24-16)
 - (9) The remaining capacity (dry metric tons) for the active sewage sludge unit; (3-24-16)
 - (10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified; (3-24-16)
 - (11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit: (3-24-16)
 - (a) The name, contact person, and mailing address of the facility; and (3-24-16)
 - (b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics; (3-24-16)
 - (12) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(9) through (b)(11) is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge; (3-24-16)
 - (13) The following information, as applicable to any ground water monitoring occurring at the active sewage sludge unit: (3-24-16)
 - (a) A description of any ground water monitoring occurring at the active sewage sludge unit; (3-24-16)

- (b) Any available ground water monitoring data, with a description of the well locations and approximate depth to ground water; (3-24-16)
- (c) A copy of any ground water monitoring plan that has been prepared for the active sewage sludge unit; and (3-24-16)
- (d) A copy of any certification that has been obtained from a qualified ground water scientist that the aquifer has not been contaminated; and (3-24-16)
- (14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request. (3-24-16)
- k.** If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information: (3-24-16)
- i. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per three hundred sixty-five (365)-day period; (3-24-16)
- ii. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate: (3-24-16)
- (1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and (3-24-16)
- (2) The total dry metric tons from the applicant's facility per three hundred sixty-five (365)-day period fired in the sewage sludge incinerator; (3-24-16)
- iii. The following information for each sewage sludge incinerator that the applicant owns or operates: (3-24-16)
- (1) The name and/or number and the location of the sewage sludge incinerator; (3-24-16)
- (2) The incinerator's latitude and longitude to the nearest second, and method of determination; (3-24-16)
- (3) The total dry metric tons per three hundred sixty-five (365)-day period fired in the sewage sludge incinerator; (3-24-16)
- (4) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Beryllium in 40 CFR Part 61 will be achieved; (3-24-16)
- (5) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Mercury in 40 CFR Part 61 will be achieved; (3-24-16)
- (6) The dispersion factor for the sewage sludge incinerator, as well as modeling results and supporting documentation; (3-24-16)
- (7) The control efficiency for parameters regulated in 40 CFR 503.43, as well as performance test results and supporting documentation; (3-24-16)
- (8) Information used to calculate the risk specific concentration (RSC) for chromium, including the results of incinerator stack tests for hexavalent and total chromium concentrations, if the applicant is requesting a chromium limit based on a site-specific RSC value; (3-24-16)
- (9) Whether the applicant monitors total hydrocarbons (THC) or Carbon Monoxide (CO) in the exit gas for the sewage sludge incinerator; (3-24-16)

- (10) The type of sewage sludge incinerator; (3-24-16)
- (11) The maximum performance test combustion temperature, as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies; (3-24-16)
- (12) The following information on the sewage sludge feed rate used during the performance test: (3-24-16)
 - (a) Sewage sludge feed rate in dry metric tons per day; (3-24-16)
 - (b) Identification of whether the feed rate submitted is average use or maximum design; and (3-24-16)
 - (c) A description of how the feed rate was calculated; (3-24-16)
- (13) The incinerator stack height in meters for each stack, including identification of whether actual or creditable stack height was used; (3-24-16)
- (14) The operating parameters for the sewage sludge incinerator air pollution control device(s), as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies; (3-24-16)
- (15) Identification of the monitoring equipment in place, including (but not limited to) equipment to monitor the following: (3-24-16)
 - (a) Total hydrocarbons or Carbon Monoxide; (3-24-16)
 - (b) Percent Oxygen; (3-24-16)
 - (c) Percent moisture; and (3-24-16)
 - (d) Combustion temperature; and (3-24-16)
- (16) A list of all air pollution control equipment used with this sewage sludge incinerator. (3-24-16)
- l.** If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent: (3-24-16)
 - i. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF; (3-24-16)
 - ii. The total dry metric tons per three hundred sixty-five (365)-day period sent from this facility to the MSWLF; (3-24-16)
 - iii. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and (3-24-16)
 - iv. Information, if known, indicating whether the MSWLF complies with criteria set forth in 40 CFR Part 258. (3-24-16)
- m.** All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal. (3-24-16)
- n.** At the request of the Department, the applicant must provide any other information necessary to determine the appropriate standards for permitting under 40 CFR Part 503, and must provide any other information

necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements. (3-24-16)

o. TWTDS facilities using or disposing of sewage sludge to which a standard applicable to its sewage sludge use or disposal practices have been published shall submit the following information on EPA Form 2S, Part I, or on the Department equivalent form: (3-24-16)

i. The TWTDS's name, mailing address, location, and status as federal, state, private, public, or other entity; (3-24-16)

ii. The applicant's name, address, telephone number, and ownership status; (3-24-16)

iii. A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of Subsection 105.17.h.iv., the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites; (3-24-16)

iv. Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and (3-24-16)

v. The most recent data the TWTDS may have on the quality of the sewage sludge. (3-24-16)

18. Individual Permit Application Requirements for Municipal Separate Storm Sewer Discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Department under 40 CFR 122.26(a)(1)(v), may submit a jurisdiction-wide or system-wide permit application. Where more than one (1) public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under 40 CFR 122.26 (a)(1)(v) shall include: (3-24-16)

a. Part 1 of the application shall consist of: (3-24-16)

i. The applicants' name, address, EIN, telephone number of contact person, ownership status and status as a state or local government entity; (3-24-16)

ii. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in Subsection 105.18.b.i., the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria; (3-24-16)

iii. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any POTW serving the same area as the municipal separate storm sewer system. The following information shall be provided: (3-24-16)

(1) A USGS seven point five (7.5) minute topographic map (or equivalent topographic map with a scale between one to ten thousand (1:10,000) and one to twenty-four thousand (1:24,000) if cost effective) extending one (1) mile beyond the service boundaries of the municipal storm sewer system covered by the permit application; (3-24-16)

(2) The location of known municipal storm sewer system outfalls discharging to waters of the United States; (3-24-16)

(3) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten (10) year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided; (3-24-16)

- (4) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste; (3-24-16)
- (5) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES or IPDES permit; (3-24-16)
- (6) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and (3-24-16)
- (7) The identification of publicly owned parks, recreational areas, and other open lands. (3-24-16)
- iv. A description of the discharge including: (3-24-16)
- (1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events; (3-24-16)
- (2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used; (3-24-16)
- (3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been: (3-24-16)
 - (a) Assessed and reported in the Clean Water Act section 305(b) reports submitted by the Department, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act goals (fishable and swimmable waters), and causes of nonsupport of designated uses; (3-24-16)
 - (b) Listed under the Clean Water Act section 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) that is not expected to meet water quality standards or water quality goals; (3-24-16)
 - (c) Listed in state Nonpoint Source Assessments required by the Clean Water Act section 319(a), without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards); (3-24-16)
 - (d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under the Clean Water Act section 314(a) (include the following: A description of those publicly owned lakes for which uses are known to be impaired, a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes, and a description of methods and procedures to restore the quality of such lakes); (3-24-16)
 - (e) Recognized by the applicant as highly valued or sensitive waters; (3-24-16)
 - (f) Defined by the state as wetlands; and (3-24-16)
 - (g) Found to have pollutants in bottom sediments, fish tissue, or biosurvey data. (3-24-16)
- (4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two (2) grab samples shall be collected during a twenty-four (24)-hour period with a minimum period of four (4) hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In

addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria: (3-24-16)

(a) A grid system consisting of perpendicular north-south and east-west lines spaced one-quarter ($\frac{1}{4}$) mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells; (3-24-16)

(b) All cells that contain a segment of the storm sewer system shall be identified; one (1) field screening point shall be selected in each cell; major outfalls may be used as field screening points; (3-24-16)

(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity; (3-24-16)

(d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination; (3-24-16)

(e) Hydrological conditions, total drainage area of the site, population density of the site, traffic density, age of the structures or buildings in the area, history of the area, and land use types; (3-24-16)

(f) For medium municipal separate storm sewer systems, no more than two hundred fifty (250) cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than five hundred (500) cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than two hundred fifty (250) cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and (3-24-16)

(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in Subsection 105.18.a.iv.(4)(a) through (f), because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than five hundred (500) or two hundred fifty (250) major outfalls respectively (or all major outfalls in the system, if less). In such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced one-quarter ($\frac{1}{4}$) mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells. The applicant will then select major outfalls in as many cells as possible until at least five hundred (500) major outfalls (large municipalities) or two hundred fifty (250) major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls; and (3-24-16)

(5) Information and a proposed program to meet the requirements of Subsection 105.18.b.iii., which shall include: the location of outfalls or field screening points appropriate for representative data collection under Subsection 105.18.b.iii.(1), a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see Subsection 105.18.a.iv.(3)) to the extent practicable; (3-24-16)

v. A description of the existing management programs to control pollutants from the municipal separate storm sewer system, which shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls that are currently being implemented. Such controls may include, but are not limited to: procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements; (3-24-16)

vi. A description of the existing program to identify illicit connections to the municipal storm sewer system, which should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented; and (3-24-16)

vii. A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs. (3-24-16)

b. Part 2 of the application shall consist of: (3-24-16)

i. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance, or series of contracts which authorizes or enables the applicant at a minimum to: (3-24-16)

(1) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity; (3-24-16)

(2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer; (3-24-16)

(3) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water; (3-24-16)

(4) Control through interagency agreements among co-applicants the contribution of pollutants from a portion of the municipal system to another portion of the municipal system; (3-24-16)

(5) Require compliance with conditions in ordinances, permits, contracts or orders; and (3-24-16)

(6) Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer. (3-24-16)

ii. The location of any major outfall that discharges to waters of the United States that was not reported under Subsection 105.18.a.iii.(2). Provide an inventory, organized by watershed of the name and address, and a description (such as Standard Industrial Classification (SIC) codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity; (3-24-16)

iii. When quantitative data for a pollutant are required under Subsection 105.18.b.iii.(1)(c), the applicant must collect a sample of effluent in accordance with Subsection 105.07.c. through 105.07.m. and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including: (3-24-16)

(1) Quantitative data from representative outfalls designated by the Department developed as follows (based on information received in part 1 of the application. The Department shall designate between five (5) and ten (10) outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five (5) outfalls covered in the application, the Department shall designate all outfalls): (3-24-16)

(a) For each outfall or field screening point designated under this subsection, samples shall be collected of storm water discharges from three (3) storm events occurring at least one (1) month apart in accordance with the requirements at Subsection 105.07.c. through 105.07.m. (the Department may allow exemptions to sampling three (3) storm events when climatic conditions create good cause for such exemptions); (3-24-16)

(b) A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event; (3-24-16)

(c) For samples collected and described under Subsections 105.18.b.iii.(1)(a) and (b), quantitative data shall be provided for the organic pollutants listed in Table II and the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of Appendix D of 40 CFR Part 122, and for the following pollutants: (3-24-16)

- (i) Total suspended solids (TSS); (3-24-16)
- (ii) Total dissolved solids (TDS); (3-24-16)
- (iii) Chemical oxygen demand (COD); (3-24-16)
- (iv) Five (5)-day biochemical oxygen demand (BOD5); (3-24-16)
- (v) Oil and grease; (3-24-16)
- (vi) Fecal coliform; (3-24-16)
- (vii) Fecal streptococcus; (3-24-16)
- (viii) pH; (3-24-16)
- (ix) Total Kjeldahl nitrogen; (3-24-16)
- (x) Nitrate plus nitrite; (3-24-16)
- (xi) Total ammonia plus organic nitrogen; (3-24-16)
- (xii) Dissolved phosphorus; and (3-24-16)
- (xiii) Total phosphorus; (3-24-16)

(d) Additional limited quantitative data required by the Department for determining permit conditions (the Department may require that quantitative data be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness); (3-24-16)

(2) Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls during a storm event for BOD5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods; (3-24-16)

(3) A proposed schedule to provide estimates for each major outfall identified in either Subsection 105.18.b.ii. or 105.18.a.iii.(2) of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under Subsection 105.18.b.iii.(1); and (3-24-16)

(4) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment; (3-24-16)

- iv. A proposed management program covering the duration of the permit, which shall include a

comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each co-applicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Department when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on: (3-24-16)

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include: (3-24-16)

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers; (3-24-16)

(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed (controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in Subsection 105.18.b.iv.(4)); (3-24-16)

(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities; (3-24-16)

(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible; (3-24-16)

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage, or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under Subsection 105.18.b.iv.(3)); and (3-24-16)

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities; (3-24-16)

(2) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate IPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include: (3-24-16)

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system. This program description shall address all types of illicit discharges; however, the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined in Section 010) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall

address discharges or flows from firefighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States); (3-24-16)

(b) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens; (3-24-16)

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation); (3-24-16)

(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer; (3-24-16)

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers; (3-24-16)

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and (3-24-16)

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary; (3-24-16)

(3) A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall: (3-24-16)

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges; and (3-24-16)

(b) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in Subsection 105.18.b.iv.(3), to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES or IPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under Subsections 105.07.j. through l.; (3-24-16)

(4) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include: (3-24-16)

(a) A description of procedures for site planning which incorporate consideration of potential water quality impacts; (3-24-16)

(b) A description of requirements for nonstructural and structural best management practices; (3-24-16)

(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and (3-24-16)

- (d) A description of appropriate educational and training measures for construction site operators; (3-24-16)
- v. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water; (3-24-16)
- vi. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under Subsections 105.18.b.iii. and iv. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds; (3-24-16)
- vii. Where more than one (1) legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and (3-24-16)
- viii. Where requirements under Subsections 105.18.a.iv.(5), 105.18.b.ii., 105.18.b.iii.(2), and 105.18.b.iv. are not practicable or are not applicable, the Department may exclude any operator of a discharge from a municipal separate storm sewer which is designated under 40 CFR 122.26(a)(1)(v), (b)(4)(ii) or (b)(7)(ii) from such requirements. The Department shall not exclude the operator of a discharge from a municipal separate storm sewer identified in Appendix F, G, H or I of 40 CFR Part 122, from any of the permit application requirements under this subsection except where authorized under this section. (3-24-16)

19. Individual Permit Application Requirements for Industrial and Construction Storm Water Discharges. Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity. (3-24-16)

a. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit or any discharge of storm water which the Department is evaluating for designation (see Section 130, General Permits) under 40 CFR 122.26(a)(1)(v) and is not a municipal storm sewer, shall submit an IPDES application in accordance with the requirements of Section 105 (Application for an Individual IPDES Permit) as modified and consistent with this subsection. (3-24-16)

b. Except as provided in Subsections 105.19.c. through e., the operator of a storm water discharge associated with industrial activity subject to this section shall provide: (3-24-16)

i. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: (3-24-16)

(1) Each of its drainage and discharge structures; (3-24-16)

(2) The drainage area of each storm water outfall; (3-24-16)

(3) Paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a Resource Conservation and Recovery Act permit which is used for accumulating hazardous waste under 40 CFR 262.34); (3-24-16)

(4) Each well where fluids from the facility are injected underground; and (3-24-16)

(5) Springs, and other surface water bodies which receive storm water discharges from the facility; (3-24-16)

- ii. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: (3-24-16)
- (1) Significant materials that in the three (3) years prior to the submittal of this application have been treated, stored, or disposed in a manner to allow exposure to storm water; (3-24-16)
- (2) Method of treatment, storage or disposal of such materials; materials management practices employed, in the three (3) years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; (3-24-16)
- (3) Materials loading and access areas; (3-24-16)
- (4) The location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; (3-24-16)
- (5) The location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and (3-24-16)
- (6) A description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; (3-24-16)
- iii. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by an IPDES permit. Tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test; (3-24-16)
- iv. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three (3) years prior to the submittal of this application; (3-24-16)
- v. Quantitative data based on samples collected during storm events and collected in accordance with Subsection 105.07 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters: (3-24-16)
- (1) Any pollutant limited in an effluent guideline to which the facility is subject; (3-24-16)
- (2) Any pollutant listed in the facility's NPDES or IPDES permit for its process wastewater (if the facility is operating under an existing NPDES or IPDES permit); (3-24-16)
- (3) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen; (3-24-16)
- (4) Any information on the discharge required under Subsections 105.07.j. through l.; (3-24-16)
- (5) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and (3-24-16)
- (6) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration (in hours) between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event; (3-24-16)
- vi. Operators of a discharge which is composed entirely of storm water are exempt from the requirements of Subsections 105.07.b., 105.07.a.i.(2) through 105.07.a.i.(5), 105.07.a.ii., 105.07.a.iii., 105.07.g., 105.07.h., 105.07.i., and 105.07.m.; and (3-24-16)
- vii. Operators of new sources or new discharges (as defined in Section 010, Definitions) which are

composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in Subsection 105.19.b.v. instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in Subsection 105.19.b.v. within two (2) years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the IPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of Subsections 105.16.a.iii.(2), 105.16.a.iii.(3), and 105.16.b. (3-24-16)

c. An operator of an existing or new storm water discharge that is associated with industrial activity solely under 40 CFR 122.26(b)(14)(x) or is associated with small construction activity solely under 40 CFR 122.26(b)(15), is exempt from the requirements of Subsection 105.07 and Subsection 105.19.b. Such operator shall provide a narrative description of: (3-24-16)

i. The location (including a map) and the nature of the construction activity; (3-24-16)

ii. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit; (3-24-16)

iii. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements; (3-24-16)

iv. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements; (3-24-16)

v. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and (3-24-16)

vi. The name of the receiving water. (3-24-16)

d. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with Subsection 105.19.b., unless the facility: (3-24-16)

i. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987; or (3-24-16)

ii. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or (3-24-16)

iii. Contributes to a violation of a water quality standard. (3-24-16)

e. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations. (3-24-16)

f. Applicants shall provide such other information the Department may reasonably require under Subsection 105.07.o. to determine whether to issue a permit and may require any facility subject to Subsection 105.19.c. to comply with Subsection 105.19.b. (3-24-16)

(BREAK IN CONTINUITY OF SECTIONS)

109. PUBLIC NOTIFICATION AND COMMENT.

- 01. Public Notification.** (3-24-16)
- a.** The Department will give notice to the public that: (3-24-16)
- i.** A draft permit has been prepared under Subsection 108.01; (3-24-16)
- ii.** The Department intends to deny a permit application under Subsection 107.01; (3-24-16)
- iii.** A public meeting is scheduled; or (3-24-16)
- iv.** An IPDES new source determination has been made. (3-24-16)
- b.** A public notice may describe more than one (1) permit or permit action. (3-24-16)
- c.** The Department will allow at least thirty (30) days for public comment on the items in the notice, and will provide at least thirty (30) days' notice before the public meeting. Notice of the draft permit and the meeting may be combined and given at the same time. (3-24-16)
- d.** Public notice that a draft permit has been prepared, and any public meeting on the draft permit must be given by the following methods: (3-24-16)
- i.** By mailing a copy of the notice to the following persons, unless any person entitled to receive notice under this subsection waives that person's right to receive notice for any classes and categories of permits: (3-24-16)
- (1)** The applicant, unless there is no applicant for an IPDES general permit; (3-24-16)
- (2)** Any other agency (including EPA when the draft permit is prepared by the state) that the Department knows has issued or is required to issue a permit for the same facility or activity under the following laws and programs: (3-24-16)
- (a)** Resource Conservation and Recovery Act, under IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; (3-24-16)
- (b)** Underground Injection Control (UIC) Program under Idaho Department of Water Resources as authorized under Idaho Code Title 42 Chapter 39 and regulated under IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells"; (3-24-16)
- (c)** Clean Air Act, under IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; (3-24-16)
- (d)** Idaho Pollution Discharge Elimination System Program, under IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program"; or (3-24-16)
- (e)** Sludge Management Program, under IDAPA 58.01.16.650, "Wastewater Rules"; and (3-24-16)
- (f)** Dredge and Fill Permit Program (Clean Water Act section 404); (3-24-16)
- (3)** Affected federal and state agencies with jurisdiction over fish, shellfish, wildlife, and other natural resources, state historic preservation officers, and any affected Indian tribe; (3-24-16)
- (4)** Any state agency responsible for plan development under the Clean Water Act sections 208(b)(2), 208(b)(4), or 303(e), and the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and the National Marine Fisheries Service; (3-24-16)

- (5) Any user identified in the permit application of a privately owned treatment works; (3-24-16)
- (6) Persons on a mailing list developed by: (3-24-16)
 - (a) Recording those who request in writing to be on the list; (3-24-16)
 - (b) Soliciting persons for area lists from participants in past permit proceedings in that area; and (3-24-16)
 - (c) Publishing notice of the opportunity to be on the mailing list on the Department's website and through periodic publication in the local press and in regional and state-funded newsletters, environmental bulletins, state law journals or similar publications. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed, and may delete from the list the name of any person who fails to respond to the Department's request; (3-24-16)
- (7) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and (3-24-16)
- (8) Each state agency having any authority under state law with respect to the construction or operation of the facility; (3-24-16)
 - ii. For a major facility permit, a general permit, and a permit that includes sewage sludge land application plans, by publishing a notice in a daily or weekly newspaper within the area affected by the facility or activity; and (3-24-16)
 - iii. By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or use of any other forum or media to elicit public participation. (3-24-16)
- e. A public notice issued under this subsection must contain at least the following information: (3-24-16)
 - i. Name and address of the office processing the permit action for which notice is being given and where comments may be submitted; (3-24-16)
 - ii. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of IPDES draft general permits; (3-24-16)
 - iii. A brief description of the business conducted at the facility or activity described in the permit application, or for general permits when there is no application, in the draft permit; (3-24-16)
 - iv. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, fact sheet, and the application; (3-24-16)
 - v. A brief description of the comment and public meeting procedures required by this subsection and the time and place of any meeting that will be held; if no meeting has already been scheduled, a statement of procedures to request a meeting and other procedures by which the public may participate in the final permit decision; (3-24-16)
 - vi. A general description of the location of each existing or proposed discharge point and the name of the receiving water; (3-24-16)
 - vii. The sludge use and disposal practices and the location of each sludge TWTDS and use or disposal sites known at the time of permit application; (3-24-16)
 - viii. A description of requirements applicable to cooling water intake structures under the Clean Water

Act section 316(b), in accordance with 40 CFR 125.80 through 89, 125.90 through 99, and 125.130 through 139; and (3-24-16)

ix. Directions to the Department's website where interested parties can obtain copies of the draft permit, fact sheet, and the permit application, if any; and (3-24-16)

f. In addition to the information required by Subsection 109.01.e., the public notice for a draft permit for a discharge for which a request has been filed under the Clean Water Act section 316(a) must include: (3-24-16)

i. A statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act sections 301 or 306, and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under the Clean Water Act sections 301 or 306; (3-24-16)

ii. A statement that a request has been filed under the Clean Water Act section 316(a), that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the Clean Water Act section 316(a), and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and (3-24-16)

iii. If the applicant has filed an early screening request under 40 CFR 125.72 for a variance under the Clean Water Act section 316(a), a statement that the applicant has submitted that early screening request. (3-24-16)

g. In addition to the general public notice described in Subsection 109.01.e., the public notice of a meeting under this section must contain the following information: (3-24-16)

i. Reference to the date of previous public notices relating to the permit; (3-24-16)

ii. Date, time, and place of the meeting; and (3-24-16)

iii. A brief description of the nature and purpose of the meeting, including the applicable rules and procedures. (3-24-16)

h. The Department shall mail a copy of the general public notice described in Subsection 109.01.e. to all persons identified in Subsections 109.01.d.i.(1), (2), (3), and (4). (3-24-16)

i. The Department will hold a public meeting whenever the Department finds, on the basis of requests, a significant degree of public interest in a draft permit. The Department may also hold a public meeting if a meeting might clarify one (1) or more issues involved in the permit decision or for other good reason in the Department's discretion. (3-24-16)

02. Public Comment. (3-24-16)

a. During the public comment period, any interested person may submit written comments on the draft permit. Written comments shall be submitted to the person identified in the notice and as specified in Subsection 109.01.e. (3-24-16)

b. During the public comment period, any interested person may request a public meeting if no public meeting has been scheduled. ~~A request for a public meeting shall be in writing and must be submitted to the Department within fourteen (14) days after the date of the public notice required by Subsection 109.01.~~ The Department shall schedule and hold a public meeting if the Department determines that significant public interest exists in the draft permit. (3-24-16)()

i. A request for a public meeting shall be in writing and must be submitted to the Department within fourteen (14) days after the date of the public notice required by Subsection 109.01. ()

ii. If a public meeting is held for the purpose of receiving comments, the Department will make an audio recording or hire a court reporter to record the meeting and shall prepare a transcript of the meeting if an appeal is filed. ()

c. If, during the comment period for an IPDES draft permit, the district engineer of the United States Army Corps of Engineers advises the Department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the Department will deny the permit and notify the applicant of the denial. If the district engineer advises the Department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, the Department will include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer must be sought through the applicable procedures of the United States Army Corps of Engineers and not through the state procedures. If a court of competent jurisdiction stays the conditions or if applicable procedures of the United States Army Corps of Engineers result in a stay of the conditions, those conditions must be considered stayed in the IPDES permit for the duration of the stay. (3-24-16)

d. If, during the comment period for an IPDES draft permit, the United States Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Department may include the specified conditions in the permit to the extent the Department determines they are necessary to comply with the provisions of the Clean Water Act. (3-24-16)

e. In some cases, the Department may confer with one (1) or more of the agencies referred to in Subsections 109.02.c. and 109.02.d. before issuing a draft permit and may set out an agency's view in the fact sheet or the draft permit. (3-24-16)

f. The Department will consider all comments in making the final decision and will answer the comments as provided in this subsection. (3-24-16)

g. Requests for extending a public comment period must be received in writing by the Department prior to the last day of the comment period. (3-24-16)

h. After the close of the public comment period and prior to the issuance of the final permit decision, the Department shall afford the permit applicant an opportunity to provide additional information to respond to public comments. In addition, in order to respond to comments, the Department may request the applicant provide additional information. (3-24-16)

03. Response to Comments. When the Department issues a final permit, the Department will issue a response to comments, which must be available to the public. The response must: (3-24-16)

a. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and (3-24-16)

b. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any meeting. (3-24-16)

110. FEE SCHEDULE FOR IPDES PERMITTED FACILITIES.

01. Effective Date. Annual fees shall be paid for each fee year beginning one (1) year after the effective date of the IPDES program for the affected category of discharger and continuing for each succeeding year. (3-24-16)

02. Fee Schedule. (3-24-16)

a. Publicly and privately owned treatment works, and any other discharger designated by the Department (Subsection 105.11.a.), shall pay an annual fee based on the number of equivalent dwelling units (EDUs) as defined in Section 010 (Definitions). The rate fee shall be \$1.74 per EDU. The Department will calculate EDUs and the appropriate annual fee will be calculated by the following: (3-24-16)()

i. Using the most recent Census Bureau statistics for estimates of the population served and the

~~average number of people in a household~~ The Department calculates facility EDUs according to the definition of EDUs in Section 010; or ~~(3-24-16)()~~

- ii. Existing facilities may annually report to the Department the number of EDUs served, ~~annually~~; or ~~(3-24-16)()~~
- iii. New facilities may report to the Department the number of EDUs to be served, based on the facility planning design as part of the IPDES permit application. (3-24-16)
- b. All other permitted IPDES dischargers shall pay an annual fee, an application fee, or both according to the following schedule:

Permit Type	Application	Annual
Industrial Permits		
Major	\$0	\$13,000
Minor	\$0	\$4,000
Storm Water Permits		
Construction (CGP)		
1-10 acres	\$200	\$0
10-50 acres	\$400	\$75
50-100 acres	\$750	\$100
100-500 acres	\$1,000	\$400
>500 acres	\$1,250	\$400
Low Erosivity Waiver (CGP)	\$125	\$0
Industrial (MSGP) Permits	\$1,500	\$1,000
Cert. of No Exposure (MSGP)	\$250	\$100
Other General Permits	\$0	\$0

(3-24-16)

03. Fee Assessment.

(3-24-16)

- a. An annual fee assessment will be generated for each IPDES-permitted facility for which an annual fee is required as set forth in Subsection 110.02. Annual fees will be determined based on the twelve (12) months between October 1 and September 30 of the following calendar year. (3-24-16)
- b. Application Fees and Annual Fees: (3-24-16)
- i. Application fees, as identified in Subsection 110.02.b., are assessed at the time of application for coverage under an individual permit, or notice of intent for coverage under a general permit. (3-24-16)
- ii. Owners or operators of multi-year storm water facilities or construction projects are subject to annual fees that will be assessed in the year (October through September) immediately following the receipt of the application or notice of intent for coverage. (3-24-16)
- c. Assessment of annual fees will consider the number of months a permittee was covered under either a general or an individual permit in a given year (October through September of the following calendar year). If the permittee was covered for less than a full twelve (12) months, the assessed fee shall be pro-rated to account for

less than a full year's coverage under the permit. (3-24-16)

04. Billing. For those permitted facilities subject to an annual fee, the annual fee shall be assessed and a statement will be mailed by the Department on or before July 1 of each year. (3-24-16)

05. Payment. (3-24-16)

a. Payment of the annual fee shall be due on October 1, unless it is a Saturday, Sunday, or legal holiday, in which event the payment shall be due on the successive business day. Fees paid by check or money order shall be made payable to the Idaho Department of Environmental Quality and sent to 1410 North Hilton Street, Boise, ID 83706-1255. (3-24-16)

b. If a POTW serves five hundred seventy-five (575) EDUs or more, the facility may request to divide its annual fee payment into equal monthly or quarterly installments by submitting a request to the Department on the proper request form provided with the initial billing statement. (3-24-16)

i. The Department will notify an applicable POTW, in writing, of approval or denial of a requested monthly or quarterly installment plan within ten (10) business days of the Department receiving such a request. (3-24-16)

ii. If a POTW has been approved to pay monthly installments then each installment shall be due by the first day of each month, unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment shall be due on the successive business day. (3-24-16)

iii. If a POTW has been approved to pay quarterly installments then each installment shall be due by the first day of the month of each quarter (October 1, January 1, April 1, and July 1), unless it is a Saturday, a Sunday, or a legal holiday, in which event the installment shall be due on the first successive business day. (3-24-16)

c. Payment of the application fee is due with the application for an individual permit or notice of intent for coverage under a general permit. (3-24-16)

06. Delinquent Unpaid Fees. A permittee covered under either a general permit or an individual permit will be delinquent in payment if the annual fee assessed has not been received by the Department by November 1; or if having first opted to pay monthly or quarterly installments, its monthly or quarterly installment has not been received by the Department by the last day of the month in which the monthly or quarterly payment is due. (3-24-16)

07. Suspension of Services and Disapproval Designation. (3-24-16)

a. For any permittee delinquent in payment of fee assessed under Subsections 110.02 and 110.06 in excess of ninety (90) days, technical services provided by the Department shall be suspended. The permittee will be informed of the fee delinquency in a warning letter, which shall identify administrative enforcement actions the Department may pursue if the permittee does not comply with the terms of the permit. (3-24-16)

b. For any permittee delinquent in payment of fee assessed under Subsections 110.02 and 110.06, in excess of one hundred and eighty (180) days, the Department shall suspend all technical services provided by the Department and consider the permittee in non-compliance with permit conditions and these rules, and subject to provisions described in Section 500 (Enforcement) of these rules. (3-24-16)

08. Reinstatement of Suspended Services and Approval Status. For any permittee for which delinquency of fee payment pursuant to Subsection 110.07 has resulted in the suspension of technical services, determination of non-compliance of permit condition, or both, the continuation of technical services, determination of compliance based on payment of fee, or both will occur upon payment of delinquent annual fee assessments. (3-24-16)

09. Enforcement Action. Nothing in Section 110 (Fee Schedule for IPDES Permitted Facilities) waives the Department's right to undertake a non-fee related enforcement action at any time, including seeking

penalties, as provided in Sections 39-108, 39-109, and 39-117, Idaho Code. (3-24-16)

10. Responsibility to Comply. Subsection 110.07 shall in no way relieve any permittee from its obligation to comply with all applicable state and federal statutes, rules, regulations, permits, or orders. (3-24-16)

(BREAK IN CONTINUITY OF SECTIONS)

130. GENERAL PERMITS.

01. Coverage. The Department may issue a general permit in accordance with the following: (3-24-16)

a. Within a geographic area, the general permit shall be written to cover one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under Subsection 130.01.b.ii., except those covered by individual permits within a geographic area. The area should correspond to existing geographic or political boundaries such as: (3-24-16)

- i. Designated planning areas under the Clean Water Act sections 208 and 303; (3-24-16)
- ii. Sewer districts or sewer authorities; (3-24-16)
- iii. City, county, or state political boundaries; (3-24-16)
- iv. State highway systems; (3-24-16)
- v. Standard metropolitan statistical areas as defined by state or federal agencies; (3-24-16)
- vi. Urbanized areas as designated by the U.S. Census Bureau; or (3-24-16)
- vii. Any other appropriate division or combination of boundaries. (3-24-16)

b. The general permit may be written to regulate one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in Subsection 130.01.a., where the sources within a covered subcategory of discharges are either: (3-24-16)

- i. Storm water point sources; or (3-24-16)
- ii. One (1) or more categories or subcategories of point sources other than storm water point sources or TWTDS, if the point sources or TWTDS within each category or subcategory all: (3-24-16)
 - (1) Involve the same or substantially similar types of operations; (3-24-16)
 - (2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices; (3-24-16)
 - (3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal; (3-24-16)
 - (4) Require the same or similar monitoring; and (3-24-16)
 - (5) In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits. (3-24-16)

c. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to Section 302 (Establishing Permit Provisions), the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations. (3-24-16)

- d. Other requirements: (3-24-16)
- i. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or TWTDS covered by the permit; and (3-24-16)
- ii. The general permit may exclude specified sources or areas from coverage. (3-24-16)
- iii. For general permits issued under Subsection 130.01.b. for small MS4s, the Department must establish the terms and conditions necessary to meet the requirements of 40 CFR 122.34 using one (1) of the two (2) permitting approaches described in Subsections 130.01.d.iii.(1) and (2). The Department must indicate in the permit or fact sheet which approach is being used. ()
- (1) Comprehensive general permit. The Department includes all required permit terms and conditions in the general permit; or ()
- (2) Two-step general permit. The Department includes required permit terms and conditions in the general permit applicable to all eligible small MS4s and, during the process of authorizing small MS4s to discharge, establishes additional terms and conditions not included in the general permit to satisfy one (1) or more of the permit requirements in 40 CFR 122.34 for individual small MS4 operators. ()
- (a) The general permit must require that any small MS4 operator seeking authorization to discharge under the general permit submit a Notice of Intent (NOI) consisting of the minimum required information in Subsection 130.05.b., and any other information the Director identifies as necessary to establish additional terms and conditions that satisfy the permit requirements of 40 CFR 122.34, such as the information required under Subsection 130.05.b. The general permit will explain any other steps necessary to obtain permit authorization. ()
- (b) The Department must review the NOI submitted by the small MS4 operator to determine whether the information in the NOI is complete and to establish the additional terms and conditions necessary to meet the requirements of 40 CFR 122.34. The Department may require the small MS4 operator to submit additional information. If the Department makes a preliminary decision to authorize the small MS4 operator to discharge under the general permit, the Department must give the public notice of and opportunity to comment and request a public meeting on its proposed authorization and the NOI, the proposed additional terms and conditions, and the basis for these additional requirements. The public notice, the process for submitting public comments and meeting requests, and the meeting process if a request for a meeting is granted, must follow the procedures applicable to draft permits set forth in Sections 108 and 109 except Subsection 109.01.d. The Department must respond to significant comments received during the comment period as provided in Subsection 109.03. ()
- (c) Upon authorization for the MS4 to discharge under the general permit, the final additional terms and conditions applicable to the MS4 operator become effective. The Department must notify the permittee and inform the public of the decision to authorize the MS4 to discharge under the general permit and of the final additional terms and conditions specific to the MS4. ()
- 02. Electronic Submittals.** ~~The Department may require the applicant to electronically submit information required by this section, if the Department approves an electronic method of submittal~~ As of December 21, 2020, all notices of intent submitted in compliance with this section must be submitted electronically by the discharger (or treatment works treating domestic sewage) to the Department unless waived pursuant to 40 CFR 127.15. (3-24-16)()
- 03. Information Retention Schedule.** An applicant must keep records of all data used to complete a notice of intent and any supplemental information submitted for a period of at least three (3) years from the date the notice of intent is signed. (3-24-16)
- 04. Notice of Intent.** (3-24-16)
- a. Any person required under Subsections 102.01 through 102.03 must submit a notice of intent to the Department for coverage under an IPDES general permit as set out in Subsection 130.05. (3-24-16)

b. A notice of intent must be signed and certified as required by Section 090 (Signature Requirements). (3-24-16)

05. Administration. (3-24-16)

a. General permits may be issued, modified, revoked and reissued, or terminated in accordance with Sections 201 (Modification, or Revocation and Reissuance of IPDES Permits) and 203 (Termination of IPDES Permits). (3-24-16)

b. Authorization to discharge, or authorization to engage in sludge use and disposal practices shall follow these procedures: (3-24-16)

i. Except as provided in Subsections 130.05.b.xi. and 130.05.b.xii., a discharger shall submit, in accordance with general permit requirements, a complete and timely notice of intent which will fulfill the requirements for permit applications; (3-24-16)

ii. A discharger (or TWTDS) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice) under the terms of the general permit unless: (3-24-16)

(1) The general permit, in accordance with Subsections 130.05.b.xi., contains a provision that a notice of intent is not required; or (3-24-16)

(2) The Department notifies a discharger (or TWTDS) that it is covered by a general permit in accordance with Subsection 130.05.b.xii.; (3-24-16)

iii. All notices of intent shall be signed as required in Section 090 (Signature Requirements); (3-24-16)

iv. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum: (3-24-16)

(1) The legal name, address, and EIN of the owner or operator; (3-24-16)

(2) The facility name and address; (3-24-16)

(3) Type of facility or discharges; and (3-24-16)

(4) The receiving stream(s); (3-24-16)

v. Coverage under a general permit may be terminated or revoked in accordance with Subsection 130.05.c. through e.; (3-24-16)

vi. Notices of intent for coverage under a general permit for CAFOs must include the information specified in Subsection 105.09 and 40 CFR 122.21(i)(1), including a topographic map; (3-24-16)

vii. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in 40 CFR 122.23(h); (3-24-16)

viii. General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements; (3-24-16)

ix. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit; (3-24-16)

x. General permits shall specify whether a discharger (or TWTDS), who has submitted a complete

and timely notice of intent to be covered in accordance with the general permit and is eligible for coverage under the permit, is authorized to discharge (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice) in accordance with the permit either: (3-24-16)

- (1) Upon receipt of the notice of intent by the Department; (3-24-16)
- (2) After a waiting period specified in the general permit; (3-24-16)
- (3) On a date specified in the general permit; or (3-24-16)
- (4) Upon receipt of notification of inclusion by the Department; (3-24-16)

xi. Discharges other than discharges from POTWs, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Department, be authorized to discharge under a general permit without submitting a notice of intent where the Department finds that a notice of intent requirement would be inappropriate. The Department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent. In making such a finding, the Department shall consider: (3-24-16)

- (1) The type of discharge; (3-24-16)
- (2) The expected nature of the discharge; (3-24-16)
- (3) The potential for toxic and conventional pollutants in the discharges; (3-24-16)
- (4) The expected volume of the discharges; (3-24-16)
- (5) Other means of identifying discharges covered by the permit; and (3-24-16)
- (6) The estimated number of discharges to be covered by the permit; and (3-24-16)

xii. The Department may notify a discharger (or TWTDS) that it is covered by a general permit, even if the discharger (or TWTDS) has not submitted a notice of intent to be covered. A discharger (or TWTDS) so notified may request an individual permit as specified in Subsection 130.05.d. (3-24-16)

c. The Department may terminate, revoke, or deny coverage under a general permit, and require the discharger or applicant to apply for and obtain an individual IPDES permit. Any interested person may petition the Department to take action under this subsection. Cases where an individual IPDES permit may be required include the following: (3-24-16)

- i. The discharger or TWTDS is not in compliance with the conditions of the general permit; (3-24-16)
- ii. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or TWTDS; (3-24-16)
- iii. Effluent limitation guidelines are promulgated for point sources covered by the general permit; (3-24-16)
- iv. A Water Quality Management plan containing requirements applicable to such point sources is approved; (3-24-16)
- v. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary; (3-24-16)
- vi. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal

practice covered by the general IPDES permit; or (3-24-16)

vii. The discharge(s) is a significant contributor of pollutants. In making this determination, the Department may consider the following factors: (3-24-16)

(1) The location of the discharge with respect to waters of the United States; (3-24-16)

(2) The size of the discharge; (3-24-16)

(3) The quantity and nature of the pollutants discharged to waters of the United States; and (3-24-16)

(4) Other relevant factors. (3-24-16)

d. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. (3-24-16)

i. The owner or operator shall submit an application under Section 105 (Application for an Individual IPDES Permit), with reasons supporting the request, to the Department no later than ninety (90) days after the publication of the general permit. (3-24-16)

ii. The Department shall process the request under Sections 106 (Individual Permit Application Review), 107 (Decision Process), 108 (Draft Permit and Fact Sheet) and 109 (Public Notification and Comment). (3-24-16)

iii. The Department shall grant a request by issuing an individual permit if the reasons cited by the owner or operator are adequate to support the request. (3-24-16)

e. When an individual IPDES permit is issued to an owner or operator otherwise subject to a general IPDES permit, the applicability of the general permit to the individual IPDES permittee is automatically terminated on the effective date of the individual permit. (3-24-16)

f. A source excluded from a general permit, solely because it already has an individual permit, may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source. (3-24-16)

06. Case-by-Case Requirements for Individual Permits. (3-24-16)

a. The Department may require any owner or operator authorized by a general permit to apply for an individual IPDES permit as provided in Subsection 130.05.c., only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, a statement that on the effective date of the individual IPDES permit, the general permit as it applies to the individual permittee shall automatically terminate, and a statement that the owner or operator may appeal the Department's decision as provided in Section 204 (Appeals Process). The Department may grant additional time upon request of the applicant. (3-24-16)

b. Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (see 40 CFR 122.26(a)(1)(v), (a)(9)(iii), and Subsection 105.19), the Department may require the discharger to submit a permit application or other information regarding the discharge described in the Clean Water Act section 308. (3-24-16)

i. In requiring such information, the Department shall notify the discharger in writing and shall send an application form with the notice. (3-24-16)

ii. The discharger must apply for a permit within one hundred eighty (180) days of notice, unless permission for a later date is granted by the Department. (3-24-16)

(BREAK IN CONTINUITY OF SECTIONS)

201. MODIFICATION, OR REVOCATION AND REISSUANCE OF IPDES PERMITS.

01. Procedures to Modify, or Revoke and Reissue Permits. (3-24-16)

a. Permits may be modified, or revoked and reissued either at the request of any interested person (including the permittee) or upon the Department's initiative. However, permits may only be modified or revoked and reissued for the reasons specified in Subsection 201.02. All requests shall be in writing and shall contain facts or reasons supporting the request. (3-24-16)

b. If the Department tentatively decides to modify or revoke and reissue a permit, the Department shall prepare a draft permit under Section 108 (Draft Permit and Fact Sheet), incorporating the proposed changes. (3-24-16)

i. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated application. If the tentative decision is to revoke and reissue a permit, the Department shall require the submission of a new application. (3-24-16)

ii. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. (3-24-16)

iii. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued. (3-24-16)

iv. Minor modifications, as defined in Subsection 201.03, do not require the development of a draft permit, fact sheet, nor must minor modifications be subjected to public notification and comment. (3-24-16)

02. Causes to Modify, or Revoke and Reissue Permits. When the Department receives any pertinent information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under Subsection 201.01, or conducts a review of the permit file), the Department may determine whether or not one (1) or more of the causes listed in Subsections 201.02.c. and 201.02.d. for modification or revocation and reissuance or both exist. (3-24-16)

a. If cause exists, the Department may modify or revoke and reissue the permit accordingly, subject to the limitations of Subsection 201.01.b., and may request a new or updated application, if necessary. (3-24-16)

b. If cause does not exist under this section, the Department shall not modify or revoke and reissue the permit. (3-24-16)

c. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees: (3-24-16)

i. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice), which occurred after permit issuance, and which justify the application of permit conditions that are different or absent in the existing permit. (3-24-16)

ii. The Department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance: (3-24-16)

(1) For IPDES general permits (Section 130) this cause includes any information indicating that cumulative effects on the environment are unacceptable; and (3-24-16)

(2) For new source or new discharger IPDES permits (Section 120), this cause shall include any significant information derived from effluent testing required under Subsection 105.08 or 105.16 after issuance of the permit. (3-24-16)

iii. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows: (3-24-16)

(1) For promulgation of amended standards or regulations, when: (3-24-16)

(a) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under 40 CFR Part 133; (3-24-16)

(b) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and (3-24-16)

(c) A permittee requests modification in accordance with Subsection 201.01 or 203.01 within ninety (90) days after notice of the action on which the request is based; and (3-24-16)

(2) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA or Idaho promulgated regulations or effluent limitation guidelines, if the remand and stay concerns that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with Subsection 201.01 or 203.01 within ninety (90) days of judicial remand. (3-24-16)

iv. The Department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an IPDES compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline. (3-24-16)

v. When the permittee has filed a request for a variance under Clean Water Act section 301(c), 301(g), 301(i), 301(k), or 316(a) or for fundamentally different factors within the time specified in Section 310 (Variances). (3-24-16)

vi. When required to incorporate an applicable Clean Water Act 307(a) toxic effluent standard or prohibition, under Subsection 302.04. (3-24-16)

vii. When required by the reopener conditions in a permit, which are established in the permit under Subsection 302.05 or 40 CFR 403.18(e) (Pretreatment Standards). (3-24-16)

viii. Upon request of a permittee who qualifies for effluent limitations on a net basis, or when a discharger is no longer eligible for net limitations, as provided in Subsection 303.07. (3-24-16)

ix. As necessary under 40 CFR 403.8(e) (Pretreatment Program Requirements: Development and Implementation by POTW). (3-24-16)

x. Upon failure of an approved state to notify, as required by the Clean Water Act section 402(b)(3), another state whose waters may be affected by a discharge from the approved state. (3-24-16)

xi. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). (3-24-16)

xii. To establish a notification level as provided in Subsection 302.08. (3-24-16)

xiii. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a loan under IDAPA 58.01.12, "Rules for Administration of Water Pollution Control Loans." In no case shall the compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline. (3-24-16)

xiv. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 40 CFR 122.34(b) when: (3-24-16)

(1) The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s), and (3-24-16)

(2) The other entity fails to implement measure(s) that satisfy the requirement(s). (3-24-16)

xv. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions. (3-24-16)

xvi. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the Clean Water Act section 402(a)(1) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline). (3-24-16)

xvii. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with 40 CFR 122.23(h) and Section 130 (General Permits) is not a cause for modification pursuant to the requirements of this section. (3-24-16)

xviii. When required by a permit condition to incorporate a land application or sludge disposal plan for beneficial reuse of sewage sludge, to revise an existing land application or sludge disposal plan, or to add a land application or sludge disposal plan as required by IDAPA 58.01.16.650, "Wastewater Rules," and Section 380 (Sewage Sludge) of these rules. (3-24-16)

d. The following are causes to modify or, alternatively, revoke and reissue a permit: (3-24-16)

i. Cause exists for termination under Subsection 203.03, and the Department determines that modification or revocation and reissuance is appropriate; (3-24-16)

ii. The Department has received notification, as required in the permit, of a proposed transfer of the permit; or (3-24-16)

iii. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (Subsection 202.02) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee. (3-24-16)

03. Minor Modifications of Permits. Upon the consent of the permittee, the Department may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this subsection without following the procedures of Sections 108 (Draft Permit and Fact Sheet), 109 (Public Notification and Comment), and Subsection 201.01. Any permit modification not processed as a minor modification under this subsection must be made for cause and must meet the requirements of Section 108 (Draft Permit and Fact Sheet) and Section 109 (Public Notification and Comment). Minor modifications may: (3-24-16)

a. Correct typographical errors; (3-24-16)

b. Require more frequent monitoring or reporting by the permittee; (3-24-16)

c. Change an interim compliance date in a schedule of compliance, provided the new date is not more than one hundred twenty (120) days after the date specified in the existing permit and does not interfere with

attainment of the final compliance date requirement; (3-24-16)

d. Allow for a change in ownership or operational control of a facility where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department; (3-24-16)

e. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under Section 120 (New Sources and New Discharges), and 40 CFR 122.29(d); (3-24-16)

f. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; (3-24-16)

g. Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 CFR 403.11 or a modification that has been approved in accordance with the procedures in 40 CFR 403.18 as enforceable conditions of the POTW's permits; (3-24-16)

h. Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of 40 CFR 122.42(e)(6); or (3-24-16)

~~i. Make a change in a permit provision that will result in neither allowing an actual or potential increase in the discharge of a pollutant or pollutants into the environment nor result in a reduction in monitoring of a permit's compliance with applicable statutes and regulations.; or (3-24-16)~~

i. Require electronic reporting requirements (to replace paper reporting requirements) including those specified in 40 CFR Part 127 (NPDES Electronic Reporting). ()

(BREAK IN CONTINUITY OF SECTIONS)

203. TERMINATION OF IPDES PERMITS.

01. Request to Terminate or Termination Initiated by the Department. Permits may be terminated either at the request of any interested person (including the permittee) or upon the Department's own initiative. However, permits may only be terminated for the reasons specified in Subsection 203.03 or 203.04. ~~All requests for termination shall be in writing and shall contain facts or reasons supporting the request. (3-24-16)()~~

a. Request for termination by persons other than the permittee shall be submitted in writing to the Department. ()

b. As of December 21, 2020, all NOTs submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, the permittee may be required to report electronically if specified by a particular permit. ()

02. Tentative Permit Termination. Except as provided in Subsection 203.04, if the Department tentatively decides to terminate a permit under Subsection 203.03, the Department shall issue a notice of intent to terminate. A notice of intent to terminate shall be available for public comment, and the Department shall give notice of an opportunity for public meetings, as specified in Section 109 (Public Notification and Comment). (3-24-16)

03. Cause to Terminate Permits. The following are causes for terminating a permit during its term, or for denying a permit renewal application: (3-24-16)

a. Noncompliance by the permittee with any condition of the permit; (3-24-16)

b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; (3-24-16)

c. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or (3-24-16)

d. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW). (3-24-16)

04. Expedited Termination Process for Terminated or Eliminated Discharge. If the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Department may terminate the permit by notice to the permittee. (3-24-16)

a. Termination by notice shall be effective thirty (30) days after notice is sent (expedited permit termination), unless the permittee objects within that time. (3-24-16)

b. If the permittee objects during that period, the Department shall follow procedures for termination in Subsection 203.02. (3-24-16)

c. Expedited permit termination procedures are not available to permittees that are subject to pending state and/or federal enforcement actions including citizen suits brought under federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under federal law. (3-24-16)

(BREAK IN CONTINUITY OF SECTIONS)

300. CONDITIONS APPLICABLE TO ALL PERMITS.

The following conditions apply to all IPDES permits. Additional conditions applicable to IPDES permits are in Sections 301 (Permit Conditions for Specific Categories), 302 (Establishing Permit Provisions), and 40 CFR 122.42(e). All conditions applicable to IPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation must be given in the permit. (3-24-16)

01. Duty to Comply. The permittee must comply with all conditions of the permit. (3-24-16)

a. Any permit noncompliance constitutes a violation of Idaho law, the Clean Water Act, and is grounds for: (3-24-16)

i. Enforcement action; (3-24-16)

ii. Permit termination, revocation and reissuance, or modification; or (3-24-16)

iii. Denial of a permit renewal application. (3-24-16)

b. The permittee shall comply with effluent standards or prohibitions established under the Clean Water Act section 307(a) for toxic pollutants and with standards for sewage sludge use or disposal established under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules," within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement. (3-24-16)

02. Duty to Reapply. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit. If the permittee complies with the application requirements of Section 105 (Application for an Individual IPDES Permit), or the notice of intent

requirements of Section 130 (General Permits) for a general permit, and a permit is not issued prior to the permit's expiration date, the permit shall remain in force as stipulated in Subsections 101.02 and 101.03. (3-24-16)

03. Need to Halt or Reduce Activity. In an enforcement action, a permittee may not assert as a defense that compliance with the conditions of the permit would have made it necessary for the permittee to halt or reduce the permitted activity. (3-24-16)

04. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment. (3-24-16)

05. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. (3-24-16)

a. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. (3-24-16)

b. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit or are required by IDAPA 58.01.16 "Wastewater Rules." (3-24-16)

06. Permit Actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition. (3-24-16)

07. Property Rights. The permit does not convey any property rights of any sort, or any exclusive privilege. (3-24-16)

08. Duty to Provide Information. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by the permit. (3-24-16)

09. Inspection and Entry. The permittee shall provide the Department's inspectors, or authorized representatives, including authorized contractors acting as representatives of the Department, upon presentation of credentials and other documents as may be required by law, access to: (3-24-16)

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit; (3-24-16)

b. Any records that must be kept under the conditions of the permit and, at reasonable times, to copy such records; (3-24-16)

c. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and (3-24-16)

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location. (3-24-16)

10. Monitoring and Records. A permittee must comply with the following monitoring and recordkeeping conditions: (3-24-16)

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. (3-24-16)

b. The permittee shall retain the following records: (3-24-16)

- i. All monitoring information, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time; and (3-24-16)
 - ii. The permittee's sewage sludge use and disposal activities shall be retained for a period of at least five (5) years or longer as required by 40 CFR Part 503. (3-24-16)
 - c. Records of monitoring information shall include: (3-24-16)
 - i. All calibration and maintenance records; (3-24-16)
 - ii. All original strip chart recordings for continuous monitoring instrumentation or other forms of data approved by the Department; (3-24-16)
 - iii. Copies of all reports required by the permit; (3-24-16)
 - iv. Records of all data used to complete the application or notice of intent for the permit; (3-24-16)
 - v. The date, exact place, and time of sampling or measurements; (3-24-16)
 - vi. The name of any individual(s) who performed the sampling or measurements; (3-24-16)
 - vii. The date(s) any analyses were performed; (3-24-16)
 - viii. The name of any individual(s) who performed the analyses; (3-24-16)
 - ix. The analytical techniques or methods used; and (3-24-16)
 - x. The results of the analysis. (3-24-16)
 - d. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another test method is required by 40 CFR Part 401 through 471 or Part 501 through 503. (3-24-16)
- 11. Signatory Requirements.** All applications, reports, or information submitted to the Department shall be signed and certified in accordance with Section 090 (Signature Requirements) and must include penalty provisions pursuant to Section 500 (Enforcement). (3-24-16)
- 12. Reporting Requirements.** (3-24-16)
- a. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when: (3-24-16)
 - i. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source as defined in Section 120 (New Sources and New Discharges) and 010 (Definitions); (3-24-16)
 - ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Subsection 301.01.a.; or (3-24-16)
 - iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites: (3-24-16)
 - (1) Not reported during the permit application process, or (3-24-16)

- (2) Not reported pursuant to an approved land application or sludge disposal plan. (3-24-16)
- b. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. (3-24-16)
- c. The permit is not transferable to any person except after notice to the Department. The Department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under Section 202 (Transfer of IPDES Permits). (3-24-16)
- d. Monitoring results shall be reported at the intervals specified in the permit. (3-24-16)
- i. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms (which may be electronic) provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices. All reports and forms submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to report electronically if specified by a particular permit. ~~(3-24-16)~~()
- ii. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136, or another method required for an industry-specific waste stream specified in the permit or under 40 CFR Part 401 through 471 or Part 501 through Part 503, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department. (3-24-16)
- iii. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit. (3-24-16)
- e. A permittee must submit reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit no later than fourteen (14) days following each schedule date of each requirement. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. ~~(3-24-16)~~()
- f. The permittee shall report to the Department any noncompliance which may endanger health or the environment as follows: (3-24-16)
- i. Any information shall be provided orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances; (3-24-16)
- ii. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of: (3-24-16)
- (1) The noncompliance and its cause; (3-24-16)
 - (2) The period of noncompliance, including exact dates and times; (3-24-16)
 - (3) If the noncompliance has not been corrected, the anticipated time it is expected to continue; and (3-24-16)
 - (4) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; (3-24-16)

(5) As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. ()

iii. The following shall be included as information which must be reported within twenty-four (24) hours: (3-24-16)

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit (see Subsection 300.07, Property Rights); (3-24-16)

(2) Any upset which exceeds any effluent limitation in the permit; and (3-24-16)

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within twenty-four (24) hours (see Subsection 302.09, Twenty-Four Hour Reporting); and (3-24-16)

iv. The Department may waive the written report on a case-by-case basis for reports under Subsection 300.12.f.iii. if the oral report has been received within twenty-four (24) hours. (3-24-16)

g. The permittee shall report all instances of noncompliance not reported under Subsections 300.12.d., e., and f., at the time monitoring reports are submitted. The reports of noncompliance shall contain the information listed in Subsection 300.12.f. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit. The Director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. (3-24-16)()

h. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or correct information. (3-24-16)

13. Bypass Terms and Conditions. (3-24-16)

a. Bypass, as defined in Section 010 (Definitions), is prohibited, and the Department may take enforcement action against a permittee for bypass, unless: (3-24-16)

i. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; (3-24-16)

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and (3-24-16)

iii. The permittee submitted a notice of a bypass to the Department in accordance with Subsections 300.13.c. and d. As of December 21, 2020, all notices submitted in compliance with this section must be submitted electronically by the permittee to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting.

Prior to this date, and independent of CFR Part 127, permittees may be required to report electronically if specified by a particular permit. (3-24-16)()

b. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three (3) conditions listed in Subsection 300.13.a. (3-24-16)

c. If the permittee knows in advance of the need for a bypass, it shall submit prior notice to the Department, if possible at least ten (10) days before the date of the bypass. (3-24-16)

d. The permittee shall submit notice of an unanticipated bypass as required in Subsection 300.12.f. (24-hour notice). (3-24-16)

e. Bypasses not exceeding limitations, are allowed to occur, and are not subject to Subsection 300.13.a. or 300.13.d. if: (3-24-16)

i. The bypass does not cause effluent limitations to be exceeded, and (3-24-16)

ii. Only if it also is for essential maintenance to assure efficient operation. (3-24-16)

14. Upset Terms and Conditions. (3-24-16)

a. In any enforcement action for noncompliance with technology-based permit effluent limitations, a permittee may claim upset, as defined in Section 010 (Definitions), as an affirmative defense. A permittee seeking to establish the occurrence of an upset has the burden of proof. (3-24-16)

b. Any determination made in administrative review of a claim that noncompliance was caused by upset, before an action for noncompliance is commenced, is not final administrative action subject to judicial review. (3-24-16)

c. The following conditions are necessary for a permittee to demonstrate that an upset occurred. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that: (3-24-16)

i. An upset occurred and that the permittee can identify the cause(s) of the upset; (3-24-16)

ii. The permitted facility was at the time being properly operated; (3-24-16)

iii. The permittee submitted twenty-four (24)-hour notice of the upset as required Subsection 300.12.f.iii.(2); and (3-24-16)

iv. The permittee complied with any remedial measures required under Subsection 300.04. (3-24-16)

15. Penalties and Fines. Permits must include penalty and fine requirements pursuant to Section 500 (Enforcement). (3-24-16)

301. PERMIT CONDITIONS FOR SPECIFIC CATEGORIES.

In addition to conditions set forth in Section 300 (Conditions Applicable to all Permits), conditions identified in this section apply to all IPDES permits within the categories specified below. (3-24-16)

01. Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers. In addition to the reporting requirements under Subsection 300.12, all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe: (3-24-16)

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following notification levels: (3-24-16)

- i. One hundred micrograms per liter (100 µg/L); (3-24-16)
- ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; (3-24-16)
- iii. Five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and (3-24-16)
- iv. One milligram per liter (1 mg/L) for antimony; (3-24-16)
- v. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.07; or (3-24-16)
- vi. The level established by the Department in accordance with Subsection 302.08; and (3-24-16)

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following notification levels: (3-24-16)

- i. Five hundred micrograms per liter (500 µg/L); (3-24-16)
- ii. One milligram per liter (1 mg/L) for antimony; (3-24-16)
- iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Subsection 105.07; or (3-24-16)
- iv. The level established by the Department in accordance with Subsection 302.08. (3-24-16)

02. Publicly Owned Treatment Works. All POTWs must provide adequate notice to the Department of the following: (3-24-16)

a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to the Clean Water Act section 301 or 306 if it were directly discharging those pollutants; and (3-24-16)

b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit. For purposes of this subsection, adequate notice shall include information on: (3-24-16)

- i. The quality and quantity of effluent introduced into the POTW, and (3-24-16)
- ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW. (3-24-16)

03. Municipal Separate Storm Sewer Systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Department under 40 CFR 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. As of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the Department in compliance with this section and 40 CFR Part 127 unless waived pursuant to 40 CFR 127.15. 40 CFR Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 40 CFR Part 127, the owner, operator, or the duly authorized representative of the MS4 may be required to report electronically if specified by a particular permit. The report shall include: ~~(3-24-16)~~ ()

a. The status of implementing the components of the storm water management program that are established as permit conditions; (3-24-16)

b. Proposed changes to the storm water management programs that are established as permit conditions. Such proposed changes shall be consistent with Subsection 105.18.b.iii.; (3-24-16)

c. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under Subsection 105.18.b.iv. and 105.18.b.v.; (3-24-16)

d. A summary of data, including monitoring data, that is accumulated throughout the reporting year; (3-24-16)

e. Annual expenditures and budget for the year following each annual report; (3-24-16)

f. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and (3-24-16)

g. Identification of water quality improvements or degradation. (3-24-16)

04. Storm Water Dischargers. The initial permits for discharges composed entirely of storm water issued pursuant to 40 CFR 122.26(e)(7) shall require compliance with the conditions of the permit as expeditiously as practicable but in no event later than three (3) years after the date of issuance of the permit. (3-24-16)

05. Concentrated Animal Feeding Operations (CAFOs). Any applicable permit must include provisions pursuant to 40 CFR 122.42(e). (3-24-16)

302. ESTABLISHING PERMIT PROVISIONS.

The Department shall establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of the Clean Water Act and state rules. These shall include conditions under Section 101 (duration of permits), Section 305 (compliance schedules), Section 304 (monitoring), and electronic reporting requirements identified under 40 CFR Part 127. An IPDES permit must include conditions meeting the following requirements, when applicable, in addition to other applicable sections of these rules. ~~(3-24-16)~~ ()

01. Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit. (3-24-16)

02. Applicable Requirements. The Department shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Clean Water Act and Section 101 (Duration), and Subsections 304.01, and 305.01 of these rules. (3-24-16)

a. Applicable requirements include all statutory or regulatory requirements which take effect prior to final administrative disposition of the permit. (3-24-16)

b. Applicable requirements also include any requirement which takes effect prior to the modification or revocation and reissuance of a permit under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits). (3-24-16)

c. New or reissued permits, and to the extent allowed under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits) for modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in Sections 200 (Renewal of IPDES Permits), and 302 (Establishing Permit Provisions) through 304 (Monitoring and Reporting Requirements). (3-24-16)

03. Technology-Based Effluent Limitations and Standards. (3-24-16)

a. Technology-based effluent limitations and standards shall be based on: (3-24-16)

i. Effluent limitations and standards promulgated under the Clean Water Act section 301; (3-24-16)

ii. New source performance standards promulgated under the Clean Water Act section 306; (3-24-16)

iii. Effluent limitations determined on a case-by-case basis under the Clean Water Act section

402(a)(1); or (3-24-16)

iv. A combination of the three (3), in accordance with 40 CFR 125.3. (3-24-16)

b. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of 40 CFR 122.29(d). (3-24-16)

c. The Department may authorize a discharger, subject to technology-based effluent limitations guidelines and standards in an IPDES permit, to forgo sampling of a pollutant found at 40 CFR Parts 401 through 471, if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. (3-24-16)

i. This waiver is good only for the term of the permit and is not available during the term of the first NPDES or IPDES permit issued to a discharger. (3-24-16)

ii. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. (3-24-16)

iii. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet. (3-24-16)

iv. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards. (3-24-16)

04. Other Effluent Limitations and Standards. (3-24-16)

a. If any applicable toxic effluent limitations and standards under the Clean Water Act sections 301, 302, 303, 307, 318, and 405 or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under the Clean Water Act section 307(a) for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall initiate proceedings under Section 201 (Modification, or Revocation and Reissuance of IPDES Permits) to modify or revoke and reissue the permit to conform to the more stringent toxic effluent standard or prohibition (see also Subsection 300.01). (3-24-16)

b. Standards for sewage sludge use or disposal under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules," shall be applied, unless those standards have been included in a permit issued under the appropriate provisions of: (3-24-16)

i. Subtitle C of the Solid Waste Disposal Act; (3-24-16)

ii. Part C of Safe Drinking Water Act; (3-24-16)

iii. The Clean Air Act; or (3-24-16)

iv. State permit programs approved by the EPA. (3-24-16)

c. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. (3-24-16)

d. If any applicable standard for sewage sludge use or disposal is promulgated under the Clean Water Act section 405(d), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules," that standard is more stringent than any limitation on the pollutant or practice in the permit, the Department may initiate

proceedings under these regulations to modify or revoke and reissue the permit, in compliance with Section 201 (Modification, or Revocation and Reissuance of IPDES Permits), to conform to the standard for sewage sludge use or disposal. (3-24-16)

e. Include any requirements applicable to cooling water intake structures under the Clean Water Act section 316(b), in accordance with 40 CFR 125.80 through 125.99. (3-24-16)

05. Reopener Clause. For any permit issued to a TWTDS (including sludge-only facilities), the Department shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under the Clean Water Act section 405(d). The Department may promptly modify or revoke and reissue any permit containing the reopener clause required by this subsection if the standard for sewage sludge use or disposal: (3-24-16)

a. Is more stringent than any requirements for sludge use or disposal in the permit, or (3-24-16)

b. Controls a pollutant or practice not limited in the permit. (3-24-16)

06. Water Quality Standards and Requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under the Clean Water Act sections 301, 304, 306, 307, 318 and 405 shall be included in a permit if they are necessary to: (3-24-16)

a. Achieve water quality standards established in IDAPA 58.01.02, "Water Quality Standards," including narrative criteria for water quality and antidegradation provisions. (3-24-16)

i. Effluent limitations in a permit must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Department determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria for water quality. (3-24-16)

ii. When the Department determines whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a water quality standard, the Department shall use procedures which account for: (3-24-16)

(1) Existing controls on point and nonpoint sources of pollution; (3-24-16)

(2) The variability of the pollutant or pollutant parameter in the effluent; (3-24-16)

(3) The sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and where appropriate, (3-24-16)

(4) The dilution of the effluent in the receiving water; (3-24-16)

iii. When the Department determines, using the procedures in Subsection 302.06.a.ii., that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a state numeric criteria within a state water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant. (3-24-16)

iv. When the Department determines, using the procedures in Subsection 302.06.a.ii., that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity. (3-24-16)

v. Except as provided in this subsection, when the Department determines, using the procedures in Subsection 302.06.a.ii., toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Department demonstrates in the fact sheet of the IPDES permit, using the procedures in Subsection 302.06.a.ii., that chemical-specific limits for the effluent are sufficient to attain and maintain applicable

numeric and narrative state water quality standards. (3-24-16)

vi. When the state has not established a numeric water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable state water quality standard, the Department must establish effluent limits using one (1) or more of the following options: (3-24-16)

(1) Establish effluent limits using a calculated numeric water quality target or concentration value for the pollutant which the Department demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a target or concentration value may be derived: (3-24-16)

(a) Using a proposed criterion, or an explicit policy or regulation interpreting its narrative water quality criterion, and (3-24-16)

(b) Supplemented with other relevant information which may include EPA's Water Quality Standards Handbook, as currently revised, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration (FDA), and current EPA criteria documents; (3-24-16)

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under the Clean Water Act section 304(a), supplemented where necessary by other relevant information; or (3-24-16)

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided: (3-24-16)

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation; (3-24-16)

(b) The required fact sheet sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards; (3-24-16)

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and (3-24-16)

(d) The permit contains a reopener clause allowing the Department to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards. (3-24-16)

vii. When developing water quality-based effluent limits under this subsection, the Department shall ensure that: (3-24-16)

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and (3-24-16)

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the state and approved by EPA pursuant to 40 CFR 130.7; (3-24-16)

b. Attain or maintain a specified water quality through water quality related effluent limits established under the Clean Water Act section 302; (3-24-16)

c. Conform to applicable water quality requirements under the Clean Water Act section 402(b)(5) when the discharge affects a state other than Idaho; (3-24-16)

d. Incorporate any more stringent limitations, treatment standards, or schedules of compliance requirements established under federal or state law or regulations in accordance with the Clean Water Act section

301(b)(1)(C); (3-24-16)

e. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under the Clean Water Act section 208(b); or (3-24-16)

f. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR 125.30 through 125.32. (3-24-16)

07. Technology-Based Controls for Toxic Pollutants. (3-24-16)

a. In determining whether to include limitations on toxic pollutants in a permit under this section, the Department will establish limits in accordance with Subsections 302.03, 302.04, and 302.06 and in a notification under Section 301 (Permit Conditions for Specific Categories), or other relevant information. The fact sheet must explain the development of limitations included in the permit. (3-24-16)

b. An IPDES permit must include limitations to control all toxic pollutants which the Department determines (based on information reported in a permit application under Subsection 105.07 and 301.01.a., or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). (3-24-16)

c. The requirement that the limitations control the pollutants meeting the criteria of Subsection 302.07.b. will be satisfied by: (3-24-16)

i. Limitations on those toxic pollutants; or (3-24-16)

ii. Limitations on other pollutants which, in the judgment of the Department, will provide treatment of the pollutants under Subsection 302.07.b. to the levels required by 40 CFR 125.3(c). (3-24-16)

08. Notification Level. An IPDES permit must include a condition requiring a notification level which exceeds the notification level of Subsection 301.01.a., upon a petition from the permittee or on the Department's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR 125.3(c). (3-24-16)

09. Twenty-Four (24) Hour Reporting. A permit shall list pollutants for which the permittee is required to report violations of maximum daily discharge limitations within twenty-four (24) hours under Subsection 300.12.f.iii.(3). This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance. (3-24-16)

10. Permit Durations. Permits must include permit durations pursuant to Subsection 101.01. (3-24-16)

11. Monitoring Requirements. Permits must include monitoring requirements pursuant to Section 304 (Monitoring and Reporting Requirements). (3-24-16)

12. Pretreatment Program for POTWs. A POTW permit must include pretreatment program conditions requiring the permittee to: (3-24-16)

a. Identify, in terms of character and volume of pollutants, any Significant Industrial Users discharging into the POTW subject to Pretreatment Standards under the Clean Water Act section 307(b) and 40 CFR Part 403; (3-24-16)

b. Submit a local program when required by and in accordance with 40 CFR Part 403, to ensure compliance with pretreatment standards to the extent applicable under the Clean Water Act section 307(b): (3-24-16)

i. The local program shall be incorporated into the permit as described in 40 CFR Part 403, and (3-24-16)

ii. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR Part 403; (3-24-16)

c. Provide written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1), following permit issuance or reissuance; and (3-24-16)

d. POTWs which are sludge-only facilities, are required to develop a pretreatment program under 40 CFR Part 403, when the Department determines that a pretreatment program is necessary to assure compliance with the Clean Water Act section 405(d). (3-24-16)

13. Best Management Practices. An IPDES permit must include best management practices (BMPs) to control or abate the discharge of pollutants when: (3-24-16)

a. Authorized under the Clean Water Act section 304(e) for the control of toxic pollutants and hazardous substances from ancillary industrial activities; (3-24-16)

b. Authorized under the Clean Water Act section 402(p) for the control of storm water discharges; (3-24-16)

c. Numeric effluent limitations are infeasible; or (3-24-16)

d. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Clean Water Act. (3-24-16)

14. Reissued Permits. When a permit is renewed or reissued, it must include provisions pursuant to Section 200 (Renewal of IPDES Permits). (3-24-16)

15. Privately-Owned Treatment Works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this section. (3-24-16)

a. Alternatively, the Department may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. (3-24-16)

b. The Department's decision to issue a permit with no conditions applicable to any user, to impose conditions on one (1) or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works. (3-24-16)

16. Grants. An IPDES permit must include any conditions imposed in grants made by the EPA to POTWs under the Clean Water Act sections 201 and 204, which are reasonably necessary for the achievement of effluent limitations under the Clean Water Act section 301. (3-24-16)

17. Sewage Sludge. An IPDES permit must include any requirements under the Clean Water Act section 405 governing the disposal of sewage sludge from POTWs or any other TWTDS for any use for which regulations have been established, in accordance with any applicable regulations. (3-24-16)

18. Navigation. An IPDES permit must include any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with Subsection 103.04 and 109.02. (3-24-16)

19. Qualifying State or Local Programs. (3-24-16)

a. For storm water discharges associated with small construction activity disturbing one (1) acre or more, but less than five (5) acres as specified in 40 CFR 122.26(b)(15), the Department may include permit conditions that incorporate by reference qualifying state or local erosion and sediment control program requirements. Where a qualifying state or local program does not include one (1) or more of the elements in this subsection, then the Department must include those elements as conditions in the permit. (3-24-16)

- b. A qualifying state or local erosion and sediment control program is one that includes: (3-24-16)
 - i. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices; (3-24-16)
 - ii. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; (3-24-16)
 - iii. Requirements for construction site operators to develop and implement a storm water pollution prevention plan, which must include: (3-24-16)
 - (1) Site descriptions; (3-24-16)
 - (2) Descriptions of appropriate control measures; (3-24-16)
 - (3) Copies of approved state or local requirements; (3-24-16)
 - (4) Maintenance procedures; (3-24-16)
 - (5) Inspection procedures; (3-24-16)
 - (6) Identification of non-storm water discharges; and (3-24-16)
 - iv. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts. (3-24-16)
 - c. For storm water discharges from a construction activity disturbing five (5) acres or more, including activities that disturb less than five (5) acres but are part of a larger common plan of development or sale that will ultimately disturb five (5) acres or more, as specified in 40 CFR 122.26(b)(14)(x), the Department may include permit conditions that incorporate by reference qualifying state or local erosion and sediment control program requirements. A qualifying state or local erosion and sediment control program is one that includes the elements listed in Subsections 302.19.a. and b. and any additional requirements necessary to achieve the applicable technology-based standards of best available technology and best conventional technology based on the best professional judgment of the permit writer. (3-24-16)
- 20. Water Quality Trading.** The Department may include provisions in IPDES permits that allow for compliance with water quality based permit limits to be achieved through water quality trading. (3-24-16)

(BREAK IN CONTINUITY OF SECTIONS)

304. MONITORING AND REPORTING REQUIREMENTS.

- 01. Monitoring Requirements.** A permit must include the following requirements for monitoring: (3-24-16)
 - a. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate); (3-24-16)
 - b. The type, intervals, and frequency of monitoring sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; (3-24-16)
 - c. Provisions for reporting the results of monitoring, including frequency, appropriate for the regulated activity based on the impact of that activity and as specified in 40 CFR Part 127 (NPDES Electronic

Reporting). Reporting shall be no less frequent than specified in 40 CFR 122.44;

~~(3-24-16)~~()

- d. The mass (or other measurement specified in the permit) for each pollutant limited in the permit; (3-24-16)
- e. The volume of effluent discharged from each outfall; (3-24-16)
- f. Other measurements as appropriate, including: (3-24-16)
- i. Pollutants in internal waste streams under Subsection 303.08; (3-24-16)
- ii. Pollutants in intake water for net limitations under Subsection 303.07; (3-24-16)
- iii. Frequency, rate of discharge, etc., for non-continuous discharges under Subsection 303.05; (3-24-16)
- iv. Pollutants subject to notification requirements under Subsection 301.01; and (3-24-16)
- v. Pollutants in sewage sludge or other monitoring as specified in 40 CFR Part 503; or as determined to be necessary on a case-by-case basis pursuant to the Clean Water Act section 405(d)(4), Section 380 (Sewage Sludge) of these rules, and IDAPA 58.01.16.650, "Wastewater Rules"; (3-24-16)

g. According to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 for the analysis of pollutants or pollutant parameters, or another method ~~is~~ required under 40 CFR Part 401 through 471 or Part 501 through 503; ~~and~~. Consistent with 40 CFR Part 136, applicants or permittees have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant or permittee can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of "sufficiently sensitive," the analytical results are not consistent with the QA/QC specifications for that method, then the Department may determine that the method is not performing adequately and the Department should select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with provisions outlined in Subsections 304.01.g.i. and ii. For the purposes of this section, a method is "sufficiently sensitive" when: ~~(3-24-16)~~()

i. The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or ()

ii. The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O, for the measured pollutant or pollutant parameter; and ()

h. In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136, or methods are not otherwise required under 40 CFR Part 401 through 471 or Part 501 through 503, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters. (3-24-16)

02. Reporting Monitoring Results. (3-24-16)

a. Except as provided in Subsections 304.02.d. and 304.02.e., the Department will establish requirements to report monitoring results on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. All results must be electronically reported in compliance with 40 CFR Part 127. ~~(3-24-16)~~()

b. For sewage sludge use or disposal practices, the Department will establish requirements to monitor and report results on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR Part 503, Section 380 (Sewage Sludge) of these rules, and Idaho's Wastewater Rules, IDAPA 58.01.16.650, "Wastewater Rules," (where applicable), but in no case less than once a year. All results must be electronically reported in compliance with 40 CFR Part 127. ~~(3-24-16)~~()

- c. The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. (3-24-16)
- d. The Department will establish requirements to report monitoring results for storm water discharges associated with industrial activity, other than those addressed in Subsection 304.02.c., on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require the discharger to:
 - i. Conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity; (3-24-16)
 - ii. Evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed; (3-24-16)
 - iii. Maintain for a period of three (3) years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance; (3-24-16)
 - iv. Sign the report and certification in accordance with Section 090 (Signature Requirements); and (3-24-16)
 - v. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification that the facility is in compliance with the permit, or alternative requirements, once every three (3) years by an Idaho licensed professional engineer. (3-24-16)
- e. A permit that does not require monitoring results reports at least annually must require the permittee to report, at least annually, all instances of noncompliance not reported under Subsection 300.12. (3-24-16)

(BREAK IN CONTINUITY OF SECTIONS)

370. PRETREATMENT STANDARDS.

- 01. Purpose and Applicability.** This section and 40 CFR Part 403 apply to: (3-24-16)
 - a. Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in Subsection 370.04 and 40 CFR 403.3; (3-24-16)
 - b. POTWs which receive wastewater from sources subject to National Pretreatment Standards; and (3-24-16)
 - c. Any new or existing source subject to Pretreatment Standards. National Pretreatment Standards do not apply to sources which discharge to a sewer which is not connected to a POTW Treatment Plant. (3-24-16)
- 02. Objectives of General Pretreatment Regulations.** This section and 40 CFR Part 403 fulfill three (3) objectives: (3-24-16)
 - a. To prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; (3-24-16)
 - b. To prevent the introduction of pollutants into POTWs which will pass through the treatment works

or otherwise be incompatible with such works; and (3-24-16)

- c. To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges. (3-24-16)

03. Department Program in Lieu of a POTW Program. 40 CFR 403.8(a) requires certain POTWs develop a pretreatment program. The Department may, however, assume responsibility for implementing the POTW pretreatment program requirements set forth in 40 CFR 403.8(f) in lieu of requiring the POTW to develop a pretreatment program. This does not preclude POTWs from independently developing pretreatment programs. (3-24-16)

04. Term Interpretation. When used in the context of 40 CFR Part 403, unless the context in which a term is used clearly requires a different meaning, terms 40 CFR Part 403 that are incorporated by reference in these rules have the following meanings: (3-24-16)

- a. The terms Administrator or Regional Administrator mean the EPA Region 10 Administrator; (3-24-16)
- b. The term Approval Authority means the Department of Environmental Quality; (3-24-16)
- c. The term Approved POTW Pretreatment Program or Program or POTW Pretreatment Program means a program administered by a POTW that meets the criteria established in 40 CFR 403.8 and 403.9, and which has been approved by the Department in accordance with 40 CFR 403.1; (3-24-16)
- d. The term Control Authority means the POTW for a facility with a Department-approved pretreatment program and the Department for a POTW without a Department-approved pretreatment program; (3-24-16)
- e. The term Director means the Department of Environmental Quality with an NPDES permit program approved pursuant to the Clean Water Act section 402(b); (3-24-16)
- f. The terms National Pretreatment Standard, Pretreatment Standard, or Standard mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5; and (3-24-16)
- g. The term Water Management Division Director means a Director of the Water Management Division within the Region 10 office of the Environmental Protection Agency or this person's delegated representative. (3-24-16)

05. Exceptions to Incorporation by Reference. The following sections of 40 CFR Part 403 are excluded from the incorporation by reference in Section 003 (Incorporation by Reference) of these rules. (3-24-16)

- a. 40 CFR 403.4 (State or Local Law). (3-24-16)
- ~~b. 40 CFR 403.10 (Development and Submission of NPDES State Pretreatment Programs).~~ (3-24-16)
- ~~e~~**b.** 40 CFR 403.19 (Provisions of Specific Applicability to the Owatonna Wastewater Treatment Facility). (3-24-16)
- ~~d~~**c.** 40 CFR 403.20 (Pretreatment Program Reinvention Pilot Projects Under Project XL). (3-24-16)