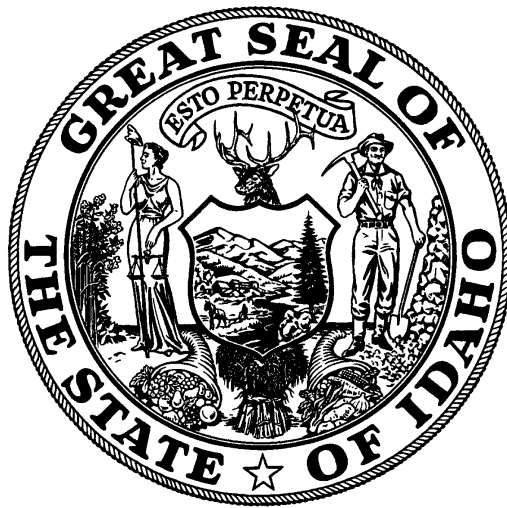


PENDING RULES COMMITTEE RULES REVIEW BOOK

**Submitted for Review Before
House Resources &
Conservation Committee
67th Idaho Legislature
Second Regular Session – 2024**



Prepared by:

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

January 2024

HOUSE RESOURCES & CONSERVATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

Table of Contents

2024 Legislative Session

IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

13.01.04 – Rules Governing Licensing
Docket No. 13-0104-23014

13.01.06 – Rules Governing Classification and Protection of Wildlife
Docket No. 13-0106-2301 (ZBR Chapter Rewrite).....7

13.01.08 – Rules Governing Taking of Big Game Animals
Docket No. 13-0108-230121

13.01.11 – Rules Governing Fish
Docket No. 13-0111-2301 (ZBR Chapter Rewrite).....24

13.01.12 – Rules Governing Commercial Fishing
Docket No. 13-0112-2301 (ZBR Chapter Repeal)50

13.01.15 – Rules Governing the Use of Dogs
Docket No. 13-0115-2301 (ZBR Chapter Rewrite).....52

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.01.01 – Rules of Practice and Procedure Before the State Board of Land Commissioners
Docket No. 20-0101-2301 (ZBR Chapter Rewrite).....59

20.03.01 – Rules Governing Dredge and Placer Mining Operations in Idaho
Docket No. 20-0301-2301 (ZBR Chapter Rewrite, Fee Rule)85

20.03.03 – Rules Governing Administration of the Reclamation Fund
Docket No. 20-0303-2301 (ZBR Chapter Rewrite, Fee Rule)131

20.03.05 – Navigable Waterways Mineral Leasing in Idaho
Docket No. 20-0305-2301 (ZBR Chapter Rewrite, Fee Rule)142

20.05.01 – Rules Pertaining to the Recreational Use of Endowment Land
Docket No. 20-0501-2301 (New Chapter)153

IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

24.35.01 – Rules of the Outfitters and Guides Licensing Board
Docket No. 24-3501-2301158

IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION

**26.01.10 – Rules Governing the Administration of Temporary Permits
on Lands Owned by the Idaho Department of Parks and Recreation**
Docket No. 26-0110-2301 (ZBR Chapter Rewrite, Fee Rule)174

26.01.20 – Rules Governing the Administration of Park and Recreation Areas and Facilities
Docket No. 26-0120-2301 (Fee Rule)186

26.01.34 – Idaho Protection Against Invasive Species Sticker Rules
Docket No. 26-0134-2201 (ZBR Chapter Repeal)201

IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

37.03.08 – Water Appropriation Rules

Docket No. 37-0308-2301 (ZBR Chapter Rewrite, Fee Rule)203

IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

13.01.04 – RULES GOVERNING LICENSING

DOCKET NO. 13-0104-2301

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104, 36-105, and 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 pending rule supports the implementation of IDAPA 13.01.04.506, by removing from rule the limit for outfitter tag set-aside which then allows flexibility for the Commission to meet the outfitter tag allocation which is based on outfitter tag verified use. The rule change allows the Commission to create the set-aside in the same action as the outfitter tag allocation as it is already allowed in statute.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9, pages 37-38](#).

FEE SUMMARY: Not applicable. The pending rule does not impose new fees or changes.

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

There is no fiscal impact to the General Fund.

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

DATED this 22nd of November, 2023.

Amber Worthington
Deputy Director
Idaho Department of Fish and Game
600 S. Walnut Street
P.O. Box 25 Boise, ID 83707
Phone (208) 334-3771
Fax (208) 334-4885
Email: rules@idfg.idaho.gov

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

EFFECTIVE DATE: The effective date of the temporary rule is July 27, 2023.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 34-104, 36-105, and 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 September 20, 2023.

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

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

The temporary rule confers a benefit to outfitting businesses in Idaho, and supports implementation of IDAPA 13.01.04 section 506, by removing from rule the limit for outfitter tag set-aside which then allows flexibility for the Commission to meet the outfitter tag allocation which is based on outfitter tag verified use. The rule change permits the Commission to adjust the set-aside when the verified use reflects an increase in allocation.

The proposed rule adopted concurrently with this temporary rule will authorize the Commission the flexibility to adopt this practice in perpetuity.

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

The rule confers a benefit (as described in the preceding section).

FEE SUMMARY: Not applicable. The temporary and proposed rules do not impose new fees or charges.

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

There is no fiscal impact to the General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the change to rule was simple in nature and necessary to maintain a limit provided through a calculation generating a limit in IDAPA 13.01.04 section 506, which was agreed upon through negotiated rulemaking and adopted in Legislative Session 2023.

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 change to the rule does not include any incorporation by reference.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 4th day of August, 2023.

Amber Worthington, Deputy Director
Idaho Department of Fish and Game
600 S. Walnut Street
P.O. Box 25 Boise, ID 83707
Phone (208) 334-3771
Fax (208) 334-4885
Email: rules@idfg.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-2301

500. NONRESIDENT DEER AND ELK TAG OUTFITTER SET-ASIDE.

~~01. Tags. The following numbers of nonresident general hunt deer tags and nonresident general hunt elk tags will annually be set aside and reserved for sale to persons who have entered into an agreement to utilize the services of an outfitter licensed under Chapter 21, Title 36, Idaho Code. For each Hunting Season: (3-31-22)~~

~~a. One thousand nine hundred eighty five (1,985) deer tags (the combined total of regular and White-tailed); (3-31-22)~~

~~b. Two thousand nine hundred (2,900) elk tags (the combined total of A and B tags for all zones). (3-31-22)~~

~~021. Restrictions. Tags for use in general hunts will be sold on a first-come, first-serve basis through July 14 of each year. Application for tag purchase ~~of these tags~~ will be made by the outfitter for the nonresident outfitted hunter on a form prescribed by the Department. ~~The application shall be accompanied by~~ along with the appropriate license fees and ~~a certification by the outfitter~~ that the nonresident hunter has a contract to hunt with the outfitter making application. (3-31-22)()~~

~~032. Unsold Tags. Any tags not sold by July 15 of each year will be sold by the Department to nonresidents on a first-come, first serve basis. (3-31-22)~~

IDAPA 13 – DEPARTMENT OF FISH AND GAME

13.01.06 – RULES GOVERNING CLASSIFICATION AND PROTECTION OF WILDLIFE

DOCKET NO. 13-0106-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b) and 36-201, Idaho Code.

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

The pending rule is being presented for authorization as part of the IDFG plan to review each rule chapter every 5 years. Consistent with the Governor's [Zero-Based Regulation Executive Order](#), the agency has revised current rule language to improve clarity and reduce duplication. Additionally, updates address a statute change made in the 2023 Idaho Legislative Session making rattlesnakes a predator, as well changes in common and scientific names which follow recognized taxonomic and nomenclatural authorities in North America.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 264-270](#).

Changes to the proposed rule continued the work of addressing common and scientific names. The chapter underwent a final staff review and staff found other names that required updating and that needed italicized, capitalized or uncapitalized. No substantive changes were made.

FEE SUMMARY: Not applicable. The pending rule does not impose new fees or changes.

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

There is no fiscal impact to the General Fund.

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

DATED this 22nd of November, 2023.

Amber Worthington, Deputy Director
Idaho Department of Fish and Game
600 S. Walnut Street
P.O. Box 25 Boise, ID 83707
Phone (208) 334-3771
Fax (208) 334-4885
Email: rules@idfg.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Sections 36-104(b) 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, 2023.

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

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

This rule is being presented for authorization as part of the IDFG plan to review each rule chapter every 5 years. This rulemaking established the classification and protection of wildlife. Consistent with the Governor's [Zero-Based Regulation Executive Order](#), the agency has revised current rule language to improve clarity and reduce duplication.

The proposed rulemaking removes most scientific names with the exception of the Genus'/species' that must be identified due to season setting complications where certain members of certain families have different seasons and limits. It also leaves intact scientific names for native salmon, rainbow, cutthroat, and bull trout species for benefit of ESA regulatory mechanisms.

FEE SUMMARY: There is no fee associated with this rule.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no fiscal impact associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 7, 2023 Idaho Administrative Bulletin, [Vol. 22-4, page 15](#) under Docket No. 13-0111-2301. The Department received no feedback around this rulemaking.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Amber Worthington, Deputy Direction 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, 2023.

DATED this 29th day of August, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 13-0106-2301

13.01.06 – RULES GOVERNING CLASSIFICATION AND PROTECTION OF WILDLIFE

000. LEGAL AUTHORITY.

Sections 36-104(b) and 36-201, Idaho Code. ()

001. SCOPE.

These rules establish the classification and protection of wildlife. ()

002. – 099. (RESERVED)

100. CLASSIFICATION OF WILDLIFE – BIG GAME ANIMALS.

01. American Black bear. ()

02. Bighorn sheep – *Ovis canadensis*, identified as “California bighorn sheep” when occurring south of Interstate 84 and as “Rocky Mountain bighorn sheep” when occurring north of Interstate 84. ()

03. Elk. ()

04. Gray wolf. ()

05. Grizzly bear. ()

06. Moose. ()

07. Rocky Mountain goat. ()

08. Mountain lion. ()

09. Mule deer. ()

10. Pronghorn. ()

11. White-tailed deer. ()

101. CLASSIFICATION OF WILDLIFE – UPLAND GAME ANIMALS.

01. Mountain cottontail. ()

02. Pygmy rabbit. ()

03. Snowshoe hare. ()

04. North American red squirrel. ()

102. CLASSIFICATION OF WILDLIFE – GAME BIRDS.

Game birds include upland game birds, migratory game birds, and American crow. ()

01. Upland Game Birds. ()

a. Ring-necked pheasant (*Phasianus colchicus*). ()

b. Partridge: gray (Hungarian) partridge – *Perdix perdix*; **chukar** – *Alectoris sp.* ()

c. Quail: northern bobwhite – *Colinus virginianus*; California quail – *Callipepla californica*; mountain quail – *Oreortyx pictus*; and Gambel’s quail – *Callipepla gambelii*. ()

d. Grouse: Dusky (blue) grouse – *Dendragapus obscurus*; ruffed grouse – *Bonasa umbellus*; spruce grouse – *Falciptennis canadensis*; Greater Sage Grouse – *Centrocercus urophasianus*; and sharp-tailed grouse – *Tympanuchus phasianellus*. “Forest grouse” means dusky grouse, ruffed grouse, and spruce grouse. ()

e. Wild turkey – *Meleagris gallopavo*. ()

02. Migratory Game Birds. ()

a. American coot – *Fulica americana*. ()

b. Doves: mourning dove – *Zenaida macroura* and white-winged dove – *Zenaida asiatica*. ()

c. Ducks: members of the *Anatidae* family other than geese and swans, including bufflehead – *Bucephala albeola*; canvasback – *Aythya valisineria*; gadwall – *Mareca strepera*; Barrow’s goldeneye – *Bucephala islandica*; common goldeneye – *Bucephala clangula*; harlequin duck – *Histrionicus histrionicus*; mallard – *Anas platyrhynchos*; common merganser – *Mergus merganser*; hooded merganser – *Lophodytes cucullatus*; red-breasted merganser – *Mergus serrator*; long-tailed duck – *Clangula hyemalis*; northern pintail – *Anas acuta*; redhead – *Aythya americana*; ring-necked duck – *Aythya collaris*; ruddy duck – *Oxyura jamaicensis*; greater scaup – *Aythya marila*; lesser scaup – *Aythya affinis*; northern shoveler – *Spatula clypeata*; blue-winged teal – *Spatula discors*; cinnamon teal – *Spatula cyanoptera*; green-winged teal – *Anas crecca*; American wigeon – *Mareca americana*; Eurasian wigeon – *Mareca penelope*; and wood duck – *Aix sponsa*. ()

d. Geese: members of the *Anatidae* family other than ducks and swans, including Canada goose – *Branta canadensis* (“Canada goose” to include cackling goose – *Branta hutchinsii*); Ross’s goose – *Anser rossii*; snow goose – *Anser caerulescens*; and greater white-fronted goose – *Anser albifrons*. ()

e. Swans: members of the *Anatidae* other than ducks and geese, including Trumpeter swan – *Cygnus buccinator*; and Tundra swan – *Cygnus columbianus*. ()

f. Wilson's snipe – *Gallinago delicata*. ()

g. Sandhill Crane – *Antigone canadensis*. ()

03. American Crow – *Corvus brachyrhynchos*. ()

103. CLASSIFICATION OF WILDLIFE – GAME FISH.

Game fish includes the following fish and crayfish: ()

01. American shad. ()

02. Arctic grayling. ()

03. Bear Lake whitefish. ()

04. Black bullhead. ()

05. Black crappie. ()

06. Blue catfish. ()

07. Bluegill and hybrid with pumpkinseed. ()

08. Bonneville cisco. ()

- | | | |
|-----|--|-----|
| 09. | Bonneville whitefish. | () |
| 10. | Brook trout. | () |
| 11. | Brown bullhead. | () |
| 12. | Brown trout. | () |
| 13. | Bull trout. | () |
| 14. | Burbot. | () |
| 15. | Channel catfish. | () |
| 16. | Chinook salmon (land locked) – <i>Oncorhynchus tshawytscha</i> , residing in waters that prohibit migration to the ocean and back. | () |
| 17. | Coho salmon – <i>Oncorhynchus kisutch</i> . | () |
| 18. | Crayfish – <i>Pacifastacus spp.</i> | () |
| 19. | Cutthroat trout – <i>Oncorhynchus clarkii</i> , including subspecies Bonneville cutthroat trout – <i>O. clarkii utah</i> , Lahontan cutthroat trout – <i>O. clarkii henshawi</i> , Westslope cutthroat trout – <i>O. clarkii lewisi</i> , and Yellowstone (including “finespotted”) cutthroat trout – <i>O. clarkii bouvieri</i> . | () |
| 20. | Flathead catfish. | () |
| 21. | Golden trout. | () |
| 22. | Green sunfish. | () |
| 23. | Kokanee – <i>Oncorhynchus nerka kennerlyi</i> (not anadromous). | () |
| 24. | Lake trout. | () |
| 25. | Lake whitefish. | () |
| 26. | Largemouth bass. | () |
| 27. | Mountain whitefish. | () |
| 28. | Northern pike. | () |
| 29. | Pumpkinseed. | () |
| 30. | Pygmy whitefish. | () |
| 31. | Rainbow trout – <i>Oncorhynchus mykiss</i> , including redband trout – <i>O. mykiss gairdneri</i> . | () |
| 32. | Rainbow/cutthroat trout (cutbow) – <i>O. mykiss</i> x <i>O. clarkii</i> hybrid. | () |
| 33. | Sauger. | () |
| 34. | Smallmouth bass. | () |
| 35. | Splake. | () |

- 36. Sunapee trout. ()
- 37. Tiger Trout. ()
- 38. Tiger muskie. ()
- 39. Walleye. ()
- 40. Warmouth. ()
- 41. White crappie. ()
- 42. White sturgeon. ()
- 43. Yellow bullhead. ()
- 44. Yellow perch. ()

104. CLASSIFICATION OF WILDLIFE – ANADROMOUS GAME FISH.

Anadromous game fish include members of the *Onchorhynchus* family that migrate to the ocean as a juvenile and return to freshwater. ()

- 01. Chinook salmon – *Oncorhynchus tshawytscha* ()
- 02. Coho salmon – *Oncorhynchus kisutch*. ()
- 03. Sockeye salmon – *Oncorhynchus nerka*. ()
- 04. Steelhead – *Oncorhynchus mykiss*. ()

105. CLASSIFICATION OF WILDLIFE – FURBEARING ANIMALS.

- 01. American badger. ()
- 02. American marten. ()
- 03. American mink. ()
- 04. North American Beaver. ()
- 05. Bobcat. ()
- 06. Canada lynx. ()
- 07. Common muskrat. ()
- 08. Fisher. ()
- 09. North American river otter. ()
- 10. Pacific marten. ()
- 11. Red fox – *Vulpes vulpes* (all color phases). ()

106. – 149. (RESERVED)

150. THREATENED OR ENDANGERED SPECIES.

151. – 199. (RESERVED)

200. PROTECTED NONGAME SPECIES.

- 01. Mammals. ()
 - a. American pika. ()
 - b. Bats – all species. ()
 - c. Chipmunks – *Tamias spp.* ()
 - d. Merriam’s ground squirrel – *Uroditellus canus.* ()
 - e. Common golden-mantled ground squirrel – *Callospermophilus lateralis.* ()
 - f. Piute ground squirrel – *Uroditellus mollis.* ()
 - g. Kit fox. ()
 - h. Wolverine. ()
 - i. Northern Idaho ground squirrel – *Uroditellus brunneus.* ()
 - j. Northern flying squirrel. ()
 - k. Common rock squirrel – *Otospermophilus variegatus.* ()
 - l. Southern Idaho ground squirrel – *Uroditellus endemicus.* ()
 - m. Caribou. ()
 - n. Wyoming ground squirrel – *Uroditellus elegans nevadensis.* ()
- 02. Birds. All native species, except game birds. ()
- 03. Amphibians. All native species. ()
- 04. Reptiles. All native species. ()
- 05. Fish. ()
 - a. Bear Lake sculpin. ()
 - b. Northern leatherside chub. ()
 - c. Pacific lamprey. ()
 - d. Sand roller. ()
 - e. Shoshone sculpin. ()
 - f. Wood River sculpin. ()
 - g. Green sucker. ()

201. PREDATORY WILDLIFE.

Predatory wildlife are defined in Section 36-201, Idaho Code. ()

202. – 249. (RESERVED)

250. UNPROTECTED WILDLIFE.

Unprotected Wildlife includes all wildlife not classified in the preceding categories. ()

251. – 299. (RESERVED)

300. PROTECTION OF WILDLIFE.

01. Game Species. Those species of wildlife classified as Big Game Animals, Upland Game Animals, Game Birds, Migratory Birds, Game Fish/Crustacea, or Furbearing Animals may be taken only in accordance with Idaho law. ()

02. Protected Nongame and Threatened or Endangered Species. No person may take or possess those species of wildlife classified as Protected Nongame, or Threatened or Endangered at any time or in any manner, except as provided in Idaho Code (including Sections 36-106(e), and 36-1107), and Commission rules. Protected Nongame status is not intended to prevent unintentional take of these species, protection of personal health or safety, limit property and building management, or prevent management of animals to address public health concerns or agricultural damage. ()

03. Unprotected and Predatory Wildlife. Those species of wildlife classified as Unprotected Wildlife and Predatory Wildlife may be taken in any amount, at any time, and in any manner, by holders of the appropriate valid Idaho hunting, trapping, fishing, or combination license, provided such taking is not otherwise in violation of federal, state, county, or city laws, rules, ordinances, or regulations. ()

301. – 999. (RESERVED)

[Agency redlined courtesy copy]

Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.

13.01.06 – RULES GOVERNING CLASSIFICATION AND PROTECTION OF WILDLIFE

000. LEGAL AUTHORITY.

Sections 36-104(b) and 36-201, Idaho Code, ~~authorize the Commission to adopt rules concerning the classification and protection of wildlife in the state of Idaho.~~ (3-31-22)()

001. TITLE AND SCOPE.

~~The title of this chapter for citation is IDAPA 13.01.06, “Rules Governing Classification and Protection of Wildlife.”~~ These rules establish the classification and protection of wildlife. (3-31-22)()

002. – 099. (RESERVED)

100. CLASSIFICATION OF WILDLIFE – BIG GAME ANIMALS.

01. American Black bear – ~~Ursus americanus.~~ (3-31-22)()

02. Bighorn sheep – *Ovis canadensis*, identified as “California bighorn sheep” when occurring south of Interstate 84 and as “Rocky Mountain bighorn sheep” when occurring north of Interstate 84. ()

03. Elk—*Cervus canadensis*. (3-31-22)()
04. Gray wolf—*Canis lupus*. (3-31-22)()
05. Grizzly bear—*Ursus arctos*. (3-31-22)()
06. Moose—*Alces americanus*. (3-31-22)()
07. **Rocky Mountain goat**—*Oreamnos americanus*. (3-31-22)()
08. Mountain lion—*Puma concolor*. (3-31-22)()
09. Mule deer—*Odocoileus hemionus*. (3-31-22)()
10. Pronghorn—*Antilocapra americana*. (3-31-22)()
11. White-tailed deer—*Odocoileus virginianus*. (3-31-22)()
101. CLASSIFICATION OF WILDLIFE – UPLAND GAME ANIMALS.
01. Mountain cottontail—*Sylvilagus nuttallii*. (3-31-22)()
02. Pygmy rabbit—*Brachylagus idahoensis*. (3-31-22)()
03. Snowshoe hare—*Lepus americanus*. (3-31-22)()
04. **North American R**ed squirrel—*Tamiasciurus hudsonicus*. (3-31-22)()
102. CLASSIFICATION OF WILDLIFE – GAME BIRDS.
Game birds include upland game birds, migratory game birds, and American crow. ()
01. Upland Game Birds. ()
- a. *Pheasants: Phasianus sp., including R*ing-necked pheasant (*Phasianus colchicus*). (3-31-22)()
- b. Partridge: gray (Hungarian) partridge – *Perdix perdix*; chukar – *Alectoris sp.* ()
- c. Quail: northern bobwhite – *Colinus virginianus*; California quail – *Callipepla californica*; mountain quail – *Oreortyx pictus*; and Gambel’s quail – *Callipepla gambelii*. ()
- d. Grouse: Dusky (blue) grouse – *Dendragapus obscurus*; ruffed grouse – *Bonasa umbellus*; spruce grouse – *Falcapennis canadensis*; Greater ~~S~~*Sage* ~~G~~*Grouse* – *Centrocercus urophasianus*; and sharp-tailed grouse – *Tympanuchus phasianellus*. “Forest grouse” means dusky grouse, ruffed grouse, and spruce grouse. (3-31-22)()
- e. Wild turkey – *Meleagris gallopavo*. ()
02. Migratory Game Birds. ()
- a. American coot – *Fulica americana*. ()
- b. Doves: mourning dove – *Zenaida macroura* and white-winged dove – *Zenaida asiatica*. ()
- c. Ducks: members of the *Anatidae* family other than geese and swans, including bufflehead – *Bucephala albeola*; canvasback – *Aythya valisineria*; gadwall – *Mareca strepera*; Barrow’s goldeneye – *Bucephala islandica*; common goldeneye – *Bucephala clangula*; harlequin duck – *Histrionicus histrionicus*; mallard – *Anas*

platyrhynchos; common merganser – *Mergus merganser*; hooded merganser – *Lophodytes cucullatus*; red-breasted merganser – *Mergus serrator*; long-tailed duck – *Clangula hyemalis*; northern pintail – *Anas acuta*; redhead – *Aythya americana*; ring-necked duck – *Aythya collaris*; ruddy duck – *Oxyura jamaicensis*; greater scaup – *Aythya marila*; lesser scaup – *Aythya affinis*; northern shoveler – *Spatula clypeata*; blue-winged teal – *Spatula discors*; cinnamon teal – *Spatula cyanoptera*; green-winged teal – *Anas crecca*; American wigeon – *Mareca americana*; Eurasian wigeon – *Mareca penelope*; and wood duck – *Aix sponsa*. ()

d. Geese: members of the *Anatidae* family other than ducks and swans, including Canada goose – *Branta canadensis* (“Canada goose” to include cackling goose – *Branta hutchinsii*); Ross’s goose – *Anser rossii*; snow goose – *Anser caerulescens*; and greater white-fronted goose – *Anser albifrons*. ()

e. Swans: members of the *Anatidae* other than ducks and geese, including Trumpeter swan – *Cygnus buccinator*; and Tundra swan – *Cygnus columbianus*. ()

f. Wilson's snipe – *Gallinago delicata*. ()

g. Sandhill Crane – *Antigone canadensis*. ()

03. American Crow – *Corvus brachyrhynchos*. ()

103. CLASSIFICATION OF WILDLIFE – GAME FISH. ()

Game fish includes the following fish and crayfish: ()

01. American shad – *Alosa sapidissima*. (3-31-22)()

02. Arctic grayling – *Thymallus arcticus*. (3-31-22)()

~~03. Atlantic salmon – *Salmo salar*. (3-31-22)~~

~~043. Bear Lake whitefish – *Prosopium abyscicola*. (3-31-22)()~~

~~054. Black bullhead – *Ameirus melas*. (3-31-22)()~~

~~065. Black crappie – *Pomoxis nigromaculatus*. (3-31-22)()~~

~~076. Blue catfish – *Ictalurus furcatus*. (3-31-22)()~~

~~08. Blueback trout – *Salvelinus alpinus oquassa*. (3-31-22)~~

~~097. Bluegill and hybrid with pumpkinseed – *Lepomis macrochirus*, including hybrid with pumpkinseed. (3-31-22)()~~

~~108. Bonneville cisco – *Prosopium gemmifer*. (3-31-22)()~~

~~1109. Bonneville whitefish – *Prosopium spilonotus*. (3-31-22)()~~

~~120. Brook trout – *Salvelinus fontinalis*. (3-31-22)()~~

~~131. Brown bullhead – *Ameirus nebulosus*. (3-31-22)()~~

~~142. Brown trout – *Salmo trutta*. (3-31-22)()~~

~~153. Bull trout – *Salvelinus confluentus*. (3-31-22)()~~

~~164. Burbot – *Lota lota*. (3-31-22)()~~

~~175. Channel catfish – *Ictalurus punctatus*. (3-31-22)()~~

- ~~186.~~ Chinook salmon (**land locked**) – *Oncorhynchus tshawytscha*, residing in waters that prohibit migration to the ocean and back. (3-31-22)()
- ~~197.~~ Coho salmon – *Oncorhynchus kisutch*. ()
- ~~2018.~~ Crayfish – *Pacifastacus spp.* ()
- ~~2119.~~ Cutthroat trout – *Oncorhynchus clarkii*, including subspecies Bonneville cutthroat trout – *O. clarkii utah*, Lahontan cutthroat trout – *O. clarkii henshawi*, Westslope cutthroat trout – *O. clarkii lewisi*, and Yellowstone (including “finespotted”) cutthroat trout – *O. clarkii bouvieri*. ()
- ~~220.~~ Flathead catfish—*Pylodictis olivaris*. (3-31-22)()
- ~~231.~~ Golden trout—*Oncorhynchus aguabonita*. (3-31-22)()
- ~~242.~~ Green sunfish—*Lepomis cyanellus*. (3-31-22)()
- ~~253.~~ Kokanee – *Oncorhynchus nerka kennerlyi* (not anadromous). ()
- ~~264.~~ Lake trout—*Salvelinus namaycush*. (3-31-22)()
- ~~275.~~ Lake whitefish—*Coregonus clupeaformis*. (3-31-22)()
- ~~286.~~ Largemouth bass—*Micropterus salmoides*. (3-31-22)()
- ~~297.~~ Mountain whitefish—*Prosopium williamsoni*. (3-31-22)()
- ~~3028.~~ Northern pike—*Esox lucius*. (3-31-22)()
- ~~3129.~~ Pumpkinseed—*Lepomis gibbosus*. (3-31-22)()
- ~~320.~~ Pygmy whitefish—*Prosopium coulterii*. (3-31-22)()
- ~~331.~~ Rainbow trout – *Oncorhynchus mykiss*, including redband trout – *O. mykiss gairdneri*. ()
- ~~342.~~ Rainbow/cutthroat trout (cutbow) – *O. mykiss* x *O. clarkii* hybrid. ()
- ~~353.~~ Sauger—*Sander canadensis*. (3-31-22)()
- ~~364.~~ Smallmouth bass—*Micropterus dolomieu*. (3-31-22)()
- ~~375.~~ Splake—*S. namaycush* x *S. fontinalis*. (3-31-22)()
- ~~36.~~ **Sunapee trout.** ()
- ~~38.~~ **Sockeye salmon**—*Oncorhynchus nerka* (anadromous). (3-31-22)
- ~~39.~~ **Steelhead trout**—*Oncorhynchus mykiss* (anadromous). (3-31-22)
- ~~4037.~~ Tiger Trout—*Salmo trutta* x *Salvelinus fontinalis*. (3-31-22)()
- ~~4138.~~ Tiger muskie—*Esox lucius* x *E. masquinongy*. (3-31-22)()
- ~~4239.~~ Walleye—*Sander vitreus*. (3-31-22)()
- ~~430.~~ Warmouth—*Lepomis gulosus*. (3-31-22)()

441. White crappie—*Pomoxis annularis*. (3-31-22)()
452. White sturgeon—*Acipenser transmontanus*. (3-31-22)()
463. Yellow bullhead—*Ameiurus natalis*. (3-31-22)()
474. Yellow perch—*Perca flavescens*. (3-31-22)()

104. CLASSIFICATION OF WILDLIFE – ANADROMOUS GAME FISH.

Anadromous game fish include members of the Onchorynchus family that migrate to the ocean as a juvenile and return to freshwater. ()

01. **Chinook salmon** – *Oncorhynchus tshawytscha* ()
02. **Coho salmon** – *Oncorhynchus kisutch*. ()
03. **Sockeye salmon** – *Oncorhynchus nerka*. ()
04. **Steelhead** – *Oncorhynchus mykiss*. ()

1045. CLASSIFICATION OF WILDLIFE – FURBEARING ANIMALS.

01. American badger—*Taxidea taxus*. (3-31-22)()
02. American marten—*Martes americana*. (3-31-22)()
03. American mink—*Vison vison*. (3-31-22)()
04. **North American Beaver**—*Castor canadensis*. (3-31-22)()
05. Bobcat—*Lynx rufus*. (3-31-22)()
06. Canada lynx—*Lynx canadensis*. (3-31-22)()
07. Common muskrat—*Ondatra zibethicus*. (3-31-22)()
08. Fisher—*Pekania pennanti*. (3-31-22)()
09. **North American river otter**—*Lontra canadensis*. (3-31-22)()
10. Pacific marten—*Martes caurina*. (3-31-22)()
11. Red fox – *Vulpes vulpes* (all color phases). ()

1056. – 149. (RESERVED)

150. THREATENED OR ENDANGERED SPECIES.

151. – 199. (RESERVED)

200. PROTECTED NONGAME SPECIES.

01. Mammals. ()
a. American pika—*Ochotona princeps*. (3-31-22)()

- b. Bats – all species. ()
- c. Chipmunks – *Tamias spp.* ()
- d. ~~Columbia Plateau~~ Merriam's ground squirrel – *Uroditellus canus*. (3-31-22)()
- e. ~~Common~~ Golden-mantled ground squirrel – *Callospermophilus lateralis*. (3-31-22)()
- f. ~~Great Basin~~ Piute ground squirrel – *Uroditellus mollis*. (3-31-22)()
- g. Kit fox – ~~Vulpes~~ macrotis. (3-31-22)()
- h. Wolverine – ~~Gulo~~ gulo. (3-31-22)()
- i. Northern Idaho ground squirrel – *Uroditellus brunneus*. ()
- j. Northern flying squirrel – ~~Glaucomy~~ sabrinus. (3-31-22)()
- k. ~~Common~~ Rock squirrel – *Otospermophilus variegatus*. (3-31-22)()
- l. Southern Idaho ground squirrel – *Uroditellus endemicus*. ()
- m. ~~Woodland~~ Caribou – ~~Rangifer~~ tarandus caribou. (3-31-22)()
- n. Wyoming ground squirrel – *Uroditellus elegans nevadensis*. ()
02. **Birds.** All native species, except game birds. ()
03. **Amphibians.** All native species. ()
04. **Reptiles.** All native species. ()
05. **Fish.** ()
- a. Bear Lake sculpin – ~~Cottus~~ extensus. (3-31-22)()
- b. Northern leatherside chub – ~~Lepidomeda~~ copei. (3-31-22)()
- c. Pacific ~~L~~ amprey – ~~Entosphenus~~ tridentatus. (3-31-22)()
- d. Sand roller – ~~Pereopsis~~ transmontana. (3-31-22)()
- e. Shoshone sculpin – ~~Cottus~~ greenei. (3-31-22)()
- f. Wood River sculpin – ~~cottus~~ leiopomus. (3-31-22)()
- g. ~~Bluehead~~ Green sucker – ~~Catostomus~~ discobolus. (3-31-22)()
201. **PREDATORY WILDLIFE.**
Predatory wildlife are defined in Section 36-201, Idaho Code. ()
202. – 249. **(RESERVED)**
250. **UNPROTECTED WILDLIFE.**
Unprotected Wildlife includes all wildlife not classified in the preceding categories. ()
251. – 299. **(RESERVED)**

300. PROTECTION OF WILDLIFE.

01. Game Species. Those species of wildlife classified as Big Game Animals, Upland Game Animals, Game Birds, Migratory Birds, Game Fish/Crustacea, or Furbearing Animals may be taken only in accordance with Idaho law ~~and Commission rules.~~ [\(3-31-22\)\(\)](#)

02. Protected Nongame and Threatened or Endangered Species. No person may take or possess those species of wildlife classified as Protected Nongame, or Threatened or Endangered at any time or in any manner, except as provided in Idaho Code (including Sections 36-106(e), and 36-1107), and Commission rules. Protected Nongame status is not intended to prevent unintentional take of these species, protection of personal health or safety, limit property and building management, or prevent management of animals to address public health concerns or agricultural damage. ()

03. Unprotected and Predatory Wildlife. Those species of wildlife classified as Unprotected Wildlife and Predatory Wildlife may be taken in any amount, at any time, and in any manner, by holders of the appropriate valid Idaho hunting, trapping, fishing, or combination license, provided such taking is not otherwise in violation of federal, state, county, or city laws, rules, ordinances, or regulations. ()

301. – 999. (RESERVED)

IDAPA 13 – DEPARTMENT OF FISH AND GAME
13.01.08 – RULES GOVERNING TAKING OF BIG GAME ANIMALS
DOCKET NO. 13-0108-2301
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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

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

The pending rule was brought by sportsmen who were concerned with the availability of muzzleloader bullets. This rulemaking expands the type of components for bullets that can be used in the muzzleloader special weapons hunts, thereby providing more options and availability for bullets.

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, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 271-272](#).

FEE SUMMARY: Not applicable. The pending rule does not impose new fees or changes.

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

There is no fiscal impact to the General Fund.

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

DATED this 22nd of November, 2023.

Amber Worthington
Deputy Director
Idaho Department of Fish and Game
600 S. Walnut Street
P.O. Box 25 Boise, ID 83707
Phone (208) 334-3771
Fax (208) 334-4885
Email: rules@idfg.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Section(s) 36-103, 36-104, 36-409, and 36-1101, 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, 2023.

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

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

The Department was asked to evaluate this rulemaking to address the decreasing availability of lead-only projectiles for muzzleloaders and the availability of other metal projectiles. Consequently, the proposed rule allows for the use of any metal or metal alloy and removes the restriction of non-jacketed projectile. Additionally, the proposed rule allows for accuracy tips and pressure bases.

FEE SUMMARY: There is no fee associated with this rule.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no fiscal impact associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 7, 2023 Idaho Administrative Bulletin, [Vol. 23-4, page 17](#) under Docket No. 13-0108-2301. The Department received little feedback around the staff recommendations for proposed changes to the rulemaking and those comments received from the public had no comments around the changes and felt current rules were appropriate.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Amber Worthington, 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, 2023.

DATED this 29th day of August, 2023.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-2301

406. SPECIAL WEAPON SEASONS – MUZZLELOADER.

01. Muzzleloader Only Season. ~~During a season designated by Commission proclamation as a Muzzleloader Only season, it~~ is unlawful to take a big game animal with any firearm, including muzzleloading pistols, or implement other than a muzzleloading rifle or musket that complies with each of the following:

~~(3-31-22)~~()

a. Is at least forty-five (.45) caliber for deer, pronghorn, mountain lion, or gray wolf, or at least fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat or black bear. (3-31-22)

b. Is capable of being loaded only from the muzzle. (3-31-22)

c. Is equipped only with open or peep sights. (3-31-22)

d. Is loaded only with loose black powder including synthetic black powder. (3-31-22)

e. Is equipped with no more than two (2) barrels. (3-31-22)

f. Is loaded only with a projectile with a diameter within one hundredth (.01) of an inch of the bore diameter. (3-31-22)

g. Is equipped only with flint, musket cap, or percussion cap. 209 primers are prohibited. (3-31-22)

h. Is equipped with an exposed ignition system. (3-31-22)

i. Is loaded only with a patched round ball or conical ~~non-jacketed~~ metal or metal alloy projectile, ~~comprised wholly of lead or lead alloy~~ with the exception of allowance of accuracy tips and pressure bases.

~~(3-31-22)~~()

02. Pelletized Powder. It is unlawful to use pelletized powder in a Muzzleloader Only season. (3-31-22)

03. Sabot. It is unlawful to use a sabot in a Muzzleloader Only season. (3-31-22)

IDAPA 13 – DEPARTMENT OF FISH AND GAME

13.01.11 – RULES GOVERNING FISH

DOCKET NO. 13-0111-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-106, 36-104, 36-406a, 36-407, 36-410, 36-701, 36-706, 36-804, 36-901, 36-902, and 36-1001, Idaho Code.

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

The pending rule is being presented for authorization as part of the IDFG plan to review each rule chapter every 5 years. Consistent with the Governor’s [Zero-Based Regulation Executive Order](#), the agency has revised current rule language to improve clarity and reduce duplication. The rulemaking includes consolidation of IDAPA 13.01.12 into this chapter, consolidates definitions into one location, and incorporates changes suggested from the public around fishing contests.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 273-287](#).

Changes to the proposed rule make it so the public can possess and live transport crayfish (that are not invasive species) without a permit. Changes also incorporate the use of and provisions for an e-tagging option for salmon and steelhead permits.

FEE SUMMARY: Not applicable. The pending rule does not impose new fees or changes.

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

There is no fiscal impact to the General Fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joe Kozfkay, State Fisheries Manager at (208) 334-3700.

DATED this 22nd of November, 2023.

Amber Worthington, Deputy Director
Idaho Department of Fish and Game
600 S. Walnut Street
P.O. Box 25 Boise, ID 83707
Phone (208) 334-3771
Fax (208) 334-4885
Email: rules@idfg.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Sections 36-103, 36-104, 36-406A, 36-407, 36-410, 36-701, 36-706, 36-804, 36-901, 36-902, 36-1001, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

This rule is being presented for authorization as part of the IDFG plan to review each rule chapter every 5 years. This rulemaking relates to criteria around commercial and non-commercial take, transport, and release of fish and crustacea, and fishing contests. Consistent with the Governor's [Zero-Based Regulation Executive Order](#), the agency has revised current rule language to improve clarity and reduce duplication.

IDFG has evaluated the potential to consolidate IDAPA 13.01.12, "Rules Governing Commercial Fishing," into this chapter, IDAPA 13.01.11, "Rules Governing Fish," such that IDAPA 13.01.12 may be repealed, as proposed concurrently in Docket No. [13-0112-2301](#).

This proposed rulemaking includes changes to integrate current IDFG restrictions found in both chapters, under the similar topic, into a single rule chapter under IDFG's authority to regulate fishing and commercial fishing. The proposed rule consolidates definitions into one location and adds sections specific to commercial fishing to the "Rules Governing Fish" chapter.

Of note, this rulemaking incorporates suggested changes from the public around fishing contests which makes limitations on certain water bodies less restrictive and provides exemptions for fish limits and transport of fish during fishing contests.

FEE SUMMARY: There is no fee associated with this rule.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no fiscal impact associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 7, 2023 Idaho Administrative Bulletin, [Vol. 22-4, page 19](#) under Docket No. 13-0111-2301. The Department received feedback around fishing contests and reached a consensus around modification of the rules.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Joe Kozfkay, State Fisheries Manager, 208-334-3700.

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, 2023.

DATED this 24th day of August, 2022.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 13-0111-2301

13.01.11 – RULES GOVERNING FISH

000. LEGAL AUTHORITY.

Sections 36-103, 36-104, 36-406A, 36-407, 36-410, 36-701, 36-706, 36-901, 36-902, 36-1001, Idaho Code. ()

001. SCOPE.

These rules govern commercial and non-commercial take, transport, and release of fish and crustacea, and fishing contests. ()

002. – 009. (RESERVED)

010. DEFINITIONS – FISH.

01. Adipose Fin. Small fatty fin along the back between the dorsal fin and tail. ()

02. Invasive Fish Species. Fish, amphibians, and crustacea designated as invasive species in IDAPA 02.06.09. ()

03. Jack Salmon. Salmon of a length set by Commission proclamation. ()

011. DEFINITIONS – CONDUCT OF FISHING.

01. Catch-and-Release. Effort to catch fish, provided that any fish so caught is released immediately back to the water after landing and not reduced to possession. ()

02. Commercial Fishing. Fishing or transporting fish or crayfish for the purpose of selling. ()

03. Fly Fishing. Fishing with a fly rod, fly line, and artificial fly. ()

04. Harvest. Reduce a fish to possession. ()

05. Ice Fishing. Fishing through an opening broken or cut through the ice. ()

06. Length. The length between the tip of the nose or jaw and the tip of the tail fin. ()

07. Snagging. Taking fish by use of a hook or lure in any manner or method other than enticing or attracting a fish to strike with, and become hooked in, its mouth or jaw. ()

08. Trolling. Taking a fish from a moving watercraft by dragging or pushing any fly, lure, bait, or hook using a motor, oars, or other forms of propulsion. ()

09. Unattended Line. Line not under the immediate surveillance by the angler. ()

012. DEFINITIONS – GEAR AND WATERCRAFT.

01. Artificial Fly. Any fly made entirely of rubber, wood, metal, glass, feather, fiber, or plastic by the method known as fly tying. ()

02. Artificial Lure. Any device made entirely of rubber, wood, metal, glass, feather, fiber, or plastic with hook or hooks attached. ()

03. Bait. Organic substances, other than rubber, wood, feather, fiber, or plastic, attached to a hook to attract fish. Bait includes insects, insect larvae, worms, dead fish, fish parts, any other animal or vegetable matter, or scented synthetic materials. ()

04. Barbless Hook. Hook without barbs or on which all barbs have been bent completely closed. ()

05. Electric Motor. Watercraft propulsion system powered by electricity. ()

06. Float Tube. Single occupant floating device not to exceed six (6) feet in any dimension that is not propelled by oars, paddles, or motors. ()

07. Hook. Bent wire device, for the catching of fish, to which one (1), two (2), or three (3) points may be attached to a single shank. ()

08. Motor. Watercraft propulsion system powered by electricity or combustion of fuel. ()

09. Single-Point Hook. Bent wire device, for catching fish, with one (1) shank and one (1) point. ()

10. Sliding Sinker. Method of attaching a sinker to a device that slides freely on the main line. ()

11. Watercraft. Device designed as a means of transportation on water. ()

013. DEFINITIONS – SEASONS AND LIMITS.

01. General Fishing Season. Season, bag limits, and possession as determined by proclamation on a regional basis. ()

02. Season Limit. Maximum number of fish that may be lawfully harvested in any declared season. ()

03. Special Rule Waters. Any water with a gear, motor, watercraft restriction, season, bag limits, or possession adopted by proclamation and different from the general fishing season. ()

014. DEFINITIONS – LOCATIONS.

01. Confluence. Location where two (2) rivers or streams join. ()

02. Diversion. Man-made structure designed to divert water. ()

03. Diversion Pond. Man-made basin holding diverted water, including basins connected by an open ditch or pipe. ()

04. Drainage. All water flowing into a common river or stream system, either above or below ground, due to area geography. ()

05. Fish Trap. Any man-made structure designed to capture fish. ()

06. Fish Weir. Any man-made structure placed in a water body to delay or divert migrating fish.

- ()
07. **Mouth.** Place where a river or stream enters a larger body of water. ()
08. **Reservoir.** Portion of a dammed waterbody in which there is no observable direction of flow. Unless noted otherwise, a stream flowing through the drawdown portion of a reservoir is not considered part of the reservoir. ()
09. **Section.** An area of a river, stream, or reservoir between specific boundary locations. ()
10. **Tributary.** A stream flowing into a larger water. ()
11. **Upstream.** Moving from a lower elevation towards a higher elevation point in the same stream. ()
- 015. DEFINITIONS – FISHING CONTESTS.**
01. **Fishing Contest.** Any organized fishing event that: ()
- a. Has a live-fish weigh-in; or ()
- b. Awards cash or prizes of one thousand dollars (\$1,000) or more based on number, size, or species of fish captured; or ()
- c. Is expected to draw or have more than twenty (20) participants. ()
02. **Catch-and-Release Contest.** Any fishing contest with specific procedures to keep target fish species alive and healthy and to release all fish caught back into the contest water on the same day. ()
03. **Harvest Contest.** Any fishing contest that allows participants to harvest fish. ()
- 013. – 100. (RESERVED)**
- 101. RELEASE OF FISH WHILE FISHING.**
Any fish caught that is unlawful to possess must be immediately released back to the water. ()
- 102. STURGEON.**
No person may remove a sturgeon that is unlawful to possess from the water. ()
01. **Barbed Hook Restrictions.** No person may fish for sturgeon with barbed hooks. ()
02. **Sinker for Sturgeon.** When fishing for sturgeon, a person must use a sliding sinker and lighter test line to attach the weight to the main line (the line attached to the reel). ()
- 103. (RESERVED)**
- 104. IDENTIFICATION OF SPECIES AND SIZE IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.**
01. **Restrictions.** No person may have in the field or in transit any trout, tiger muskie, or bass from which the head or tail has been removed unless: ()
- a. The angler is ashore and done fishing for the day; ()
- b. The fish is processed or packaged with the skin naturally attached to the flesh; ()
- c. The fish is processed or packaged in a manner that the number of fish harvested can be readily

determined; and ()

d. The processed fish is not transported by watercraft. ()

02. Transport or Gift. No person may transport for another or accept as a gift any game fish, unless a statement signed by taker accompanies the fish, showing the number and kinds, the date taken, the taker's name, address, and fishing license number. No person may claim ownership of more fish than allowed by the possession limit. ()

105. PURCHASE, BARTER, OR SALE OF FISH.

No person may purchase, barter, or sell the edible flesh of fish, crayfish, or bullfrog harvested from the wild, except as provided in Section 36-501, Idaho Code, and Title 36, Chapter 8, Idaho Code, and these rules promulgated. ()

106. LIVE FISH – POSSESSION, TRANSPORT, IMPORT, AND RELEASE.

01. Permit. No person may possess, transport, import, or release any live fish, crayfish, or bullfrog, or viable eggs thereof, without having first obtained a permit from the Department or the Department of Agriculture. ()

02. Marking Fish. No person may mark live fish by any means, including removing fins or injuring, without first obtaining a Scientific Collecting Permit from the Department. ()

03. Import Inspection and Examination Requirements. The Department may require a disease-free certification for live fish import or transport, as evidenced by a Certificate of Veterinary Inspection by a licensed veterinarian, (b) CFR Title 50 certification, (c) American Fisheries Society certified fish health inspector's certification, or (d) other certification by the Department of Agriculture. ()

04. Unpermitted Fish Species Released. Any fish unauthorized for import, possession, transport or release that is released by a person or escapes from that person's control must be captured or destroyed by that person, and may be captured or destroyed by the Department at the person's expense. ()

107. LIVE FISH AND EGGS – EXCEPTIONS.

No permit is required to: ()

01. Fish. Keep fish that can legally be reduced to possession (except for anadromous game fish), alive and in possession in a live well, while on the body of water from which they were taken. ()

02. Crayfish. Possess and transport live crayfish for personal consumption that are not designated as invasive species in IDAPA 02.06.09. ()

03. Private Ponds or Commercial Fish Facility. Possess fish from a private pond or commercial fish facility when accompanied by sales receipt and written permission from the Department, as provided in Title 36, Chapter 7, Idaho Code or from the Department of Agriculture as provided in Title 22, Chapter 46, Idaho Code. ()

04. Fish Eggs. Possess, sell, purchase or transport nonviable fish eggs used for bait or personal consumption. ()

108. – 199. (RESERVED)

200. FISHING METHODS AND GEAR.

01. General Restrictions. Unless modified by rule (such as exceptions in the following subsections), order, or proclamation, it is unlawful to: ()

a. Fish in any waters of Idaho with more than one (1) handline or pole with a line attached, unless in

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

legibly marked on two (2) opposing sides of the enclosure or shelter. ()

201. – 344. (RESERVED)

345. FISHING IN BOUNDARY WATERS.

01. Bear Lake. The holder of a valid Idaho or Utah fishing license may fish all of Bear Lake, subject to the rules or regulations of the state in which they are fishing, including any closure. ()

02. Limit for One License Only. Any angler who fishes on the Snake River or any other water forming an Idaho boundary is entitled to have in possession only the limit allowed by one (1) license regardless of the number of licenses they may possess. ()

346. FISH SALVAGE.

No person may salvage fish from public waters without specific authorization of the Department. Authorization for salvage may allow holders of valid fishing licenses to harvest fish without regard to usual possession limits and may allow snagging, spearing, archery, dipnet, seines, or with the hands. ()

347. – 399. (RESERVED)

400. ANADROMOUS GAME FISH LICENSES, TAGS, AND PERMITS.

01. Licenses. Any person fishing for anadromous game fish, except those expressly exempt, must have in possession a valid fishing license. ()

02. Permits. No person may fish for, or reduce to possession, anadromous game fish without a valid permit in possession for the targeted species. Permits are only valid for the specified river sections and species, as well as mark types (adipose clipped or unclipped) as set by Commission proclamation. Permits may either be paper copies or electronic permits which anglers will determine at time of purchase. Electronic permits require use of the Department's official mobile app. ()

a. Salmon Permit. Allows for fishing, retention, and possession of Chinook or Coho salmon as authorized by Commission proclamation. ()

b. Steelhead Permit. Allows for fishing, retention, and possession of steelhead as authorized by Commission proclamation. ()

401. – 402. (RESERVED)

403. PERMIT VALIDATION.

For each anadromous game fish hooked, landed, and reduced to possession, the angler hooking the fish must immediately validate their salmon or steelhead permit with the appropriate species, month, day, and river location code (listed by Commission proclamation). Paper validation requires entering in permanent ink. Electronic validation requires submission via the Department's official mobile app. ()

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

01. Provisions for Processing and Transporting Anadromous Game Fish. All processing and transportation provisions and restrictions from IDAPA 13.01.11.104 are applicable to anadromous game fish. In addition: ()

a. The processed and packaged fish must include a portion with a healed, clipped, adipose fin scar or adipose fin. ()

b. No jack salmon may be processed while in the field or in transit. ()

c. Each processed anadromous game fish counts towards an angler's possession limit while in the field or in transit. ()

405. ANADROMOUS GAME FISH METHODS OF TAKE.

In addition to take restrictions for all game fish, the following apply to anadromous game fish: ()

01. Hooks. Anadromous game fish may be taken only with barbless hooks in the Salmon, Clearwater, and Snake River drainages downstream of Hells Canyon Dam. ()

02. Retention. Any anadromous game fish caught must be released or, provided it is legal to possess, killed immediately. ()

03. Cease Fishing. Once an angler has attained their bag, possession or season limit on those waters with anadromous game fish limits, they must cease fishing for anadromous game fish, including catch-and-release fishing. ()

04. Adipose Fin. Only anadromous game fish with a clipped adipose fin, as evidenced by a healed scar, may be kept during an open season. Retention of unclipped anadromous game fishes may be authorized by Commission proclamation. ()

05. Fish Counted in Limit. Each fish that is hooked, landed, and reduced to possession counts towards the limit of the person hooking the fish. ()

406. – 407. (RESERVED)

408. STEELHEAD PURCHASE REPORT.

01. Filing Purchase Report. Any person holding a wholesale or retail steelhead trout buyer's license must report all sales and purchases of steelhead on a form provided by the Department on or before December 31 of each year. ()

02. Inaccurate Reporting. Failure to provide complete and accurate information on the report or failure to file the report on time are grounds for revocation of the wholesale or retail license. ()

409. – 599. (RESERVED)

600. FISHING CONTESTS – PERMIT REQUIREMENT AND APPLICATION.

01. Permit Requirement. No person or other entity may conduct a fishing contest without having first obtained a fishing contest permit from the Department. Events organized wholly for youth under the age of fourteen (14) do not require a fishing contest permit. ()

02. Permit Application. Application for fishing contest permits must be made using a form provided by the Department. ()

601. FISHING CONTESTS PERMIT ISSUANCE.

01. General. The issuance of a fishing permit is at the Department's discretion. Among the factors the Department will consider are: ()

a. Effects of the contest on fish populations. ()

b. Compatibility of the contest with fish population management and fishery goals. ()

c. Potential conflict with other recreational users or other permitted contests. ()

d. Previous compliance with submitting fishing contest reports. ()

02. Limit on Contest. The Department will not issue a permit for a harvest contest for wild native trout or sturgeon in rivers or streams. ()

03. Conditions. The Department has discretion to specify conditions in the permit to minimize adverse effects on fish populations, management programs and goals, other recreational users, or other permitted contests, including: ()

a. The time of start and check-in; ()

b. Limitations on the contest area; ()

c. Handling protocols and the method and location of release of fish; ()

d. More restrictive bag or size limits than would otherwise apply. ()

e. Allowing overland transport of live fish to facilitate fish redistribution within the contest area. ()

f. Requiring mandatory kill of fish species deemed incompatible with water body management objectives. ()

602. FISHING CONTESTS – REQUIREMENTS.

01. Rules. Any fishing contest participant must comply with seasons, limits, and rules pertaining to the taking of fish and any additional conditions of the fishing contest permit. For special rule waters, the Department may authorize seasons, limits, and rules exemptions. ()

02. Culling. No fishing contest participant may release back to the water (cull) any fish that is not capable of swimming free. ()

603. FISHING CONTEST REPORTS.

Each fishing contest sponsor shall, within thirty (30) days after the last day of a fishing contest, submit a report to the Fisheries Bureau at the Department’s main office using the form provided by the Department. ()

604. – 699. (RESERVED)

700. COMMERCIAL FISHING LICENSES, TAGS, AND APPLICATIONS.

01. Commercial Fishing License Requirements. No person shall set, operate, or fish with commercial gear unless they possess a valid commercial fishing license or are assisting in the presence of a licensee. ()

a. Commercial Fishing Species. The holder of a valid commercial fishing license may engage in commercial fishing for Bullfrog, Crayfish, or unprotected species from the Minnow or Sucker families. ()

b. Commercial Fishing Locations. Commercial harvest is allowed only in the Snake River and its main stem impoundments from Hells Canyon Dam upstream to the confluence of the North and South Forks, Palisades Reservoir, Lake Lowell, Black Canyon Reservoir, Blackfoot Reservoir, and the Bear River and its main stem impoundments from Utah state line upstream to and including Alexander Reservoir. ()

02. Commercial Fishing License Application. Application for a commercial fishing license may occur using a form provided by the Department. Should the license be approved, or conditionally approved, commercial fishing may occur after licenses and tags are secured. ()

03. Commercial Gear Tags. No person may set, operate, lift, or fish commercial gear unless such gear has attached thereto a valid commercial gear tag from the Department, except that no tag needs to be attached to

conventional rod and reel fishing tackle used for commercial fishing. ()

701. COMMERCIAL FISHING AUTHORIZATION ISSUANCE.

01. General. The Department may consider commercial fishing operations not listed in IDAPA 13.01.11.700.01 by special authorization. The issuance of a special authorization is at the Department's discretion. Such authorizations will be valid for a period not to exceed one (1) year. Among the factors the department will consider are: ()

- a. Impacts of commercial fishing on fish or wildlife populations. ()
- b. Post-release mortality of non-target species. ()
- c. Compatibility of commercial fishing with fish population management and fishery goals. ()
- d. Potential conflict with other recreational users or commercial fishing activities. ()
- e. Transmission of invasive species. ()
- f. Compliance with reporting requirements. ()

02. Commercial Fishing Conditions. The Department has discretion to specify conditions to minimize adverse effects on fish or wildlife populations, management programs and goals, other recreational users, or other licensees, including: ()

- a. Limitations of fishing seasons and times. ()
- b. Limitations on fishing areas. ()
- c. Limitations on gear type, specifications, and quantity. ()
- d. Handling protocols, as well as methods and locations for release of non-target fish. ()
- e. Maximum allowable catch. ()

03. Revocation of Commercial Licenses and Special Authorizations. The Department is authorized to suspend, for a period not to exceed one (1) year, or revoke entirely, any commercial license or authorization for violation of Title 36, Idaho Code by the licensee or persons acting under the licensee's direction and control. ()

702. – 749. (RESERVED)

750. RELEASE OF NON-TARGET FISH AND CRUSTACEA.

Any person capturing with commercial gear any species of fish or crustacea not a commercial species or listed on a special permit shall immediately release it unharmed back to the water. ()

01. Female Crayfish. Any person capturing any female crayfish carrying eggs or young shall release it unharmed back to the water at the time the crayfish are sorted. ()

751. POSSESSION AND TRANSPORTATION OF LIVE FISH OR CRUSTACEA.

01. Live Fish. No person may transport live fish without Department authorization. ()

02. Live Crustacea. Commercial fishers may possess and transport live commercial species of crustacea between the water areas where harvested and the point of sale or holding. Live crustacea may be held only in the waters where harvested, in ponds for which a private pond permit listing crustacea has been issued or in licensed commercial facilities. ()

752. – 779. (RESERVED)

780. SIZE LIMITS.

- 01. Fish.** Commercial fish species of any size may be taken commercially. ()
- 02. Crayfish.** ()
- a.** Only crayfish three and five-eighths (3 5/8) inches or greater in length from the tip of the nose to the tip of the tail, measured in a straight line ventral side up, may be taken commercially. ()
- b.** Crayfish shall be sorted, and any undersize crayfish returned to the water at the place of capture immediately following the emptying of any single trap or a trap line. However, an allowable sorting error percentage of undersized crayfish, not to exceed five percent (5%), is allowed in any load or lot. The percentage of undersized crayfish will be the mean of combined counts of samples measured and counted from various portions of the load or lot. Samples will be taken in containers of not less than one (1) gallon size approximately full of crayfish, with at least three (3) such samples taken from any load or lot. ()

781. – 799. (RESERVED)

800. COMMERCIAL GEAR AND METHODS OF TAKE FOR FISH OR CRUSTACEA.

No person may commercially harvest fish or crustacea except as follows: ()

- 01. Seine Nets.** Seine net mesh size may not exceed one and one half (1 1/2) inch bar measurement and under constant attendance by the licensee or someone working under the supervision of the licensee; or if being used to hold fish, clearly marked with buoys that are at least twelve (12) inches in diameter. ()
- 02. Traps.** With a trap not exceeding three (3) feet in any dimension, and provided all traps are lifted and emptied of catch at least once every ninety-six (96) hours, except during periods of weather that pose a threat to human life, health, or safety. ()
- 03. By Hand.** For crayfish only. ()

801. UNTAGGED GEAR.

Untagged gear, or unattended seine nets, or traps left unattended more than ninety-six (96) hours are considered unlawful or abandoned and may be confiscated by Department personnel. ()

802. – 859. (RESERVED)

860. COMMERCIAL SEASONS.

- 01. Commercial Fish.** Year-round. ()
- 02. Commercial Crustacea.** April 1 through October 31 of each year. ()

861. – 879. (RESERVED)

880. COMMERCIAL FISHING RESTRICTIONS.

- 01. Operation Limitations.** No commercial gear may be set, operated, or lifted within one hundred (100) yards of any public boat ramp or dock. ()
- 02. Storage Limitation.** No commercial gear, watercraft, or other equipment or materials used in conjunction with a commercial fishing operation may be stored or left unattended at any public fishing access area in any manner that restricts angling or angler access. ()

881. – 899. (RESERVED)

900. COMMERCIAL FISHING INSPECTIONS AND REPORTING REQUIREMENTS.

01. **Inspections.** Department personnel may inspect: ()
- a. Commercial gear at any time the gear is being used. ()
- b. Catches and catch records at any time. ()

02. **Reporting Requirements.** All licensees shall submit a monthly report on a form prescribed by the Department, with all requested information including daily landings and effort, such that it is received by the Department not later than the fifteenth day of the month following the fishing activities. ()

901. – 999. (RESERVED)

[Agency redlined courtesy copy]

Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.

13.01.11 – RULES GOVERNING FISH

000. LEGAL AUTHORITY.

Sections 36-103, 36-104, 36-406A, 36-407, 36-410, 36-701, 36-706, 36-901, 36-902, 36-1001, Idaho Code, ~~authorize the Commission to adopt rules concerning fishing, methods of take, seasons, limits, and fishing contests.~~ (3-31-22)()

001. ~~TITLE AND SCOPE.~~

~~The title of this chapter for citation is IDAPA 13.01.11, “Rules Governing Fish.” These rules establish the methods of govern commercial and non-commercial take, seasons transport, and possession limits for all non-commercial fishing and govern release of fish and crustacea, and fishing contests.~~ (3-31-22)()

002. – 009. (RESERVED)

010. DEFINITIONS – FISH.

01. ~~Chinook Salmon~~ **Adipose Fin.** ~~Anadromous (ocean run) salmon of the species *Oncorhynchus tshawytscha* in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage, and the Clearwater River drainage, (excluding lakes, reservoirs, and the North Fork of the Clearwater River above Dworshak Dam), and the Boise River drainage~~ **Small fatty fin along the back between the dorsal fin and tail.** (3-31-22)()

02. ~~Coho Salmon.~~ **Coho Salmon.** ~~Anadromous (ocean run) salmon of the species *Oncorhynchus kisutch* in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage, and Clearwater River drainage (excluding lakes, reservoirs, and the North Fork of the Clearwater River above Dworshak Dam).~~ (3-31-22)

03. ~~Game Fish.~~ **Game Fish.** ~~As classified in IDAPA 13.01.06, “Rules Governing Classification and Protection of Wildlife.”~~ (3-31-22)

04. ~~Hybrid Fish~~ **Invasive Fish Species.** ~~The offspring of two different species or subspecies of fish. Fish, amphibians, and crustacea designated as invasive species in IDAPA 02.06.09.~~ (3-31-22)()

05. ~~Jack Salmon.~~ **Jack Salmon.** ~~Anadromous (ocean run) s~~Salmon of a size length set by Commission proclamation. (3-31-22)()

~~06. **Invasive Fish Species.** Bullfrog, fish and crustacea species designated invasive species by state authority (IDAPA 02.06.09 “Rules Governing Invasive Species of the Idaho Department of Agriculture”). (3-31-22)~~

~~07. **Sockeye Salmon.** Anadromous (ocean run) salmon of the species *Oncorhynchus nerka* in the Snake River drainage below Hells Canyon Dam and the Salmon River drainage. (3-31-22)~~

~~08. **Steelhead.** Any rainbow trout longer than twenty (20) inches in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage, and the Clearwater River drainage (excluding that portion above Dworshak Dam); and any rainbow trout longer than twenty (20) inches in length with the adipose fin clipped (as evidenced by a healed scar) in the Snake River drainage from Hells Canyon Dam upstream to Oxbow Dam, and in the Boise River drainage from its mouth upstream to Barber Dam. (3-31-22)~~

~~09. **Trout.** Trout, including brown, cutthroat, golden, grayling, lake (Mackinaw), rainbow (other than steelhead), splake, sunapee, tiger, trout hybrids; and landlocked (not ocean runs) forms of chinook, coho, atlantic and kokanee (blueback) salmon. (3-31-22)~~

~~10. **Unprotected Fish.** Bullfrog and all fish species not classified in a protected category (game fish, protected nongame, threatened or endangered species) in IDAPA 13.01.06, “Rules Governing Classification and Protection of Wildlife.” (3-31-22)~~

011. DEFINITIONS – CONDUCT OF FISHING.

~~01. **Artificial Fly.** Any fly made entirely of rubber, wood, metal, glass, feather, fiber, or plastic by the method known as fly tying. (3-31-22)~~

~~02. **Artificial Lure.** Any device made entirely of rubber, wood, metal, glass, feather, fiber, or plastic with hook or hooks attached. (3-31-22)~~

~~03. **Bag Limit.** The maximum number of fish that may be lawfully taken by any one (1) person in one (1) day, construed in accordance with Sections 36-202 and 36-410, Idaho Code. (3-31-22)~~

~~04. **Bait.** Organic substances, other than rubber, wood, feather, fiber, or plastic, attached to a hook to attract fish. Bait includes insects, insect larvae, worms, dead fish, fish parts, any other animal or vegetable matter, or scented synthetic materials. (3-31-22)~~

~~05. **Barbless Hook.** A fish hook without barbs or on which all barbs have been bent completely closed. (3-31-22)~~

~~06. **Catch-and-Release.** Effort, ~~by permitted methods,~~ to catch fish, provided that any fish so caught is released immediately back to the water **after landing and not reduced to possession.** (3-31-22)()~~

~~02. **Commercial Fishing.** Fishing or transporting fish or crayfish for the purpose of selling. ()~~

~~07. **Confluence of a Stream or River.** The point where two (2) rivers or streams come together. (3-31-22)~~

~~08. **Diversion.** A man-made structure designed to change the direction of flowing water in a stream. (3-31-22)~~

~~09. **Diversion Pond.** A man-made pond holding water taken from a stream or reservoir, which pond may be connected to the stream or reservoir by an open ditch or pipe. (3-31-22)~~

~~10. **Drainage.** All water flowing into a common river or stream system, either above or below ground, due to area geography. (3-31-22)~~

~~11. **Electric Motors Only.** For fishing waters listed in proclamation as “electric motors only,” no gas~~

- ~~(internal combustion) motors may be used, although they may be attached to the boat. (3-31-22)~~
- ~~12. Fish Trap. Any man-made structure designed to capture fish. (3-31-22)~~
- ~~13. Fish Weir. Any man-made structure placed in a water body to delay or divert migrating fish. (3-31-22)~~
- ~~14. Flat Water. Water where there is no observable direction of flow. (3-31-22)~~
- ~~15. Float Tube. A floating device that suspends a single occupant, from the seat down, in the water, and is not propelled by oars, paddles, or motors. (3-31-22)~~
- ~~1603. Fly Fishing. Fishing with a fly rod, fly reel, fly line, and artificial fly. (3-31-22)()~~
- ~~17. General Fishing Season. The season and bag limits as determined by proclamation on a Regional basis. (3-31-22)~~
- ~~1804. Harvest. Reduce a fish to possession. ()~~
- ~~19. Hook. A bent wire device, for the catching of fish, to which one (1), two (2), or three (3) points may be attached to a single shank. Up to five (5) hooks per line may be used, except where specifically identified. (3-31-22)~~
- ~~2005. Ice Fishing. Fishing through an opening broken or cut through the ice. ()~~
- ~~2106. Length. The length between the tip of the nose or jaw and the tip of the tail fin. ()~~
- ~~22. Limit is 0 (Zero). Fishing is allowed, provided the fish is released after landing and not reduced to possession. (3-31-22)~~
- ~~23. Motor. Includes electric and internal combustion motors. (3-31-22)~~
- ~~24. Mouth of River or Stream. The place where a river or stream enters a larger body of water. (3-31-22)~~
- ~~25. No Motors. For fishing waters listed in proclamation as "no motors," no person may fish from a boat with a motor attached. (3-31-22)~~
- ~~26. Possession Limit. As defined in Section 36-202, Idaho Code. (3-31-22)~~
- ~~27. Reservoir. The flat water level existing at any time within a reservoir basin. Unless noted otherwise, a stream flowing through the drawdown portion of a reservoir is not considered part of the reservoir. (3-31-22)~~
- ~~28. Season Limit. The maximum number of fish that may be lawfully harvested in any declared season. (3-31-22)~~
- ~~29. Section. An area of a river, stream, or reservoir between specific boundary locations. (3-31-22)~~
- ~~30. Single Point Hook. A bent wire device, for catching fish, with one (1) shank and one (1) point. (3-31-22)~~
- ~~31. Sliding Sinker. A method of attaching a sinker to a device that slides freely on the main line. (3-31-22)~~
- ~~3207. Snagging. Taking or attempting to take a fish by use of a hook or lure in any manner or method other than enticing or attracting a fish to strike with, and become hooked in, its mouth or jaw. (3-31-22)()~~

- ~~33. **Special Rule Waters.** Any water with a gear, season, or bag limit rule that is listed in proclamation and different from the general fishing season. (3-31-22)~~
- ~~34. **Tributary.** A stream flowing into a larger stream or lake. (3-31-22)~~
- ~~08. **Trolling.** Taking a fish from a moving watercraft by dragging or pushing any fly, lure, bait, or hook using a motor, oars, or other forms of propulsion. ()~~
- ~~3509. **Unattended Line.** A line not under the immediate surveillance by the angler. (3-31-22)()~~
- ~~36. **Upstream.** Moving from a lower elevation towards a higher elevation point in the same stream. (3-31-22)~~
- ~~37. **Watercraft.** Those devices designed as a means of transportation on water. (3-31-22)~~

012. DEFINITIONS – GEAR AND WATERCRAFT.

- ~~01. **Artificial Fly.** Any fly made entirely of rubber, wood, metal, glass, feather, fiber, or plastic by the method known as fly tying. ()~~
- ~~02. **Artificial Lure.** Any device made entirely of rubber, wood, metal, glass, feather, fiber, or plastic with hook or hooks attached. ()~~
- ~~03. **Bait.** Organic substances, other than rubber, wood, feather, fiber, or plastic, attached to a hook to attract fish. Bait includes insects, insect larvae, worms, dead fish, fish parts, any other animal or vegetable matter, or scented synthetic materials. ()~~
- ~~04. **Barbless Hook.** Hook without barbs or on which all barbs have been bent completely closed. ()~~
- ~~05. **Electric Motor.** Watercraft propulsion system powered by electricity. ()~~
- ~~06. **Float Tube.** Single occupant floating device not to exceed six (6) feet in any dimension that is not propelled by oars, paddles, or motors. ()~~
- ~~07. **Hook.** Bent wire device, for the catching of fish, to which one (1), two (2), or three (3) points may be attached to a single shank. ()~~
- ~~08. **Motor.** Watercraft propulsion system powered by electricity or combustion of fuel. ()~~
- ~~09. **Single-Point Hook.** Bent wire device, for catching fish, with one (1) shank and one (1) point. ()~~
- ~~10. **Sliding Sinker.** Method of attaching a sinker to a device that slides freely on the main line. ()~~
- ~~11. **Watercraft.** Device designed as a means of transportation on water. ()~~

013. DEFINITIONS – SEASONS AND LIMITS.

- ~~01. **General Fishing Season.** Season, bag limits, and possession as determined by proclamation on a regional basis. ()~~
- ~~02. **Season Limit.** Maximum number of fish that may be lawfully harvested in any declared season. ()~~

03. Special Rule Waters. Any water with a gear, motor, watercraft restriction, season, bag limits, or possession adopted by proclamation and different from the general fishing season. ()

014. DEFINITIONS – LOCATIONS.

01. Confluence. Location where two (2) rivers or streams join. ()

02. Diversion. Man-made structure designed to divert water. ()

03. Diversion Pond. Man-made basin holding diverted water, including basins connected by an open ditch or pipe. ()

04. Drainage. All water flowing into a common river or stream system, either above or below ground, due to area geography. ()

05. Fish Trap. Any man-made structure designed to capture fish. ()

06. Fish Weir. Any man-made structure placed in a water body to delay or divert migrating fish. ()

07. Mouth. Place where a river or stream enters a larger body of water. ()

08. Reservoir. Portion of a dammed waterbody in which there is no observable direction of flow. Unless noted otherwise, a stream flowing through the drawdown portion of a reservoir is not considered part of the reservoir. ()

09. Section. An area of a river, stream, or reservoir between specific boundary locations. ()

10. Tributary. A stream flowing into a larger water. ()

11. Upstream. Moving from a lower elevation towards a higher elevation point in the same stream. ()

0125. DEFINITIONS – FISHING CONTESTS.

01. Fishing Contest. Any organized fishing event that: ()

a. Has a live-fish weigh-in; or ()

b. Awards cash or prizes of one thousand dollars (\$1,000) or more based on number, size, or species of fish captured; or ()

c. Is expected to draw or have more than twenty (20) participants. ()

02. Catch-and-Release Contest. Any fishing contest with specific procedures to keep target fish species alive and healthy and to release all fish caught back into the contest water on the same day. ()

03. Harvest Contest. Any fishing contest that allows participants to harvest fish. ()

013. – 100. (RESERVED)

101. RELEASE OF FISH WHILE FISHING.

Any fish caught ~~in Idaho waters~~ that is unlawful to possess must be immediately released back to the water. (3-31-22)()

102. STURGEON.

No person may remove a sturgeon that is unlawful to possess from the water, ~~and it is unlawful to possess sturgeon.~~

(3-31-22)()

01. Barbed Hook Restrictions. No person may fish for sturgeon with barbed hooks. ()

02. Sinker for Sturgeon. When fishing for sturgeon, a person must use a sliding sinker and lighter test line to attach the weight to the main line (the line attached to the reel). ()

103. (RESERVED)

104. IDENTIFICATION OF SPECIES AND SIZE IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

01. Restrictions. No person may have in the field or in transit any trout, tiger muskie, or bass from which the head or tail has been removed unless: ()

a. The angler is ashore and done fishing for the day; ()

b. The fish is processed or packaged with the skin naturally attached to the flesh; ~~and~~ (3-31-22)()

c. The fish is processed or packaged in a manner that the number of fish harvested can be readily determined; and ()

~~d.~~ The processed fish is not transported by ~~boat~~ watercraft. (3-31-22)()

02. Transport or Gift. No person may transport for another or accept as a gift any game fish, unless a statement signed by taker accompanies the fish, showing the number and kinds, the date taken, the taker's name, address, and fishing license number. ~~However, n~~ No person may claim ownership of more fish than allowed by the possession limit. (3-31-22)()

105. PURCHASE, BARTER, OR SALE OF FISH.

No person may purchase, barter, or sell the edible flesh of fish, crayfish, or bullfrog harvested from the wild, except as provided in Section 36-501, Idaho Code, and Title 36, Chapter 8, Idaho Code, and these rules promulgated pursuant thereto. (3-31-22)()

106. LIVE FISH – POSSESSION, TRANSPORT, IMPORT, AND RELEASE.

01. Permit. No person may possess, transport, ~~cause to be transported,~~ import, or release any live fish, crayfish, or bullfrog, or viable eggs thereof, without having first obtained a permit from the ~~Director~~ Department or the Department of Agriculture. (3-31-22)()

02. Marking Fish in Possession. No person may mark live fish by any means, including ~~with a tag,~~ by removing fins or injuring ~~with intent to leave a scar,~~ without first obtaining a Scientific Collecting Permit from the Department. (3-31-22)()

03. Import Inspection and Examination Requirements. ~~All live fish imported into or transported within Idaho must be certified free from disease.~~ The Department may require a disease-free certification for live fish import or transport, as evidenced by a Certificate of Veterinary Inspection by a licensed veterinarian, (b) CFR Title 50 certification, (c) American Fisheries Society certified fish health inspector's certification, or (d) other certification by ~~an individual designated by the Director of~~ the Department of Agriculture. (3-31-22)()

04. Unpermitted Fish Species Released. Any fish ~~species unpermitted~~ unauthorized for import, possession, transport or release that is released by a person or escapes from ~~an owner or operator shall~~ that person's control must be captured or destroyed by ~~the owner that person,~~ or and may be captured or destroyed by the Department at the ~~owner's~~ person's expense. (3-31-22)()

107. LIVE FISH AND EGGS – EXCEPTIONS.

No permit is required to:

()

01. **Fish.** Keep fish that can legally be reduced to possession (except for anadromous ~~salmon and steelhead~~ game fish), alive and in possession in a live well, ~~net, or on a stringer~~ while at on the body of water from which they were taken. (3-31-22)()

~~02. **Same Location.** Release fish at the same time and place where captured. (3-31-22)~~

~~03. **Aquarium Fish.** Possess ornamental or tropical aquarium fish of varieties commonly accepted for interstate shipment (not to include invasive species). (3-31-22)~~

~~02. **Crayfish.** Possess and transport live crayfish for personal consumption that are not designated as invasive species in IDAPA 02.06.09. ()~~

~~043. **Private Ponds or Commercial Fish Facility.** Possess fish from a private pond or commercial fish facility when accompanied by sales receipt and written permission from the ~~director~~ Department, as provided in ~~Chapter 7~~, Title 36, Chapter 7, Idaho Code or from the Department of Agriculture as provided in ~~Chapter 46~~, Title 22, Chapter 46, Idaho Code. (3-31-22)()~~

~~05. **Transport Between Commercial Fish Facilities.** Transport fish between commercial fish facilities licensed under Chapter 7, Title 36 and Chapter 46, Title 22, Idaho Code. (3-31-22)~~

~~064. **Fish Eggs.** Possess, sell, purchase or transport nonviable fish eggs used for bait or personal consumption. ()~~

108. – 199. (RESERVED)

200. FISHING METHODS AND GEAR.

01. **General Restrictions.** Unless modified by rule (such as ~~the~~ exceptions in the following subsections), order, or proclamation, it is unlawful to: (3-31-22)()

a. Fish in any waters of Idaho with more than one (1) handline or pole with a line attached, unless in possession of a valid two-pole permit. (3-31-22)()

b. Leave an line unattended line. (3-31-22)()

c. Have more than five (5) hooks attached per line. ()

~~d. Use more than five (5) lines while ice fishing. ()~~

~~de. Fish by archery, spearfishing, snagging, hands, trapping, seining, or netting. ()~~

~~ef. Use live fish, leeches, frogs, salamanders, waterdogs, or shrimp as bait. ()~~

~~fg. Land any fish with a gaff hook. ()~~

~~02h. **Molesting Fish.** It is unlawful to ~~m~~Molest any fish by shooting at it with a firearm or pellet gun, striking at it with a club, hands, rocks, or other objects, building obstructions for catching fish, or chasing fish up or downstream in any manner. (3-31-22)()~~

~~i. Fish from a watercraft with a motor attached in waters listed in proclamation as “no motors.” ()~~

~~j. Use gas (internal combustion) motors on fishing waters listed in proclamation as “electric motors only,” although it may be attached to the boat. ()~~

~~03. **Hook and Line Exceptions.** The holder of a valid two (2) pole permit may use two (2) poles~~

~~during a general fishing season. A person may use no more than (5) lines while ice fishing. (3-31-22)~~

~~042. Snagging, Archery, and Spear Fishing Exceptions. Fishing with a~~ The use of snagging, bow and arrow, crossbow, spear or mechanical device, excluding firearms, is permitted for the taking of unprotected fish, provided there is an open season for game fish. (3-31-22)()

~~053. Gaff Hook Exceptions. It is permitted to use a~~ The use of a gaff hook ~~through a hole cut or broken in the ice is permitted while ice fishing~~ in waters which have no length restrictions or harvest closures for that species, or when landing unprotected fish species taken with archery equipment, ~~provided the angler does not intend to release fish so caught.~~ (3-31-22)()

~~06. Snagging Exceptions. Snagging of unprotected fish species is permitted. (3-31-22)~~

~~074. Trapping and Seining Exceptions. It is lawful to take unprotected fish, crayfish, and yellow perch with a minnow net, seine, or up to five (5) traps, provided unless~~ there is an open season for game fish, and provided the following conditions are met: (3-31-22)()

a. The seine or net does not exceed ten (10) feet in length or width, and the seine has three-eighths (3/8) inch square or smaller mesh; and the minnow or crayfish trap does not exceed two (2) feet in length, width or height. If the trap is of irregular dimension, but its volume does not exceed the volume of an eight (8) cubic foot trap, it is lawful to use. ()

b. Nets and seines are not left unattended. ()

c. Traps are checked at least every forty-eight (48) hours. ()

d. All game fish and protected nongame fish incidentally ~~taken~~ captured while trapping or seining are immediately released alive. (3-31-22)()

e. All traps have a tag attached bearing the owner's name and address, ~~or~~ license number, or sportsman identification number. (3-31-22)()

~~085. Use of Bait Exceptions. Live crayfish and bullfrog may be used for bait if caught on the body of water being fished. ()~~

~~096. Use of Hands Exceptions. It is permitted to take b~~ Bullfrog and crayfish may be taken with the hands. (3-31-22)()

~~10. Barbed Hook Restrictions. It is unlawful to fish for sturgeon with barbed hooks. It is unlawful to fish for or take steelhead or salmon with barbed hooks in the Clearwater River drainage, Salmon River drainage, and Snake River drainage below Hells Canyon Dam. (3-31-22)~~

~~11. Sinker for Sturgeon. When fishing for sturgeon, a person must use a sliding sinker and a lighter test line to attach the weight to the main line (the line attached to the reel). (3-31-22)~~

~~1207. Fishing Shelters. Any enclosure or shelter left unattended overnight on the ice of any waters of the state shall have the owner's name, telephone numbers, and current address, or sportsman identification number legibly marked on two (2) opposing sides of the enclosure or shelter. (3-31-22)()~~

201. – 344. (RESERVED)

345. FISHING IN BOUNDARY WATERS.

01. **Bear Lake.** The holder of a valid Idaho or Utah fishing license may fish all of Bear Lake, subject to the rules or regulations of the state in which they are fishing, including any closure. ()

~~02. Snake River Between Idaho and Oregon or Washington. The holder of a valid Idaho fishing~~

~~license may fish the Snake River where it forms the boundary between Idaho and the states of Oregon or Washington, subject to the fish and game laws of Idaho. An Idaho license does not authorize the holder to fish from the shoreline, sloughs, or tributaries on the Oregon or Washington side. An Oregon or Washington license holder has the same rights and restrictions with reference to the Idaho side.~~ (3-31-22)

032. Limit for One License Only. Any angler who fishes on the Snake River or any other water forming an Idaho boundary is entitled to have in possession only the limit allowed by one (1) license regardless of the number of licenses ~~he~~ they may possess. (3-31-22)()

346. FISH SALVAGE.

No person may salvage fish from public waters without specific authorization of the ~~Commission, Director, or Regional Supervisor~~ Department. Authorization for salvage may allow holders of valid fishing licenses to harvest fish without regard to usual possession limits and may allow snagging, spearing, archery, dipnet, seines, or with the hands. (3-31-22)()

347. – 399. (RESERVED)

400. ~~STEELHEAD AND ANADROMOUS SALMON~~ GAME FISH LICENSES, TAGS, AND PERMITS.

01. Licenses. Any person fishing for ~~steelhead or~~ anadromous ~~salmon~~ game fish, except those expressly exempt, must have in possession a valid fishing license. (3-31-22)()

02. Permits. No person may fish for, or reduce to possession, ~~steelhead or~~ anadromous ~~salmon~~ game fish without a valid ~~steelhead or salmon~~ permit in possession for the targeted species. Permits are only valid for the specified river sections and species, as well as mark types (adipose clipped or unclipped) as set by Commission proclamation. Permits may either be paper copies or electronic permits which anglers will determine at time of purchase. Electronic permits require use of the Department's official mobile app. (3-31-22)()

a. Salmon Permit. Allows for fishing, retention, and possession of *Chinook or Coho* salmon as authorized by Commission proclamation. ()

b. Steelhead Permit. Allows for fishing, retention, and possession of steelhead as authorized by Commission proclamation. ()

401. – 402. (RESERVED)

403. PERMIT VALIDATION.

For each ~~steelhead or adult~~ anadromous ~~salmon~~ game fish hooked, landed, and reduced to possession, the angler hooking the fish must immediately validate ~~her~~ their salmon or steelhead permit ~~by notching the permit and entering in ink with~~ the appropriate species, month, day, and river location code (listed by Commission proclamation). Paper validation requires entering in permanent ink. Electronic validation requires submission via the Department's official mobile app. (3-31-22)()

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

01. Provisions for Processing and Transporting ~~Steelhead and Anadromous Salmon~~ Game Fish. ~~No person may have in the field or in transit a hatchery-produced steelhead or anadromous salmon processed by removing the head and tail unless the following conditions are met~~ All processing and transportation provisions and restrictions from IDAPA 13.01.11.104 are applicable to anadromous game fish. In addition: (3-31-22)()

a. The ~~fish is~~ processed and packaged ~~with the skin naturally attached to the flesh~~ fish must including include a portion with a healed, clipped, adipose fin scar or adipose fin; ~~and~~. (3-31-22)()

b. ~~The fish is packaged in a manner that the number of fish harvested can be readily determined.~~ (3-31-22)

~~02. Restrictions on Processing and Transporting Steelhead and Anadromous Salmon.~~ No person may process steelhead or anadromous salmon until he is ashore and done fishing for the day. No person may transport processed steelhead or anadromous salmon via boat. No jack salmon may be processed while in the field or in transit. Each processed steelhead or anadromous salmon counts towards an angler's possession limit while in the field or in transit. (3-31-22)

~~b. No jack salmon may be processed while in the field or in transit. ()~~

~~c. Each processed anadromous game fish counts towards an angler's possession limit while in the field or in transit. ()~~

405. ~~STEELHEAD AND ANADROMOUS SALMON GAME FISH METHODS OF TAKE.~~

~~In addition to take restrictions for all game fish, the following apply to anadromous game fish: ()~~

~~01. Hooks.~~ It is unlawful to use any hook larger than five eighths (5/8) inch, measured from the point of the hook to the shank. ~~Steelhead and a~~ Anadromous salmon game fish may be taken only with barbless hooks in the Salmon, Clearwater, and Snake River drainages downstream of Hells Canyon Dam. ~~Bending the barb down to the shank of a single, double, or treble hook will meet this requirement. Steelhead and anadromous salmon may be taken with barbed hooks in the Boise River drainages, and the Snake River between Hells Canyon and Oxbow Dams.~~ (3-31-22)()

~~02. Snagging.~~ No person may kill or retain in possession any steelhead or anadromous salmon hooked other than in the mouth or jaw. (3-31-22)

~~032. Legal Catch Retention.~~ Any ~~steelhead or anadromous salmon game fish~~ caught must be released or, provided it is legal to possess, killed immediately ~~after it is landed.~~ (3-31-22)()

~~043. Cease Fishing.~~ Once an angler has attained ~~his their~~ bag, possession or season limit on those waters with ~~steelhead or anadromous game fish salmon~~ limits, ~~he they~~ must cease fishing for ~~steelhead or anadromous salmon game fish~~, including catch-and-release fishing. (3-31-22)()

~~054. Keeping Marked Fish Adipose Fin.~~ Only steelhead or anadromous salmon marked by clipping the adipose fin, as evidenced by a HEALED scar may be kept in the Salmon, Clearwater, and Snake River drainages. ~~Anadromous salmon with an intact adipose fin may be retained as authorized by Commission proclamation.~~ Only anadromous game fish with a clipped adipose fin, as evidenced by a healed scar, may be kept during an open season. Retention of unclipped anadromous game fishes may be authorized by Commission proclamation. (3-31-22)()

~~065. Fish Counted in Limit.~~ Each fish that is hooked, landed, and reduced to possession counts towards the limit of the person hooking the fish. ()

~~07. Special Limits.~~ No person may fish in waters having special limits while possessing fish of that species in excess of the special limit. (3-31-22)

406. – 407. (RESERVED)

408. STEELHEAD PURCHASE REPORT.

01. **Filing Purchase Report.** Any person holding a wholesale or retail steelhead trout buyer's license must report all sales and purchases of steelhead on an ~~Idaho Steelhead Purchase Report to the Administration Bureau of the Idaho Department of Fish and Game, Boise, Idaho,~~ form provided by the Department on or before December 31 of each year. (3-31-22)()

02. **Inaccurate Reporting.** Failure to provide complete and accurate information on the report or failure to file the report on ~~or before December 31 is~~ time are grounds for revocation of the wholesale or retail license. (3-31-22)()

409. – ~~699~~599. (RESERVED)

7600. FISHING CONTESTS – PERMIT REQUIREMENT AND APPLICATION.

01. Permit Requirement. No person or other entity may conduct ~~or participate in~~ a fishing contest without having first obtained a fishing contest permit from the Department. Events organized wholly for youth under the age of fourteen (14) do not require a fishing contest permit. (3-31-22)()

02. Permit Application. Application for fishing contest permits must be made ~~on~~ using a form prescribed provided by the Department. ~~An application must be submitted at least thirty (30) days prior to a catch and release contest and ninety (90) days prior to a harvest contest.~~ (3-31-22)()

7601. FISHING CONTESTS PERMIT ISSUANCE.

01. General. The issuance of a fishing permit is at the Department’s discretion. Among the factors the Department will consider are: ()

- a. ~~Impacts~~Effects of the contest on fish populations. (3-31-22)()
- b. Compatibility of the contest with fish population management and fishery goals. ()
- c. Potential conflict with other recreational users or other permitted contests. (3-31-22)()
- d. ~~Potential conflict with other permitted contests~~Previous compliance with submitting fishing contest reports. (3-31-22)()

02. Limit on Contest. The Department will not issue a permit for a harvest contest for wild native trout or sturgeon in rivers or streams. ~~The Director may issue a permit for a catch and release contest for these species if he determines there will be no harm to that fishery resource in the particular water where the contest is to take place:~~ (3-31-22)()

03. Conditions. The Department has discretion to specify conditions in the permit to minimize adverse ~~impacts~~effects on fish populations, management programs and goals, other recreational users, or other permitted contests, including: (3-31-22)()

- a. The time of start and check-in; ()
- b. Limitations on the contest area ~~where participants may fish;~~ (3-31-22)()
- c. ~~For catch and release contests,~~Handling protocols and the method and location of release of fish; (3-31-22)()
- d. ~~For harvest contests, m~~More restrictive bag or size limits than would otherwise apply. (3-31-22)()
- e. Allowing overland transport of live fish to facilitate fish redistribution within the contest area. ()
- f. Requiring mandatory kill of fish species deemed incompatible with water body management objectives. ()

7602. FISHING CONTESTS – REQUIREMENTS.

01. Rules. Any fishing contest participant must comply with seasons, limits, and rules pertaining to the taking of fish and any additional conditions of the fishing contest permit. For special rule waters, the Department may authorize seasons, limits, and rules exemptions. (3-31-22)()

02. Culling. No fishing contest participant may release back to the water (cull) any fish that is not

capable of swimming free. ~~A participant in a catch and release contest may have one (1) daily bag limit of the target species in possession while continuing to fish for the contest target species; if the participant catches another target fish, the participant must immediately release the last fish caught or immediately exchange it for another target fish in possession.~~ (3-31-22)()

7603. FISHING CONTEST REPORTS.

Each fishing contest sponsor shall, within thirty (30) days after the last day of a fishing contest, submit a ~~written~~ report to the Fisheries Bureau at the Department's main office ~~on using~~ the form ~~prescribed~~ provided by the Department. (3-31-22)()

7604. – 9699. (RESERVED)

700. COMMERCIAL FISHING LICENSES, TAGS, AND APPLICATIONS.

01. Commercial Fishing Licenses Requirements. No person shall set, operate, or fish with commercial gear unless they possess a valid commercial fishing license or are assisting in the presence of a licensee. ()

a. Commercial Fishing Species. The holder of a valid commercial fishing license may engage in commercial fishing for Bullfrog, Crayfish, or unprotected species from the Minnow or Sucker families. ()

b. Commercial Fishing Locations. Commercial harvest is allowed only in the Snake River and its main stem impoundments from Hells Canyon Dam upstream to the confluence of the North and South Forks, Palisades Reservoir, Lake Lowell, Black Canyon Reservoir, Blackfoot Reservoir, and the Bear River and its main stem impoundments from Utah state line upstream to and including Alexander Reservoir. ()

02. Commercial Fishing License Application. Application for a commercial fishing license may occur using a form provided by the Department. Should the license be approved, or conditionally approved, commercial fishing may occur after licenses and tags are secured. ()

03. Commercial Gear Tags. No person may set, operate, lift, or fish commercial gear unless such gear has attached thereto a valid commercial gear tag from the Department, except that no tag needs to be attached to conventional rod and reel fishing tackle used for commercial fishing. ()

701. COMMERCIAL FISHING AUTHORIZATION ISSUANCE.

01. General. The Department may consider commercial fishing operations not listed in IDAPA 13.01.11.700.01 by special authorization. The issuance of a special authorization is at the Department's discretion. Such authorizations will be valid for a period not to exceed one (1) year. Among the factors the department will consider are: ()

a. Impacts of commercial fishing on fish or wildlife populations. ()

b. Post-release mortality of non-target species. ()

c. Compatibility of commercial fishing with fish population management and fishery goals. ()

d. Potential conflict with other recreational users or commercial fishing activities. ()

e. Transmission of invasive species. ()

f. Compliance with reporting requirements. ()

02. Commercial Fishing Conditions. The Department has discretion to specify conditions to minimize adverse effects on fish or wildlife populations, management programs and goals, other recreational users, or other licensees, including: ()

- a.** Limitations of fishing seasons and times. ()
- b.** Limitations on fishing areas. ()
- c.** Limitations on gear type, specifications, and quantity. ()
- d.** Handling protocols, as well as methods and locations for release of non-target fish. ()
- e.** Maximum allowable catch. ()

03. Revocation of Commercial Licenses and Special Authorizations. The Department is authorized to suspend, for a period not to exceed one (1) year, or revoke entirely, any commercial license or authorization for violation of Title 36, Idaho Code by the licensee or persons acting under the licensee's direction and control. ()

702. – 749. (RESERVED)

750. RELEASE OF NON-TARGET FISH AND CRUSTACEA.

Any person capturing with commercial gear any species of fish or crustacea not a commercial species or listed on a special permit shall immediately release it unharmed back to the water. ()

01. Female Crayfish. Any person capturing any female crayfish carrying eggs or young shall release it unharmed back to the water at the time the crayfish are sorted. ()

751. POSSESSION AND TRANSPORTATION OF LIVE FISH OR CRUSTACEA.

01. Live Fish. No person may transport live fish without Department authorization. ()

02. Live Crustacea. Commercial fishers may possess and transport live commercial species of crustacea between the water areas where harvested and the point of sale or holding. Live crustacea may be held only in the waters where harvested, in ponds for which a private pond permit listing crustacea has been issued or in licensed commercial facilities. ()

752. – 779. (RESERVED)

780. SIZE LIMITS.

01. Fish. Commercial fish species of any size may be taken commercially. ()

02. Crayfish. ()

a. Only crayfish three and five-eighths (3 5/8) inches or greater in length from the tip of the nose to the tip of the tail, measured in a straight line ventral side up, may be taken commercially. ()

b. Crayfish shall be sorted, and any undersize crayfish returned to the water at the place of capture immediately following the emptying of any single trap or a trap line. However, an allowable sorting error percentage of undersized crayfish, not to exceed five percent (5%), is allowed in any load or lot. The percentage of undersized crayfish will be the mean of combined counts of samples measured and counted from various portions of the load or lot. Samples will be taken in containers of not less than one (1) gallon size approximately full of crayfish, with at least three (3) such samples taken from any load or lot. ()

781. – 799. (RESERVED)

800. COMMERCIAL GEAR AND METHODS OF TAKE FOR FISH OR CRUSTACEA.

No person may commercially harvest fish or crustacea except as follows: ()

01. Seine Nets. Seine net mesh size may not exceed one and one half (1 1/2) inch bar measurement and under constant attendance by the licensee or someone working under the supervision of the licensee; or if being used

to hold fish, clearly marked with buoys that are at least twelve (12) inches in diameter. ()

02. Traps. With a trap not exceeding three (3) feet in any dimension, and provided all traps are lifted and emptied of catch at least once every ninety-six (96) hours, except during periods of weather that pose a threat to human life, health, or safety. ()

03. By Hand. For crayfish only. ()

801. UNTAGGED GEAR.
Untagged gear, or unattended seine nets, or traps left unattended more than ninety-six (96) hours are considered unlawful or abandoned and may be confiscated by Department personnel. ()

802. – 859. (RESERVED)

860. COMMERCIAL SEASONS.

01. Commercial Fish. Year-round. ()

02. Commercial Crustacea. April 1 through October 31 of each year. ()

861. – 879. (RESERVED)

880. COMMERCIAL FISHING RESTRICTIONS.

01. Operation Limitations. No commercial gear may be set, operated, or lifted within one hundred (100) yards of any public boat ramp or dock. ()

02. Storage Limitation. No commercial gear, watercraft, or other equipment or materials used in conjunction with a commercial fishing operation may be stored or left unattended at any public fishing access area in any manner that restricts angling or angler access. ()

881. – 899. (RESERVED)

900. COMMERCIAL FISHING INSPECTIONS AND REPORTING REQUIREMENTS.

01. Inspections. Department personnel may inspect: ()

a. Commercial gear at any time the gear is being used. ()

b. Catches and catch records at any time. ()

02. Reporting Requirements. All licensees shall submit a monthly report on a form prescribed by the Department, with all requested information including daily landings and effort, such that it is received by the Department not later than the fifteenth day of the month following the fishing activities. ()

901. – 999. (RESERVED)

IDAPA 13 – DEPARTMENT OF FISH AND GAME
13.01.12 – RULES GOVERNING COMMERCIAL FISHING
DOCKET NO. 13-0112-2301 (ZBR CHAPTER REPEAL)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104 and 36-804, Idaho Code.

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

The pending rule is being presented for repeal as part of the IDFG plan to review each rule chapter every 5 years. Consistent with the Governor's [Zero-Based Regulation Executive Order](#), the agency has revised current rule language to improve clarity and reduce duplication. That language has been consolidated into IDAPA chapter 13.01.11, running concurrently with this chapter in Docket No 13-0111-2301.

There are no changes to the pending rule and it is being adopted as originally proposed for repeal. The complete text of the proposed rule was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 288-289](#).

FEE SUMMARY: Not applicable. The pending rule does not impose new fees or changes.

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

There is no fiscal impact to the General Fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joe Kozfkay, State Fisheries Manager at (208) 334-3700.

DATED this 22nd of November, 2023.

Amber Worthington
Deputy Director
Idaho Department of Fish and Game
600 S. Walnut Street
P.O. Box 25 Boise, ID 83707
Phone (208) 334-3771
Fax (208) 334-4885
Email: rules@idfg.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Sections 36-104 and 36-804, 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, 2023.

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

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

This rule is being presented for authorization as part of the IDFG plan to review each rule chapter every five years. The rule chapter under consideration establishes the criteria for commercial fishing in Idaho. Consistent with the Governor's [Zero-Based Regulation Executive Order](#), the agency has reorganized rule sections in this chapter and revised current rule language to improve clarity and reduce duplication.

IDFG has evaluated the potential to consolidate IDAPA 13.01.12, "Rules Governing Commercial Fishing," into IDAPA 13.01.11, "Rules Governing Fish," such that IDAPA 13.01.12 may be repealed, as proposed concurrently in Docket No. [13-0111-2301](#).

This proposed rulemaking includes changes to integrate current IDFG restrictions found in both chapters, under the similar topic, into a single rule chapter under IDFG's authority to regulate fishing and commercial fishing. The proposed rule consolidates definitions into one location and adds sections specific to commercial fishing to the "Rules Governing Fish" chapter.

FEE SUMMARY: There is no fee associated with this rule.

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

There is no fiscal impact associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 7, 2023 Idaho Administrative Bulletin, [Vol. 23-4, page 21](#) under Docket No. 13-0112-2301. The Department received no feedback on this rulemaking.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Joe Kozfkay, State Fisheries Manager, 208-334-3700

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, 2023.

DATED this 29th day of August, 2023.

IDAPA 13.01.12 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 13 – DEPARTMENT OF FISH AND GAME
13.01.15 – RULES GOVERNING THE USE OF DOGS
DOCKET NO. 13-0115-2301 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-103, 36-104, 36-409, and 36-1001, Idaho Code.

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

The pending rule is being presented for authorization as part of the IDFG plan to review each rule chapter every 5 years. Consistent with the Governor’s [Zero-Based Regulation Executive Order](#), the agency has revised current rule language to improve clarity and reduce duplication. The rulemaking specifically addresses the process around permit issuance and season setting in an effort to achieve consistency in Commission management and authority.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 290-293](#).

Changes to the proposed rule essentially reverse consolidation that was done in the proposed rulemaking around Subsection 100.02. The public had concerns around the interpretation of the consolidation and while the changes hadn’t altered the intent, the perception was that it would change the way they could use their dog(s) in the field. The agency addressed the concern of the number of dogs that could be used and the ability to train/pursue once a tag was filled.

FEE SUMMARY: Not applicable. The pending rule does not impose new fees or changes.

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

There is no fiscal impact to the General Fund.

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

DATED this 22nd of November, 2023.

Amber Worthington, Deputy Director
Idaho Department of Fish and Game
600 S. Walnut Street
P.O. Box 25 Boise, ID 83707
Phone (208) 334-3771
Fax (208) 334-4885
Email: rules@idfg.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking. The action is authorized pursuant to Section(s) 36-103, 36-104, 36-409, and 36-1101, 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, 2023.

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

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

This rule is being presented for authorization as part of the IDFG plan to review each rule chapter every 5 years. This rulemaking concerns the use of dogs in taking wildlife and use of game birds in field training dogs in Idaho. Consistent with the Governor's [Zero-Based Regulation Executive Order](#), the agency has revised current rule language to improve clarity and reduce duplication.

Notable revisions in this rulemaking include the addition of a reference to bobcat consistent with the Furbearer proclamation and clarification of the requirement for outfitters and the need for a Hound Hunter Permit.

FEE SUMMARY: There is no fee associated with this rule.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no fiscal impact associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, a Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 7, 2023 Idaho Administrative Bulletin, [Vol. 23-4, page 23](#) under Docket No. 13-0115-2301. The Department received feedback around nonresident hound hunter permits and was asked that the limit remain the same. Consistent with the existing rule and the request, the Department does not propose changing the permit cap.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions about the proposed rules, contact Sal Palazzolo, 208-334-3700.

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, 2023.

DATED this 29th day of August, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 13-0115-2301

13.01.15 – RULES GOVERNING THE USE OF DOGS

000. LEGAL AUTHORITY.

Sections 36-104, 36-409, and 36-1101, Idaho Code. ()

001. SCOPE.

These rules govern the use of dogs in taking wildlife and use of game birds in field training dogs in Idaho. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Licensed Outfitter. Outfitter with a valid license issued under Title 36, Chapter 21, Idaho Code. ()

02. Licensed Guide. Guide with a valid license issued under Title 36, Chapter 21, Idaho Code. ()

03. Unarmed Observers. Unarmed person who is not the owner or controller of pursuit dogs and who accompanies a hunt without intent to take or harvest an animal. ()

04. Unqualified Idaho Resident. Person who has moved into Idaho, and by notarized affidavit proves intent to become a bona fide Idaho resident but who is not yet qualified to purchase a resident license. ()

011. -- 099. (RESERVED)

100. USE OF DOGS.

No person may use dogs for taking wildlife, except for the following wildlife under the following conditions: ()

01. Game Birds and Upland Game Animals. One (1) or more dogs may be used for training on or hunting game birds and upland game animals. ()

02. Black Bear, Mountain Lion, Bobcat, and Fox – Hunting. One (1) or more dogs may be used for hunting black bear, mountain lion, bobcat, and fox in a hunting season open for the species, unless prohibited by Commission proclamation. ()

03. Black Bear, Mountain Lion, Bobcat, and Fox – Training/Pursuit Only. One (1) or more dogs may be used to train on and pursue only (no harvest) black bear, mountain lion, bobcat, and fox in a dog training season open for the species, unless such use is prohibited by Commission proclamation. A big game tag valid for the calendar year that has been filled is still valid for training/pursuit only of the species. Outside of the bobcat hunting season, bobcats may be pursued and treed, but may not be captured, killed, or possessed. ()

04. Blood Trailing of Big Game. Use of one (1) blood-trailing dog controlled by leash during hunting hours and within seventy-two (72) hours of hitting a big game animal is allowed to track animals and aid in recovery. ()

05. Unprotected and Predatory Wildlife. A dog may be used for training on or taking unprotected and predatory wildlife. ()

101. -- 199. (RESERVED)

200. HOUND HUNTER PERMIT.

01. Hound Hunter Permits. ()

a. The following persons must have a valid hunting license and Hound Hunter Permit in possession when any dog is being used to hunt, including training or pursuit only, black bear, mountain lion, bobcat, and fox: ()

i. Anyone who owns the dog. ()

ii. Anyone having control of the dog if owned by another person. ()

iii. Anyone that harvests an animal over dogs, except clients of licensed outfitters in the licensed outfitting area, provided the licensed outfitter or guide accompanying the client has a Hound Hunter Permit. ()

b. A permit is not transferable EXCEPT, licensed outfitters may convey the authority of their Hound Hunter Permit to a nonresident licensed guide operating for them, provided the nonresident guide has a copy of the outfitter's Hound Hunter Permit in possession. ()

c. A permit is valid from January 1 through December 31 of each year. ()

02. Exceptions. A person owning or using a dog only for blood trailing does not need a hound hunter permit. An unarmed observer does not need a hunting license or hound hunter permit. ()

03. Limit on Hound Hunter Permits for Nonresidents. No more than seventy (70) nonresident hound hunter permits will be issued to nonresident hunters. Sales of nonresident Hound Hunter Permits to the following persons are exempt from this limit: ()

a. Nonresident licensed outfitter(s) or guide(s), provided the permit is not used for personal hunting. ()

b. Unqualified Idaho resident(s). ()

c. Nonresidents who hunt solely in a game management zone or unit for which the Commission has adopted a separate limit for hound hunter permits, in which cases those limits will apply to the number of nonresidents. ()

04. Nonresident Applications. ()

a. To be eligible for a controlled draw for limited nonresident permits, a nonresident must submit a complete application on the form prescribed by the Department such that it is received at the Department's main office by no later than December 1 of the year preceding the year in which the permit is to be valid. ()

b. No person may submit more than one (1) application for a Hound Hunter Permit. ()

c. Two nonresidents may apply for two (2) permits on the same application form. ()

d. If nonresident permits are available after the application period, they will be available for purchase at any Department office on a first-come, first-served basis starting around December 10. ()

201. -- 299. (RESERVED)

300. USE OF CAPTIVELY PROPAGATED GAME BIRDS.

IDAPA 13.01.10.500, "Rules Governing Importation, Possession, Release, Sale, or Salvage of Wildlife," apply to anyone who possesses, releases, or uses artificially propagated game birds for field training dogs. No person may conduct bird-dog field training or trial with the use of captively propagated game birds unless that person has a valid Bird Dog Training Permit or Bird Dog Field Trial Permit corresponding to the activity, and complies with permit terms. ()

301. -- 999. (RESERVED)

[Agency redlined courtesy copy]

Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.

13.01.15 – RULES GOVERNING THE USE OF DOGS

000. LEGAL AUTHORITY.

Sections 36-104, 36-409, and 36-1101, Idaho Code, ~~authorize the Commission to adopt rules concerning the use of dogs in taking wildlife, use of game birds in field training, and related permitting.~~ (3-31-22)()

001. TITLE AND SCOPE.

~~The title of this chapter for citation is IDAPA 13.01.15, “Rules Governing the Use of Dogs.”~~ These rules govern the use of dogs in taking wildlife and use of game birds in field training dogs in Idaho. (3-31-22)()

002. -- 009. (RESERVED)

010. DEFINITIONS.

~~IDAPA 13.01.06, “Rules Governing Classification and Protection of Wildlife,” defines upland game animals, upland game birds, and migratory game birds.~~ (3-31-22)

01. **Licensed Outfitter.** ~~An~~ Outfitter with a valid license issued under Title 36, Chapter 21, Idaho Code. (3-31-22)()

02. **Licensed Guide.** A guide with a valid license issued under Title 36, Chapter 21, Idaho Code. (3-31-22)()

03. **Unarmed Observers.** ~~An~~ unarmed person who is not the owner or controller of pursuit dogs and who accompanies a hunt without intent to take or harvest an animal. (3-31-22)()

04. **Unqualified Idaho Resident.** ~~A~~ person who has moved into Idaho, and by notarized affidavit proves intent to become a bona fide Idaho resident but who is not yet qualified to purchase a resident license. (3-31-22)()

011. -- 099. (RESERVED)

100. USE OF DOGS.

No person may use dogs for taking wildlife, except for the following wildlife under the following conditions: ()

01. ~~Upland Game Animals, Upland Game Birds, and Migratory Game Birds~~ Upland Game Animals. ~~A~~ One (1) or more dogs may be used for training on or hunting ~~upland game animals,~~ game birds, and ~~migratory game birds~~ upland game animals. (3-31-22)()

02. **Black Bear, Mountain Lion, Bobcat, and Fox – Taking Hunting.** ~~One (1) or more~~ Dogs may be used for ~~taking hunting~~ black bear, mountain lion, bobcat, and fox in a ~~take hunting~~ season open for the species, unless ~~the prohibited by~~ Commission ~~prohibits dog use in the area by~~ proclamation. (3-31-22)()

03. **Black Bear, Mountain Lion, Bobcat, and Fox – Training/Pursuit Only.** ~~One (1) or more~~ Dogs may be used ~~for to training on~~ and ~~pursuit pursue~~ only (no harvest) ~~of~~ black bear, mountain lion, bobcat, and fox in a dog training season open for the species, unless such use is prohibited by the Commission ~~prohibits dog use in the area by~~ proclamation. A big game tag valid for the calendar year that has been filled is still valid for training/pursuit only of the species. Outside of the bobcat hunting season, bobcats may be pursued and treed, but may not be captured, killed, or possessed. (3-31-22)()

04. **Blood Trailing of Big Game.** ~~The u~~Use of one (1) blood-trailing dog controlled by leash during hunting hours and within seventy-two (72) hours of hitting a big game animal is allowed to track animals and aid in recovery. (3-31-22)()

05. **Unprotected and Predatory Wildlife.** A dog may be used for training on or taking unprotected and predatory wildlife. ()

101. -- 199. (RESERVED)

200. **HOUND HUNTER PERMIT.**

01. **Hound Hunter Permits.** ()

a. The following persons must have a valid hunting license and Hound Hunter Permit in possession when any dog is being used to hunt, including training or pursuit only, black bear, mountain lion, bobcat, and fox: ()

i. Anyone who owns the dog. ()

ii. Anyone having control of the dog if owned by another person. ()

iii. Anyone that harvests an animal over dogs, except clients of licensed outfitters in the licensed outfitting area, provided the licensed outfitter or guide accompanying the client has a Hound Hunter Permit. (3-31-22)()

b. A permit is not transferable EXCEPT, ~~a~~ licensed outfitters may convey the authority of ~~his~~ their Hound Hunter Permit to a nonresident licensed guide operating for ~~him~~ them, provided the nonresident guide has a copy of the outfitter's Hound Hunter Permit in possession. (3-31-22)()

c. A permit is valid from January 1 through December 31 of each year. ()

02. **Exceptions.** A person owning or using a dog only for blood trailing does not need a hound hunter permit. An unarmed observer does not need a hunting license or hound hunter permit. ()

03. **Limit on Hound Hunter Permits for Nonresidents.** No more than seventy (70) nonresident hound hunter permits will be issued to nonresident hunters. Sales of nonresident Hound Hunter Permits to the following persons are exempt from this limit: ()

a. ~~A n~~Nonresident licensed outfitter(s) or guide(s), provided the permit is not used for personal hunting. (3-31-22)()

b. ~~An u~~Unqualified Idaho resident(s). (3-31-22)()

c. ~~Persons~~Nonresidents who ~~hound~~ hunt solely in ~~the Middle Fork Zone (Units 20A, 26, and 27)~~ a game management zone or unit for which the Commission has adopted a separate limit for hound hunter permits, in which cases those limits will apply to the number of nonresidents. (3-31-22)()

~~d.~~ ~~Persons who hound hunt solely in the Lolo Zone (Units 10 and 12).~~ (3-31-22)

~~e.~~ ~~Persons who hound hunt solely within the Selway Zone (Units 16A, 17, 19, and 20), for which no more than forty (40) nonresident permits will be issued for Units 16A, 19, 20, and all of Unit 17, excluding Hunt Area 17-1, for which no more than six (6) nonresident permits will be issued. Hunt Area 17-1 is that portion of Unit 17 south of the following boundary: Beginning at the junction of the Unit 17 boundary and Forest Service Trail 24, then west along Forest Service Trail 24 to the Selway River, then north along the Selway River to Forest Service Trail 40, then southwest along Forest Service Trail 40 to Forest Service Trail 3, then along Forest Service Trail 3 to the Unit 17 boundary.~~ (3-31-22)

04. Nonresident Applications. ()

a. To be eligible for a controlled draw for limited nonresident permits, a nonresident must submit a legible, complete application ~~for a hound hunter permit~~ on the form prescribed by the Department such that it is received at the Department's main office by no later than December 1 of the year preceding the year in which the permit is to be valid. (3-31-22)()

b. No person may submit more than one (1) application for a Hound Hunter Permit. ()

c. Two nonresidents may apply for two (2) permits on the same application form. ()

d. If nonresident ~~tags permits~~ are available after the application period, they will be available for purchase at any Department office on a first-come, first-served basis ~~on or after~~ starting around December 10. (3-31-22)()

201. -- 299. (RESERVED)

300. ~~BIRD DOG TRAINING AND FIELD TRIALS BY INDIVIDUALS USING ARTIFICIALLY~~ USE OF CAPTIVELY PROPAGATED GAME BIRDS.

IDAPA 13.01.10.500, "Rules Governing Importation, Possession, Release, Sale, or Salvage of Wildlife," apply to anyone who possesses, releases, or uses artificially propagated game birds for field training dogs. No person may conduct bird-dog field training or trial with the use of captively propagated game birds unless that person has a valid Bird Dog Training Permit or Bird Dog Field Trial Permit corresponding to the activity, and complies with permit terms. ()

~~**01. Bird Dog Training.** No person may conduct bird-dog field training with the use of artificially propagated game birds unless all of the following conditions are met: (3-31-22)~~

~~**a.** The owner of any dog being field trained has a valid Bird Dog Training Permit (obtainable at Department Offices), and has the permit available for inspection at the training site. (3-31-22)~~

~~**b.** Artificially propagated game birds used for training purposes on Wildlife Management Areas are certified as disease free under the standards set forth by the National Poultry Improvement Program (NPIP). (3-31-22)~~

~~**c.** The permittee is in compliance with permit terms. (3-31-22)~~

~~**02. Bird Dog Field Trials.** No person may conduct or own a dog participating in a bird-dog field trial using artificially propagated game birds unless all of the following conditions are met: (3-31-22)~~

~~**a.** There is a valid Bird Dog Field Trial Permit (obtainable at Department Offices) available for inspection at the field trial site. (3-31-22)~~

~~**b.** Artificially propagated game birds used for training purposes are certified as disease free under the standards set forth by the National Poultry Improvement Program (NPIP). (3-31-22)~~

~~**c.** Proof of lawful game bird origin is available for inspection at the field trial site. (3-31-22)~~

~~**d.** The permittee is in compliance with permit terms. (3-31-22)~~

301. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS
20.01.01 – RULES OF PRACTICE AND PROCEDURE BEFORE
THE STATE BOARD OF LAND COMMISSIONERS
DOCKET NO. 20-0101-2301 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency and the State Board of Land Commissioners have adopted a pending rule. The action is authorized pursuant to Section 58-104, Idaho Code, State Land Board, Powers and Duties and Section 67-5206(2)(b), Idaho Code, Promulgation of Rules Implementing Administrative Procedure Act.

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

Following [Executive Order 2020-01: Zero-Based Regulation](#), this rule chapter is scheduled for a comprehensive review in 2023 with the goal of simplifying the rules for increased clarity and ease of use. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published on August 2, 2023, Idaho Administrative Bulletin, [Vol. 23-8, pages 153-176](#).

The changes in the pending rule were to remove Section 004, previously added, due to redundancy with statute.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Scott Phillips at 208-334-0294 or sphillips@idl.idaho.gov.

DATED this 21st of November, 2023.

Scott Phillips, Policy and Communications Chief
Idaho Department of Lands
300 N. 6th St, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0294
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2023.

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

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

The Idaho Department of Lands initiated this rulemaking in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). This rule chapter is scheduled for a comprehensive review in 2024 with the goal of simplifying and streamlining the rules for increased clarity and ease of use. The overall regulatory burden has been reduced by decreasing both total word count (-95%) and the number of restrictive words (-97%) in the proposed rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the March 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, pages 163-164](#).

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:

IDAPA 04.11.01, Idaho Rules of Administrative Procedure of the Attorney General, excluding Section 741.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Scott Phillips at (208) 334-0294 or SPhillips@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2023.

DATED this 6th day of July, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 20-0101-2301

**20.01.01 – RULES OF PRACTICE AND PROCEDURE BEFORE
THE STATE BOARD OF LAND COMMISSIONERS**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 58-104 and 67-5206(5)(b), Idaho Code. ()

001. TITLE AND SCOPE.

This chapter is titled IDAPA 20.01.01, “Rules of Practice and Procedure Before the State Board of Land Commissioners.” These rules govern the practice and procedure in contested cases before the Board and the Idaho Department of Lands. These rules do not govern practice and procedure during regular or special meetings of the Board. Furthermore, these rules are not intended to create the substantive right to a contested case hearing; any right to a contested case hearing must be established by other provision of law. ()

002. PROCEEDINGS GOVERNED.

01. Contested Case. These rules govern procedure before the Board in contested cases, unless otherwise provided by statute, rule, notice or order of the Board. ()

02. Other Specified Procedures. Where another statute or rule requires specific procedures in a contested case before the Board, such other procedures will preempt these rules to the extent that these rules conflict with the other procedures. To the extent the other statute or rule does not address any matter of practice and procedure set forth in these rules, however, these rules shall govern. ()

03. Rules Not Applicable to Board Meetings. These rules do not govern practice and procedure before regular or special board meetings. Board meetings are conducted informally and are not contested case hearings. A person who is dissatisfied with any decision of the Board may apply to appear before and be heard by the Board. Such appearances are informal and minutes will be taken and recorded the same as for regular Board meetings, unless application is made for a contested case hearing. A contested case hearing is available when authorized by statute. ()

04. Right to Contested Case, Board Discretion. The Board may, in its discretion, direct that a contested case hearing be held in a contested case, or on any matter. The Board may, in its discretion, deny any request for a contested case hearing on any matter that is not a contested case. ()

05. Rules Not Applicable to Proceedings or Public Hearings. These rules do not govern proceedings in any public comment hearing that the Board may direct for the purpose of taking public comment on any matter. ()

003. OPT OUT OF ATTORNEY GENERAL’S RULES - TABLE.

The Board declines to adopt the following Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01 as follows for the reasons listed:

Rules Promulgated by the Office of the Attorney General will be followed except the following section of IDAPA 04.11.01 will be excluded:
741: Idaho Department of Lands has no authority to award costs or attorney fees.

()

004. -- 999. (RESERVED)

[Agency redlined courtesy copy]

Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.

20.01.01 – RULES OF PRACTICE AND PROCEDURE BEFORE THE STATE BOARD OF LAND COMMISSIONERS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 58-104 and 67-5206(5)(b), Idaho Code. ()

001. TITLE AND SCOPE.

This chapter is titled IDAPA 20.01.01, “Rules of Practice and Procedure Before the State Board of Land Commissioners.” These rules govern the practice and procedure in contested cases before the Board and the Idaho Department of Lands. These rules do not govern practice and procedure during regular or special meetings of the Board. Furthermore, these rules are not intended to create the substantive right to a contested case hearing; any right to a contested case hearing must be established by other provision of law. ()

002. DEFINITIONS.

~~As used in this chapter:~~

~~(3-31-22)~~

- ~~01. Agency. The state board of land commissioners and the Idaho department of lands. (3-31-22)~~
- ~~02. Agency Action. Agency action means: (3-31-22)~~
- ~~a. The whole or part of a rule or order; (3-31-22)~~
- ~~b. The failure to issue a rule or order; or (3-31-22)~~
- ~~c. An agency’s performance of, or failure to perform, any duty placed on it by law. (3-31-22)~~
- ~~03. Agency Head. The state board of land commissioners and the board secretary, the director of the Idaho department of lands. (3-31-22)~~
- ~~04. Board. The State Board of Land Commissioners. (3-31-22)~~
- ~~05. Contested Case. A proceeding which results in the issuance of an order. (3-31-22)~~
- ~~06. Document. Any proclamation, executive order, notice, rule or statement of policy of an agency. (3-31-22)~~
- ~~07. License. The whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes. (3-31-22)~~
- ~~08. Order. An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. (3-31-22)~~
- ~~09. Party. Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (3-31-22)~~
- ~~10. Person. Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. (3-31-22)~~

~~003. FILING OF DOCUMENTS — NUMBER OF COPIES.~~

~~**01. Where to File.** In general, all documents in contested cases may be filed with the Board Secretary/ Department of Lands Director at the address set forth at www.idl.idaho.gov if no other officer is designated for the particular proceeding. When a specific officer is designated to receive documents in a particular proceeding, documents may be filed with the designated officer as set forth in the order appointing a hearing officer. (3-31-22)~~

~~**02. Number of Copies.** An original and five (5) legible copies of all documents shall be filed with the Board in all contested cases wherein a hearing officer has not been appointed by the Board. If a hearing officer has been appointed to hear a contested case, then one (1) original and one (1) legible copy of all documents shall be filed with the hearing officer. (3-31-22)~~

~~**004.—049. (RESERVED)**~~

050~~02.~~ **PROCEEDINGS GOVERNED.**

01. Contested Case. ~~Sections 100 through 780~~ These rules govern procedure before the Board in contested cases, unless otherwise provided by statute, rule, notice or order of the Board. (3-31-22)()

02. Other Specified Procedures. Where another statute or rule requires specific procedures in a contested case before the Board, such other procedures will preempt these rules to the extent that these rules conflict with the other procedures. To the extent the other statute or rule does not address any matter of practice and procedure set forth in these rules, however, these rules shall govern. ()

03. Rules Not Applicable to Board Meetings. These rules do not govern practice and procedure before regular or special board meetings. Board meetings are conducted informally and are not contested case hearings. A person who is dissatisfied with any decision of the Board may apply to appear before and be heard by the Board. Such appearances are informal and minutes will be taken and recorded the same as for regular Board meetings, unless application is made for a contested case hearing. A contested case hearing is available ~~only~~ when authorized by statute. ~~See Subsection 104.02.~~ (3-31-22)()

~~**04. Rules Not Applicable to Proceedings or Public Hearings.** These rules do not govern proceedings in any public comment hearing that the Board may direct for the purpose of taking public comment on any matter. (3-31-22)~~

~~**051. REFERENCE TO AGENCY.**~~

~~Reference to the agency in these rules includes the Board and its Secretary, the Director of the Department of Lands, the hearing officer appointed by the agency, or the presiding officer, as context requires. Reference to the agency head means to the Board and its Secretary, the Director of the Department of Lands, as context requires, or such other officer designated by the agency head to review recommended or preliminary orders. (3-31-22)~~

~~**052. LIBERAL CONSTRUCTION.**~~

~~The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. Unless required by statute, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. (3-31-22)~~

~~**053. COMMUNICATIONS WITH AGENCY.**~~

~~All written communications and documents that are intended to be part of an official record for a decision in a contested case must be filed with the Board's Secretary/Director of the Department of Lands, or such officer appointed by the Board. Unless otherwise provided by statute, rule, order or notice, documents are considered filed when received by the officer designated to receive them, not when mailed. (3-31-22)~~

~~**054. IDENTIFICATION OF COMMUNICATIONS.**~~

~~Parties' communications addressing or pertaining to a given proceeding must be written under that proceeding's case caption and case number. General communications by other persons should refer to case captions, case numbers,~~

permit or license numbers, or the like, if this information is known. (3-31-22)

055. SERVICE BY AGENCY.

~~Unless otherwise provided by statute or these rules, the officer designated by the agency to serve rules, notices, summonses, complaints, and orders issued by the agency may serve these documents by certified mail, return receipt requested, to a party's last known mailing address or by personal service. Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail or the Statehouse mail, if the party is a state employee or state agency. The officer designated by the agency to serve documents in a proceeding must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency.~~ (3-31-22)

056. COMPUTATION OF TIME.

~~Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count. If the day the act must be done is Saturday, Sunday or a legal holiday, the act may be done on the first day following that is not Saturday, Sunday or a legal holiday.~~ (3-31-22)

057. FEES AND REMITTANCES.

~~Fees and remittances to the agency must be paid by money order, bank draft or check payable to agency. Remittances in currency or coin are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss.~~ (3-31-22)

058.—099. (RESERVED)

100. INFORMAL PROCEEDINGS DEFINED.

~~Informal proceedings are proceedings in contested cases authorized by statute, rule or order of the agency to be conducted using informal procedures, i.e., procedures without a record to be preserved for later agency or judicial review, without the necessity of representation according to Section 202, without formal designation of parties, without the necessity of hearing examiners or other presiding officers, or without other formal procedures required by these rules for formal proceedings. Unless prohibited by statute, an agency may provide that informal proceedings may precede formal proceedings in the consideration of a rulemaking or a contested case.~~ (3-31-22)

101. INFORMAL PROCEDURE.

~~Statute authorizes and these rules encourage the use of informal proceedings to settle or determine contested cases. Unless prohibited by statute, the agency may provide for the use of informal procedure at any stage of a contested case. Informal procedure may include individual contacts by or with the agency staff asking for information, advice or assistance from the agency staff, or proposing informal resolution of formal disputes under the law administered by the agency. Informal procedures may be conducted in writing, by telephone or television, or in person.~~ (3-31-22)

102. FURTHER PROCEEDINGS.

~~If statute provides that informal procedures shall be followed with no opportunity for further formal administrative review, then no opportunity for later formal administrative proceedings must be offered following informal proceedings. Otherwise, except as provided in Section 103, any person participating in an informal proceeding must be given an opportunity for a later formal administrative proceeding before the agency, if such person is entitled to a contested case hearing, at which time the parties may fully develop the record before the agency.~~ (3-31-22)

103. INFORMAL PROCEEDINGS DO NOT EXHAUST ADMINISTRATIVE REMEDIES.

~~Unless all parties agree to the contrary in writing, informal proceedings do not substitute for formal proceedings and do not exhaust administrative remedies, and informal proceeding are conducted without prejudice to the right of the parties to present the matter formally to the agency. Settlement offers made in the course of informal proceedings are confidential.~~ (3-31-22)

104. FORMAL PROCEEDINGS.

~~**01. Initiation of Proceedings.** Formal proceedings, which are governed by rules of procedure other than Sections 100 through 103, must be initiated by a document (generally a notice, order or complaint if initiated by the agency) or another pleading listed in Sections 220 through 260 if initiated by another person. Formal proceedings~~

~~may be initiated by a document from the agency informing the party(ies) that the agency has reached an informal determination that will become final in the absence of further action by the person to whom the correspondence is addressed, provided that the document complies with the requirements of Sections 210 through 280. Formal proceedings can be initiated by the same document that initiates informal proceedings. (3-31-22)~~

~~**024. Right to Contested Case, Board Discretion.** Formal proceedings may be initiated by a party only where such party is given the statutory right to a contested case hearing. The Board may, in its discretion, direct that a contested case hearing be held in a contested case, or on any matter. The Board may, in its discretion, deny any request for a contested case hearing on any matter that is not a contested case. (3-31-22)()~~

~~**05. Rules Not Applicable to Proceedings or Public Hearings.** These rules do not govern proceedings in any public comment hearing that the Board may direct for the purpose of taking public comment on any matter. ()~~

~~**003. OPT OUT OF ATTORNEY GENERAL'S RULES - TABLE.**
The Board declines to adopt the following Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01 as follows for the reasons listed:~~

Rules Promulgated by the Office of the Attorney General will be followed except the following section of IDAPA 04.11.01 will be excluded:
741: Idaho Department of Lands has no authority to award costs or attorney fees.

~~**105.—149. (RESERVED)**~~

~~**150. PARTIES TO CONTESTED CASES LISTED.**
Parties to contested cases before the agency are called applicants or claimants or appellants, petitioners, complainants, respondents, protestants, or intervenors. On reconsideration or appeal within the agency parties are called by their original titles listed in the previous sentence. (3-31-22)~~

~~**151. APPLICANTS/CLAIMANTS/APPELLANTS.**
Persons who seek any right, license, award or authority from the agency are called “applicants” or “claimants” or “appellants.” (3-31-22)~~

~~**152. PETITIONERS.**
Persons not applicants who seek to modify, amend or stay existing orders or rules of the agency, to clarify their rights or obligations under law administered by the agency, to ask the agency to initiate a contested case (other than an application or complaint), or to otherwise take action that will result in the issuance of an order or rule, are called “petitioners.” (3-31-22)~~

~~**153. COMPLAINANTS.**
Persons who charge other person(s) with any act or omission are called “complainants.” In any proceeding in which the agency itself charges a person with an act or omission, the agency is called “complainant.” (3-31-22)~~

~~**154. RESPONDENTS.**
Persons against whom complaints are filed or about whom investigations are initiated are called “respondents.” (3-31-22)~~

~~**155. PROTESTANTS.**
Persons who oppose an application or claim or appeal and who have a statutory right to contest the right, license, award or authority sought by an applicant or claimant or appellant are called “protestants.” (3-31-22)~~

~~**156. INTERVENORS.**
Persons, not applicants or claimants or appellants, complainants, respondents, or protestants to a proceeding, who are permitted to participate as parties pursuant to Sections 350 through 354 are called “intervenors.” (3-31-22)~~

~~157. RIGHTS OF PARTIES AND OF AGENCY STAFF.~~

~~Subject to Sections 558, 560, and 600, all parties and agency staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (3-31-22)~~

~~158. PERSONS DEFINED — PERSONS NOT PARTIES — INTERESTED PERSONS.~~

~~The term “person” includes natural persons, partnerships, corporations, associations, municipalities, government entities and subdivisions, and any other entity authorized by law to participate in the administrative proceeding. Persons other than the persons named in Sections 151 through 156 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. In kinds of proceedings in which persons other than the applicant or claimant or appellant, petitioner, complainant, or respondent would be expected to have an interest, persons may request the agency in writing that they be notified when proceedings of that kind are initiated. These persons are called “Interested Persons.” Interested persons may become protestants, intervenors or public witnesses. The agency must serve notice of such proceedings on all interested persons. (3-31-22)~~

~~159.—199. (RESERVED)~~

~~200. INITIAL PLEADING BY PARTY — LISTING OF REPRESENTATIVES.~~

~~The initial pleading of each party at the formal stage of a contested case (be it an application or claim or appeal, petition, complaint, protest, motion, or answer) must name the party’s representative(s) for service and state the representative’s (s’) address(es) for purposes of receipt of all official documents. Service of documents on the named representative (s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party’s representative, the person signing the pleading will be considered the party’s representative. (3-31-22)~~

~~201. TAKING OF APPEARANCES — PARTICIPATION BY AGENCY STAFF.~~

~~The presiding officer at a formal hearing or prehearing conference will take appearances to identify the representatives of all parties or other persons. In all proceedings in which the agency staff will participate, or any report or recommendation of the agency staff (other than a recommended order or preliminary order prepared by a hearing officer) will be considered or used in reaching a decision, at the timely request of any party the agency staff must appear at any hearing and participate in the same manner as a party. (3-31-22)~~

~~202. REPRESENTATION OF PARTIES AT HEARING.~~

~~01. Appearances and Representation.~~ ~~To the extent authorized or required by law, appearances and representation of parties or other persons at formal hearing or prehearing conference must be as follows: (3-31-22)~~

~~a. Natural person. A natural person may represent himself or herself or be represented by a duly authorized employee, attorney, family member, or next friend. (3-31-22)~~

~~b. A partnership may be represented by a partner, duly authorized employee, or attorney. (3-31-22)~~

~~c. A corporation may be represented by an officer, duly authorized employee, or attorney. (3-31-22)~~

~~d. A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. (3-31-22)~~

~~02. Representatives.~~ ~~The representatives of parties at hearing, and no other persons or parties appearing before the agency, are entitled to examine witnesses and make or argue motions. (3-31-22)~~

~~203. SERVICE ON REPRESENTATIVES OF PARTIES AND OTHER PERSONS.~~

~~From the time a party files its initial pleading in a contested case, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties’ representatives designated pursuant to Section 200, unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The presiding officer may order parties to serve past or future documents filed in the case upon persons not parties to the proceedings before the agency. (3-31-22)~~

204. ~~WITHDRAWAL OF PARTIES.~~

~~Any party may withdraw from a proceeding in writing or at hearing. (3-31-22)~~

205. ~~SUBSTITUTION OF REPRESENTATIVE—WITHDRAWAL OF REPRESENTATIVE.~~

~~A party's representative may be changed and a new representative may be substituted by notice to the agency and to all other parties so long as the proceedings are not unreasonably delayed. The presiding officer at hearing may permit substitution of representatives at hearing in the presiding officer's discretion. Persons representing a party who wish to withdraw their representation of a party in a proceeding before the agency must immediately file in writing a notice of withdrawal of representation and serve that notice on the party represented and all other parties. (3-31-22)~~

206. ~~CONDUCT REQUIRED.~~

~~Representatives of parties and parties appearing in a proceeding must conduct themselves in an ethical and courteous manner. (3-31-22)~~

207.—209. (RESERVED)

210. ~~PLEADINGS LISTED—MISCELLANEOUS.~~

~~Pleadings in contested cases are called applications or claims or appeals, petitions, complaints, protests, motions, answers, and consent agreements. Affidavits or declarations under penalty of perjury may be filed in support of any pleading. A party's initial pleading in any proceeding must comply with Section 200, but the presiding officer may allow documents filed during informal stages of the proceeding to be considered a party's initial pleading without the requirement of resubmission to comply with this rule. All pleadings filed during the formal stage of a proceeding must be filed in accordance with Sections 300 through 303. A party may adopt or join any other party's pleading. Two (2) or more separately stated grounds, claims or answers concerning the same subject matter may be included in one (1) pleading. (3-31-22)~~

211.—219. (RESERVED)

220. ~~APPLICATIONS/CLAIMS/APPEALS—DEFINED—FORM AND CONTENTS.~~

~~All pleadings requesting a right, license, award or authority from the agency are called "applications" or "claims" or "appeals." Applications or claims or appeals must: (3-31-22)~~

~~01. **Facts.** Fully state the facts upon which they are based. (3-31-22)~~

~~02. **Refer to Provisions.** Refer to the particular provisions of statute, rule, order, or other controlling law upon which they are based. (3-31-22)~~

~~03. **Other.** State the right, license, award, or authority sought. (3-31-22)~~

221.—229. (RESERVED)

230. ~~PETITIONS—DEFINED—FORM AND CONTENTS.~~

~~01. **Pleadings Defined.** All pleadings requesting the following are called "petitions": (3-31-22)~~

~~a. Modification, amendment or stay of existing orders or rules; (3-31-22)~~

~~b. Clarification, declaration or construction of the law administered by the agency or of a party's rights or obligations under law administered by the agency; (3-31-22)~~

~~c. The initiation of a contested case not an application, claim or complaint or otherwise taking action that will lead to the issuance of an order or a rule; (3-31-22)~~

~~d. Rehearing; or (3-31-22)~~

~~e. Intervention. (3-31-22)~~

- ~~02. **Petitions.** Petitions must: (3-31-22)~~
- ~~a. Fully state the facts upon which they are based; (3-31-22)~~
 - ~~b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; (3-31-22)~~
 - ~~c. State the relief desired; and (3-31-22)~~
 - ~~d. State the name of the person petitioned against (the respondent), if any. (3-31-22)~~

~~231.—239. (RESERVED)~~

~~240. **COMPLAINTS—DEFINED—FORM AND CONTENTS.**~~

- ~~01. **Defined.** All pleadings charging other person(s) with acts or omissions under law administered by the agency are called “complaints.” (3-31-22)~~
- ~~02. **Form and Contents.** Complaints must: (3-31-22)~~
- ~~a. Be in writing; (3-31-22)~~
 - ~~b. Fully state the acts or things done or omitted to be done by the persons complained against by reciting the facts constituting the acts or omissions and the dates when they occurred; (3-31-22)~~
 - ~~c. Refer to statutes, rules, orders or other controlling law involved; (3-31-22)~~
 - ~~d. State the relief desired; and (3-31-22)~~
 - ~~e. State the name of the person complained against (the respondent). (3-31-22)~~

~~241.—249. (RESERVED)~~

~~250. **PROTESTS—DEFINED—FORM AND CONTENTS—TIME FOR FILING.**~~

- ~~01. **Defined.** All pleadings opposing an application or claim or appeal as a matter of right are called “protests.” (3-31-22)~~
- ~~02. **Form and Contents, Time for Filing.** Protests must: (3-31-22)~~
- ~~a. Fully state the facts upon which they are based, including the protestant’s claim of right to oppose the application or claim; (3-31-22)~~
 - ~~b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; and (3-31-22)~~
 - ~~c. State any proposed limitation (or the denial) of any right, license, award or authority sought in the application. (3-31-22)~~

~~251.—259. (RESERVED)~~

~~260. **MOTIONS—DEFINED—FORM AND CONTENTS—TIME FOR FILING.**~~

- ~~01. **Defined.** All other pleadings requesting the agency to take any other action in a contested case, except consent agreements or pleadings specifically answering other pleadings, are called “motions.” (3-31-22)~~

- ~~02. **Form and Contents.** Motions must: (3-31-22)~~
- ~~a. Fully state the facts upon they are based; (3-31-22)~~
 - ~~b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and (3-31-22)~~
 - ~~c. State the relief sought. (3-31-22)~~

~~03. **Other.** If the moving party desires oral argument or hearing on the motion, it must state so in the motion. Any motion to dismiss, strike or limit an application or claim or appeal, complaint, petition, or protest must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within fourteen (14) days after service of the answer. Other motions may be filed at any time upon compliance with Section 565. (3-31-22)~~

~~261.—269. (RESERVED)~~

~~270. **ANSWERS—DEFINED—FORM AND CONTENTS—TIME FOR FILING.**~~

~~All pleadings responding to the allegations or requests of applications or claims or appeals, complaints, petitions, protests, or motions are called “answers.” (3-31-22)~~

~~01. **Answers to Pleadings Other Than Motions.** Answers to applications, claims, or appeals, complaints, petitions, or protests must be filed and served on all parties of record within twenty one (21) days after service of the pleading being answered, unless order or notice modifies the time within which answer may be made, or a motion to dismiss is made within twenty one (21) days. When an answer is not timely filed under this rule, the presiding officer may issue a notice of default against the respondent pursuant to Section 700. Answers to applications or claims, complaints, petitions, or protests must admit or deny each material allegation of the applications or claims, complaint, petition or protest. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross complaint or affirmative defense must be separately stated and numbered. (3-31-22)~~

~~02. **Answers to Motions.** Answers to motions may be filed by persons or parties who are the object of a motion or by parties opposing a motion. The person or party answering the motion must do so with all deliberate and reasonable speed. In no event is a party entitled to more than fourteen (14) days to answer a motion or to move for additional time to answer. The presiding officer may act upon a prehearing motion under Section 565. (3-31-22)~~

~~271.—279. (RESERVED)~~

~~280. **CONSENT AGREEMENTS—DEFINED—FORM AND CONTENTS.**~~

~~Agreements between the agency or agency staff and another person(s) in which one or more person(s) agree to engage in certain conduct mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, case decision, or other provision of law, are called “consent agreements.” Consent agreements are intended to require compliance with existing law. (3-31-22)~~

- ~~01. **Requirements.** Consent agreements must: (3-31-22)~~
- ~~a. Recite the parties to the agreement; and (3-31-22)~~
 - ~~b. Fully state the conduct proscribed or prescribed by the consent agreement. (3-31-22)~~
- ~~02. **Additional.** In addition, consent agreements may: (3-31-22)~~
- ~~a. Recite the consequences of failure to abide by the consent agreement; (3-31-22)~~
 - ~~b. Provide for payment of civil or administrative penalties authorized by law; (3-31-22)~~
 - ~~c. Provide for loss of rights, licenses, awards or authority; (3-31-22)~~

- ~~d.~~ Provide for other consequences as agreed to by the parties; and (3-31-22)
- ~~e.~~ Provide that the parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent agreement. (3-31-22)

~~281-299. (RESERVED)~~

~~300. FILING DOCUMENTS WITH THE AGENCY NUMBER OF COPIES FACSIMILE TRANSMISSION (FAX).~~

~~An original and necessary copies (if any are required by the agency) of all documents intended to be part of an agency record must be filed with the officer designated by the agency to receive filing in the case. Pleadings and other documents not exceeding ten (10) pages in length requiring urgent or immediate action may be filed by facsimile transmission (FAX) if the agency's individual rule of practice lists a FAX number for that agency. Whenever any document is filed by FAX, if possible, originals must be delivered by overnight mail the next working day. (3-31-22)~~

~~301. FORM OF PLEADINGS.~~

- ~~01. Pleadings.~~ All pleadings submitted by a party and intended to be part of an agency record must: (3-31-22)
 - ~~a.~~ Be submitted on white, eight and one-half by eleven inch (8-1/2" x 11") paper copied on one (1) side only; (3-31-22)
 - ~~b.~~ State the case caption, case number and title of the document; (3-31-22)
 - ~~c.~~ Include on the upper left corner of the first page the name(s), mailing and street address(es), and telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; and (3-31-22)
 - ~~d.~~ Have at least one inch (1") left and top margins. (3-31-22)
- ~~02. Form.~~ Documents complying with this rule will be in the following form:

Name of Representative			
Mailing Address of Representative			
Street Address of Representative (if different)			
Telephone Number of Representative			
FAX Number of Representative (if there is one)			
Attorney/Representative for (Name of Party)			
	BEFORE THE AGENCY		
(Title of Proceeding))		CASE NO.-
)		(TITLE OF DOCUMENT)
)		
)		

(3-31-22)

~~302. SERVICE ON PARTIES AND OTHER PERSONS.~~

~~All documents intended to be part of the agency record for decision must be served upon the representatives of each party of record concurrently with filing with the officer designated by the agency to receive filings in the case. When a document has been filed by FAX, it must be served upon all other parties with FAX facilities by FAX and upon the remaining parties by overnight mail, hand delivery, or the next best available service if these services are not available. The presiding officer may direct that some or all of these documents be served on interested or affected persons who are not parties. (3-31-22)~~

~~303. PROOF OF SERVICE.~~

Every document filed with and intended to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have this day of _____, served the foregoing (name(s) of document(s)) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names)).	
(Signature)	(3-31-22)

304. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS.
Defective, insufficient or late pleadings may be returned or dismissed. (3-31-22)

305. AMENDMENTS TO PLEADINGS—WITHDRAWAL OF PLEADINGS.
The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective fourteen (14) days after filing. (3-31-22)

~~306.—349. (RESERVED)~~

350. ORDER GRANTING INTERVENTION NECESSARY.
Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party. (3-31-22)

351. FORM AND CONTENTS OF PETITIONS TO INTERVENE.
Petitions to intervene must comply with Sections 200 and 300 through 303. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. (3-31-22)

352. TIMELY FILING OF PETITIONS TO INTERVENE.
Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing or prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. (3-31-22)

353. GRANTING PETITIONS TO INTERVENE.
If a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding. (3-31-22)

354. ORDERS GRANTING INTERVENTION—OPPOSITION.
No order granting a petition to intervene will be acted upon fewer than seven (7) days after its filing, except in a hearing in which any party may be heard. Any party opposing a petition to intervene by motion must file the motion within seven (7) days after receipt of the petition to intervene and serve the motion upon all parties of record and upon the person petitioning to intervene. (3-31-22)

355. PUBLIC WITNESSES.
Persons not parties and not called by a party who testify at hearing are called “public witnesses.” Public witnesses do

~~not have parties' rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses' written or oral statements and exhibits are subject to examination and objection by parties. Subject to Sections 558 and 560, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits introduced at hearing, except that public witnesses offering expert opinions at hearing or detailed analysis or detailed exhibits must comply with Section 530 with regard to filing and service of testimony and exhibits to the same extent as expert witnesses of parties.~~ (3-31-22)

~~356.—399. (RESERVED)~~

~~400. FORM AND CONTENTS OF PETITION FOR DECLARATORY RULINGS.~~

~~Any person petitioning for a declaratory ruling on the applicability of a statute, rule or order administered by the agency must substantially comply with this rule.~~ (3-31-22)

~~01. Form. The petition shall:~~ (3-31-22)

~~a. Identify the petitioner and state the petitioner's interest in the matter;~~ (3-31-22)

~~b. State the declaratory ruling that the petitioner seeks; and~~ (3-31-22)

~~e. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition.~~ (3-31-22)

~~02. Legal Assertions. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions.~~ (3-31-22)

~~401. NOTICE OF PETITION FOR DECLARATORY RULING.~~

~~Notice of petition for declaratory ruling may be issued in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition.~~ (3-31-22)

~~402. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER.~~

~~01. Final Agency Action. The agency's decision on a petition for declaratory ruling on the applicability of any statute, rule, or order administered by the agency is a final agency action decided by order.~~ (3-31-22)

~~02. Content. The order issuing the declaratory ruling shall contain or must be accompanied by a document containing the following paragraphs or substantially similar paragraphs:~~ (3-31-22)

~~a. This is a final agency action issuing a declaratory ruling.~~ (3-31-22)

~~b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this declaratory ruling may appeal to district court by filing a petition in the District Court in the county in which:~~ (3-31-22)

~~i. A hearing was held;~~ (3-31-22)

~~ii. The declaratory ruling was issued;~~ (3-31-22)

~~iii. The party appealing resides; or~~ (3-31-22)

~~iv. The real property or personal property that was the subject of the declaratory ruling is attached.~~ (3-31-22)

~~e. This appeal must be filed within twenty eight (28) days of the service date of this declaratory ruling. See Section 67-5273, Idaho Code.~~ (3-31-22)

~~403.—409. (RESERVED)~~

~~410. APPOINTMENT OF HEARING OFFICERS.~~

~~A hearing officer is a person other than the agency head appointed to hear contested cases on behalf of the agency. Unless otherwise provided by statute or rule, hearing officers may be employees of the agency or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the agency. The appointment of a hearing officer is a public record available for inspection, examination and copying.~~ (3-31-22)

~~411. HEARING OFFICERS CONTRASTED WITH AGENCY HEAD.~~

~~Agency heads are not hearing officers, even if they are presiding at contested cases. The term “hearing officer” as used in these rules refers only to officers subordinate to the agency head.~~ (3-31-22)

~~412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES.~~

~~Pursuant to Section 67-5252, Idaho Code, hearing officers are subject to disqualification for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified. Any party may promptly petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or upon discovering facts establishing grounds for disqualification, whichever is later. Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting the designation by a presiding officer. A hearing officer whose disqualification is requested shall determine in writing whether to grant the petition for disqualification, stating facts and reasons for the hearing officer’s determination. Disqualification of agency heads, if allowed, will be pursuant to Sections 74-704 and 67-5252(4), Idaho Code.~~ (3-31-22)

~~413. SCOPE OF AUTHORITY OF HEARING OFFICERS.~~

~~The scope of hearing officers’ authority may be restricted in the appointment by the agency.~~ (3-31-22)

~~**01. Scope of Authority.** Unless the agency otherwise provides, hearing officers have the standard scope of authority, which is:~~ (3-31-22)

~~**a.** Authority to schedule cases assigned to the hearing officer, including authority to issue notices of prehearing conference and of hearing, as appropriate;~~ (3-31-22)

~~**b.** Authority to schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency;~~ (3-31-22)

~~**c.** Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, and otherwise oversee the orderly presentations of the parties at hearing; and~~ (3-31-22)

~~**d.** Authority to issue a written decision of the hearing officer, including a narrative of the proceedings before the hearing officer and recommended findings of fact, conclusions of law, and recommended or preliminary orders by the hearing officer.~~ (3-31-22)

~~**02. Limitation.** The hearing officer’s scope of authority may be limited from the standard scope, either in general, or for a specific proceeding. For example, the hearing officer’s authority could be limited to scope iii (giving the officer authority only to conduct hearing), with the agency retaining all other authority. Hearing officers can be given authority with regard to the agency’s rules as provided in Section 416.~~ (3-31-22)

~~**03. Final Decision by Board.** All final decisions in contested cases will be made by the Board. A hearing officer will only issue recommended findings of fact, conclusions of law, and orders to the Board, and the Board will make the final decision to adopt, modify, or reject any or all of the proposed findings, conclusions, and order.~~ (3-31-22)

~~414. PRESIDING OFFICER(S).~~

~~One (1) or more members of the agency board, the agency director, or duly appointed hearing officers may preside at hearing as authorized by statute or rule. When more than one (1) officer sits at hearing, they may all jointly be presiding officers or may designate one of them to be the presiding officer.~~ (3-31-22)

415. CHALLENGES TO STATUTES.

~~A hearing officer in a contested case has no authority to declare a statute unconstitutional. However, when a court of competent jurisdiction whose decisions are binding precedent in the state of Idaho has declared a statute unconstitutional, or when a federal authority has preempted a state statute or rule, and the hearing officer finds that the same state statute or rule or a substantively identical state statute or rule that would otherwise apply has been challenged in the proceeding before the hearing officer, then the hearing officer shall apply the precedent of the court or the preemptive action of the federal authority to the proceeding before the hearing officer and decide the proceeding before the hearing officer in accordance with the precedent of the court or the preemptive action of the federal authority.~~ (3-31-22)

416. REVIEW OF RULES.

~~When an order is issued by the agency head in a contested case, the order may consider and decide whether a rule of that agency is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure. The agency head may delegate to a hearing officer the authority to recommend a decision on issues of whether a rule is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure or may retain all such authority itself.~~ (3-31-22)

417. EX PARTE COMMUNICATIONS.

~~Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. However, when a presiding officer has received a written ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer shall place a copy of the communication in the file for the case and distribute a copy of it to all parties of record or order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications.~~ (3-31-22)

~~418.—499. (RESERVED)~~

500. ALTERNATIVE RESOLUTION OF CONTESTED CASES.

~~The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, factfinding, minitrials, and arbitration, or any combination of them. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. An agency may use ADR for the resolution of issues in controversy in a contested case if the agency finds that such a proceeding is appropriate. Reasons why an agency may find that using ADR is not appropriate may include, but are not limited to, a finding that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest. Nothing in this rule shall be interpreted to require the Board to utilize ADR procedures in a contested case, nor shall it require the Board to make any findings of fact, conclusions of law, or orders with respect to a decision concerning utilization of ADR procedures. A Board decision on utilization of ADR procedures is not reviewable.~~ (3-31-22)

501. NEUTRALS.

~~When ADR is used for all or a portion of a contested case, the agency may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the agency or of another state agency or any other individual who is acceptable to the parties in the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve.~~ (3-31-22)

502. CONFIDENTIALITY.

~~Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or is required by court order, statute or agency rule to be made public.~~ (3-31-22)

~~503.—509. (RESERVED)~~

~~510. PURPOSES OF PREHEARING CONFERENCES.~~

~~The presiding officer may by order or notice issued to all parties and to all interested persons as defined in Section 158 convene a prehearing conference in a contested case for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.~~

~~(3-31-22)~~

~~511. NOTICE OF PREHEARING CONFERENCE.~~

~~Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the prehearing conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference must contain the same information as notices of hearing with regard to an agency's obligations under the American with Disabilities Act.~~

~~(3-31-22)~~

~~512. RECORD OF CONFERENCE.~~

~~Prehearing conferences may be held formally (on the record) or informally (off the record) before or in the absence of a presiding officer, according to order or notice. Agreements by the parties to the conference may be put on the record during formal conferences or may be reduced to writing and filed with the agency after formal or informal conferences.~~

~~(3-31-22)~~

~~513. ORDERS RESULTING FROM PREHEARING CONFERENCE.~~

~~The presiding officer may issue a prehearing order or notice based upon the results of the agreements reached at or rulings made at a prehearing conference. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause.~~

~~(3-31-22)~~

~~514. FACTS DISCLOSED NOT PART OF THE RECORD.~~

~~Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in prehearing conferences in a contested case are not part of the record.~~

~~(3-31-22)~~

~~515.—519. (RESERVED)~~

~~520. KINDS AND SCOPE OF DISCOVERY LISTED.~~

~~01. **Kinds of Discovery.** The kinds of discovery recognized and authorized by these rules in contested cases are:~~

~~(3-31-22)~~

~~a. Depositions; (3-31-22)~~

~~b. Production requests or written interrogatories; (3-31-22)~~

~~c. Requests for admission; (3-31-22)~~

~~d. Subpoenas; and (3-31-22)~~

~~e. Statutory inspection, examination (including physical or mental examination), investigation, etc. (3-31-22)~~

~~02. **Rules of Civil Procedure.** Unless otherwise provided by statute, rule, order or notice, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)). (3-31-22)~~

~~521. WHEN DISCOVERY AUTHORIZED.~~

~~No party before the agency is entitled to engage in discovery unless the party moves to compel discovery and the~~

~~agency issues an order directing that the discovery be answered, or upon agreement of all parties to the discovery that discovery may be conducted. The presiding officer shall provide a schedule for discovery in the order compelling discovery, but the order compelling and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. The agency or agency staff may conduct statutory inspection, examination, investigation, etc., at any time without filing a motion to compel discovery. (3-31-22)~~

~~522. RIGHTS TO DISCOVERY RECIPROCAL.~~

~~All parties to a proceeding have a right of discovery of all other parties to a proceeding according to Section 521 and to the authorizing statutes and rules. The presiding officer may by order authorize or compel necessary discovery authorized by statute or rule. (3-31-22)~~

~~523. DEPOSITIONS.~~

~~Depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. (3-31-22)~~

~~524. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION.~~

~~Production requests or written interrogatories and requests for admission may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. (3-31-22)~~

~~525. SUBPOENAS.~~

~~The agency may issue subpoenas as authorized by statute, upon a party's motion or upon its own initiative. The agency upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms. (3-31-22)~~

~~526. STATUTORY INSPECTION, EXAMINATION, INVESTIGATION, ETC.— CONTRASTED WITH OTHER DISCOVERY.~~

~~This rule recognizes, but does not enlarge or restrict, an agency's statutory right of inspection, examination (including mental or physical examination), investigation, etc. This statutory right of an agency is independent of and cumulative to any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, examination, investigation, etc., may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. The rights of deposition, production request or written interrogatory, request for admission, and subpoena, can be used by parties only in connection with formal proceedings before the agency. (3-31-22)~~

~~527. ANSWERS TO PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND TO REQUESTS FOR ADMISSION.~~

~~Answers to production requests or written interrogatories and to requests for admission shall be filed or served as provided by the order compelling discovery. Answers must conform to the requirements of the Idaho Rules of Civil Procedure. The order compelling discovery may provide that voluminous answers to requests need not be served so long as they are made available for inspection and copying under reasonable terms. (3-31-22)~~

~~528. FILING AND SERVICE OF DISCOVERY RELATED DOCUMENTS.~~

~~Notices of deposition, cover letters stating that production requests, written interrogatories or requests for admission have been served, cover letters stating answers to production requests, written interrogatories, or requests for admission have been served or are available for inspection under Section 527, and objections to discovery must be filed and served as provided in the order compelling discovery. (3-31-22)~~

~~529. EXHIBIT NUMBERS.~~

~~The agency assigns exhibit numbers to each party. (3-31-22)~~

~~530. PREPARED TESTIMONY AND EXHIBITS.~~

~~Order, notice or rule may require a party or parties to file before hearing and to serve on all other parties prepared expert testimony and exhibits to be presented at hearing. Assigned exhibits numbers should be used in all prepared testimony. (3-31-22)~~

~~531. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY.~~

~~The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery. (3-31-22)~~

~~532. PROTECTIVE ORDERS.~~

~~As authorized by statute or rule, the agency may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. (3-31-22)~~

~~533.—549. (RESERVED)~~

~~550. NOTICE OF HEARING.~~

~~Notice of the place, date and hour of hearing will be served on all parties at least fourteen (14) days before the time set for hearing, unless the agency finds by order that it is necessary or appropriate that the hearing be held earlier. Notices must comply with the requirements of Section 551. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number or docket number, the names of the presiding officers who will hear the case, the name, address and telephone number of the person to whom inquiries about scheduling, hearing facilities, etc., should be directed, and the names of persons with whom the documents, pleadings, etc., in the case should be filed if the presiding officer is not the person who should receive those documents. If no document previously issued by the agency has listed the legal authority of the agency to conduct the hearing, the notice of hearing must do so. The notice of hearing shall state that the hearing will be conducted under these rules of procedure and inform the parties where they may read or obtain a copy. (3-31-22)~~

~~551. FACILITIES AT OR FOR HEARING AND ADA REQUIREMENTS.~~

~~All hearings must be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act, and all notices of hearing must inform the parties that the hearing will be conducted in facilities meeting the accessibility requirements of the Americans with Disabilities Act. All notices of hearing must inform the parties and other persons notified that if they require assistance of the kind that the agency is required to provide under the Americans with Disabilities Act (e.g., sign language interpreters, Braille copies of documents) in order to participate in or understand the hearing, the agency will supply that assistance upon request a reasonable number of days before the hearing. The notice of hearing shall explicitly state the number of days before the hearing that the request must be made. (3-31-22)~~

~~552. HOW HEARINGS HELD.~~

~~Hearings may be held in person or by telephone or television or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. (3-31-22)~~

~~553. CONDUCT AT HEARINGS.~~

~~All persons attending a hearing must conduct themselves in a respectful manner. Smoking is not permitted at hearing. (3-31-22)~~

~~554. CONFERENCE AT HEARING.~~

~~In any proceeding the presiding officer may convene the parties before hearing or recess the hearing to discuss formulation or simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer shall state the results of the conference on the record. (3-31-22)~~

~~555. PRELIMINARY PROCEDURE AT HEARING.~~

~~Before taking evidence the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements as necessary or appropriate to explain a party's presentation. (3-31-22)~~

~~556. CONSOLIDATION OF PROCEEDINGS.~~

~~The agency may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings the presiding officer determines the order of the proceeding. (3-31-22)~~

557. STIPULATIONS.

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented at hearing or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The agency may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The agency is not bound to adopt a stipulation of the parties, but may do so. If the agency rejects a stipulation, it will do so before issuing a final order, and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. (3-31-22)

558. ORDER OF PROCEDURE.

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. (3-31-22)

559. TESTIMONY UNDER OATH.

All testimony presented in formal hearings will be given under oath. Before testifying each witness must swear or affirm that the testimony the witness will give before the agency is the truth, the whole truth, and nothing but the truth. (3-31-22)

560. PARTIES AND PERSONS WITH SIMILAR INTERESTS.

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication, the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. (3-31-22)

561. CONTINUANCE OF HEARING.

The presiding officer may continue proceedings for further hearing. (3-31-22)

562. RULINGS AT HEARINGS.

The presiding officer rules on motions and objections presented at hearing. When the presiding officer is a hearing officer, the presiding officer's rulings may be reviewed by the agency head in determining the matter on its merits and the presiding officer may refer or defer rulings to the agency head for determination. (3-31-22)

563. ORAL ARGUMENT.

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. (3-31-22)

564. BRIEFS—MEMORANDA—PROPOSED ORDERS OF THE PARTIES—STATEMENTS OF POSITION—PROPOSED ORDER OF THE PRESIDING OFFICER.

In any contested case, any party may ask to file briefs, memoranda, proposed orders of the parties or statements of position, and the presiding officer may request briefs, proposed orders of the parties, or statements of position. The presiding officer may issue a proposed order and ask the parties for comment upon the proposed order. (3-31-22)

565. PROCEDURE ON PREHEARING MOTIONS.

The presiding officer may consider and decide prehearing motions with or without oral argument or hearing. If oral argument or hearing on a motion is requested and denied, the presiding officer must state the grounds for denying the request. Unless otherwise provided by the presiding officer, when a motion has been filed, all parties seeking similar substantive or procedural relief must join in the motion or file a similar motion within seven (7) days after receiving the original motion. The party(ies) answering to or responding to the motion(s) will have fourteen (14) days from the time of filing of the last motion or joinder pursuant to the requirements of the previous sentence in which to respond. (3-31-22)

566. JOINT HEARINGS.

The agency may hold joint hearings with federal agencies, with agencies of other states, and with other agencies of the state of Idaho. When joint hearings are held, the agencies may agree among themselves which agency's rules of practice and procedure will govern. (3-31-22)

567.—599. (RESERVED)

600. RULES OF EVIDENCE—EVALUATION OF EVIDENCE.

Evidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that

~~development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence.~~ (3-31-22)

~~601. DOCUMENTARY EVIDENCE.~~

~~Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original if available.~~ (3-31-22)

~~602. OFFICIAL NOTICE—AGENCY STAFF MEMORANDA.~~

~~Official notice may be taken of any facts that could be judicially noticed in the courts of Idaho and of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified of the specific facts or material noticed and the source of the material noticed, including any agency staff memoranda and data. Notice that official notice will be taken should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material officially noticed. Parties must be given an opportunity to contest and rebut the facts or material officially noticed. When the presiding officer proposes to notice agency staff memoranda or agency staff reports, responsible staff employees or agents shall be made available for cross-examination if any party timely requests their availability.~~ (3-31-22)

~~603. DEPOSITIONS.~~

~~Depositions may be offered into evidence.~~ (3-31-22)

~~604. OBJECTIONS—OFFERS OF PROOF.~~

~~Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection, or, if the presiding officer is a hearing officer, the presiding officer may receive the evidence subject to later ruling by the agency head or refer the matter to the agency head.~~ (3-31-22)

~~605. PREPARED TESTIMONY.~~

~~The presiding officer may order a witness's prepared testimony previously distributed to all parties to be included in the record of hearing as if read. Admissibility of prepared testimony is subject to Section 600.~~ (3-31-22)

~~606. EXHIBITS.~~

~~Exhibit numbers may be assigned to the parties before hearing. Exhibits prepared for hearing must ordinarily be typed or printed on eight and one-half inch by eleven inch (8-1/2" x 11") white paper, except maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. Motion pictures, slides, opaque projections, videotapes, audiotapes or other materials not capable of duplication by still photograph or reproduction on paper shall not be presented as exhibits without approval of the presiding officer.~~ (3-31-22)

~~607.—609. (RESERVED)~~

~~610. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS.~~

~~Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record.~~ (3-31-22)

~~611. SUGGESTION FOR OR INQUIRY ABOUT SETTLEMENTS.~~

~~Through notice or order or on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. (3-31-22)~~

612. CONSIDERATION OF SETTLEMENTS.

~~Settlements must be reviewed under this rule. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the presiding officer could summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one (1) or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the agency's charge under the law. (3-31-22)~~

613. BURDENS OF PROOF.

~~Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. (3-31-22)~~

614. SETTLEMENT NOT BINDING.

~~The presiding officer is not bound by settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law. (3-31-22)~~

~~**615.—649. (RESERVED)**~~

650. RECORD FOR DECISION.

~~**01. Requirement.** The agency shall maintain an official record for each for each contested case and (unless statute provides otherwise) base its decision in a contested case on the official record for the case. (3-31-22)~~

~~**02. Contents.** The record for a contested case shall include: (3-31-22)~~

~~**a.** All notices of proceedings; (3-31-22)~~

~~**b.** All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; (3-31-22)~~

~~**c.** All intermediate or interlocutory rulings of hearing officers or the agency head; (3-31-22)~~

~~**d.** All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); (3-31-22)~~

~~**e.** All offers of proof, however made; (3-31-22)~~

~~**f.** All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; (3-31-22)~~

~~**g.** All evidentiary rulings on testimony, exhibits, or offers of proof; (3-31-22)~~

~~**h.** All staff memoranda or data submitted in connection with the consideration of the proceeding; (3-31-22)~~

~~**i.** A statement of matters officially noticed; and (3-31-22)~~

~~**j.** All recommended orders, preliminary orders, final orders, and orders on reconsideration. (3-31-22)~~

651. ~~RECORDING OF HEARINGS.~~

~~All hearings shall be recorded on audiotape or videotape at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense.~~

~~(3-31-22)~~

652.—699. (RESERVED)

700. ~~NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR.~~

~~If an applicant or claimant or appellant, petitioner, complainant, or moving party fails to appear at the time and place set for hearing on an application or claim or appeal, petition, complaint, or motion, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim or appeal, petition, complaint, or motion. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the applicant or claimant or appellant, petitioner, complainant or moving party to appear at the time and place set for hearing. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted.~~

~~(3-31-22)~~

701. ~~SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER.~~

~~Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered.~~

~~(3-31-22)~~

702. ~~ISSUANCE OF DEFAULT ORDER.~~

~~The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven days for the party to file a petition contesting the default order or receipt of a petition. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default (if the defaulting party is not a movant) or upon the results of the denial of the motion (if the defaulting party is a movant). All issues in the contested case shall be determined, including those affecting the defaulting party. If authorized by statute or rule, costs may be assessed against a defaulting party.~~

~~(3-31-22)~~

703.—709. (RESERVED)

710. ~~INTERLOCUTORY ORDERS.~~

~~Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the agency may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by reconsideration or appeal, but is not final on other issues. Unless an order contains or is accompanied by a document containing one of the paragraphs set forth in Sections 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. The following orders are always interlocutory: orders initiating complaints or investigations; orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the officer issuing the order pursuant to Sections 711, 760, and 770.~~

~~(3-31-22)~~

711. ~~REVIEW OF INTERLOCUTORY ORDERS.~~

~~Any party or person affected by an interlocutory order may petition the officer issuing the order to review the interlocutory order. The officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the officer's own motion, but will not on the officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment.~~

~~(3-31-22)~~

712.—719. (RESERVED)

720. ~~RECOMMENDED ORDERS.~~

01. ~~Definition.~~ ~~Recommended orders are orders issued by a person other than the agency head that will become a final order of the agency only after review of the agency head (or the agency head's designee) pursuant to Section 67-5244, Idaho Code.~~

~~(3-31-22)~~

~~02. **Content.** Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-31-22)~~

~~a. This is a recommended order of the hearing officer. It will not become final without action of the agency head. Any party may file a petition for reconsideration of this recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. (3-31-22)~~

~~b. Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding. (3-31-22)~~

~~c. Written briefs in support of or taking exceptions to the recommended order shall be filed with the agency head (or designee of the agency head). Opposing parties shall have twenty-one (21) days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (3-31-22)~~

~~721.—729. (RESERVED)~~

730. PRELIMINARY ORDERS.

~~01. **Definition.** Preliminary orders are orders issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head (or the agency head's designee) pursuant to Section 67-5245, Idaho Code. (3-31-22)~~

~~02. **Content.** Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-31-22)~~

~~a. This is a preliminary order of the hearing officer. It can and will become final without further action of the agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officer's superiors in the agency. Any party may file a motion for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. (3-31-22)~~

~~b. Within twenty-one (21) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing appeal or take exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head). Otherwise, this preliminary order will become a final order of the agency. (3-31-22)~~

~~c. If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the agency. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head (or designee). The agency head (or designee) may review the preliminary order on its own motion. (3-31-22)~~

~~d. If the agency head (or designee) grants a petition to review the preliminary order, the agency head (or designee) shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The agency head (or designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee) may remand the matter for further~~

~~evidentiary hearings if further factual development of the record is necessary before issuing a final order. (3-31-22)~~

~~e. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (3-31-22)~~

~~i. A hearing was held; (3-31-22)~~

~~ii. The final agency action was taken; (3-31-22)~~

~~iii. The party seeking review of the order resides; or (3-31-22)~~

~~iv. The real property or personal property that was the subject of the agency action is attached. (3-31-22)~~

~~f. This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (3-31-22)~~

~~731.—739. (RESERVED)~~

740. FINAL ORDERS.

~~01. **Definition.** Final orders are preliminary orders that have become final under Section 730 pursuant to Section 67-5245, Idaho Code, or orders issued by the agency head pursuant to Section 67-5246, Idaho Code. (3-31-22)~~

~~02. **Content.** Every final order issued by the agency head must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-31-22)~~

~~a. This is a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5246(4), Idaho Code. (3-31-22)~~

~~b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (3-31-22)~~

~~i. A hearing was held; (3-31-22)~~

~~ii. The final agency action was taken; (3-31-22)~~

~~iii. The party seeking review of the order resides; or (3-31-22)~~

~~iv. The real property or personal property that was the subject of the agency action is attached. (3-31-22)~~

~~e. An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (3-31-22)~~

~~741.—749. (RESERVED)~~

750. ORDER NOT DESIGNATED.

~~If an order does not designate itself as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate.~~
(3-31-22)

~~751.—759. (RESERVED)~~

~~**760. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION.**~~

~~A hearing officer issuing a recommended or preliminary order may modify the recommended or preliminary order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended or preliminary order by withdrawing the recommended or preliminary order and issuing a substitute recommended or preliminary order. The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it.~~
(3-31-22)

~~761.—769. (RESERVED)~~

~~**770. CLARIFICATION OF ORDERS.**~~

~~Any party or person affected by an order may petition to clarify any order, whether interlocutory, recommended, preliminary or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or appeal the order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration.~~
(3-31-22)

~~771.—779. (RESERVED)~~

~~**780. STAY OF ORDERS.**~~

~~Any party or person affected by an order may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion.~~
(3-31-22)

[Proposed Section 004 has been omitted from the pending rule]

~~781~~**004.** -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.01 – RULES GOVERNING DREDGE AND PLACER MINING OPERATIONS IN IDAHO

DOCKET NO. 20-0301-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code, and Title 47, Chapter 13, Idaho Code.

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

Following [Executive Order 2020-01, Zero-Based Regulation](#), this rule chapter is scheduled for a comprehensive review in 2023 with the goal of simplifying the rules for increased clarity and ease of use. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. Inspection fees have been increased to cover the costs of performing inspections, and the late payment policy was updated. Surety companies issuing bonds must be listed in the U.S Department of the Treasury's Circular 570, and the 120 day cancellation notification was reduced to 90 days. Time Deposit Receipts were recognized as acceptable forms of bonding.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9, pages 280-307](#).

The changes in the pending rule were mostly to fix punctuation and capitalization errors. The definition of Permittee was shortened for clarity. A word was added in Subsection 035.09 to better align with statute. The word order in Paragraph 040.14.d. was modified for clarity of the written notice.

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

The annual inspection fee in place since 1991 is increased to \$435 for all permits. This fee is being imposed pursuant to Section 47-1317(d), Idaho Code. The current annual inspection fees are \$100 for permits on United States Forest Service lands and \$250 for all other permits.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Eric Wilson at (208) 334-0261 or ewilson@idl.idaho.gov.

DATED this 21st of November, 2023.

Eric Wilson, Resource Protection & Assistance Bureau Chief
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, Idaho 83720-0050
P.O. Box 83720
Phone: (208) 334-0261
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code, and Title 47, Chapter 13, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2023.

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:

Following [Executive Order 2020-01, Zero-Based Regulation](#), this rule chapter is scheduled to be repealed and replaced in 2023 for review during the 2024 legislative session. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. Inspection fees have been increased to cover the costs of performing inspections, and the late payment policy was updated. Surety companies issuing bonds must be listed in the U.S Department of the Treasury's Circular 570, and the 120 day cancellation notification was reduced to 90 days. Time Deposit Receipts were recognized as acceptable forms of bonding.

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

The annual inspection fee in place since 1991 is increased to \$435 for all permits. This fee is being imposed pursuant to Section 47-1317(d), Idaho Code. The current annual inspection fees are \$100 for permits on United States Forest Service lands and \$250 for all other permits.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2023, Idaho Administrative Bulletin, [Vol. 23-4, pages 35-37](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson at (208) 334-0261 or ewilson@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 6th day of September, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 20-0301-2301

20.03.01 – RULES GOVERNING DREDGE AND PLACER MINING OPERATIONS IN IDAHO

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Title 47, Chapter 13, Idaho Code, Section 47-1316; Title 58, Chapter 1, Idaho Code, Sections 58-104(6) and 58-105; and Title 67, Chapter 52, Idaho Code. The Board has delegated to the Director the duties and powers under the act and these rules; provided that the Board retains responsibility for approval of permits. ()

001. SCOPE.

01. Scope. These rules establish the notification requirements for dredge and placer exploration, and the application and operation requirements of dredge and placer mines. In addition, these rules establish the reclamation and financial assurance requirements for all these activities. ()

02. Applicability. These rules are to be read and applied in conjunction with the Act. ()

a. These rules apply to all lands within the state, including private and federal lands, which are disturbed by dredge or placer mining conducted after November 24, 1954. ()

b. These rules apply to the following activities: ()

i. All dredge and placer exploration activities using motorized earth-moving equipment. ()

ii. The extraction of minerals from a placer deposit, including the removal of vegetation, topsoil, overburden, and minerals; construction and operation of on-site processing equipment; disposal of overburden and waste materials; design and operation of siltation and other water quality control facilities; and other activities contiguous to the mining site that disturb land and affect water quality and/or water quantity. ()

c. These rules do not apply to the following: ()

i. Mining operations regulated by the Mined Land Reclamation Act; ()

ii. Surface disturbance caused by the underground mining of a placer deposit, unless the deposit outcrops on or near the surface and the operation will result in the probable subsidence of the land surface. ()

iii. Dredging operations conducted for the sole purpose of establishing and maintaining a channel for navigation. ()

iv. Dredging operations in streams or rivers using suction dredges with an intake diameter of eight (8) inches or less. ()

03. Other Laws. Dredge and placer exploration and mining operations must comply with all applicable rules and laws of the state of Idaho including, but not limited to, the following: ()

a. Idaho water quality standards established in Title 39, Chapters 1 and 36, Idaho Code and IDAPA 58.01.02, "Water Quality Standards". ()

b. Wastewater treatment or disposal plan and specification review established in IDAPA 58.01.16, and IPDES requirements in IDAPA 58.01.25 administered by DEQ. ()

c. Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. ()

d. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions set forth in the Act, the following definitions apply to these rules: ()

01. Act. The Idaho Dredge and Placer Mining Protection Act, Title 47, Chapter 13, Idaho Code. ()

02. Approximate Previous Contour. A contour reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. ()

03. Best Management Practices. 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. ()

04. Department. The Idaho Department of Lands. ()

05. Mine Panel. That area designated by the Permittee as an identifiable portion of a placer or dredge mine on the map submitted under Subsection 021.04 of these rules. ()

06. Mulch. Vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation. ()

07. Overburden. Material extracted by a Permittee which is not a part of the material ultimately removed from a placer or dredge mine and marketed by a Permittee, exclusive of mineral stockpiles. Overburden is comprised of topsoil and waste. ()

08. Overburden Disposal Area. Land surface upon which overburden is piled or planned to be piled. ()

09. Permanent Cessation. Mining operations as to the whole or any part of the permit area have stopped and there is substantial evidence that such operations will not resume within one (1) year. The date of permanent cessation is the last day when mining operations are known or can be shown to have occurred. ()

10. Permit. Dredge or placer mining permit issued under the Act and these rules. ()

11. Permittee. The person in whose name the permit is issued and who is held responsible for compliance with the conditions of the permit by the Department. ()

12. Pit. An excavation created by the extraction of minerals or overburden during placer mining or exploration operations. ()

13. Placer Stockpile. Placer deposit material extracted during past or present dredge or placer mining operations. ()

14. Reclamation. The process of restoring an area disturbed by a placer or dredge mining operation or exploration operation to its original or another beneficial use, considering land uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. ()

15. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by placer or dredge mining operations. ()

16. Settling Pond. A manmade enclosure or natural impoundment structure constructed and used for the purpose of treating mine process water and/or runoff water from adjacent disturbed areas by the removal or settling of sediment particles. Several types of settling ponds or a series of smaller ponds may be used in water management. The most common type is a recycle or recirculation pond which is used to pump clarified water back to the wash plant operation. ()

17. Surface Waters. The surface waters of the state of Idaho. ()

18. Topsoil. The unconsolidated mineral and organic matter naturally present on the surface of the earth that is necessary for the growth and regeneration of vegetation. ()

011. ABBREVIATIONS.

01. BMP. Best Management Practices. ()

02. DEQ. Idaho Department of Environmental Quality. ()

012. -- 019. (RESERVED)

020. PLACER OR DREDGE EXPLORATION OPERATIONS.

01. Notice. Any person desiring to conduct placer or dredge exploration operations using motorized earth-moving equipment must, prior to or within seven (7) days of commencing exploration, notify the Director. The notice includes the following: ()

a. The name and address of the operator; ()

b. The legal description of the exploration operation and a map of sufficient scale to show the location of the exploration and nearby roads and streams. ()

c. The exploration starting and estimated completion dates; and ()

d. The anticipated size of the exploration operation and the general method of operation. ()

02. One-Half Acre Limit. Any placer or dredge exploration operation that causes a cumulative surface disturbance in excess of one-half (1/2) acre of land, including roads, is considered a placer or dredge mining operation and subject to the requirements outlined in Sections 021 through 065. Lands disturbed by any placer or dredge exploration operation that causes a cumulative surface disturbance of less than one-half (1/2) acre of land, including roads, must be restored to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operation and as outlined in Subsection 020.03. ()

03. Reclamation Required. The following reclamation activities, required to be conducted on exploration sites, must be performed in a workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, pit, or trench, within one (1) year after abandonment thereof: ()

- a. Drill holes must be plugged within one (1) year of abandonment with a permanent concrete or bentonite plug: ()
- b. Restore all disturbed lands, including roads, to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operations: ()
- c. Conduct revegetation activities in accordance with Subsection 040.15. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. Such abandoned pits and trenches must be reclaimed within one (1) year of verification; ()
- d. If water runoff from exploration operations causes siltation or other pollution of surface waters, the operator will prepare disturbed lands and adjoining lands under his or her control, as is necessary to meet state water quality standards: ()
- e. Abandoned lands disturbed by an exploration operation must be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration operation, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon; and ()
- f. Any water containment structure created in connection with exploration operations will be constructed, maintained, and reclaimed so as not to constitute a hazard to human health or the environment. ()

021. APPLICATION PROCEDURE FOR PERMIT.

- 01. Approved Permit Required.** No Permittee may conduct placer or dredge mining operations, as defined in these rules, on any lands in the state of Idaho until the permit has been approved by the Board, the Department has received a bond meeting the requirements of these rules, and the permit has been signed by the Director and the Permittee. ()
- 02. Application Package.** The Permittee must submit a complete application package, for each separate placer mine or mine panel, before the permit will be reviewed. Separate placer mines are individual, physically disconnected operations. The complete application package consists of: ()
 - a. An application provided by the Director; ()
 - b. A map or maps of the proposed mining operation which includes the information required under Subsection 021.04; ()
 - c. A plan, of operations in map and narrative form, which includes the information required under Subsection 021.06. The map and plan of operations may be combined on one (1) sheet if practical; ()
 - d. Document(s) identifying and assessing foreseeable, site-specific sources of water quality impacts upon adjacent surface waters, and the BMPs or other measures the applicant will take to comply with water quality requirements; ()
 - e. When the Director determines, after consultation with DEQ, that there is an unreasonably high potential for pollution of adjacent surface waters, the Director will request, and the applicant will provide to the Director, baseline pre-project surface water monitoring information and furnish ongoing monitoring data during the life of the project. This provision does not require any additional baseline preproject surface water monitoring information or ongoing monitoring data where such information or data is already required to be provided pursuant to any federal or state law and is available to the Director; ()
 - f. An out-of-state Permittee must designate an in-state agent authorized to act on behalf of the Permittee. In case of an emergency requiring action to be taken to prevent environmental damage, the authorized agent will be notified as well as the Permittee; ()

g. An application fee of fifty dollars (\$50) for each ten (10) acres or fraction of land included in an application for a new permit, or of land to be affected or added in an amended application to an existing permit, must be included with the application. No application fee will exceed one thousand dollars (\$1,000); and ()

h. If the applicant is not the owner of the lands described in the application, or any part thereof, the landowner must sign the application prior to issuance of a permit. The federal government, as a property owner, will be notified of the application, and asked to sign the application as property owner. For mining operations proposed upon land under a mining lease, either the signature of the lessor must be affixed to the application, or a copy of the complete lease attached to the application. ()

03. Incomplete Applications. An application for a permit may be returned for correction if the information provided on the application form or associated mine map(s) or plan of operations is incomplete or otherwise unsatisfactory. The Director will not proceed on the application until all necessary information is submitted. ()

04. Requirements of Maps. Vicinity maps must be prepared on standard United States Geological Survey, seven and one-half (7.5) minute quadrangle maps, or equivalent. In addition, maps of the proposed placer mining operation site will be of sufficient scale to show: ()

a. The location of existing roads, access, and main haul roads constructed or reconstructed in connection with the mining operation and the approximate dates for construction, reconstruction, and abandonment; ()

b. The approximate location and names of all known drainages, streams, creeks, or water bodies within one thousand (1,000) feet of the mining operation; ()

c. The approximate boundaries of the proposed disturbed lands for the mining operation, including legal description to the quarter-quarter section; ()

d. The approximate boundaries and acreage of the lands that will become disturbed land during the first year of operations; ()

e. The planned location and configuration of pits, mineral stockpiles, topsoil stockpiles, and waste dumps within the permit area; ()

f. Scaled cross-sections by length and height showing the surface contour prior to mining and the expected surface contour after reclamation is completed; ()

g. The location of required settling ponds and the discharge points, if any; and ()

h. Surface and mineral control or ownership map of appropriate scale for boundary identification. ()

05. Settling Ponds. Detailed plans and specifications for settling ponds must be drawn at an appropriate scale to show the following: ()

a. Layout of each settling pond including: ()

i. Dimensions and orientation of the settling ponds and/or other wastewater treatment components of the operation; ()

ii. Distance from surface waters; ()

iii. Pond inlet/outlet locations including emergency spillways and detailed description of control structures and piping; ()

iv. Location of erosion control structures; ()

v. Location of any current ten (10) year floodplain in relation to the mining facilities if the floodplain is within one hundred (100) feet of the facilities; and ()

vi. The BMPs to be implemented that will keep surface waters from entering any pits and potentially changing course. ()

b. A cross-section of each pond including: ()

i. Dimensions and orientation; ()

ii. Proposed sidewall elevations; ()

iii. Proposed sidewall slope; ()

iv. Sidewall width; ()

v. Distance from and elevation above all surface water; and ()

vi. Slope of settling pond location. ()

c. Narrative of the construction method(s) describing: ()

i. Bottom material; ()

ii. Sidewall material; ()

iii. Pond volume; ()

iv. Volume of water to be used in the wash plant; ()

v. Discharge or land application requirements; ()

vi. Any pond liners or filter materials to be installed; and ()

viii. Compaction techniques. ()

06. Requirements for Plan of Operations. A plan of operations must be submitted in map and narrative form and include the following: ()

a. Show how watercourses disturbed by the mining operation will be replaced on meander lines with a pool structure conducive to good fish and wildlife habitat and recreational use. Show how and where riprap or other methods of bank stabilization will be used to ensure that, following abandonment, the stream erosion will not exceed the rate normally experienced in the area. If necessary, show how the replaced watercourse will not contribute to degradation of water supplies; ()

b. Describe and show the contour of the proposed mine site after final backfilling and grading, with grades listed for slopes after mining; ()

c. On a drainage control map, show the best management practices to be utilized to minimize erosion on disturbed lands; ()

d. Show roads to be reclaimed upon completion of mining; ()

e. Show plans for both concurrent and final revegetation of disturbed lands. Indicate soil types, where soils are not present, slopes, precipitation, seed rates, species, topsoil, or other growth medium storage and handling, time of planting, method of planting and, if necessary, fertilizer and mulching rates; ()

f. The planned reclamation of tailings or sediment ponds; ()

g. An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and administrative overhead; and ()

h. Make a premining estimate of trees on the site by species and forest lands utilization consideration in reclamation. ()

07. State Approval Required. Approval of a permit must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency. ()

08. Application Review and Inspection. If the Department determines that an inspection is necessary, the applicant may be contacted and asked that he or his duly authorized employee or representative be present for inspection at a reasonable time. An inspection may be required prior to issuance of the permit. The applicant must make such persons available for the purpose of inspection. Failure to provide a representative does not mean that the state will not conduct such inspection. ()

022. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION.

01. Public Hearings. For the purpose of determining whether a proposed application complies with these rules, the Director may call for a public hearing, as described in Section 030. ()

02. Adverse Weather. If weather conditions prevent the Department from inspecting the proposed mining site to acquire the information required to evaluate the application, the application may be placed in suspense, pending improved weather conditions. The applicant will be notified in writing of this action. ()

03. Interagency Comment. Nonconfidential materials submitted under Section 021 will be forwarded by the Department to the Departments of Water Resources, Environmental Quality, and Fish and Game for review and comment. If operations are to be located on federal lands, the Department will notify the U. S. Bureau of Land Management or the U.S. Forest Service. The Director may provide public notice on receipt of a reclamation plan. In addition, a copy of an application will be provided to individuals who request the information in writing, subject to Title 74, Chapter 1, Idaho Code. ()

04. Stream Channel Alteration Permits. No permit will be issued proposing to alter, occupy or to dredge any stream or watercourse without notification to the Department of Water Resources of the pending application. The Department of Water Resources will respond to said notification within twenty (20) days. If a stream channel alteration permit is required, it must be issued prior to issuance of the placer and dredge permit. ()

05. Water Clarification. No permit will be issued until the Department is satisfied that the methods of water clarification proposed by the applicant are of sound engineering design and capable of meeting the water quality standards established under Title 39, Chapters 1 and 36, Idaho Code, and IDAPA 58.01.02, "Water Quality Standards." ()

06. Permit Conditions. If an application fails to meet the requirements of these rules, the Department may include permit conditions that bring the application into compliance with these rules. ()

07. Decision on Application. Following the Department's review of an application for a new or amended permit and an opportunity for the applicant to correct any deficiencies, the Board will approve or disapprove the application and the Director will notify the applicant of the Board's decision by mail. ()

08. Permit Offering. Upon approval by the Board, the applicant will be sent the permit for their signature and submittal of the reclamation bond and first year's inspection fees. If the signed permit, fee, and bond are not received by the Department within twelve (12) months of Board action, the approval will be automatically rescinded. Upon receipt of the signed permit, fee, and bond, the Department will complete the permit with the required state signatures and send the fully executed permit to the permittee. ()

09. Permit Denial Authority. The Board has the power to deny any application for a permit on state lands, streams, or riverbeds, or on any unpatented mining claims, pursuant to Section 47-1317(j), Idaho Code. ()

10. Amended Applications. If the Board disapproves the application, the applicant will be informed of the rules that have not been complied with, the manner in which they have not been complied with, and the requirements necessary to correct the deficiencies. The applicant may then submit an amended application and application fee, which will be processed as described in Section 022 of these rules. ()

11. Reclamation Obligations. The permit issued by the Board governs and determines the nature and extent of the reclamation obligations of the Permittee. ()

023. -- 024. (RESERVED)

025. AMENDING AN APPROVED PERMIT.

01. Application to Amendment. If circumstances arise that require significant change in the plan of operations, method of operation, increase in acreage, water management or other details associated with an approved permit, the Permittee will submit an application covering the proposed changes as described in Section 021 of these rules. ()

02. Processing. An application to amend a permit will be processed in accord with Section 022. ()

026. DEVIATION FROM AN APPROVED PERMIT.

01. Unforeseen Events. If unforeseen events or unexpected conditions require immediate deviation from an approved permit, the Permittee may continue mining as dictated by the changed conditions, pending submission and approval of an amended permit. This does not excuse the Permittee from complying with the BMPs and reclamation requirements of Sections 020 and 040. If water quality is being impaired or the stability of settling ponds or other mine features is compromised due to the unforeseen events, then mining must stop until the mine features are stabilized. ()

02. Notification. Notification of such unforeseen events must be given to the Department within forty-eight (48) hours after discovery, and an application to amend the permit must be submitted within thirty (30) days of deviation from the approved permit by the Permittee. ()

027. TRANSFER OF PERMITS.

Permits may be transferred from an existing Permittee to a new Permittee only after the Department's approval. Transfer is made by the new Permittee filing a notarized Department form and providing replacement bonding. The new Permittee is then responsible for the past Permittee's obligations under the Act, these rules, and the permit. ()

028. -- 029. (RESERVED)

030. PUBLIC HEARING FOR PERMIT APPLICATION.

01. Public Hearings. During any stage of the application process the Department may conduct a public hearing. ()

02. Basis for Hearing. This action will be based upon the preliminary review of the application and upon any concern registered with the Department by the public, affected land owners, reviewing agencies, other interested entities, or upon request by the applicant. ()

03. Site of Hearing. The hearing will be held, in the locality of the proposed operation, or in Ada County, at a reasonable time and place. ()

04. Hearing Notice. The Department will give notice of the date, time, and place of the hearing to the applicant; federal, state, and local agencies, and Indian tribes which may have an interest in the application; any persons petitioning for the hearing; and all persons identified as an owner of the specific acreage to be affected by the proposed operation. Such hearing notice will be sent by certified mail and postmarked not less than thirty (30) days before the scheduled date of the public hearing. ()

05. Public Notice. The Director will notify the general public of the date, time, and place of the hearing by placing a newspaper advertisement once a week, for two (2) consecutive weeks in a newspaper in the county in which the mining is proposed. The advertisements will be between seven (7) and twenty (20) days prior to the scheduled date of the hearing. A copy of the application is to be placed for review in a conspicuous place in the local area of the proposed mining operations, in the Department's nearest area office, and the Department's administrative office in Boise. ()

06. Hearing Officer. The hearing will be conducted by the Director or his duly authorized representative. Both oral and written testimony will be accepted. ()

031. -- 034. (RESERVED)

035. PERFORMANCE BOND REQUIREMENTS.

01. Amount of Bond. The initial bond is in the amount determined by the Board to be the estimated reasonable costs of reclamation of lands proposed to be disturbed in the permit area, plus ten percent (10%), and subject to the limitations in Idaho Code 47-1317(b). ()

02. Form of Performance Bond. ()

a. Corporate surety bond. This is an indemnity agreement executed for the Permittee by a corporate surety licensed to do business in the state of Idaho and submitted on a Department form. Surety bonds are subject to the following conditions: ()

i. The bond is to be conditioned upon the Permittee faithfully performing all requirements of the Act, these rules, and the permit, and must be payable to the state of Idaho; ()

ii. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties in Circular 570 of the U.S. Department of the Treasury; and ()

iii. When a replacement bond is submitted, the following rider must be filed with the Department as part of the replacement before the existing bond will be released: "(Surety company or principal) understands and expressly agrees that the liability under this bond will extend to all acts for which reclamation is required on areas disturbed in connection with placer or dredge mining permit [number], both prior to and subsequent to the date of this rider." ()

iv. Any surety company canceling a bond must give the Department at least ninety (90) days' notice prior to cancellation. The Director will not release a surety from liability under an existing bond until the Permittee has submitted an acceptable replacement bond to the Director or reclaimed the site. A replacement bond must be received within thirty (30) days following written notice by the Director or prior to the effective date of cancellation, whichever is later. ()

v. If a surety's Idaho business license is suspended or revoked the Permittee must, within thirty (30) days after notice by the Department, submit a replacement bond for such surety to the Department. ()

vi. If the Permittee fails to submit a replacement bond or complete reclamation as directed in subparagraphs iv and v above, the Director may issue a cease-and-desist order and seek injunctive relief to stop the Permittee from conducting placer and dredge mining operations on the lands covered by the bond until a replacement bond has been submitted. The Permittee must cease mining operations on lands covered by the bond until a bond acceptable to the Department is filed. ()

b. Collateral bond. This is an indemnity agreement executed by or for the Permittee, and payable to the state of Idaho, pledging cash deposits, governmental securities, or certificates of deposit of any financial institution doing business in the United States. Collateral bonds are subject to the following conditions: ()

i. The Director will obtain possession of cash or other collateral bonds and then deposit them with the state treasurer to hold in trust for the purpose of bonding reclamation performance; ()

ii. The Director will value collateral at its current market value minus any penalty for early withdrawal, not its face value; ()

iii. Certificates of deposit or time deposit receipts are issued or assigned, in writing, to the state of Idaho and upon the books of the financial institution issuing such certificates. Interest will be allowed to accrue and may be paid by the bank, upon demand and after written release by the Department, to the Permittee or other person who posted the collateral bond; ()

iv. Amount of an individual certificate of deposit or time deposit receipt may not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors; ()

v. Financial institutions issuing certificates of deposit or time deposit receipts will waive all rights of set-off or liens which it has or might have against such certificates, and will place holds on those funds that prevent the Permittee from withdrawing funds until the Department sends a written release to the financial institution; ()

vi. Certificates of deposit and time deposit receipts must be automatically renewable. ()

c. Letters of credit. A letter of credit is an instrument executed by a bank doing business in Idaho and made at the request of a customer. A letter of credit states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit. Letters of credit are subject to the following conditions: ()

i. All credits are irrevocable and prepared in a format prescribed by the Director; ()

ii. All credits must be issued by an institution authorized to do business in the state of Idaho or through a correspondent bank authorized to do business in the state of Idaho; and ()

iii. The account party on all credits must be identical to the entity identified on the permit as the Permittee. ()

03. Blanket Bond. Where a Permittee is involved in numerous placer or dredge operations, the Director may accept a blanket bond in lieu of separate bonds under approved permits. The amount of such bond must comply with other applicable provisions of Section 035 and must be equal to the total of the amounts of the separate bonds being combined into a single bond. ()

04. Bond Reduction. ()

a. Upon finding that any land bonded under a permit will not be affected by mining, the Permittee will notify the Department. When the Department has verified that the bonding requirement for the remaining permit area is adequate, any excess reclamation bond will be released. Any request for bond reduction will be answered by the Director within thirty (30) days of receiving such request unless weather conditions prevent inspection. ()

b. A Permittee may petition the Department for a change in the initial bond rate. The Department will review the petition and if satisfied with the information presented a revised bond amount will be determined. The revised bond amount will be based upon the estimated cost that the Department would incur should a forfeiture of bond occur and it becomes necessary for the Department to complete reclamation to the standards established in the permit. This amount is subject to the limitations in Section 47-1317(b), Idaho Code. ()

05. Bond Release. Upon completion of the reclamation, specified in the permit, the Permittee must notify the Department in writing of their desire to secure release from bonding. When the Department has verified that the requirements of the permit have been met the bond will be released. ()

a. Any request for bond release will be answered by the Department within thirty (30) days of receiving such request unless weather conditions prevent inspection. ()

b. If the Department finds that a specific portion of the reclamation has been satisfactorily completed, the bond may be reduced to the amount required to complete the remaining reclamation. The following schedule will be used to complete these bond reductions unless the Department determines in a specific case that this schedule is not appropriate and specifies a different schedule: ()

i. Sixty percent (60%) of the bond may be released when the Permittee completes the required backfilling, regrading, topsoil replacement, and drainage control of the bonded area in accordance with the approved permit; and ()

ii. An additional twenty-five percent (25%) of the bond may be released after the Permittee performs revegetation activities on the regraded lands according to the approved permit and Section 040 of these rules. ()

c. The remaining bond will not be released: ()

i. As long as the disturbed lands are contributing sediment or other pollution to surface waters outside the disturbed land in excess of state water quality standards established under Title 39, Chapters 1 and 36, Idaho Code; ()

ii. Until final removal of equipment and structures related to the mining activity, or until any remaining equipment and structures are brought under an approved permit and bond by a new Permittee; ()

iii. Until all temporary sediment or erosion control structures have been removed and reclaimed or until such structures are brought under an approved permit and bond by a new Permittee; and ()

iv. Until vegetation meets the standards in Subsection 040.15 of these rules. ()

06. Forfeiture. In accord with Subsection 051.02, a bond may be forfeited if the Director determines that the Permittee has not conducted the placer and dredge mining and reclamation in accord with the Act, these rules, and the permit. ()

07. Correction of Deficiencies. The Director may, through cooperative agreement with the Permittee, devise a schedule to correct deficiencies in complying with the permit and thereby postpone action to recover the bond. ()

08. Federal Bonds Recognized. The Director may accept as a bond, evidence of a valid reclamation bond with the United States government. The bond must equal or exceed the amount determined in Subsection 035.01.a. This does not release a Permittee from bonding under these rules if the Permittee fails to continuously maintain a valid federal bond. ()

09. Insufficient Bond. In the event the amount of the bond is insufficient to reclaim the land in compliance with the Act, these rules, the permit, and the plan of operations, the attorney general is empowered to commence legal action against the Permittee in the name of the Board to recover the amount, in excess of the recoverable bond, necessary to reclaim the land in compliance with the Act, these rules, the permit, and the plan of operations. ()

036. -- 039. (RESERVED)

040. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR PLACER AND DREDGE MINING OPERATION.

01. Pollution Control. ()

a. Appropriate best management practices for nonpoint source sediment or other pollution controls must be designed, constructed, and maintained with respect to site-specific placer or dredge mining operations. ()

b. State water quality standards, including protection of existing beneficial uses, are the standard that must be achieved by best management practices. In addition to proper mining techniques and reclamation measures, the Permittee will take necessary steps at the close of each operating season to assure that sediment movement or other pollution associated with surface runoff over the area is minimized in order to achieve water quality standards. ()

c. Sediment or pollution control measures refer to best management practices that are carried out within and, if necessary, adjacent to the disturbed land and consist of utilization of proper mining and reclamation measures, as well as specific necessary pollution control methods, separately or in combination. Specific pollution control methods may include, but are not limited to: ()

i. Keeping the disturbed land to a minimum at any given time through concurrent reclamation; ()

ii. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; ()

iii. Retaining sediment within the disturbed land; ()

iv. Diverting surface runoff to limit water coming into the disturbed land and settling ponds; ()

v. Routing runoff through the disturbed land using protected channels or pipes so as not to increase sediment load; ()

vi. Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and ()

vii. Use of adequate sediment ponds, with or without chemical treatment. ()

02. Modification of Best Management Practices. If best management practices utilized by the Permittee do not result in compliance with Subsection 040.01, the Director will require the Permittee to modify or improve such best management practices to meet state water quality standards. ()

03. Clearing and Grubbing. Clearing and grubbing of land in preparation for mining exposes mineral soil to the erosive effects of moving water. Permittees are cautioned to keep such areas as small as possible (preferably no more than one (1) year's mining activity) as the Permittee is required to meet state water quality standards. Trees and slash should be stockpiled for use in seedbed protection and erosion control and such stockpiling may be a requirement of the approved permit. ()

04. Overburden/Topsoil. To aid in the revegetation of disturbed land, where placer or dredge mining operations result in the removal of substantial amounts of overburden, including any topsoil, the Permittee must remove, where practicable, the available topsoil or other growth medium as a separate operation for such area. Unless there are previously disturbed lands which are graded and immediately available for placement of the newly removed topsoil or other growth medium, the topsoil or other growth medium must be stockpiled and protected from erosion and contamination until such areas become available. ()

a. Overburden/topsoil removal: ()

i. Any overburden/topsoil to be removed will be removed prior to any other mining activity to prevent loss or contamination; ()

ii. Where overburden/topsoil removal exposes land area to potential erosion, the Director may, as a condition of a permit, limit the size of any one (1) area having topsoil removed at any one (1) time; and ()

iii. Where the Permittee can show that an overburden material other than topsoil is more conducive to plant growth, or where overburden other than topsoil is the only material reasonably available, such overburden may be allowed as a substitute for or a supplement to the available topsoil. ()

b. Topsoil storage. Topsoil stockpiles must be placed to minimize rehandling and exposure and to avoid excessive wind and water erosion. Topsoil stockpiles must be protected, as necessary, from erosion by use of temporary vegetation or by other methods which will control erosion including, but not limited to, silt fences, chemical binders, seeding, and mulching. ()

c. Overburden storage. Stockpiled ridges of overburden must be leveled to a minimum width of ten (10) feet at the top. Peaks of overburden must be leveled to a minimum width of fifteen (15) feet at the top. The overburden piles must be reasonably prepared to control erosion using best management practices such as terracing, silt fences, chemical binders, seeding, and mulching. ()

05. Roads. ()

a. Roads must be constructed to minimize soil erosion. Such construction may require, but is not limited to, restrictions on length and grade of roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. ()

b. All access and haul roads must be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. ()

c. Culverts that are to be maintained for more than one (1) year must be designed to pass peak flows from not less than a twenty (20) year, twenty-four (24) hour precipitation event and have a minimum diameter of eighteen (18) inches. ()

d. Roads and water control structures must be maintained at periodic intervals as needed. Water control structures serving to drain roads may not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. ()

e. Roads that are to be abandoned must be cross-ditched, ripped, and revegetated or otherwise obliterated to control erosion. ()

f. Roads that will be used under the jurisdiction of a governmental or private landowner after reclamation is completed are the Permittee's responsibility under Subsection 040.01 until the successor assumes control. ()

06. Settling Ponds -- Minimum Criteria. ()

a. Settling ponds must provide adequate sediment storage capacity to achieve compliance with applicable water quality standards and protect existing beneficial uses, and may require periodic cleaning and proper disposal of sediment. ()

b. No settling pond, used for process water clarification may be constructed to block a surface water drainage. ()

c. All settling ponds will be constructed and designed to prevent surface water runoff from entering the pond. ()

d. All settling ponds will be constructed and maintained to contain direct precipitation to the pond surface from a fifty (50) year twenty-four (24) hour storm event. ()

e. No chemicals may be used for water clarification or on site gold recovery without prior notification

to, and approval from, the DEQ. ()

07. Dewatering Settling Ponds. Upon reclamation, settling ponds must be dewatered, detoxified, and stabilized. Stabilization includes regrading to the approximate original contour, and may require removal and disposal of settling pond contents. ()

08. Backfilling and Grading. ()

a. Every operator who conducts placer mining exploration operations that disturb less than one-half (1/2) acre must contour the disturbed land to its approximate previous contour. These lands must be revegetated in accordance with Subsection 040.15. For showing discovery on federal mining claims, unless otherwise required by a federal agency, one (1) pit may be left open on each claim pending verification by federal mining examiners, but must not create a hazard to humans or animals. Such pits and trenches must be reclaimed within one (1) year of verification. ()

b. Every Permittee who disturbs more than one-half (1/2) acre must shape and smooth the disturbed ground to a grade reasonably comparable with the natural contour of the ground prior to mining, and to a condition that promotes the growth of vegetation except as provided in Paragraph 040.15.m. or minimize erosion through other means. Any disturbed natural watercourse must be restored to a configuration and structure conducive to good fish and wildlife habitat and recreational use. ()

c. Backfill materials must be compacted in a manner to ensure stability of the fill. ()

d. After the disturbed land has been graded, slopes will be measured by the Department for compliance with the requirements of the Act, these rules, and the permit. ()

09. Waste Disposal - Disposal of Waste in Areas Other Than Mine Excavations. Waste materials not used in backfilling mined areas must be placed, stabilized, and revegetated to ensure that drainage is compatible with the surrounding drainage and to ensure long-term stability. ()

a. The Permittee may, if appropriate, use terraces to stabilize the face of any fill. Slopes of the fill material may not exceed the angle of repose. ()

b. Unless adequate drainage is provided through a fill area, all surface water above a fill must be diverted away from a fill area into protected channels, and drainage may not be directed over the unprotected face of a fill. ()

10. Topsoil Redistribution. Topsoil must be spread to achieve a thickness over the regraded area, adequate to support plant life. Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution must be timed so that seeding or other protective measures can be readily applied to prevent compaction and erosion. Final grading must be along the contour unless such grading will expose equipment operators to hazardous operating conditions, in which case the best alternative method must be used in grading. ()

11. Soil Amendments. Nutrients and soil amendments will be applied as needed to the graded areas to successfully achieve the revegetation requirements of the permit. ()

12. Revegetating Waste Piles. The Permittee must conduct revegetation activities with respect to such waste piles in accordance with Subsection 040.15. ()

13. Mulching. Mulch should be used on severe sites and may be required by the permit. Nurse crops such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. ()

14. Permanent Cessation and Time Limits for Planting. ()

a. Wherever possible, but not later than one (1) year after grading, seeding and planting of disturbed

lands will be completed during the first favorable growth period after seedbed preparation. If permanent vegetation is delayed or slow in establishment, temporary cover of small annual grains, grasses, or legumes may be used to control erosion until adequate permanent cover is established. ()

b. Reclamation activities should be concurrent with the mining operation and may be included in the approved permit. Final reclamation of the permit area or any part of the permit area must begin within one (1) year after the placer or dredge mining operations have permanently ceased on those parts of the permit area. ()

c. A Permittee will be presumed to have permanently ceased placer or dredge mining operations on a given portion of disturbed land where no substantial amount of mineral or overburden material has been removed or overburden placed on an overburden dump, or no significant use has been made of a road during the previous one (1) year. ()

d. If a Permittee does not plan to use disturbed land for one (1) or more years, but intends thereafter to use the disturbed land for placer or dredge mining operations, and desires to defer final reclamation until after its subsequent use, the Permittee must submit written notice of intent and request for deferral of reclamation to the Department. If the Department determines that the Permittee plans to continue the operation within a reasonable period of time, the Department will notify the Permittee and may require actions to be taken to stabilize stockpiles and maintain water quality until operations resume. If the Department determines that the use of the disturbed land for placer or dredge mining operations will not be continued within a reasonable period of time, the Department will proceed as though the placer or dredge mining operation has been abandoned, but the Department will notify the Permittee of such decision at least thirty (30) days before taking any formal administrative action. ()

15. Revegetation Activities. ()

a. The Permittee must select and establish plant species that can be expected to result in vegetation comparable to that growing on the disturbed lands prior to placer or dredge mining operations or other species that will be conducive to the post-mining use of the disturbed lands. The Permittee may use available technical data and results of field tests for selecting seeding practices and soil amendments that will result in viable revegetation. ()

b. Standards for success of revegetation. Revegetative success, unless otherwise specified in the approved placer mining permit, is measured against the existing vegetation at the site prior to mining, or an adjacent reference area supporting similar vegetation. ()

c. The ground cover of living plants on the revegetated area must be comparable to the ground cover of living plants on the adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation. ()

d. For purposes of this rule, ground cover is considered comparable if it has, on the area actually planted, at least seventy percent (70%) of the premining ground cover for the mined land or adjacent reference area. ()

e. For locations with an average annual precipitation of more than twenty-six (26) inches, the Director, in approving a placer mining permit, may set a minimum standard for success of revegetation as follows: ()

i. Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or ()

ii. Fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species. ()

f. As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measurement. Rock surface areas, composed of rock three plus (3+) inches in diameter will be excluded

from this calculation. For purposes of measuring ground cover, rock greater than three (3) inches in diameter is considered as ground cover. ()

g. Previously mined areas that lack sufficient topsoil and are re-disturbed by a placer or dredge mining operation are not required to meet the revegetation standards in Section 040, but vegetation must be established to the extent necessary to control erosion and may not be less than that which existed before re-disturbance. ()

h. Introduced species may be planted if they are comparable to previous vegetation, or if known to be of equal or superior use for the approved post-mining use of the disturbed land, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous, noxious weeds, or invasive may not be used in revegetation. ()

i. By mutual agreement of the Department, the landowner, and the Permittee, a site may be converted to a different, more desirable, or more economically suitable habitat. ()

j. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for mine revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. ()

k. The Permittee should plant shrubs or shrub seed, as required, where shrub communities existed prior to mining. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the landowner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs must be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. ()

l. Reforestation -- Tree stocking of forestlands should meet the following criteria: ()

i. Trees that are adapted to the site should be planted on the land to be revegetated, in a density which can be expected over time to yield a timber stand comparable to premining timber stands. This in no way is to exclude the conversion of sites to a different, more desirable, or more economically suited species; ()

ii. Trees must be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and ()

iii. Forest lands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. ()

m. Revegetation is not required on the following areas: ()

i. Disturbed lands, or portions thereof, where planting is not practicable or reasonable because the soil is composed of excessive amounts of sand, gravel, shale, stone, or other material to such an extent to prohibit plant growth; ()

ii. Any mined land or overburden piles proposed to be used in the mining operations; ()

iii. Any mined land or overburden pile, where lakes are formed by rainfall or drainage run-off from adjoining lands; ()

iv. Any mineral stockpile; ()

v. Any exploration trench which will become a part of any pit or overburden disposal area; and ()

vi. Any road which is to be used in mining operations, so long as the road is not abandoned. ()

041. -- 049. (RESERVED)

050. TERMINATION OF A PERMIT.

01. Completion of Reclamation. A permit may be retired upon completion of all reclamation activity to the standards specified in the permit and these rules, a written request from the Permittee, and after final inspection and approval has been granted by the Department. Upon permit retirement, the Department will release the remaining bond. ()

02. Involuntary Termination. For continuous operation, the bonded permit will remain valid. Administrative action may be taken to terminate a permit if: ()

a. The permit does not remain bonded; ()

b. The placer and dredge mining operations are not commenced within two (2) years of the date of Board approval; ()

c. The placer and dredge mining operations are permanently ceased and final reclamation has not commenced within one (1) year of the date of permanent cessation; ()

d. Inspection fees are delinquent; or ()

e. Permittee fails to comply with the Act, these rules, or the permit. ()

051. ENFORCEMENT AND FAILURE TO COMPLY.

01. Inspection. The Department may inspect the operation under permit to determine compliance with the Act, these rules, and the permit. The Permittee will pay the cost and expense of such inspections as required by Section 47-1317, Idaho Code. ()

a. Cost of inspection is assessed at a flat rate of four hundred thirty five dollars (\$435) per year for each permit. ()

b. A billing for inspection fees will be made in advance each May 1, with the bill due and payable within thirty (30) days of receipt. Fees not received by the due date are considered late. ()

c. Late inspection fees will result in the following monthly charges: ()

i. A late charge of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal obligation, whichever is greater; and ()

ii. An interest charge of one percent (1%) on the unpaid principal obligation. ()

d. Failure to pay the inspection fees may result in permit termination and the Department placing a lien upon the Permittee's equipment, personal property, or real property and upon minerals produced from the permit area. ()

e. Inspection fees related to a reported violation are assessed at actual costs and in addition to the fees in Paragraph 051.01.a. Costs include mileage to and from the mine site, employee meals, lodging, personnel costs, and administrative overhead. Fees are due and payable thirty (30) days after receipt of the inspection cost statement. ()

02. Department Remedies. Without affecting the penal and injunctive provisions of these rules, the Department may pursue the following remedies: ()

a. When the Department determines that a Permittee has not complied with the Act, these rules, or the permit the Department will notify the Permittee in writing and set forth the violations claimed and the corrective

actions needed. ()

b. If the Permittee fails to complete the requested corrective action or enter a cooperative agreement as per Subsection 035.07 of these rules within the timeframe given in the notice of the violation, the Director may take action to terminate the permit and forfeit the bond as provided in Sections 47-1318, 1319, and 1329, Idaho Code. ()

03. Injunctive Procedures. ()
The Director may seek injunctive relief, as provided by Section 47-1324, Idaho Code, against a Permittee or other person who violates the Act, these rules, or an approved permit. ()

04. Civil Penalty. ()

a. Pursuant to Section 47-1324, Idaho Code, any person violating the Act, these rules, a permit, or a related final order may be liable for a civil penalty equal to the cost of reclamation. An additional penalty of five hundred dollars (\$500) to two thousand five hundred dollars (\$2,500) may also be assessed for each day a violation continues. Such penalty is recoverable in an action brought in the name of the state of Idaho by the attorney general. ()

b. Pursuant to Section 47-1324(f), Idaho Code, any person who willfully or knowingly falsifies any records, plans, specifications, or other information required by the Board or willfully fails, neglects, or refuses to comply with any of the provisions of these rules, is guilty of a misdemeanor and will be punished by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) or imprisonment, not to exceed one (1) year, or both. ()

05. Hearing Procedures. ()

a. Hearings under Section 47-1318, Idaho Code, will be held as directed by Title 67, Chapter 52, Idaho Code. ()

b. The cost of such hearing including, but not limited to, room rental, hearing officer fees, and transcript may be assessed against the Permittee as allowed by Section 47-1318, Idaho Code. ()

06. Procedures for Appeals. Any applicant or permit holder aggrieved by any final decision or order of the Board is entitled to judicial review in accordance with the provisions and standards set forth in Title 67, Chapter 52, Idaho Code, the Administrative Procedures Act. ()

052. -- 054. (RESERVED)

055. COMPUTATION OF TIME.

Computation of time for these rules will be based on calendar days. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal state holiday. In such a case, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, or legal holidays are excluded from the computation when the period of prescribed time is seven (7) days or less. ()

056. -- 064. (RESERVED)

065. DEPOSIT OF FORFEITURES AND DAMAGES.

01. Mining Account. All monies, forfeitures, and penalties collected under the provisions of these rules will be deposited in the Dredge and Placer Mining Account to be used as directed by Section 47-1319, Idaho Code. ()

066. -- 069. (RESERVED)

070. COMPLIANCE OF EXISTING PLANS WITH THESE RULES.

These rules, upon their adoption, apply as appropriate to all existing placer or dredge mining operations, but will not affect the validity or modify the duties, terms, or conditions of any existing approved placer or dredge mining permits or impose any additional obligations with respect to reclamation upon any Permittee conducting placer or dredge mining operations pursuant to a placer or dredge mining permit approved prior to May 1, 2024. ()

071. -- 999. (RESERVED)

[Agency redlined courtesy copy]

Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.

20.03.01 – RULES GOVERNING DREDGE AND PLACER MINING OPERATIONS IN IDAHO

000. LEGAL AUTHORITY.

~~These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to~~ This Chapter is adopted under the legal authorities of Title 47, Chapter 13, Idaho Code, Section 47-1316; Title 58, Chapter 1, Idaho Code, Sections 58-104(6) and 58-105; and Title 67, Chapter 52, Idaho Code. The Board has delegated to the Director ~~of the Department of Lands (“department”)~~ the duties and powers under the act and these rules; provided that the Board retains responsibility for approval of permits ~~and administrative review.~~ (3-18-22)()

001. TITLE AND SCOPE.

~~01. Title.~~ 01. Title. These rules are titled ~~IDAPA 20.03.01 “Rules Governing Dredge and Placer Mining Operations in Idaho.”~~ (3-18-22)

~~021. Scope.~~ 021. Scope. These rules ~~constitute the Idaho Department of Lands’ administrative procedures for implementation of the Idaho Dredge and Placer Mining Protection Act with the intent and purpose to protect the lands, streams and watercourses within the state, from destruction by dredge mining and by placer mining, and to preserve the same for the enjoyment, use and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest~~ establish the notification requirements for dredge and placer exploration, and the application and operation requirements of dredge and placer mines. In addition, these rules establish the reclamation and financial assurance requirements for all these activities. (3-18-22)()

02. Applicability. These rules are to be read and applied in conjunction with the Act. ()

a. These rules apply to all lands within the state, including private and federal lands, which are disturbed by dredge or placer mining conducted after November 24, 1954. ()

b. These rules apply to the following activities: ()

i. All dredge and placer exploration activities using motorized earth-moving equipment. ()

ii. The extraction of minerals from a placer deposit, including the removal of vegetation, topsoil, overburden, and minerals; construction and operation of on-site processing equipment; disposal of overburden and waste materials; design and operation of siltation and other water quality control facilities; and other activities contiguous to the mining site that disturb land and affect water quality and/or water quantity. ()

c. These rules do not apply to the following: ()

i. Mining operations regulated by the Mined Land Reclamation Act; ()

ii. Surface disturbance caused by the underground mining of a placer deposit, unless the deposit

outcrops on or near the surface and the operation will result in the probable subsidence of the land surface. ()

iii. Dredging operations conducted for the sole purpose of establishing and maintaining a channel for navigation. ()

iv. Dredging operations in streams or rivers using suction dredges with an intake diameter of eight (8) inches or less. ()

03. Other Laws. Dredge and placer exploration and mining operations must comply with all applicable rules and laws of the state of Idaho including, but not limited to, the following: ()

a. Idaho water quality standards established in Title 39, Chapters 1 and 36, Idaho Code and IDAPA 58.01.02, "Water Quality Standards". ()

b. Wastewater treatment or disposal plan and specification review established in IDAPA 58.01.16, and IPDES requirements in IDAPA 58.01.25 administered by DEQ. ()

c. Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. ()

d. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. ()

002. ADMINISTRATIVE APPEALS.

01. Procedures for Appeals: (3-18-22)

~~**a.** Any applicant or permit holder aggrieved by any final decision or order of the Board is entitled to judicial review in accordance with the provisions and standards set forth in Title 67, Chapter 52, Idaho Code, the Administrative Procedures Act. (3-18-22)~~

~~**b.** When the Director or the Board finds that justice so requires, it may postpone the effective date of a final order pending judicial review. The reviewing court, including the court to which a case may be taken on appeal, may issue all necessary and appropriate orders to postpone the effective date of any final order pending conclusion of the review proceedings. (3-18-22)~~

~~**c.** Notwithstanding any other provisions of these rules concerning administrative or judicial proceedings, whenever the Board determines that a Permittee has not complied with the provisions of the act or these rules, the Board may file a civil action in the district court for the county wherein the violation or some part occurred, or in the district court for the county where the defendant resides. The Board may request the court to issue an appropriate order to remedy any alleged violation. (3-18-22)~~

003. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions set forth in the Act, the following definitions apply to these rules: ()

01. Act. The Idaho ~~Placer and~~ Dredge and Placer Mining Protection Act, Title 47, Chapter 13, Idaho Code. (3-18-22)()

02. Approximate Previous Contour. A contour reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. ()

~~**03. Best Management Practices.** Methods, measures, or practices to prevent or reduce nonpoint source (NPS) water pollution, including, but not limited to, structural and nonstructural controls, and operation and maintenance procedures. Usually, BMPs are applied as a system of practices rather than a single practice. BMPs are selected on the basis of site-specific conditions that reflect natural background conditions; political, social, economic,~~

~~and technical feasibility; and stated water quality goals~~ 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. (3-18-22)()

~~04. Board. The State Board of Land Commissioners or any department, commission, or agency that may lawfully succeed to the powers and duties of such Board.~~ (3-18-22)

~~05. Department. The Idaho Department of Lands.~~ ()

~~06. Director. The Director of the Department of Lands or such representative as may be designated by the Director.~~ (3-18-22)

~~07. Disturbed Land or Affected Land. Land, natural watercourses, or existing stockpiles and waste piles affected by placer or dredge mining, re-mining, exploration, stockpiling of ore wastes from placer or dredge mining, or construction of roads, tailings ponds, structures, or facilities appurtenant to placer or dredge mining operations.~~ (3-18-22)

~~08. Final Order of the Board. A written notice of rejection or approval, the order of a hearing officer at the conclusion of a hearing, or any other order of the Board where additional administrative remedies are not available.~~ (3-18-22)

~~09. Hearing Officer. That person duly appointed by the Board to hear proceedings under Section 47-1320, Idaho Code. It also means that person selected by the Director to hear proceedings initiated under Section 030 or Section 051 of these rules.~~ (3-18-22)

~~10. Mine Panel. That area designated by the Permittee as an identifiable portion of a placer or dredge mine on the map submitted pursuant to Section 47-1317, Idaho Code~~ under Subsection 021.04 of these rules. (3-18-22)()

~~11. Mineral. Any ore, rock or substance extracted from a placer deposit or from an existing placer stockpile or wastepile, but does not include coal, clay, stone, sand, gravel, phosphate, uranium, oil or gas.~~ (3-18-22)

~~12. Motorized Earth Moving Equipment. Backhoes, bulldozers, front loaders, trenchers, core drills, draglines, and suction dredges with an intake diameter exceeding eight (8) inches, and other similar equipment.~~ (3-18-22)

~~13. Mulch. Vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation.~~ ()

~~14. Natural Watercourse. Any stream in the state of Idaho having definite bed and banks, and which confines and conducts continuously flowing water.~~ (3-18-22)

~~15. Overburden. Material extracted by a Permittee which is not a part of the material ultimately removed from a placer or dredge mine and marketed by a Permittee, exclusive of mineral stockpiles. Overburden is comprised of topsoil and waste.~~ ()

~~16. Overburden Disposal Area. Land surface upon which overburden is piled or planned to be piled.~~ ()

~~17. Permanent Cessation. Mining operations as to the whole or any part of the permit area have stopped and there is substantial evidence that such operations will not resume within one (1) year. The date of permanent cessation is the last day when mining operations are known or can be shown to have occurred.~~ ()

~~18. Permit Area. That area designated under Section 021 as the site of a proposed placer or dredge mining operation, including all lands to be disturbed by the operation.~~ (3-18-22)

- 10. Permit.** Dredge or placer mining permit issued under the Act and these rules. ()
- 191. Permittee.** The person in whose name the permit is issued and who is ~~to be~~ held responsible for compliance with the conditions of the permit by the Department. (3-18-22)()
- 20. Person.** Any person, corporation, partnership, association, or public or governmental agency engaged in placer or dredge mining, whether individually, jointly, or through subsidiaries, agents, employees, or contractors. (3-18-22)
- 212. Pit.** An excavation created by the extraction of minerals or overburden during placer mining or exploration operations. ()
- 22. Placer Deposit.** Naturally occurring unconsolidated surficial detritus containing valuable minerals, whether located inside or outside the confines of a natural watercourse. (3-18-22)
- 2313. Placer Stockpile.** Placer ~~mineral~~ deposit material extracted during past or present ~~placer or dredge or placer~~ mining operations and retained at the mine for future rather than immediate use. (3-18-22)()
- 24. Placer or Dredge Exploration Operation.** Activities including, but not limited to, the construction of roads, trenches, and test holes performed on a placer deposit for the purpose of locating and determining the economic feasibility of extracting minerals by placer or dredge mining. (3-18-22)
- 25. Placer or Dredge Mining or Dredge or Other Placer Mining.** The extraction of minerals from a placer deposit, including removing for sale, processing, or other disposition of earth material excavated from previous placer or dredge mining. (3-18-22)
- 26. Placer or Dredge Mining Operation.** Placer or dredge mining which disturbs in excess of one-half (1/2) acre of land during the life of the operation. (3-18-22)
- 2714. Reclamation.** The process of restoring an area disturbed by a placer or dredge mining operation or exploration operation to its original or another beneficial use, considering land uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. ()
- 2815. Revegetation.** The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by placer or dredge mining operations. ()
- 29. Road.** A way including the bed, slopes, and shoulders constructed within the circular tract circumscribed by a placer or dredge mining operation, or constructed solely for access to a placer or dredge mining operation or placer or dredge exploration operation. A way dedicated to public multiple use or being used by a governmental land manager or private landowner at the time of cessation of operations and not constructed solely for access to a placer or dredge mining operation or exploration operation, is not considered a road. (3-18-22)
- 3016. Settling Pond.** A manmade enclosure or natural impoundment structure constructed and used for the purpose of treating mine process water and/or runoff water from adjacent disturbed areas by the removal or settling of sediment particles. Several types of settling ponds or a series of smaller ponds may be used in water management. The most common type is a recycle or recirculation pond which is used to pump clarified water back to the wash plant operation. ()
- 317. Surface Waters.** The surface waters of the state of Idaho. ()
- 3218. Topsoil.** The unconsolidated mineral and organic matter naturally present on the surface of the earth that is necessary for the growth and regeneration of vegetation. ()
- 011. ABBREVIATIONS.**
- 01. BMP.** Best Management Practices. ()

02. DEQ. Idaho Department of Environmental Quality. (3-18-22)()

~~012. PURPOSE AND GENERAL PROVISIONS.~~

~~01. **Policy.** It is the policy of the state of Idaho to protect the lands, streams, and watercourses within the state from destruction by placer mining, and to preserve them for the enjoyment, use, and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest. (3-18-22)~~

~~02. **Purpose.** These rules are intended to implement the requirements for operation and reclamation of placer and dredge mining set forth in the Idaho Code. Compliance with these rules will allow removal of minerals while preserving water quality and ensuring rehabilitation for beneficial use of the land following mining. Placer and dredge mining is expressly prohibited upon certain waterways included in the federal wild and scenic rivers system. It is also the purpose of these rules to implement the state of Idaho's antidegradation policy as set out in Executive Order No. 88-23 as it pertains to placer mining and exploration operations. (3-18-22)~~

~~03. **General Provisions.** In general, these rules establish: (3-18-22)~~

~~a. Requirements for placer mine exploration operations; (3-18-22)~~

~~b. Procedures for securing a placer and dredge mining permit; (3-18-22)~~

~~c. The requirements for posting a performance bond as a condition of such permit to ensure the completion of rehabilitation operations; (3-18-22)~~

~~d. Procedures for initial and periodic inspection of placer and dredge mining operations to ensure compliance with these rules; (3-18-22)~~

~~e. Prohibition of placer and dredge mining on designated watercourses (see Section 060); and (3-18-22)~~

~~f. Prohibitions against placer and dredge mining on certain lands when not in the public interest. (3-18-22)~~

~~04. **Compliance with Other Laws.** Placer and dredge exploration operations and mining operations must comply with all applicable rules and laws of the state of Idaho including, but not limited to, the following: (3-18-22)~~

~~a. Idaho Environmental Protection and Health Act, Title 39, Chapter 1, Idaho Code, and rules as promulgated and administered by the Idaho Department of Environmental Quality. (3-18-22)~~

~~b. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. (3-18-22)~~

~~c. Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations as promulgated and administered by the Idaho Department of Water Resources. (3-18-22)~~

~~013. APPLICABILITY.~~

~~01. **All Lands in State.** These rules apply to all lands within the state, including private and federal lands, which are disturbed by placer or dredge mining conducted after November 24, 1954. (3-18-22)~~

~~02. **Types of Operations.** These rules apply to placer and dredge mining operations and placer and dredge exploration operations as defined under Section 47-1313, Idaho Code, and Subsections 010.24, 010.25, and 010.26 and to the following activities: (3-18-22)~~

~~a. The extraction of minerals from a placer deposit, including the removal of vegetation, topsoil,~~

~~overburden, and minerals; construction, and operation of on-site processing equipment; disposal of overburden and waste materials; design and operation of siltation and other water quality control facilities; and other activities contiguous to the mining site that disturb land and affect water quality and/or water quantity. (3-18-22)~~

~~b. All exploration activities conducted upon a placer deposit using motorized earth moving equipment. (3-18-22)~~

~~03. **Nonapplicability.** These rules do not apply to mining operations regulated by the Idaho Surface Mining Act; neither do they apply to surface disturbance caused by the underground mining of a placer deposit, unless the deposit outcrops on or near the surface and the operation will result in the probable subsidence of the land surface. (3-18-22)~~

~~04. **Stream Channel Alterations.** These rules do not exempt the Permittee from obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources. (3-18-22)~~

~~05. **Navigational Improvements.** These rules do not apply to dredging operations conducted for the sole purpose of establishing and maintaining a channel for navigation. (3-18-22)~~

~~06. **Suction Dredges.** These rules do not apply to dredging operations in streams or riverbeds using suction dredges with an intake diameter of eight (8) inches or less. However, these rules do not affect or exempt the applicability of Section 47-701, Idaho Code, regarding leasing of the state-owned beds of navigable lakes, rivers, and streams, Section 47-703A, Idaho Code, regarding exploration on navigable lakes and streams, and Section 39-118, Idaho Code, regarding review of plans for waste treatment or disposal facilities such as settling or recycle ponds. (3-18-22)~~

~~014. **ADMINISTRATION.** The Department of Lands shall administer these rules under the direction of the director. (3-18-22)~~

~~015-019. (RESERVED)~~

020. PLACER OR DREDGE EXPLORATION OPERATIONS.

01. Notice. Any person desiring to conduct placer or dredge exploration operations using motorized earth-moving equipment must, prior to or within seven (7) days of commencing exploration, notify the Director. The notice includes the following: (3-18-22)()

a. The name and address of the operator; ()

b. The legal description of the exploration operation and ~~its starting and estimated completion date;~~ and a map of sufficient scale to show the location of the exploration and nearby roads and streams. (3-18-22)()

c. The exploration starting and estimated completion dates; and ()

d. The anticipated size of the exploration operation and the general method of operation. ()

~~02. **Confidentiality.** The exploration notice will be treated confidential pursuant to Sections 74-107 and 47-1314, Idaho Code. (3-18-22)~~

~~03. **One-Half Acre Limit.** Any placer or dredge exploration operation that causes a cumulative surface disturbance in excess of one-half (1/2) acre of land, including roads, is considered a placer or dredge mining operation and subject to the requirements outlined in Sections 021 through 065. Lands disturbed by any placer or dredge exploration operation that causes a cumulative surface disturbance of less than one-half (1/2) acre of land, including roads, must be restored to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operation and as outlined in Subsection 020.043. (3-18-22)()~~

~~04. **Reclamation Required.** The following reclamation activities, required to be conducted on exploration sites, must be performed in a workmanlike manner with all reasonable diligence, and as to a given~~

exploration drill hole, road, pit, or trench, within one (1) year after abandonment thereof: ()

a. Drill holes must be plugged within one (1) year of abandonment with a permanent concrete or bentonite plug; ~~(3-18-22)~~()

b. Restore all disturbed lands, including roads, to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operations; ~~(47-1314(b))~~; ~~(3-18-22)~~()

c. Conduct revegetation activities in accordance with Subsection 040.175. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. Such abandoned pits and trenches must be reclaimed within one (1) year of verification; ~~(3-18-22)~~()

d. If water runoff from exploration operations causes siltation or other pollution of surface waters, the operator will prepare disturbed lands and adjoining lands under his or her control, as is necessary to meet state water quality standards; ~~(3-18-22)~~()

e. Abandoned lands disturbed by an exploration operation must be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration operation, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon; and ~~(3-18-22)~~()

f. Any water containment structure created in connection with exploration operations will be constructed, maintained, and reclaimed so as not to constitute a hazard to human health or the environment. ()

021. APPLICATION PROCEDURE FOR ~~PLACER OR DREDGE MINING~~ PERMIT.

01. ~~Approved Reclamation Plan Permit~~ Required. No Permittee may conduct placer or dredge mining operations, as defined in these rules, on any lands in the state of Idaho until the ~~placer mining~~ permit has been approved by the Board, the ~~Department~~ has received a bond meeting the requirements of these rules, and the permit has been signed by the Director and the Permittee. ~~(3-18-22)~~()

02. Application Package. The Permittee must submit a complete application package, for each separate placer mine or mine panel, before the ~~placer~~ permit will be reviewed. Separate placer mines are individual, physically disconnected operations. The complete application package consists of: ~~(3-18-22)~~()

a. An application ~~completed by the applicant on a form~~ provided by the Director; ~~(3-18-22)~~()

b. A map or maps of the proposed mining operation which includes the information required under Subsection 021.04; ()

c. A ~~reclamation~~ plan, of operations in map and narrative form, which includes the information required under Subsection 021.06. The map and ~~reclamation~~ plan of operations may be combined on one (1) sheet if practical; ~~(3-18-22)~~()

d. Document(s) identifying and assessing foreseeable, site-specific ~~nonpoint~~ sources of water quality impacts upon adjacent surface waters, and the ~~best management practices~~ BMPs or other measures the applicant will take to ~~control such nonpoint source impacts~~ comply with water quality requirements; ~~(3-18-22)~~()

e. When the Director determines, after consultation with DEQ, that there is an unreasonably high potential for ~~nonpoint source~~ pollution of adjacent surface waters, the Director will request, and the applicant will provide to the Director, baseline pre-project surface water monitoring information and furnish ongoing monitoring data during the life of the project. This provision does not require any additional baseline preproject surface water monitoring information or ongoing monitoring data where such information or data is already required to be provided pursuant to any federal or state law and is available to the Director; ~~(3-18-22)~~()

f. An out-of-state Permittee must designate an in-state agent authorized to act on behalf of the

Permittee. In case of an emergency requiring action to be taken to prevent environmental damage, the authorized agent will be notified as well as the Permittee; ~~and~~ (3-18-22)()

g. An application fee of fifty dollars (\$50) for each ten (10) acres or fraction of land included in an application for a new ~~mining~~ permit, or of land to be affected or added in an amended application to an existing ~~mining~~ permit, must be included with the application. No application fee will exceed one thousand dollars (\$1,000); ~~and~~ (3-18-22)()

h. ~~If the applicant is not the owner of the lands described in the application, or any part thereof, the landowner must sign the application prior to issuance of a permit. The federal government, as a property owner, will be notified of the application, and asked to sign the application as property owner. For mining operations proposed upon land under a mining lease, either the signature of the lessor must be affixed to the application, or a copy of the complete lease attached to the application.~~ ()

03. Incomplete Applications. An application for a permit may be returned for correction if the information provided on the application form or associated mine map(s) or ~~reclamation~~ plan ~~of operations~~ is incomplete or otherwise unsatisfactory. The Director will not proceed on the application until all necessary information is submitted. (3-18-22)()

~~**a.** If the applicant is not the owner of the lands described in the application, or any part thereof, the land owner must endorse his approval of the application prior to issuance of a permit. The federal government, as a property owner, will be notified of the application, and asked to endorse the application as property owner. For mining operations proposed upon land under a mining lease, either the signature of the lessor must be affixed to the application or a copy of the complete lease attached to the application.~~ (3-18-22)

04. Requirements of Maps. Vicinity maps must be prepared on standard United States Geological Survey, seven and one-half (7.5) minute quadrangle maps, or equivalent. In addition, maps of the proposed placer mining operation site will be of sufficient scale to ~~adequately show the following:~~ (3-18-22)()

a. The location of existing roads ~~and anticipated,~~ access, and main haulage roads ~~planned for construction constructed or reconstructed~~ in connection with the mining operation, ~~along with and the~~ approximate dates for construction, reconstruction, and abandonment; (3-18-22)()

b. The approximate location, ~~and the~~ names of all known ~~drainages,~~ streams, creeks, ~~springs, wells,~~ or ~~bodies of water~~ ~~bodies~~ within one thousand (1,000) feet of the mining operation; (3-18-22)()

c. The approximate boundaries of ~~all the proposed disturbed~~ lands ~~to be disturbed in the process of for~~ ~~the mining operation,~~ including legal description to the quarter-quarter section; (3-18-22)()

d. The approximate boundaries and acreage of the lands that will become disturbed land ~~as a result of the placer or dredge mining operation~~ during the first year of operations ~~following issuance of a placer mining permit;~~ (3-18-22)()

e. The planned location and configuration of pits, mineral stockpiles, topsoil stockpiles, and waste dumps within the ~~mining property permit area;~~ (3-18-22)()

f. Scaled cross-sections, ~~of by~~ length and ~~width, height which are representative of the placer or dredge mining operation,~~ showing the surface contour prior to mining and the expected surface contour after reclamation ~~activities have been~~ ~~is~~ completed; (3-18-22)()

g. The location of required settling ponds, ~~and the design plans, construction specifications and narrative to show they meet both operating requirements and protection from erosion, seepage, and flooding that can be anticipated in the area. Where a dredge is operating in a stream, describe by drawing and narrative, the operation of the filtration equipment to be used to clarify the water.~~ ~~discharge points, if any; and~~ (3-18-22)()

h. Surface and mineral control or ownership ~~map~~ of appropriate scale for boundary identification. (3-18-22)()

- 05. Settling Ponds.** Detailed plans and specifications for settling ponds must be drawn ~~to a scale of one (1) inch = ten (10) feet and include~~ at an appropriate scale to show the following: ~~(3-18-22)()~~
- a.** ~~A detailed map of the~~ Layout of each settling pond ~~location;~~ including: ~~(3-18-22)()~~
 - i. Dimensions and orientation of the settling ponds and/or other wastewater treatment components of the operation; ()
 - ii. Distance from surface waters; ()
 - iii. Pond inlet/outlet locations including emergency spillways and detailed description of control structures and piping; ()
 - iv. Location of erosion control structures; ~~and~~ ~~(3-18-22)()~~
 - v. Location of any current ~~Ten (10) year floodplain elevation (probable high water mark); in relation to the mining facilities if the floodplain is within one hundred (100) feet of the facilities; and~~ ~~(3-18-22)()~~
 - vi. The BMPs to be implemented that will keep surface waters from entering any pits and potentially changing course. ()
 - b.** ~~A detailed~~ cross-section of ~~the~~ each pond(s) including: ~~(3-18-22)()~~
 - i. Dimensions and orientation; ()
 - ii. Proposed sidewall elevations; ()
 - iii. Proposed sidewall slope; ()
 - iv. Sidewall width; ()
 - v. Distance from and elevation above all surface water; and ()
 - vi. Slope of settling pond location. ()
 - c.** Narrative of the construction method(s) describing: ()
 - i. Bottom material; ()
 - ii. Sidewall material; ()
 - iii. Pond volume; ()
 - iv. Volume of water to be used in the wash plant; ()
 - v. Discharge or land application requirements; ()
 - vi. Any pond liners or filter materials to be installed; and ()
 - viii. Compaction techniques. ()
 - ~~**d.** If the proposed ponds are: (3-18-22)~~
 - ~~i. Less than two thousand five hundred (2,500) feet square surface area; (3-18-22)~~
 - ~~ii. Less than four (4) feet high; (3-18-22)~~

iii. ~~Greater than fifty (50) feet from surface water; and~~ (3-18-22)

iv. ~~Constructed on slopes of three: one (3:1) or flatter, the plans and specifications for settlements ponds must contain information in Subparagraphs 021.05.a.i., 021.05.a.ii., and 021.05.a.iv.; 021.05.b.i., 021.05.b.ii., 021.05.b.v. and 021.05.b.vi. This information may be prepared as a sketch map showing appropriate elevations, distances and other required details.~~ (3-18-22)

06. Requirements for ~~Reclamation~~ Plan of Operations. A ~~reclamation~~ plan of operations must be submitted in map and narrative form and include the following: (3-18-22)()

a. Show how watercourses disturbed by the mining operation will be replaced on meander lines with a pool structure conducive to good fish and wildlife habitat and recreational use. Show how and where riprap or other methods of bank stabilization will be used to ensure that, following abandonment, the stream erosion will not exceed the rate normally experienced in the area. If necessary, show how the replaced watercourse will not contribute to degradation of water supplies; ()

b. Describe and show the contour of the proposed mine site after final backfilling and/or grading, with grades listed for slopes after mining; (3-18-22)()

c. On a drainage control map, show the best management practices to be utilized to minimize erosion on disturbed lands; ()

d. Show roads to be reclaimed upon completion of mining; ()

e. Show plans for both concurrent and final revegetation of disturbed lands. Indicate soil types, where soils are not present, slopes, precipitation, seed rates, species, topsoil, or other growth medium storage and handling, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (3-18-22)()

f. The planned reclamation of tailings or sediment ponds; ()

g. An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and administrative overhead; and (3-18-22)()

h. Make a premining estimate of trees on the site by species and forest lands utilization consideration in reclamation. ()

07. State Approval Required. Approval of a ~~placer mining~~ permit must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency. (3-18-22)()

08. Application Review and Inspection. If the ~~Director~~ Department determines that an inspection is necessary, the applicant may be contacted and asked that he or his duly authorized employee or representative be present for inspection at a reasonable time. An inspection may be required prior to issuance of the permit. The applicant must make such persons available for the purpose of inspection (~~see Subsection 051.01~~). Failure to provide a representative does not mean that the state will not conduct such inspection. (3-18-22)()

022. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION.

01. ~~Decision on Application.~~ Following the Director's review of an application for a new permit, or to amend an existing permit and provide an opportunity to correct any deficiencies, the Board will approve or disapprove the application and the Director will notify the applicant of the Board's decision by mail. Such notice will contain any reservations conditioned with the approval, or the information required to be given under Subsections 022.07 and 022.09 if disapproved. If approved, a permit will be issued after the bonding requirements of Section 035 are met. No mining is allowed until the permit is bonded and applicant is notified by mail or telephone of approval. (3-18-22)

021. Public Hearings. For the purpose of determining whether a proposed application complies with these rules, the Director may call for a public hearing, as described in Section 030. ()

032. Adverse Weather. If weather conditions prevent the ~~Director~~ Department from inspecting the proposed mining site to acquire the information required to evaluate the application, the application may be placed in suspense, pending improved weather conditions. The applicant will be notified in writing of this action. (3-18-22)()

043. Interagency Comment. Nonconfidential materials submitted under Section 021 will be forwarded by the ~~Director~~ Department to the Departments of Water Resources, Environmental Quality, and Fish and Game for review and comment. If operations are to be located on federal lands, the ~~d~~Department will notify the U. S. Bureau of Land Management or the U.S. Forest Service. The Director may provide public notice on receipt of a reclamation plan. In addition, a copy of an application will be provided to individuals who request the information in writing, subject to Title 74, Chapter 1, Idaho Code. (3-18-22)()

054. Stream Channel Alteration Permits. No permit will be issued proposing to alter, occupy or to dredge any stream or watercourse without notification to the Department of Water Resources of the pending application. The Department of Water Resources will respond to said notification within twenty (20) days. If a stream channel alteration permit is required, it must be issued prior to issuance of the placer and dredge permit. (3-18-22)()

065. Water Clarification. No permit will be issued until the ~~Director~~ Department is satisfied that the methods of water clarification proposed by the applicant are of sound engineering design and capable of meeting the water quality standards established under Title 39, Chapters 1 and 36, Idaho Code, and IDAPA 58.01.02, "Water Quality Standards," IDAPA, 58.01.11. "Ground Water Quality Rule." (3-18-22)()

06. Permit Conditions. If an application fails to meet the requirements of these rules, the Department may include permit conditions that bring the application into compliance with these rules. ()

07. Decision on Application. Following the Department's review of an application for a new or amended permit and an opportunity for the applicant to correct any deficiencies, the Board will approve or disapprove the application and the Director will notify the applicant of the Board's decision by mail. ()

08. Permit Offering. Upon approval by the Board, the applicant will be sent the permit for their signature and submittal of the reclamation bond and first year's inspection fees. If the signed permit, fee, and bond are not received by the Department within twelve (12) months of Board action, the approval will be automatically rescinded. Upon receipt of the signed permit, fee, and bond, the Department will complete the permit with the required state signatures and send the fully executed permit to the permittee. ()

079. Permit Denial Authority. The Board has the power to deny any application for a permit on state lands, streams, or riverbeds, or on any unpatented mining claims, ~~upon its determination that a placer or dredge mining operation on the area proposed would not be in the public interest, giving consideration to economic factors, recreational use for such lands, fish and wildlife habitat, and other factors which in the judgement of the Board may be pertinent, and may deny any application upon notification by the Department of Water Resources that the granting of such permit would result in permanent damage to the stream channel.~~ (pursuant to Section 47-1317(j), Idaho Code). (3-18-22)()

08. Permit Conditions. ~~If an application fails to meet the requirements of these rules, the Board may issue a permit subject to conditions that bring the application into compliance with these rules. The applicant may accept or refuse the permit. Refusal to accept the permit is considered a denial under Subsection 022.09.~~ (3-18-22)

0910. Amended Applications. If the Board disapproves the application, the applicant will be informed of the rules that have not been complied with, the manner in which they have not been complied with, and the requirements necessary to correct the deficiencies. The applicant may then submit an amended application and application fee, which will be processed as described in Section 022 of these rules. (3-18-22)()

10. Permit Offering. ~~Upon approval by the Board, the applicant will be notified of the action and the~~

~~amount of bond required. Upon receipt of the required bond, the permit will be sent to the applicant for signature. If the bond and the permit, signed by the applicant, are not received within twelve (12) months of Board action, the approval will be automatically rescinded, except that upon written request of the applicant, and for good cause, the Director may defer decision of the Board's approval for a reasonable period of time not to exceed one (1) year. The Director will notify the applicant of his decision in writing.~~ (3-18-22)

11. Reclamation Obligations. The permit issued by the Board governs and determines the nature and extent of the reclamation obligations of the Permittee. ()

023. -- 024. (RESERVED)

025. AMENDING AN APPROVED PERMIT.

01. Application to Amendment. If circumstances arise that require significant change in the ~~reclamation plan~~ of operations, method of operation, increase in acreage, water management or other details associated with an approved permit, the Permittee will submit an application ~~on a department form or exact copy to amend the permit. Application fees are to be submitted with amended applications pursuant to Subsection 021.02.g covering the proposed changes as described in Section 021 of these rules.~~ (3-18-22)()

02. Processing. An application to amend a permit will be processed in accord with Section 022. ()

026. DEVIATION FROM AN APPROVED PERMIT.

01. Unforeseen Events. ~~If a Permittee finds that~~ unforeseen events or unexpected conditions require immediate deviation from an approved permit, the Permittee may continue mining ~~in accord with the procedures as dictated by the changed conditions, pending submission and approval of an amended permit, even though such operations do not comply with the current approved permit.~~ This does not excuse the Permittee from complying with the BMPs and reclamation requirements of Sections 020 and 040. If water quality is being impaired or the stability of settling ponds or other mine features is compromised due to the unforeseen events, then mining must stop until the mine features are stabilized. (3-18-22)()

02. Notification. Notification of such unforeseen events must be given to the ~~d~~Department within forty-eight (48) hours after discovery, and an application to amend the permit must be submitted within thirty (30) days of deviation from the approved permit by the Permittee. (3-18-22)()

027. TRANSFER OF PERMITS.

~~Placer and dredge mining p~~Permits may be transferred from an existing Permittee to a new Permittee only after the Department's approval. Transfer is made by the new Permittee filing a notarized Department ~~Transfer of Permit~~ and providing replacement bonding. The new Permittee is then responsible for the past Permittee's obligations under Title 47, Chapter 13, Idaho Code the Act, these rules, ~~the reclamation plan, and the~~ permit. ~~When a replacement bond is submitted relative to an approved placer/dredge mining permit, the following rider must be filed with the department as part of the replacement bond before the existing bond will be released:~~ "(Surety company or principal) understands and expressly agrees that the liability under this bond shall extend to all acts for which reclamation is required on areas disturbed in connection with placer/dredge mining permit No., both prior and subsequent to the date of this rider." (3-18-22)()

028. -- 029. (RESERVED)

030. PUBLIC HEARING FOR PERMIT APPLICATION.

01. Public Hearings. During any stage of the application process the ~~Director~~ Department may conduct a public hearing. (3-18-22)()

02. Basis for Hearing. This action will be based upon the preliminary review of the application and upon any concern registered with the ~~Director~~ Department by the public, affected land owners, ~~federal reviewing agencies having surface management of the affected lands~~, other interested entities, or upon request by the applicant.

(3-18-22)()

~~03. **Hearing for Water Degradation.** The Director will call for a public hearing when he determines, after consultation with the Departments of Water Resources, Environmental Quality, Fish and Game, and affected Indian tribes (pursuant to Paragraph 021.02.e.), that proposed placer or dredge mining operations can reasonably be expected to significantly degrade adjacent surface waters. A hearing held under this subsection will be conducted to receive comment on the measures the applicant will use to protect surface water quality from nonpoint source water pollution.~~ (3-18-22)

~~04. **Site of Hearing.** The hearing will be held, upon the record, in the locality of the proposed operation, or in Ada County, at a reasonable time and place.~~ (3-18-22)()

~~05. **Hearing Notice.** The Director Department will give notice of the date, time, and place of the hearing to the applicant, ~~to~~ federal, state, and local agencies, and Indian tribes which may have an interest in the decision, ~~as shown on~~ the application; ~~to all~~ any persons petitioning for the hearing, ~~if any~~; and ~~to~~ all persons identified ~~by the applicant pursuant to Subsection 021.03.a.~~ as an owner of the specific acreage to be affected by the proposed placer or dredge mining operation. Such hearing notice will be sent by certified mail and postmarked not less than thirty (30) days before the scheduled date of the public hearing.~~ (3-18-22)()

~~06. **Public Notice.** The Director will notify the general public of the date, time, and place of the hearing by placing a newspaper advertisement once a week, for two (2) consecutive weeks, in the locale of the area covered by the application in a newspaper in the county in which the mining is proposed. The two (2) consecutive weekly advertisements begin will be between seven (7) and twenty (20) days prior to the scheduled date of the hearing. A copy of the application is to be placed for review in a conspicuous place in the local area of the proposed mining operations, in the ~~nearest~~ Department's nearest area office, and the ~~Department's~~ Department's administrative office in Boise.~~ (3-18-22)()

~~07. **Description of Effects.** In the event a hearing is ordered under Subsection 030.03, the notice to the public will describe the potentially significant surface water quality degradation and contain the applicant's description of the measures that will be taken to prevent degradation of adjacent surface waters from nonpoint sources of pollution. The foregoing is to be discussed at the public hearing.~~ (3-18-22)

~~08. **Hearing Officer.** The hearing will be conducted by the Director or his duly authorized representative. Both oral and written testimony will be accepted.~~ ()

031. -- 034. (RESERVED)

035. PERFORMANCE BOND REQUIREMENTS.

~~01. **Submittal Amount of Bond.** Prior to issuance of a placer or dredge mining permit, an applicant must submit to the Director, on a placer or dredge mining bond form, a performance bond meeting the requirements of this rule.~~ (3-18-22)

~~a. The amount of the initial bond is in the amount determined by the Board to be the estimated reasonable costs of reclamation of lands proposed to be disturbed in the permit area, plus ten percent (10%), and subject to the limitations in Idaho Code 47-1317(b). The determination by the Board of the bond amount constitutes a final decision subject to judicial review as set forth in Section 002 of these rules. The bond may be submitted in the form of a surety, cash, certificate of deposit, or other bond acceptable to the Director.~~ (3-18-22)

~~b. Acreage on which reclamation is completed must be reported in accord with Subsections 035.06 and 035.07. Acreage may be released upon approval by the Director. The bond may be reduced by the amount appropriate to reflect the completed reclamation.~~ (3-18-22)()

02. **Form of Performance Bond.** ()

a. Corporate surety bond. This is an indemnity agreement executed for the Permittee by a corporate surety licensed to do business in the state of Idaho and submitted on a placer and dredge mining bond Department

form, or exact copy, supplied by the Director. Surety bonds are subject to the following conditions: ~~The bond is to be conditioned upon the Permittee faithfully performing all requirements of the act, these rules, the permit, and reclamation plan, and must be payable to the state of Idaho.~~ (3-18-22)()

i. The bond is to be conditioned upon the Permittee faithfully performing all requirements of the Act, these rules, and the permit, and must be payable to the state of Idaho; ()

ii. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties in Circular 570 of the U.S. Department of the Treasury; and ()

iii. When a replacement bond is submitted, the following rider must be filed with the Department as part of the replacement before the existing bond will be released: “(Surety company or principal) understands and expressly agrees that the liability under this bond will extend to all acts for which reclamation is required on areas disturbed in connection with placer or dredge mining permit [number], both prior to and subsequent to the date of this rider.” ()

iv. Any surety company canceling a bond must give the Department at least ninety (90) days’ notice prior to cancellation. The Director will not release a surety from liability under an existing bond until the Permittee has submitted an acceptable replacement bond to the Director or reclaimed the site. A replacement bond must be received within thirty (30) days following written notice by the Director or prior to the effective date of cancellation, whichever is later. ()

v. If a surety’s Idaho business license is suspended or revoked the Permittee must, within thirty (30) days after notice by the Department, submit a replacement bond for such surety to the Department. ()

vi. If the Permittee fails to submit a replacement bond or complete reclamation as directed in subparagraphs iv and v above, the Director may issue a cease-and-desist order and seek injunctive relief to stop the Permittee from conducting placer and dredge mining operations on the lands covered by the bond until a replacement bond has been submitted. The Permittee must cease mining operations on lands covered by the bond until a bond acceptable to the Department is filed. ()

b. Collateral bonds: This is an indemnity agreement executed by or for the Permittee, and payable to the ~~state of Idaho~~ Department of Lands, pledging cash deposits, governmental securities, or ~~negotiable~~ certificates of deposit of any financial institution doing business in the United States. Collateral bonds are subject to the following conditions: (3-18-22)()

i. The Director will obtain possession, ~~and upon receipt of such collateral bonds,~~ of cash or other collateral bonds and then deposit ~~such cash or securities~~ them with the state treasurer to hold in trust for the purpose of bonding reclamation performance; (3-18-22)()

ii. The Director will value collateral at its current market value minus any penalty for early withdrawal, not its face value; (3-18-22)()

iii. Certificates of deposit ~~will be~~ or time deposit receipts are issued or assigned, in writing, to the ~~Department, in writing, state of Idaho~~ and upon the books of the financial institution issuing such certificates. Interest will be allowed to accrue and may be paid by the bank, upon demand and after written release by the Department, to the Permittee, or other person ~~which~~ who posted the collateral bond; (3-18-22)()

iv. Amount of an individual certificate of deposit or time deposit receipt may not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors; (3-18-22)()

v. Financial institutions issuing ~~such~~ certificates of deposit or time deposit receipts will waive all rights of set-off or liens which it has or might have against such certificates, and will place holds on those funds that prevent the Permittee from withdrawing funds until the Department sends a written release to the financial institution; (3-18-22)()

vi. ~~Any such e~~Certificates ~~will~~ of deposit and time deposit receipts must be automatically renewable; and. (3-18-22)()

vii. ~~The certificate of deposit will be of sufficient amount to ensure that the Director would be able to liquidate such certificates prior to maturity, upon forfeiture, for the amount of the required bond, including any penalty for early withdrawal.~~ (3-18-22)

c. Letters of credit: A letter of credit is an instrument executed by a bank doing business in Idaho and made at the request of a customer. A letter of credit states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit. Letters of credit are subject to the following conditions: (3-18-22)()

i. ~~A letter of credit (“credit”) is an instrument executed by a bank doing business in Idaho, made at the request of a customer, that states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit;~~ (3-18-22)

ii. All credits are irrevocable and prepared in a format prescribed by the Director; ()

iii. All credits must be issued by an institution authorized to do business in the state of Idaho or through a confirming correspondent bank authorized to do business in the state of Idaho ~~which engages that it will itself honor the credit in full. In the alternative, a foreign bank may execute or consent to jurisdiction of Idaho courts on a form prescribed by the Director;~~ and (3-18-22)()

~~iv~~ii. The account party on all credits must be identical to the entity identified on the placer mining permit as the Permittee. (3-18-22)()

03. Blanket Bond. Where a Permittee is involved in numerous placer or dredge operations, the Director may accept a blanket bond in lieu of separate bonds under approved permits. The amount of such bond must comply with other applicable provisions of Section 035 and ~~are~~ must be equal to the total of the penalties amounts of the separate bonds being combined into a single bond. (3-18-22)()

04. Bond Cancellation. ~~Any surety company canceling a bond must give the department at least one hundred twenty (120) days’ notice prior to cancellation. The Director will not release a surety from liability under an existing bond until the Permittee has submitted to the Director an acceptable replacement bond or reclaimed the site. Replacement bonds must cover any liability accrued against the bonded principal under the permit. If a Permittee fails to submit an acceptable replacement bond prior to the effective date of cancellation of the original bond, or within thirty (30) days following written notice of cancellation by the Director, whichever is later, the Director may issue a cease and desist order and seek injunctive relief to stop the Permittee from conducting placer or dredge mining operations on the lands covered by the bond until such replacement has been received by the department. The Permittee must cease mining operations on lands covered by the bond until a suitable bond is filed.~~ (3-18-22)

05. Substitute Surety. If a surety’s Idaho business license is suspended or revoked, the Permittee must, within thirty (30) days after notice by the department, find a substitute for such surety. The substitute surety must be licensed to do business in Idaho. If the Permittee fails to secure such substitute surety, the Director may issue a cease and desist order and seek injunctive relief to stop the Permittee from conducting placer and dredge mining operations on the lands covered by the bond until a substitution has been made. The Permittee must cease mining operations on lands covered by the bond until a bond acceptable to the department is filed. (3-18-22)

06. Bond Reduction. ~~Upon finding that any land bonded under a placer or dredge mining permit will not be affected by mining, the Permittee must notify the Director by submitting an application amending the permitted acreage, pursuant to Section 025. When the Director has verified that the bonding requirement for the amended permit is adequate, any excess reclamation bond will be released. Any request for bond reduction will be answered by the Director within thirty (30) days of receiving such request unless weather conditions prevent inspection.~~ (3-18-22)()

a. Upon finding that any land bonded under a permit will not be affected by mining, the Permittee will notify the Department. When the Department has verified that the bonding requirement for the remaining permit area is adequate, any excess reclamation bond will be released. Any request for bond reduction will be answered by the

Director within thirty (30) days of receiving such request unless weather conditions prevent inspection. ()

b. A Permittee may petition the Department for a change in the initial bond rate. The Department will review the petition and if satisfied with the information presented a revised bond amount will be determined. The revised bond amount will be based upon the estimated cost that the Department would incur should a forfeiture of bond occur and it becomes necessary for the Department to complete reclamation to the standards established in the permit. This amount is subject to the limitations in Section 47-1317(b), Idaho Code. ()

075. Bond Release. Upon completion of the reclamation, specified in the permit, the Permittee must notify the ~~Director~~ Department in writing, of ~~his~~ their desire to secure release from bonding. When the ~~Director~~ Department has verified that the requirements of the ~~placer or dredge mining~~ permit have been met, ~~as stated in the permit,~~ the bond will be released. (3-18-22)()

a. Any request for bond release will be answered by the ~~Director~~ Department within thirty (30) days of receiving such request unless weather conditions prevent inspection. (3-18-22)()

b. If the ~~Director~~ Department finds that a specific portion of the reclamation has been satisfactorily completed, the bond may be reduced to the amount required to complete the remaining reclamation. The following schedule will be used to complete these bond reductions unless the ~~Director~~ Department determines in a specific case that this schedule is not appropriate and specifies a different schedule: (3-18-22)()

i. Sixty percent (60%) of the bond may be released when the Permittee completes the required backfilling, regrading, topsoil replacement, and drainage control of the bonded area in accordance with the approved ~~placer mining~~ permit; and (3-18-22)()

ii. After An additional twenty-five percent (25%) of the bond may be released after the Permittee performs revegetation activities ~~have been performed by the Permittee~~ on the regraded lands according to the approved ~~placer mining~~ permit and Section 040 of these rules, ~~the department may release an additional twenty-five percent (25%) of the bond.~~ (3-18-22)()

c. The remaining bond will not be released: ()

i. As long as the disturbed lands are contributing sediment or other pollution to surface waters outside the disturbed land in excess of state water quality standards established under Title 39, Chapters 1 and 36, Idaho Code; (3-18-22)()

ii. Until final removal of equipment and structures related to the mining activity, or until any remaining equipment and structures are brought under an approved ~~placer or dredge mining~~ permit and bond by a new Permittee ~~(this rule does not require a Permittee to remove equipment or structures from patented lands when the landowner has authorized the equipment and structures to remain on the site);~~ (3-18-22)()

iii. Until all temporary sediment or erosion control structures have been removed and reclaimed or until such structures are brought under an approved ~~placer mining~~ permit and bond by a new Permittee; and (3-18-22)()

iv. Until vegetation ~~productivity is returned to levels of yields at least comparable to productivity which the disturbed lands supported prior to the permitted mining, except as stated in Subsection 040.17.b~~ meets the standards in Subsection 040.15 of these rules. (3-18-22)()

086. Forfeiture. In accord with Subsection 0501.02, a bond may be forfeited if the Director determines that the Permittee has not conducted the placer and dredge mining and reclamation in accord with the ~~a~~ Act, these rules, and the approved permit, ~~and the reclamation plan.~~ (3-18-22)()

097. Correction of Deficiencies. The Director may, through cooperative agreement with the Permittee, devise a schedule to correct deficiencies in complying with the permit and thereby postpone action to recover the bond. ()

~~10. **Bonding Rate.** A Permittee may petition the Director for a change in the initial bond rate. The Director will review the petition, and if satisfied with the information presented, a special bond rate will be set based upon the estimated cost that the Director would incur should a forfeiture of bond occur and it becomes necessary for the Director to complete reclamation to the standards established in the permit and reclamation plan. (3-18-22)~~

~~108. **Federal Bonds Recognized.** The Director may accept as a bond, evidence of a valid reclamation bond with the United States government. The bond must equal or exceed the amount determined in Subsection 035.01.a. This does not release a Permittee from bonding under these rules if the Permittee fails to continuously maintain a valid federal bond. ()~~

~~109. **Insufficient Bond.** In the event the amount of the bond is insufficient to reclaim the land in compliance with the act, these rules, the approved permit, and the reclamation plan of operations, the attorney general is empowered to commence legal action against the Permittee in the name of the Board to recover the amount, in excess of the recoverable bond, necessary to reclaim the land in compliance with the act, these rules, the approved permit, and the reclamation plan of operations. (3-18-22)()~~

036. -- 039. (RESERVED)

040. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR PLACER AND DREDGE MINING OPERATION.

01. Nonpoint Source Sediment Pollution Control. (3-18-22)()

~~a. Appropriate best management practices for nonpoint source sediment or other pollution controls must be designed, constructed, and maintained with respect to site-specific placer or dredge mining operations. Permittees will utilize best management practices designed to achieve state water quality standards and protect existing beneficial uses of adjacent surface waters. (3-18-22)()~~

~~b. State water quality standards, including protection of existing beneficial uses, are the standard that must be achieved by best management practices. In addition to proper mining techniques and reclamation measures, the Permittee will take necessary steps at the close of each operating season to assure that sediment movement or other pollution associated with surface runoff over the area is minimized in order to achieve water quality standards. ()~~

~~c. Sediment or pollution control measures refer to best management practices that are carried out within and, if necessary, adjacent to the disturbed land and consist of utilization of proper mining and reclamation measures, as well as specific necessary pollution control methods, separately or in combination. Specific pollution control methods may include, but are not limited to: ()~~

- ~~i. Keeping the disturbed land to a minimum at any given time through concurrent reclamation; ()~~
- ~~ii. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; ()~~
- ~~iii. Retaining sediment within the disturbed land; ()~~
- ~~iv. Diverting surface runoff to limit water coming into the disturbed land and settling ponds; ()~~
- ~~v. Routing runoff through the disturbed land using protected channels or pipes so as not to increase sediment load; ()~~
- ~~vi. Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and ()~~
- ~~vii. Use of adequate sediment ponds, with or without chemical treatment. ()~~

02. Modification of Best Management Practices. If best management practices utilized by the

Permittee do not result in compliance with Subsection 040.01, the Director will require the Permittee to modify or improve such best management practices to meet state water quality standards. (3-18-22)()

03. Clearing and Grubbing. Clearing and grubbing of land in preparation for mining exposes mineral soil to the erosive effects of moving water. Permittees are cautioned to keep such areas as small as possible (preferably no more than one (1) year's mining activity) as the Permittee is required to meet state water quality standards. Trees and slash should be stockpiled for use in seedbed protection and erosion control and such stockpiling may be a requirement of the approved permit. ()

04. Overburden/Topsoil. To aid in the revegetation of disturbed land, where placer or dredge mining operations result in the removal of substantial amounts of overburden, including any topsoil, the Permittee must remove, where practicable, the available topsoil or other growth medium as a separate operation for such area. Unless there are previously disturbed lands which are graded and immediately available for placement of the newly removed topsoil or other growth medium, the topsoil or other growth medium must be stockpiled and protected from erosion and contamination until such areas become available. ()

a. Overburden/topsoil removal: ()

i. Any overburden/topsoil to be removed will be removed prior to any other mining activity to prevent loss or contamination; ()

ii. Where overburden/topsoil removal exposes land area to potential erosion, the Director may, as a condition of a permit, limit the size of any one (1) area having topsoil removed at any one (1) time-; *and* (3-18-22)()

iii. Where the Permittee can show that an overburden material other than topsoil is more conducive to plant growth, or where overburden other than topsoil is the only material reasonably available, such overburden may be allowed as a substitute for or a supplement to the available topsoil. ()

b. Topsoil storage. Topsoil stockpiles must be placed to minimize rehandling and exposure and to avoid excessive wind and water erosion. Topsoil stockpiles must be protected, as necessary, from erosion by use of temporary vegetation or by other methods which will control erosion including, but not limited to, silt fences, chemical binders, seeding, and mulching. ()

c. Overburden storage. Stockpiled ridges of overburden must be leveled to a minimum width of ten (10) feet at the top. Peaks of overburden must be leveled to a minimum width of fifteen (15) feet at the top. The overburden piles must be reasonably prepared to control erosion using best management practices such as terracing, silt fences, chemical binders, seeding, and mulching. ()

05. Roads. ()

a. Roads must be constructed to minimize soil erosion. Such construction may require, but is not limited to, restrictions on length and grade of roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. ()

b. All access and haul roads must be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. ()

c. Culverts that are to be maintained for more than one (1) year must be designed to pass peak flows from not less than a twenty (20) year, twenty-four (24) hour precipitation event and have a minimum diameter of eighteen (18) inches. ()

d. Roads and water control structures must be maintained at periodic intervals as needed. Water control structures serving to drain roads may not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. ()

e. Roads that are to be abandoned must be cross-ditched, ripped, and revegetated or otherwise

obliterated to control erosion. ()

f. Roads, ~~not abandoned, which are to continue in that will be~~ used under the jurisdiction of a governmental or private landowner; after reclamation is completed are the Permittee's responsibility ~~to comply with the nonpoint source sediment control provisions of~~ under Subsection 040.01 until the successor assumes control. (3-18-22)()

06. Settling Ponds -- Minimum Criteria. ()

a. Settling ponds must provide adequate sediment storage capacity to achieve compliance with applicable water quality standards and protect existing beneficial uses, and may require periodic cleaning and proper disposal of sediment. ()

b. No settling pond, used for process water clarification, ~~must~~ may be constructed to block a surface water drainage. (3-18-22)()

c. All settling ponds ~~must~~ will be constructed and designed to prevent surface water runoff from entering the pond. (3-18-22)()

d. All settling ponds ~~must~~ will be constructed and maintained to contain direct precipitation to the pond surface from a fifty (50) year twenty-four (24) hour storm event. (3-18-22)()

e. No chemicals may be used for water clarification or on site gold recovery without prior notification to, and approval from, the DEQ. ()

07. Dewatering Settling Ponds. Upon reclamation, settling ponds must be dewatered, detoxified, and stabilized. Stabilization includes regrading ~~the site for erosion control~~, to the approximate original contour, and may require removal and disposal of settling pond contents. (3-18-22)()

~~**08. Topsoil Replacement.** Following completion of the requirements of Subsection 040.07, the settling ponds must be retopped with stockpiled topsoils or other soils conducive to plant growth. Where such soils are limited in quantity or not available, physical or chemical methods of erosion control may be used. All such areas are to be revegetated in accord with Subsection 040.17, unless otherwise specified in the placer mining permit.~~ (3-18-22)

~~**09. Dam Safety.** Settling ponds must conform with the Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code and with the Environmental Protection and Health Act, Section 39-118, Idaho Code, requiring plan and specification review and approval for waste treatment facilities.~~ (3-18-22)

~~**1008. Backfilling and Grading.**~~ ()

a. Every operator who conducts placer mining exploration operations that disturb less than one-half (1/2) acre must contour the disturbed land to its approximate previous contour. These lands must be revegetated in accordance with Subsection 040.17~~5~~. For showing discovery on federal mining claims, unless otherwise required by a federal agency, one (1) pit may be left open on each claim pending verification by federal mining examiners, but must not create a hazard to humans or animals. Such pits and trenches must be reclaimed within one (1) year of verification. (3-18-22)()

b. Every Permittee who disturbs more than one-half (1/2) acre must shape and smooth the disturbed ground to a grade reasonably comparable with the natural contour of the ground prior to mining, and to a condition that promotes the growth of vegetation except as provided in Paragraph 040.15.m. or minimize erosion through other means. Any disturbed natural watercourse must be restored to a configuration and structure conducive to good fish and wildlife habitat and recreational use. ()

c. Backfill materials must be compacted in a manner to ensure stability of the fill. ()

d. After the disturbed land has been graded, slopes will be measured by the ~~I~~D department for

compliance with the requirements of the ~~a~~Act, these rules, and the ~~placer or dredge mining permit, and the reclamation plan.~~ (3-18-22)()

1109. Waste Disposal - Disposal of Waste in Areas Other Than Mine Excavations. Waste materials not used in backfilling mined areas must be placed, stabilized, and revegetated to ensure that drainage is compatible with the surrounding drainage and to ensure long-term stability. ()

a. The Permittee may, if appropriate, use terraces to stabilize the face of any fill. Slopes of the fill material may not exceed the angle of repose. ()

b. Unless adequate drainage is provided through a fill area, all surface water above a fill must be diverted away from a fill area into protected channels, and drainage may not be directed over the unprotected face of a fill. ()

120. Topsoil Redistribution. Topsoil must be spread to achieve a thickness over the regraded area, adequate to support plant life. Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution must be timed so that seeding or other protective measures can be readily applied to prevent compaction and erosion. Final grading must be along the contour unless such grading will expose equipment operators to hazardous operating conditions, in which case the best alternative method must be used in grading. ()

131. Soil Amendments. Nutrients and soil amendments ~~must, if necessary, will~~ be applied as needed to the graded areas to successfully achieve the revegetation requirements of the permit ~~and reclamation plan.~~ (3-18-22)()

142. Revegetating Waste Piles. The Permittee must conduct revegetation activities with respect to such waste piles in accordance with Subsection 040.175. (3-18-22)()

153. Mulching. Mulch ~~must should~~ be used on severe sites and may be required by the ~~approved placer or dredge mining~~ permit. Nurse crops such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. (3-18-22)()

164. Permanent Cessation and Time Limits for Planting. ()

a. Wherever possible, but not later than one (1) year after grading, seeding and planting of disturbed lands ~~must will~~ be completed during the first favorable growth period after seedbed preparation. If permanent vegetation is delayed or slow in establishment, temporary cover of small annual grains, grasses, or legumes may be used to control erosion until adequate permanent cover is established. (3-18-22)()

b. Reclamation activities should be concurrent with the mining operation and may be included in the approved ~~placer or dredge mining permit and reclamation plan.~~ Final reclamation of the permit area or any part of the permit area must begin within one (1) year after the placer or dredge mining operations have permanently ceased ~~on a mine panel. If the Permittee permanently ceases disposing of overburden on a waste area or permanently ceases removing minerals from a pit or permanently ceases using a road or other disturbed land, the reclamation activity on each given area must start within one (1) year of such cessation, despite the fact that all operations as to the mine panel, which included such pit, road, overburden pile, or other disturbed land, has not permanently ceased on those parts of the permit area.~~ (3-18-22)()

c. A Permittee will be presumed to have permanently ceased placer or dredge mining operations on a given portion of disturbed land where no substantial amount of mineral or overburden material has been removed or overburden placed on an overburden dump, or no significant use has been made of a road during the previous one (1) year. ()

d. If a Permittee does not plan to use disturbed land for one (1) or more years, but intends thereafter to use the disturbed land for placer or dredge mining operations, and desires to defer final reclamation until after its subsequent use, the Permittee must submit written a notice of intent and request for deferral of reclamation to the

~~Director Department, in writing.~~ If the ~~Director Department~~ determines that the Permittee plans to continue the operation within a reasonable period of time, the ~~Director Department~~ will notify the Permittee and may require actions to be taken to ~~reduce degradation of surface resources~~ stabilize stockpiles and maintain water quality until operations resume. If the ~~Director Department~~ determines that the use of the disturbed land for placer or dredge mining operations will not be continued within a reasonable period of time, the ~~Director Department~~ will proceed as though the placer or dredge mining operation has been abandoned, but the ~~Permittee Department~~ will ~~be notified~~ notify the Permittee of such decision at least thirty (30) days before taking any formal administrative action. (3-18-22)()

175. Revegetation Activities. ()

a. The Permittee must select and establish plant species that can be expected to result in vegetation comparable to that growing on the disturbed lands prior to placer or dredge mining operations or other species that will be conducive to the post-mining use of the disturbed lands. The Permittee may use available technical data and results of field tests for selecting seeding practices and soil amendments that will result in viable revegetation. ()

b. Standards for success of revegetation. Revegetative success, unless otherwise specified in the approved placer mining permit ~~and reclamation plan~~, is measured against the existing vegetation at the site prior to mining, or an adjacent reference area supporting similar vegetation. (3-18-22)()

c. The ground cover of living plants on the revegetated area must be comparable to the ground cover of living plants on the adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation. ()

d. For purposes of this rule, ground cover is considered comparable if it has, on the area actually planted, at least seventy percent (70%) of the premining ground cover for the mined land or adjacent reference area. ()

e. For locations with an average annual precipitation of more than twenty-six (26) inches, the Director, in approving a placer mining permit, may set a minimum standard for success of revegetation as follows: ()

i. Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or ()

ii. Fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species. ()

f. As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measurement. Rock surface areas, composed of rock three plus (3+) inches in diameter will be excluded from this calculation. For purposes of measuring ground cover, rock greater than three (3) inches in diameter is considered as ground cover. ()

g. ~~For p~~Previously mined areas that ~~were not reclaimed to the standards~~ lack sufficient topsoil and are re-disturbed by a placer or dredge mining operation are not required ~~by to meet the~~ revegetation standards in Section 040, ~~and that are disturbed by the placer or dredge mining operations,~~ but vegetation must be established to the extent necessary to control erosion, ~~but and may~~ not be less than that which existed before re-disturbance. (3-18-22)()

h. Introduced species may be planted if they are comparable to previous vegetation, or if known to be of equal or superior use for the approved post-mining use of the disturbed land, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous, ~~or~~ noxious weeds, ~~or~~ invasive may not be used in revegetation. (3-18-22)()

i. By mutual agreement of the ~~Director Department~~, the landowner, and the Permittee, a site may be

converted to a different, more desirable, or more economically suitable habitat. (3-18-22)()

j. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for mine revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. ()

k. The Permittee should plant shrubs or shrub seed, as required, where shrub communities existed prior to mining. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the landowner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs must be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. ()

l. Reforestation -- Tree stocking of forestlands should meet the following criteria: ()

i. Trees that are adapted to the site should be planted on the land to be revegetated, in a density which can be expected over time to yield a timber stand comparable to premining timber stands. This in no way is to exclude the conversion of sites to a different, more desirable, or more economically suited species; ()

ii. Trees must be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and ()

iii. Forest lands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. ()

m. Revegetation is not required on the following areas: ()

i. Disturbed lands, or portions thereof, where planting is not practicable or reasonable because the soil is composed of excessive amounts of sand, gravel, shale, stone, or other material to such an extent to prohibit plant growth; ()

ii. Any mined land or overburden piles proposed to be used in the mining operations; ()

iii. Any mined land or overburden pile, where lakes are formed by rainfall or drainage run-off from adjoining lands; ()

iv. Any mineral stockpile; ()

v. Any exploration trench which will become a part of any pit or overburden disposal area; and ()

vi. Any road which is to be used in mining operations, so long as the road is not abandoned. ()

041. -- 049. (RESERVED)

050. TERMINATION OF A PERMIT.

01. Completion of Reclamation. A ~~placer or dredge mining~~ permit ~~terminates~~ may be retired upon completion of all reclamation activity to the standards specified in the permit ~~and reclamation plan, and these rules, a written request from the Permittee, and after~~ final inspection and approval has been granted by the ~~Director Department~~. Upon ~~termination permit retirement~~, the ~~Director Department~~ will release the remaining ~~portion of the~~ bond. (3-18-22)()

02. Involuntary Termination. For continuous operation, the bonded permit will remain valid. Administrative action may be taken to terminate a ~~placer and dredge mining~~ permit if: (3-18-22)()

a. The permit does not remain bonded; ()

- b. The placer and dredge mining operations are not commenced within two (2) years of the date of Board approval; ()
- c. The placer and dredge mining operations are permanently ceased and final reclamation has not commenced within one (1) year of the date of permanent cessation; ()
- d. Inspection ~~costs~~ fees are delinquent; or (3-18-22)()
- e. Permittee fails to comply with the ~~a~~Act, these rules, or the permit, ~~or the reclamation plan.~~ (3-18-22)()

051. ENFORCEMENT AND FAILURE TO COMPLY.

01. Inspection. The ~~Director~~ Department may inspect the operation under permit ~~from time to time~~ to determine compliance with the ~~a~~Act, these rules, and the permit, ~~and the reclamation plan.~~ The Permittee will pay the cost and expense of such inspections ~~will be borne by the Permittee as required by Section 47-1317, Idaho Code.~~ (3-18-22)()

a. Cost of inspection is assessed at a flat rate of ~~two hundred and fifty~~ four hundred thirty five dollars (\$~~250~~435) per year for each permit. ~~Permits upon U.S. Forest Service administered lands is assessed at a flat rate of one hundred dollars (\$100) per year for each permit, to reflect the reduced inspection work for the department.~~ (3-18-22)()

b. A billing for inspection ~~costs~~ fees will be made in advance each May 1, with the ~~costs~~ bill due and payable within thirty (30) days of receipt ~~of an inspection cost statement. Inspection fees become delinquent if not paid on or before June 1, and the department may assess the greater of the following: either a twenty-five dollars (\$25) late payment charge or penalty at the rate of one percent (1%) for each calendar month or fraction thereof, compounded monthly, for late payments from the date the inspection fee is due. Such costs constitute a lien upon equipment, personal property, or real property of the Permittee and upon minerals produced from the permit area. Should inspection fees be delinquent, the department will send a single notice of delinquent payment by certified mail, return receipt requested, to the Permittee. If payment is not received by the department within thirty (30) days from the date of receipt, the department may take appropriate administrative action to cancel the permit as provided by Subsection 050-02. Fees not received by the due date are considered late.~~ (3-18-22)()

c. Late inspection fees will result in the following monthly charges: ()

i. A late charge of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal obligation, whichever is greater; and ()

ii. An interest charge of one percent (1%) on the unpaid principal obligation. ()

d. Failure to pay the inspection fees may result in permit termination and the Department placing a lien upon the Permittee's equipment, personal property, or real property and upon minerals produced from the permit area. ()

e. Inspection ~~costs~~ fees related to a reported violation are assessed at actual costs and in addition to ~~those costs~~ the fees in Paragraph 051.01.a. Costs include mileage to and from the mine site, employee meals, lodging, personnel costs, and administrative overhead. ~~Costs~~ Fees are due and payable thirty (30) days after receipt of the inspection cost statement. (3-18-22)()

02. Department Remedies. Without affecting the penal and injunctive provisions of these rules, the ~~d~~Department may pursue the following remedies: (3-18-22)()

a. When the ~~Director~~ Department determines that a Permittee has not complied with the ~~a~~Act, these rules, or the permit, ~~or the reclamation plan,~~ the ~~Director~~ Department will notify the Permittee in writing and set forth the violations claimed and the corrective actions needed. (3-18-22)()

~~b.~~ If the Permittee fails to ~~commence and diligently proceed to~~ complete the requested corrective action ~~or enter a cooperative agreement as per Subsection 035.07 of these rules~~ within a specified number of days after ~~the timeframe given in the~~ notice of the violation, ~~unless a cooperative agreement has been reached pursuant to Subsection 035.09,~~ the Director may take ~~administrative action as provided within this rule~~ to terminate the permit and forfeit the bond ~~as provided in Sections 47-1318, 1319, and 1329, Idaho Code.~~ (3-18-22)()

~~e.~~ The Board may cause to have issued and served upon the Permittee alleged to be committing such violation, a formal complaint that specifies the provisions of the act, the permit, the reclamation plan, or these rules which the Permittee allegedly is violating, and a statement of the manner in and the extent to which said Permittee is alleged to be violating the provisions of the act, the permit, the reclamation plan, or these rules. Such complaint may be served by certified mail, and return receipt, signed by the Permittee, an officer of a corporate Permittee, or the designated agent of the Permittee, will constitute service. (3-18-22)

~~d.~~ The Permittee is required to answer the formal complaint and request a hearing before a hearing officer appointed by the Director, which authority to appoint is hereby delegated by the Board to the Director, within thirty (30) days of receipt of the complaint if matters asserted in the complaint are disputed. The hearing will be held at a time not less than thirty (30) days after the date the Permittee requests such a hearing. The Board will issue subpoenas at the request of the Director and at the request of the charged Permittee. The hearing will be conducted in accordance with Sections 67-5209 through 67-5213, Idaho Code, and these rules. (3-18-22)

~~e.~~ The hearing officer will enter an order in accordance with Section 67-5212, Idaho Code, that, if adverse to the Permittee, will designate a time period within which prescribed corrective action, if any, should be taken. The designated time period will be sufficient to allow a reasonably diligent Permittee to correct any violation. Procedure for appeal of an order is outlined in Subsection 002.01. (3-18-22)

~~f.~~ Upon the Permittee's compliance with the order, the Director will consider the matter resolved and take no further action with respect to such noncompliance. (3-18-22)

~~g.~~ If the Permittee fails to answer the complaint and request a hearing, the matters asserted in the complaint will be deemed admitted by the Permittee, and the Director may proceed to cancel the placer mining permit and forfeit the bond in the amount necessary to pay all costs and expense of restoring the lands and beds of streams damaged by dredge or other placer mining of said defaulting Permittee and covered by such bond and remaining unrestored, including the department's administrative costs. (3-18-22)

~~03. Violation of an Order.~~ Upon request of the Director, the attorney general may institute proceedings to have the bond of a Permittee forfeited for violation of an order entered pursuant to Subsection 051.02.e. (3-18-22)

043. Injunctive Procedures. ()

~~a.~~ The Director may seek injunctive relief, as provided by Section 47-1324(b), Idaho Code, against any a Permittee who is conducting placer mining or exploration operations when: or other person who violates the Act, these rules, or an approved permit. (3-18-22)()

~~i.~~ Under an existing approved permit, reclamation plan, and bond, a Permittee violates or exceeds the terms of the permit; (3-18-22)

~~ii.~~ A Permittee violates a provision of the act or these rules; or (3-18-22)

~~iii.~~ The bond, if forfeited, would not be sufficient to adequately restore the land; (3-18-22)

~~b.~~ The Director may seek injunctive relief to enjoin a placer mining operation for the Permittee's violation of the terms of an existing approved permit, the reclamation plan, the act, and these rules, and if immediate and irreparable injury, loss, or damage to the state may be expected to occur. (3-18-22)

~~e.~~ The Director will request the court to terminate any injunction when he determines that all

~~conditions, practices, or violations listed in the order have been abated. Termination will not affect the right of the department to pursue civil penalties for these violations in accordance with Subsection 051.06. (3-18-22)~~

~~**05. Civil Action.** In addition to the injunctive provisions above, the Board may maintain a civil action against any person who violates any provision of the act or these rules, to collect civil damages in an amount sufficient to pay for all the damages to the state caused by such violation, including but not limited to, costs of restoration in accordance with Section 47-1314, Idaho Code, where a person is conducting placer or dredge mining without an approved permit or bond. (3-18-22)~~

~~**064. Civil Penalty.** ()~~

~~a. Pursuant to Section 47-1324(d), Idaho Code, any person violating any of the provisions of the placer and dredge mining act or the Act, these rules or violating any determination or order pursuant to these rules, is a permit, or a related final order may be liable for a civil penalty of not less than equal to the cost of reclamation. An additional penalty of five hundred dollars (\$500) nor more than to two thousand five hundred dollars (\$2,500) may also be assessed for each day during which such a violation continues. Such penalty is recoverable in an action brought in the name of the state of Idaho by the attorney general. (3-18-22)()~~

~~b. Pursuant to Section 47-1324(f), Idaho Code, any person who willfully or knowingly falsifies any records, plans, specifications, or other information required by the Board or willfully fails, neglects, or refuses to comply with any of the provisions of these rules, is guilty of a misdemeanor and will be punished by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) or imprisonment, not to exceed one (1) year, or both. (3-18-22)()~~

~~**075. Hearing Procedures.** ()~~

~~a. Process and procedures under these rules will be as summary and simple as may be possible. The Director, Board, or any member thereof, or the hearing officer designated by the Director, has the power to subpoena witnesses and administer oaths. The District Court will enforce the attendance and testimony of witnesses and the production for examination of books, papers, and records. A stenographic record or other recording of the hearing will be made. Witnesses subpoenaed by the Director or the hearing officer will be allowed such fees and traveling expenses as are allowed in civil actions in the District Court, to be paid by the party in whose interest such witnesses are subpoenaed. The Board, Director, or hearing officer will make such inquiries and investigations as deemed relevant. Each hearing will be held at the county seat in the county where any of the lands involved in the hearing are situate, or in the County of Ada, as the Board or Director may designate. Hearings under Section 47-1318, Idaho Code, will be held as directed by Title 67, Chapter 52, Idaho Code. (3-18-22)()~~

~~b. A notice of hearing will be served by certified mail to the last known address of the Permittee or his agent at least twenty (20) days prior to the hearing. A certified return receipt signed by the Permittee or his agent constitutes service and time thereof. (3-18-22)~~

~~eb. The cost of such hearing including, but not limited to, room rental, hearing officer fees, and transcript will may be assessed against the defaulting Permittee as allowed by Section 47-1318, Idaho Code. The Director may designate a hearing officer to conduct any hearings and make findings of fact, conclusions of law, and decision on issues involving the administration of the act and these rules. (3-18-22)()~~

~~d. If the hearing involves a permit or application for a permit, the decisions of the Board or the hearing officer, together with the transcript of the evidence, findings of fact, and any other matter pertinent to the questions arising during any hearing will be filed in the office of the Director. A copy of the findings of fact and decision will be sent to the applicant or holder of the permit involved in such hearing, by U.S. mail. If the matter has been assigned for hearing and a claim for review is not filed by any party in the proceeding within thirty (30) days after his decision is filed, the decision may be adopted as the decision of the Board and notice thereof will be sent to the applicant or permit holder involved in such hearing by U. S. mail. (3-18-22)~~

~~**06. Procedures for Appeals.** Any applicant or permit holder aggrieved by any final decision or order of the Board is entitled to judicial review in accordance with the provisions and standards set forth in Title 67, Chapter 52, Idaho Code, the Administrative Procedures Act. ()~~

052. -- 054. (RESERVED)

055. COMPUTATION OF TIME.

Computation of time for these rules will be based on calendar days. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal state holiday. In such a case, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, or legal holidays are excluded from the computation when the period of prescribed time is seven (7) days or less. (3-18-22)

~~056. -- 059. (RESERVED)~~

~~**060. PLACER OR DREDGE MINING OF CERTAIN WATERBODIES PROHIBITED.**~~

~~**01. Prohibited Areas.** Placer or dredge mining in any form is prohibited on water bodies making up the national wild and scenic river system: (3-18-22)~~

~~**a.** The Middle Fork of the Clearwater River, from the town of Kooskia upstream to the town of Lowell; the Lochsa River from its junction with the Selway at Lowell forming the Middle Fork upstream to the Powell Ranger Station; and the Selway River from Lowell upstream to its origin; (3-18-22)~~

~~**b.** The Middle Fork of the Salmon River, from its origin to its confluence with the main Salmon River; (3-18-22)~~

~~**c.** The St. Joe River, including tributaries, from its origin to its confluence with Coeur d'Alene Lake, except for the St. Maries River and its tributaries. (3-18-22)~~

~~**02. Mining Withdrawals.** The Board, under authority provided by Title 47, Chapter 7, Idaho Code, has withdrawn certain other lands from placer and dredge mining. A listing of such withdrawals is available from the administrative offices of the Department. (3-18-22)~~

~~061. -- 064. (RESERVED)~~

065. DEPOSIT OF FORFEITURES AND DAMAGES.

01. Mining Account. All monies, forfeitures, and penalties collected under the provisions of these rules will be deposited in the ~~Placer and Dredge~~ and Placer Mining Account to be used ~~by the Director for placer and dredge mine reclamation purposes and related administrative costs~~ as directed by Section 47-1319, Idaho Code. (3-18-22)()

~~**02. Funds for Reclamation.** Upon approval of the Board, monies in the account may be used to reclaim lands for which the forfeited bond was insufficient to reclaim in accord with these rules, or for placer or dredge mine sites for which the bond has been released and which have resulted in subsequent damage. Monies received from inspection fees are to be kept separate and used for costs incurred by the Director in conducting such inspections. (3-18-22)~~

066. -- 069. (RESERVED)

070. COMPLIANCE OF EXISTING PLANS WITH THESE RULES.

These rules, upon their adoption, apply as appropriate to all existing placer or dredge mining operations, but will not affect the validity or modify the duties, terms, or conditions of any existing approved placer or dredge mining permits or impose any additional obligations with respect to reclamation upon any Permittee conducting placer or dredge mining operations pursuant to a placer or dredge mining permit approved prior to ~~adoption of these rules~~ May 1, 2024. (3-18-22)()

071. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.03 – RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

DOCKET NO. 20-0303-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code, and Title 47, Chapter 18, Idaho Code.

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

Following [Executive Order 2020-01, Zero-Based Regulation](#), this rule chapter is scheduled for a comprehensive review in 2023 with the goal of simplifying the rules for increased clarity and ease of use. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. The late payment policy was updated.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9, pages 308-313](#).

The changes in the pending rule were to fix punctuation and clarify some statute references.

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

A monthly late fee of the greater of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal, and an interest charge of one percent (1%) on the unpaid principal. These charges are authorized by Section 47-1803, Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Eric Wilson at (208) 334-0261 or ewilson@idl.idaho.gov.

DATED this 21st of November, 2023.

Eric Wilson, Resource Protection and Assistance Bureau Chief
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, Idaho 83720-0050
P.O. Box 83720
Phone: (208) 334-0261
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code, and Title 47, Chapter 18, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2023.

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:

Following [Executive Order 2020-01, Zero-Based Regulation](#), this rule chapter is scheduled to be repealed and replaced in 2023 for review during the 2024 legislative session. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. The late payment policy was updated.

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

A monthly late fee of the greater of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal, and an interest charge of one percent (1%) on the unpaid principal.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2023, Idaho Administrative Bulletin, [Vol. 23-4, pages 38-39](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson at (208) 334-0261 or ewilson@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 6th day of September, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 20-0303-2301

20.03.03 – RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

000. LEGAL AUTHORITY.

These rules are promulgated by the Board under Sections 58-104 (6) and 58-105, Idaho Code, and Title 47, Chapter 18, Idaho Code. The Board has delegated to the Director the duties and powers under Title 47, Chapter 18, Idaho Code and these rules. ()

001. SCOPE.

These rules constitute the Department’s administrative procedures for implementation of the Act with the intent to provide an alternative form of financial assurance for certain mines in Idaho. These rules are to be construed in a manner consistent with the duties and responsibilities of the Board and of operators, permit holders, or lessees as set forth in “Mineral Rights in State Lands; Dredge Mining Act; Mined Land Reclamation Act; IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho;” IDAPA 20.03.02, “Rules Governing Mined Land Reclamation;” and IDAPA 20.03.05, “Riverbed Mineral Leasing In Idaho.” ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

Except as provided in these rules, the Board adopts the definitions set forth in the Mineral Rights in State Lands, the Dredge Mining Act, and the Mined Land Reclamation Act. As used in these rules: ()

01. Actual Allowable Cost. The allowable total reclamation cost as set by the Board to allow participation in the Reclamation Fund. ()

02. Actual Allowable Disturbance. The area of disturbed acres or affected land as set by the Board to allow participation in the Reclamation Fund. ()

03. Board. The Idaho State Board of Land Commissioners or its authorized representative. ()

04. Department. The Idaho Department of Lands. ()

05. Disturbed Acres; Affected Lands. ()

a. Any land, natural watercourses, or existing stockpiles or waste piles affected by placer or dredge mining, remining, exploration, stockpiling of ore, waste from placer or dredge mining, or construction of roads, settling ponds, structures, or facilities appurtenant to a placer or dredge mine; ()

b. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at a mine; and ()

c. The land area disturbed by motorized exploration of state land under a mineral lease. ()

06. Dredge Mining Act. Idaho Dredge and Placer Mining Protection Act, Title 47, Chapter 13, Idaho Code, and IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho.” ()

07. Financial Assurance. ()

a. Cash, corporate surety bond, collateral bond, or letter of credit as described in the Dredge Mining Act, or the Mineral Rights in State Lands; and ()

b. Financial assurance as defined in the Mined Land Reclamation Act. ()

08. Mine; Mine Panel. All areas designated by the operator on the map or plan submitted pursuant to Section 47-703A, Idaho Code, or Section 47-1506, Idaho Code, or as an identifiable portion of a placer or dredge ()

mine on the map submitted under Section 47-1317, Idaho Code. ()

09. Mined Land Reclamation Act. Title 47, Chapter 15, Idaho Code, and IDAPA 20.03.02, “Rules Governing Mined Land Reclamation.” ()

10. Mineral Lease. Lease executed by the Board and the mineral lessee pursuant to the Mineral Rights in State Lands. ()

11. Mineral Lessee. The lessee of a mineral lease. ()

12. Mineral Rights in State Lands. Title 47, Chapter 7, Idaho Code. ()

13. Mining Reclamation Plan. Any reclamation plan approved pursuant to the Mined Land Reclamation Act. ()

14. Motorized Exploration. Exploration which may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques which employ the use of earth moving equipment, seismic operations using explosives, and includes sampling with a suction dredge having an intake diameter greater than two (2) inches when operated in a perennial stream. When operated in an intermittent stream, suction dredges will be considered motorized exploration regardless of intake size. ()

15. Operator. Any person or entity authorized to conduct business in Idaho, partnership, joint venture, or public or governmental agency required to have any reclamation plan under the Mined Land Reclamation Act or the Mineral Rights in State Lands, or a permit under the Dredge Mining Act, whether individually or jointly through subsidiaries, agents, employees, or contractors. ()

16. Permit. Dredge or placer mining permit issued pursuant to the Dredge Mining Act. ()

17. Reclamation Fund. The interest-bearing dedicated fund authorized pursuant to the Reclamation Fund Act. ()

18. Reclamation Fund Act; Act. Title 47, Chapter 18, Idaho Code, and IDAPA 20.03.03, “Rules Governing Administration of the Reclamation Fund.” ()

011. -- 015. (RESERVED)

016. REQUIRED PARTICIPANTS.

Any operator, with the exception of the mines and operators listed in Sections 017 and 019 of these rules, will be required to provide alternative financial assurance through the Reclamation Fund to assure the reclamation of disturbed acres or affected lands. Alternative financial assurance pursuant to the Reclamation Fund Act is in lieu of other types of financial assurance as set forth in the Mined Land Reclamation Act, the Mineral Rights in State Lands, or the Dredge Mining Act. ()

017. INELIGIBLE MINES OR OPERATORS.

The following types of mines and operators are not allowed to participate in the Reclamation Fund and must file proof of other acceptable financial assurance as required by the Department. ()

01. Disturbed Acres Limit. A mine or mineral lease with un-reclaimed disturbed acres in excess of the actual allowable disturbance may not provide alternative financial assurance through the Reclamation Fund. Un-reclaimed disturbance is that which does not meet the final financial assurance release criteria in the Dredge Mining Act, the Mined Land Reclamation Act, or the Mineral Rights in State Lands. ()

02. Reclamation Cost Limit. Operators with an estimated reclamation cost in excess of the actual allowable reclamation cost, regardless of the disturbed acres. ()

03. Phosphate Mines. Operators or mineral lessees of phosphate mines. ()

04. Hardrock Mines. Operators or mineral lessees of hardrock mines such as gold, silver, molybdenum, copper, lead, zinc, cobalt, and other precious or base metal mines. ()

05. Potential Heavy Metal Releases. Operators of mines with a reasonable potential to release heavy metals or other substances harmful to human health or the environment, but not including substances such as fuels and other materials commonly used in excavation or construction. ()

06. Oil and Gas Conservation. Oil and gas exploration and development under Title 47, Chapter 3, Idaho Code. ()

07. Oil and Gas Leasing. Oil and gas leases and associated exploration and development under Title 47, Chapter 8, Idaho Code. ()

08. Geothermal. Operators or mineral lessees of geothermal wells and development under Title 47, Chapter 16, Idaho Code. ()

09. Off Lease Exploration. Motorized exploration on state lands that are not under a mineral lease or exploration location. ()

10. Violators. Mines or operators in violation of the Act, Dredge Mining Act, Mined Land Reclamation Act, or Mineral Rights in State Lands. ()

11. Reclamation Fund Forfeitures. Operators, permittees or lessees who have not reimbursed the Reclamation Fund for a forfeiture from the Reclamation Fund due to their violations of the Reclamation Fund Act, Dredge Mining Act, Mined Land Reclamation Act, or Mineral Rights in State Lands. ()

12. Other Forfeitures. An operator who has forfeited any financial assurance. ()

13. Operators Providing Acceptable Financial Assurance. An operator who provides proof of financial assurance accepted by the Department that is greater than or equal to the minimum dollar per acre for each acre of affected land at a mine. ()

018. ACREAGE AND RECLAMATION COST LIMITATIONS.

01. Actual Allowable Participation. The Board will establish by policy the actual allowable disturbance, actual allowable reclamation cost, and the minimum dollar per acre of disturbance in order to provide financial assurance to opt out of participation in the Reclamation Fund. ()

02. Maximum Disturbance and Reclamation Cost. The maximum allowable disturbance is eighty (80) acres; the maximum allowable reclamation cost is four hundred forty thousand dollars (\$440,000). ()

03. Multiple Plans or Permits. An operator who has multiple mining reclamation plans or permits that have a total disturbance in excess of the actual allowable disturbance, or with total reclamation costs in excess of the actual allowable reclamation cost, may participate in the Reclamation Fund with one (1) or more sites that together contain less than both of the Board-established actual allowable limits. ()

019. OPTIONAL PARTICIPATION.

Operators who have one (1) or more mines or mineral leases that are ineligible to participate in the Reclamation Fund as set forth in Section 017 of these rules may choose to not participate in the Reclamation Fund with respect to all other eligible mines or mineral leases in their name. An operator who does not participate in the Reclamation Fund must secure all mines with other types of financial assurance approved by the Department. ()

020. FEDERAL AGENCY NON-ACCEPTANCE OF RECLAMATION FUND.

If a federal agency will not accept an operator's participation in the Reclamation Fund as proof of reclamation security, the operator will be required to provide the Department with proof of other types of financial assurance acceptable to the Department and the federal agency. ()

021. -- 025. (RESERVED)

026. PAYMENT.

01. Board Approved Payment Schedule. The Board will adopt a payment schedule that sets the annual Reclamation Fund payment for each operator participating in the Reclamation Fund. Any changes to the payment schedule must be approved by the Board. New participants will be assessed a pro-rated payment based on the Department's established billing cycle. ()

02. Acreage Calculation. The annual payment for each participant in the Reclamation Fund will be established based upon the number of disturbed acres at each mine. The acres used to calculate the annual payment will include the total current disturbed acres of affected lands and the acres planned to be disturbed or affected during the next twelve (12) months. The total acreage calculation will not be rounded when determining annual payments. ()

03. Annual Payments Non-Refundable. Payments to the Reclamation Fund will be billed annually and are non-refundable. ()

04. Late Payments. Payments not received by the due date are considered late and will result in the following monthly charges: ()

a. A late charge of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal obligation, whichever is greater; and ()

b. An interest charge of one percent (1%) on the unpaid principal obligation. ()

05. Supplemental Payments. If an operator affects more acreage than the acreage secured through the Reclamation Fund for a current period, the Department may require supplemental Reclamation Fund payments. ()

06. Assignment. When a mineral lease, mining reclamation plan, or permit is assigned, all financial assurance requirements must be assumed by the new operator. No Reclamation Fund payments will be refunded following an assignment. If the new operator is ineligible to participate in the Reclamation Fund, the new operator must provide proof of other acceptable financial assurance before the assignment may be approved. ()

07. Non-Payment Constitutes Lack of Bonding. For any operator participating in the Reclamation Fund, non-payment of the annual payment will be considered a failure to provide financial assurance as required by the Dredge Mining Act, the Mined Land Reclamation Act, or Mineral Rights in State Lands. ()

027. -- 030. (RESERVED)

031. ENFORCEMENT AND FAILURE TO COMPLY.

01. Forfeiture. Prior to withdrawing monies from the Reclamation Fund due to a violation of the Dredge Mining Act, the Mined Land Reclamation Act, or Mineral Rights in State Lands, the Department will comply with the respective financial assurance forfeiture procedures. ()

02. Penalties. If an operator fails to provide financial assurance as required by these rules or has forfeited monies from the Reclamation Fund and has not repaid those monies, the Board is authorized to file liens against personal property and equipment of the operator to recover costs. The operator is liable for actual costs of all unpaid annual payments, interest, and late payment charges, the actual reclamation costs, and administrative costs incurred by the Department in reclaiming the disturbed or affected lands. Authorization to obtain a lien under these rules and Section 47-1804, Idaho Code, is in addition to, not in lieu of, any other legal remedy available to the Board and the Department pursuant to the Dredge Mining Act, Mined Land Reclamation Act, or Mineral Rights in State Lands. ()

032. MINIMUM BALANCE FOR THE RECLAMATION FUND.

The Board will determine a reasonable minimum balance for the Reclamation Fund. ()

033. -- 999. (RESERVED)

[Agency redlined courtesy copy]

Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.

20.03.03 – RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

000. LEGAL AUTHORITY.

These rules are promulgated by the ~~Idaho State Board of Land Commissioners~~ under Sections 58-104(3) and (6) and 58-105, Idaho Code, and Title 47, Chapter 18, Idaho Code. The Board has delegated to the Director ~~of the Idaho Department of Lands~~ the duties and powers under Title 47, Chapter 18, Idaho Code and these rules, ~~except that the Board retains responsibility for administrative review.~~ (3-18-22)()

001. ~~TITLE AND SCOPE.~~

01. ~~Title.~~ These rules are titled ~~IDAPA 20.03.03, “Rules Governing Administration of the Reclamation Fund,” IDAPA 20, Title 03, Chapter 03.~~ (3-18-22)

02. ~~Scope.~~ These rules constitute the Department’s administrative procedures ~~and participation criteria for the Reclamation Fund, which is~~ for implementation of the Act with the intent to provide an alternative form of financial assurance for certain mines in Idaho. These rules are to be construed in a manner consistent with the duties and responsibilities of the Board and of operators, permit holders, or lessees as set forth in ~~Title 47, Chapter 7, Idaho Code, “Mineral Rights in State Lands;” Title 47, Chapter 13, Idaho Code, “Dredge Mining Act;” Title 47, Chapter 15, Idaho Code, “Mined Land Reclamation Act;” Title 47, Chapter 18, Idaho Code, “Financial Assurance;”~~ IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho;” IDAPA 20.03.02, “Rules Governing Mined Land Reclamation;” and IDAPA 20.03.05, “Riverbed Mineral Leasing In Idaho.” (3-18-22)()

002. ~~ADMINISTRATIVE APPEALS.~~

~~Any person aggrieved by a final agency action or a party aggrieved by a final order of the Board arising from its administration of the Reclamation Fund Act is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, “Administrative Procedure Act,” and IDAPA 20.01.01, “Rules of Practice and Procedure Before the State Board of Land Commissioners.”~~ (3-18-22)

003. -- 009. (RESERVED)

010. DEFINITIONS.

Except as provided in these rules, the Board adopts the definitions set forth in the ~~Mineral Leasing Act~~ Rights in State Lands, the Dredge Mining Act, and the Mined Land Reclamation Act. As used in these rules: (3-18-22)()

01. Actual Allowable Cost. The allowable total reclamation cost as set by the Board to allow participation in the Reclamation Fund. ()

02. Actual Allowable Disturbance. The area of disturbed acres or affected land as set by the Board to allow participation in the Reclamation Fund. ()

03. Board. The Idaho State Board of Land Commissioners or its authorized representative. ()

04. Department. The Idaho Department of Lands. ()

- 05. Disturbed Acres; Affected Lands.** ()
- a.** Any land, natural watercourses, or existing stockpiles or waste piles affected by placer or dredge mining, remining, exploration, stockpiling of ore, waste from placer or dredge mining, or construction of roads, settling ponds, structures, or facilities appurtenant to a placer or dredge mine. ()
- b.** The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at a mine. ~~and~~ ()
- c.** The land area disturbed by motorized exploration of state land under a mineral lease. (3-18-22)()
- 06. Dredge Mining Act.** *Idaho Dredge and Placer Mining Protection Act*, Title 47, Chapter 13, Idaho Code, and IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho.” (3-18-22)()
- 07. Financial Assurance.** ()
- a.** Cash, corporate surety bond, collateral bond, or letter of credit as described in the Dredge Mining Act, ~~or the Mineral Leasing Act, or a mineral lease.~~ *Rights in State Lands; and* ()
- b.** Financial assurance as defined in the Mined Land Reclamation Act. (3-18-22)()
- 08. Mine; Mine Panel.** All areas designated by the operator on the map or plan submitted pursuant to Section 47-703A, Idaho Code, or Section 47-1506, Idaho Code, or as an identifiable portion of a placer or dredge mine on the map submitted under Section 47-1317, Idaho Code. ()
- 09. Mined Land Reclamation Act.** Title 47, Chapter 15, Idaho Code, and IDAPA 20.03.02, “Rules Governing Mined Land Reclamation.” ()
- 10. Mineral Lease.** Lease executed by the Board and the mineral lessee pursuant to the Mineral ~~Leasing Act~~ *Rights in State Lands.* (3-18-22)()
- 11. Mineral Lessee.** The lessee of a mineral lease. ()
- 12. Mineral** ~~Leasing Act~~ *Rights in State Lands.* Title 47, Chapter 7, Idaho Code. (3-18-22)()
- 13. Mining Reclamation Plan.** Any reclamation plan approved pursuant to the Mined Land Reclamation Act. ()
- 14. Motorized Exploration.** Exploration which may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques which employ the use of earth moving equipment, seismic operations using explosives, and includes sampling with a suction dredge having an intake diameter greater than two (2) inches when operated in a perennial stream. When operated in an intermittent stream, suction dredges ~~shall~~ *will* be considered motorized exploration regardless of intake size. (3-18-22)()
- 15. Operator.** Any person or entity authorized to conduct business in Idaho, partnership, joint venture, or public or governmental agency required to have any reclamation plan under the Mined Land Reclamation Act or the Mineral ~~Leasing Act~~ *Rights in State Lands*, or a permit under the Dredge Mining Act, whether individually or jointly through subsidiaries, agents, employees, or contractors. (3-18-22)()
- 16. Permit.** Dredge or placer mining permit issued pursuant to the Dredge Mining Act. ()
- 17. Reclamation Fund.** The interest-bearing dedicated fund authorized pursuant to the Reclamation Fund Act. ()

18. Reclamation Fund Act: ~~Act~~. Title 47, Chapter 18, Idaho Code, and IDAPA 20.03.03, “Rules Governing Administration of the Reclamation Fund.” (3-18-22)()

011. -- 015. (RESERVED)

016. REQUIRED PARTICIPANTS.

Any operator, with the exception of the mines and operators listed in Sections 017 and 019 of these rules, ~~shall~~ will be required to provide alternative financial assurance through the Reclamation Fund to assure the reclamation of disturbed acres or affected lands. Alternative financial assurance pursuant to the Reclamation Fund Act is in lieu of other types of financial assurance as set forth in the Mined Land Reclamation Act, the Mineral ~~Leasing Act~~ **Rights in State Lands**, or the Dredge Mining Act. (3-18-22)()

017. INELIGIBLE MINES OR OPERATORS.

The following types of mines and operators are not allowed to participate in the Reclamation Fund and must file proof of other acceptable financial assurance as required by the Department. ()

01. Disturbed Acres Limit. A mine or mineral lease with un-reclaimed disturbed acres in excess of the actual allowable disturbance may not provide alternative financial assurance through the Reclamation Fund. Un-reclaimed disturbance is that which does not meet the final financial assurance release criteria in the Dredge Mining Act, the Mined Land Reclamation Act, ~~or a mineral lease~~ **the Mineral Rights in State Lands**. (3-18-22)()

02. Reclamation Cost Limit. Operators with an estimated reclamation cost in excess of the actual allowable reclamation cost, regardless of the disturbed acres. ()

03. Phosphate Mines. Operators or mineral lessees of phosphate mines. ()

04. Hardrock Mines. Operators or mineral lessees of hardrock mines such as gold, silver, molybdenum, copper, lead, zinc, cobalt, and other precious ~~or base~~ metal mines. (3-18-22)()

05. Potential Heavy Metal Releases. Operators of mines with a reasonable potential to release heavy metals or other substances harmful to human health or the environment, but not including substances such as fuels and other materials commonly used in excavation or construction. ()

06. Oil and Gas Conservation. Oil and gas exploration and development under Title 47, Chapter 3, Idaho Code. ()

07. Oil and Gas Leasing. Oil and gas leases and associated exploration and development under Title 47, Chapter 8, Idaho Code. ()

08. Geothermal. Operators or mineral lessees of geothermal wells and development under Title 47, Chapter 16, Idaho Code. ()

09. Off Lease Exploration. Motorized exploration on state lands that are not under a mineral lease or exploration location. ()

10. Violators. Mines or operators in violation of the ~~Reclamation Fund~~ Act, Dredge Mining Act, Mined Land Reclamation Act, ~~or Mineral Leasing Act, or a mineral lease~~ **Rights in State Lands**. (3-18-22)()

11. Reclamation Fund Forfeitures. Operators, permittees or lessees who have not reimbursed the Reclamation Fund for a forfeiture from the Reclamation Fund due to their violations of the Reclamation Fund Act, Dredge Mining Act, Mined Land Reclamation Act, ~~or Mineral Leasing Act, or a mineral lease~~ **Rights in State Lands**. (3-18-22)()

12. Other Forfeitures. An operator who has forfeited any financial assurance. ()

13. Operators Providing Acceptable Financial Assurance. An operator who provides proof of financial assurance accepted by the Department that is greater than or equal to the minimum dollar per acre for each

acre of affected land at a mine. ()

018. ACREAGE AND RECLAMATION COST LIMITATIONS.

01. Actual Allowable Participation. The Board will establish by policy the actual allowable disturbance, actual allowable reclamation cost, and the minimum dollar per acre of disturbance in order to provide financial assurance to opt out of participation in the Reclamation Fund. ()

02. Maximum Disturbance and Reclamation Cost. ~~The maximum disturbance and maximum reclamation costs in these rules are maximums.~~ The maximum allowable disturbance is eighty (80) acres; the maximum allowable reclamation cost is four hundred forty thousand dollars (\$440,000). (3-18-22)()

03. Multiple Plans or Permits. An operator who has multiple mining reclamation plans or permits that have a total disturbance in excess of the actual allowable disturbance, or with total reclamation costs in excess of the actual allowable reclamation cost, may participate in the Reclamation Fund with one (1) or more sites that together contain less than both of the Board-established actual allowable limits. ()

019. OPTIONAL PARTICIPATION.

Operators who have one (1) or more mines or mineral leases that are ineligible to participate in the Reclamation Fund as set forth in Section 017-~~or 018~~ of these rules may choose to not participate in the Reclamation Fund with respect to all other eligible mines or mineral leases in their name. An operator who does not participate in the Reclamation Fund must secure all mines with other types of financial assurance approved by the Department. (3-18-22)()

020. FEDERAL AGENCY NON-ACCEPTANCE OF RECLAMATION FUND.

If a federal agency will not accept an operator's participation in the Reclamation Fund as proof of reclamation security, the operator will be required to provide the Department with proof of other types of financial assurance acceptable to the Department and the federal agency. (3-18-22)()

021. -- 025. (RESERVED)

026. PAYMENT.

01. Board Approved Payment Schedule. The Board will adopt a payment schedule that ~~determines~~ sets the annual Reclamation Fund payment for each operator participating in the Reclamation Fund. Any changes to the payment schedule ~~will must~~ must be approved by the Board. ~~Participating operators shall pay all required payments annually~~ New participants will be assessed a pro-rated payment based on the Department's established billing cycle. (3-18-22)()

02. Acreage Calculation. The annual payment for each participant in the Reclamation Fund will be established based upon the number of disturbed acres at each mine. The acres used to calculate the annual payment will include the total current disturbed acres of affected lands and the acres planned to be disturbed or affected during the next twelve (12) months. The total acreage calculation will not be rounded when determining annual payments. ()

03. Annual Payments Non-Refundable. Payments to the Reclamation Fund will be billed annually ~~and~~ are non-refundable. ~~Payments will be billed annually and, if not timely paid, will accrue late fees and interest as established by the Board. New participants will be assessed a pro-rated payment based on the Department's established billing cycle.~~ (3-18-22)()

04. Late Payments. Payments not received by the due date are considered late and will result in the following monthly charges: ()

a. A late charge of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal obligation, whichever is greater; and ()

b. An interest charge of one percent (1%) on the unpaid principal obligation. ()

045. Supplemental Payments. If an operator affects more acreage than the acreage secured through the Reclamation Fund for a current period, the Department may require supplemental Reclamation Fund payments. ()

056. Assignment. When a mineral lease, mining reclamation plan, or permit is assigned, all financial assurance requirements must be assumed by the new operator. No Reclamation Fund payments will be refunded following an assignment. If the new operator is ineligible to participate in the Reclamation Fund, the new operator must provide proof of other acceptable financial assurance before the assignment may be approved. ()

067. Non-Payment Constitutes Lack of Bonding. For any operator participating in the Reclamation Fund, non-payment of the annual payment ~~shall~~ will be considered a failure to provide financial assurance as required by the Dredge Mining Act, the Mined Land Reclamation Act, or Mineral ~~Leasing Act, or a mineral lease~~ Rights in State Lands. (3-18-22)()

027. -- 030. (RESERVED)

031. ENFORCEMENT AND FAILURE TO COMPLY.

01. Forfeiture. Prior to withdrawing monies from the Reclamation Fund due to a violation of the Dredge Mining Act, the Mined Land Reclamation Act, or Mineral ~~Leasing Act, or a mineral lease~~ Rights in State Lands, the Department will comply with the respective financial assurance forfeiture procedures. (3-18-22)()

02. Penalties. If an operator fails to provide financial assurance as required by these rules or has forfeited monies from the Reclamation Fund and has not repaid those monies, the Board ~~shall be~~ is authorized to file liens against personal property and equipment of the operator to recover costs. The operator ~~shall be~~ is liable for actual costs of all unpaid annual payments, interest, and late payment charges, the actual reclamation costs, and administrative costs incurred by the Department in reclaiming the disturbed or affected lands. Authorization to obtain a lien under these rules and Section 47-1804, Idaho Code, ~~shall be~~ is in addition to, not in lieu of, any other legal remedy available to the Board and the Department pursuant to the Dredge Mining Act, Mined Land Reclamation Act, or Mineral ~~Leasing Act, or a mineral lease~~ Rights in State Lands. (3-18-22)()

032. MINIMUM BALANCE FOR THE RECLAMATION FUND.

The Board will determine a reasonable minimum balance for the Reclamation Fund. ()

033. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS
20.03.05 – NAVIGABLE WATERWAYS MINERAL LEASING IN IDAHO
DOCKET NO. 20-0305-2301 (ZBR CHAPTER REWRITE, FEE RULE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code, and Title 47, Chapter 13, Idaho Code.

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

Following [Executive Order 2020-01, Zero-Based Regulation](#), this rule chapter is scheduled to be repealed and replaced in 2023 for review during the 2024 legislative session. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. Application and assignment fees have been increased to cover the costs of reviewing applications. Late payment policy is updated, and revised wording in the rule will now cover all navigable waterways rather than just rivers.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9, pages 314-320](#).

The changes in the pending rule were to fix punctuation and grammatical errors.

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

The \$50 lease application fee in place since 1991 is increased to \$425. The application advertising fee is increased from \$45 to \$75. The exploration location fee is increased from \$250 to \$500. The \$50 assignment fee is increased to \$200. These fees are being imposed pursuant to Sections 58-104 and 58-127, Idaho Code, and Section 47-7, Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Marde Mensinger at (208) 334-0248 or mmensinger@idl.idaho.gov.

DATED this 21st of November, 2023.

Marde Mensinger, Navigable Waterways Program Manager
Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0248
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code, and Section 47-7, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2023.

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:

Following [Executive Order 2020-01, Zero-Based Regulation](#), this rule chapter is scheduled to be repealed and replaced in 2023 for review during the 2024 legislative session. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. Application and assignment fees have been increased to cover the costs of reviewing applications. Late payment policy is updated, and revised wording in the rule will now cover all navigable waterways rather than just rivers.

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

The \$50 lease application fee in place since 1991 is increased to \$425. The application advertising fee is increased from \$45 to \$75. The exploration location fee is increased from \$250 to \$500. The \$50 assignment fee is increased to \$200. These fees are being imposed pursuant to Sections 58-104 and 58-127, Idaho Code, and Section 47-7, Idaho Code.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2023, Idaho Administrative Bulletin, [Vol. 23-4, pages 40-41](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Marde Mensinger at (208) 334-0248 or mmensinger@idl.idaho.gov. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 6th day of September, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 20-0305-2301

20.03.05 – NAVIGABLE WATERWAYS MINERAL LEASING IN IDAHO

000. AUTHORITY.

These rules are promulgated by the Board pursuant to Title 47, Chapter 7, Idaho Code, and Title 58, Chapter 1, Idaho Code Section 58-104. ()

001. SCOPE.

01. Where Applicable. These rules apply to the exploration and extraction of minerals and salable minerals from state-owned navigable waterways. ()

02. Where Not Applicable. These rules do not apply to the exploration and leasing of geothermal resources covered by title 47, Chapter 16, Idaho Code, or to the exploration and leasing of oil and gas resources covered by Title 47, Chapter 8, Idaho Code. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners or its designee. ()

02. Commercial. The type of operation that engages in the removal of salable minerals or uses suction dredges with an intake diameter larger than five inches (5”) or attendant power sources rated at greater than fifteen (15) horsepower and/or other motorized equipment. ()

03. Department. The Idaho Department of Lands. ()

04. Director. The Director of the Idaho Department of Lands or his designee. ()

05. Natural or Ordinary High Water Mark. The line that the water impresses upon the soil by covering it for sufficient periods of time to deprive the soil of its vegetation and destroy its value for agricultural purposes. When the soil, configuration of the surface, or vegetation has been altered by human activity, the natural or ordinary high water mark will be located where it would have been if this alteration had not occurred. ()

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

07. River Mile. Five thousand two hundred eighty (5,280) feet of contiguous riverbed as measured along the approximate center of the river. ()

08. State-Owned Navigable Waterways and Navigable Waterways. As used in these rules, the beds of all navigable rivers and lakes up to the natural or ordinary high water mark as of the date Idaho was admitted into statehood. This includes any such bed that was formerly submerged and subsequently filled, and is now uplands because of human activity (e.g., dikes, berms, jetties) or by natural processes, and includes islands within navigable waterways resulting from human activity or by natural processes. ()

011. -- 014. (RESERVED)

015. CASUAL EXPLORATION.

01. Lands Open. All beds of navigable waterways that have not been located, leased or withdrawn in accordance with statute or the terms of these rules, are free and open to casual exploration on a nonexclusive and first come basis. ()

02. Equipment Limitations. Mining equipment for casual exploration that may occur prior to the filing of a location or lease application is limited to suction dredges with a five (5") inch intake or less and powered equipment rated at fifteen (15) HP or less, or non-powered sluice equipment. ()

03. No Approval for Casual Exploration Required. No written approval is required from the Director for casual exploration. ()

04. Department of Water Resources Permits. Casual exploration requires a valid Stream Channel Alteration Permit issued by the Idaho Department of Water Resources. ()

05. Lake Encroachment Permits. An encroachment permit pursuant to Title 58, Chapter 13, Idaho Code is required prior to any mineral exploration or extraction in a navigable lake. ()

06. Department of Environmental Quality Permits. Suction dredging requires a valid general or individual permit issued under the Idaho Pollutant Discharge Elimination System. ()

016. EXPLORATION LOCATIONS.

01. Lands Open. The beds of navigable waterways that have not been located or withdrawn, or are not under application to lease, in accordance with statute or the terms of these rules, are available for exploration location; provided that salable minerals are not subject to exploration location. Details of exploration locations on state lands can be found in Title 47, Chapter 7, Idaho Code. ()

02. Size of Location. Each exploration location is limited to one-half (1/2) mile in length on a navigable river or stream, or a 20-acre aliquot part on a navigable lake. ()

03. Record Keeping Required. A locator must keep a record of all minerals recovered during exploration operations and must pay to the state a royalty of five percent (5%) of the gross value of the minerals recovered. Payment must be made each year with the filing of the assessment work report. ()

04. When No Written Approval Required. No written approval is required from the Department for casual exploration in a navigable river on an exploration location. Casual exploration performed under a Stream Channel Alteration Permit does not serve to establish any basis for an exploration location. ()

05. When Written Approval Required. Written approval is required from the Department prior to entry for operators conducting motorized exploration. Approved operations must be bonded as outlined in Subsection 040.02. ()

017. -- 019. (RESERVED)

020. RIVERBED MINERAL LEASE.

01. Limitations on Suction Dredges. Operators may not use suction dredges with an intake diameter larger than five inches (5") or attendant power sources rated greater than fifteen (15) horsepower, except under lease. ()

02. Approval Required Before Operations. Prior to entry upon navigable waterways, operators are required to have written approval from the Department. ()

03. Bonding. Approved operations must be bonded as outlined in Subsection 040.01. ()

04. Simultaneous Filings. Two (2) or more lease applications received on the same date and hour, covering the same lands, are considered simultaneous filings. Simultaneous filings will be resolved by competitive bidding. ()

021. -- 024. (RESERVED)

025. PUBLIC NOTICE AND HEARING.

01. Publication of Notice. Upon receipt by the Board of an application to lease any lands that may belong to the state of Idaho by reason of being situated between the high water marks of navigable waterways, the Board will cause at the expense of the applicant, a notice of such application to be published once a week for two (2) issues in a newspaper of general circulation in the county or counties in which said lands described in said application are situated. ()

02. Public Hearing. The Board may order a public hearing on an application if it deems this action is in the best interest of the public. ()

03. Petition for Hearing. The Board or its authorized representative will hold a public hearing on the application, if requested in writing no later than thirty (30) days after the last published notice by ten (10) person whose lawful rights to use the waters applied for may be injured thereby, or by an association presenting a petition with signatures of not less than ten (10) such aggrieved parties; provided that the Board may order a public hearing in the first instance. The Board will consider fully all written and oral submissions respecting the application. ()

026. -- 029. (RESERVED)

030. RENTAL AND ROYALTY AND LATE PAYMENTS.

01. Minimum Annual Rental. The minimum annual rental is five hundred dollars (\$500). ()

02. Royalty Schedule. A royalty schedule for each commodity leased must be attached and made a part of the mineral lease. ()

03. Late Payments. Rental or royalty not paid by the due date is considered late and will result in the following monthly charges: ()

a. A late charge of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal obligation, whichever is greater; and ()

b. An interest charge of one percent (1%) on the unpaid principal obligation. ()

04. Late Charge Accrual. The Department will send monthly statements with the outstanding balance that will remain on the account and will continue to accrue late charges and interest each month, or any portion of a month, until the balance is paid in full. All payments will be applied first to accrued interest and late charges, and then to principal. ()

031. LEASE SIZE.

01. One Mile Limitation. A riverbed lease may not exceed one (1) contiguous river mile in length or all the riverbed within one (1) section should all the available state lands within the section exceed one (1) river mile. ()

02. Salable Minerals. Leases for salable minerals may be limited to a smaller size tract at the Board's discretion. ()

032. -- 034. (RESERVED)

035. ASSIGNMENTS.

01. Prior Written Approval. No lease assignment is valid until approved in writing by the Department. A lease may be assigned to any person qualified to hold a lease. ()

02. Partial Assignment. A lease may be partially assigned if both the assigned and the retained part

created by the assignment contain not less than one-half (1/2) mile length of river bed. The resulting leases continue in full force and effect for the balance of the term of the original lease unless otherwise terminated in accordance with the terms of the lease. ()

036. -- 039. (RESERVED)

040. BOND.

01. Lease Bond. Concurrent with the lessee's execution of the lease, lessee must furnish to the Department a bond in favor of the state of Idaho on a Department form in the amount of five thousand dollars (\$5,000) for commercial operations and one thousand dollars (\$1,000) for all other operations. The bond will be conditioned on the payment of all damages to the land and all improvements thereon which result from the lessee's operation and conditioned on complying with statute, these rules and the lease terms. This bond is in addition to bonds required by Title 47, Chapter 13, Idaho Code. ()

02. Motorized Exploration. Motorized exploration on an exploration location is subject to a bond that covers the estimated reasonable cost of reclamation as provided in Section 47-703A, Idaho Code. ()

041. -- 044. (RESERVED)

045. FEES.

The following fees apply and are nonrefundable: ()

01. Lease Application. Four hundred twenty five dollars (\$425) per application. ()

02. Lease Application Advertising. Seventy-five dollars (\$75) per application. ()

03. Exploration Location. Five hundred dollars (\$500) per location. ()

04. Assignment. Two hundred dollars (\$200) per lease involved in the assignment. ()

046. -- 999. (RESERVED)

[Agency redlined courtesy copy]

Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.

20.03.05 – ~~RIVERBED~~ NAVIGABLE WATERWAYS MINERAL LEASING IN IDAHO

000. AUTHORITY.

01. ~~Statutory Authority.~~ These rules are promulgated by the ~~Idaho State Board of Land Commissioners~~ pursuant to Title 47, Chapter 7, Idaho Code, and Title 58, Chapters 7 and 1, Idaho Code Sections ~~47-710, 47-714 and 58-104, Idaho Code.~~ (3-18-22)()

02. ~~Discretionary Powers.~~ The Board of Land Commissioners is ~~delegated discretionary power to regulate and control the use or disposition of lands in the beds of navigable lakes, rivers, and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided that the Board will take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands. (Section 58-104(9), Idaho Code).~~ (3-18-22)

001. ~~TITLE AND SCOPE.~~

~~01. Title. These rules are titled IDAPA 20.03.05, "Riverbed Mineral Leasing in Idaho." (3-18-22)~~

~~021. Where Applicable. These rules apply to the exploration and extraction of ~~precious metals,~~ minerals; and ~~construction materials~~ salable minerals from a ~~placer deposit situated in state-owned submerged lands~~ navigable waterways. (3-18-22)()~~

~~032. Where Not Applicable. These rules do not apply to the ~~application~~ exploration and leasing of geothermal resources covered by title 47, Chapter 16, Idaho Code, or to the ~~application~~ exploration and leasing of oil and gas resources covered by Title 47, Chapter 8, Idaho Code. (3-18-22)()~~

002. -- 009. (RESERVED)

010. DEFINITIONS.

~~01. Available State Lands. All lands between the ordinary high water marks of a navigable river which have not been located, leased, or withdrawn. (3-18-22)~~

~~021. Board. The Idaho State Board of Land Commissioners or its ~~authorized representative~~ designee. (3-18-22)()~~

~~03. Casual Exploration. Entry and/or exploration which does not appreciably disturb or damage the land or resources thereon. Casual exploration includes, but is not limited to, geochemical and/or geophysical exploration techniques, sampling with hand tools, and entry using wheeled vehicles for transportation to conduct such exploration. Exploration using suction dredges having an intake diameter of two inches (2") or less are considered casual exploration when operated in a perennial stream and authorized under the stream protection act, Title 42, Chapter 38, Idaho Code. Refer to Section 015 for further clarification regarding casual exploration and recreational mining. (3-18-22)~~

~~042. Commercial. The type of operation that engages in the removal of ~~construction materials~~ salable minerals or uses suction dredges with an intake diameter larger than five inches (5") or attendant power sources rated at greater than fifteen (15) horsepower and/or other motorized equipment. (3-18-22)()~~

~~05. Construction Materials. Sand, gravel, cobble, boulders, and other similar materials. (3-18-22)~~

~~03. Department. The Idaho Department of Lands. ()~~

~~064. Director. The Director of the Idaho Department of Lands or his ~~authorized representative~~ designee. (3-18-22)()~~

~~07. Motorized Exploration. Exploration that may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques that employ the use of earth moving or other motorized equipment, seismic operations using explosives, and sampling with suction dredges having an intake diameter greater than two inches (2") when operated in a perennial stream. When operated in an intermittent stream, suction dredges are considered motorized exploration regardless of the intake size. (3-18-22)~~

~~085. Natural or Ordinary High Water Mark. The line that the water impresses upon the soil by covering it for sufficient periods of time to deprive the soil of its vegetation and destroy its value for agricultural purposes. When the soil, configuration of the surface, or vegetation has been altered by human activity, the natural or ordinary high water mark will be located where it would have been if this alteration had not occurred. (3-18-22)()~~

~~096. Person. An individual, corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity qualified to do business in the state of Idaho, and any federal, state, county, or local unit of government. (3-18-22)()~~

- ~~a. An individual of legal age; (3-18-22)~~
- ~~b. Any firm, association or corporation qualified to do business in the state of Idaho; or (3-18-22)~~
- ~~c. Any public agency or government unit, including without limitation, municipalities. (3-18-22)~~
- ~~10. **Recreational Mining.** Mining with a suction dredge having an intake diameter of five inches (5") or less, and attendant power sources, rated at fifteen (15) horsepower or less, pans, rockers, hand tools, hand operated sluices and other similar equipment. (3-18-22)~~
- ~~11. **River Mile.** Five thousand two hundred eighty (5,280) feet of contiguous riverbed as measured along the approximate center of the river. ()~~
- ~~12. **Navigable River.** A natural water course of perceptible extent, with definite bed and banks, which confine and conducts continuously flowing water, and the bed of which is owned by the state of Idaho in trust. (3-18-22)~~
- ~~13. **Submerged Lands.** All state owned beds of navigable lakes, rivers, and streams between the natural or ordinary high water marks. (3-18-22)~~
- ~~14. **State-Owned Navigable Waterways and Navigable Waterways.** As used in these rules, the beds of all navigable rivers and lakes up to the natural or ordinary high water mark as of the date Idaho was admitted into statehood. This includes any such bed that was formerly submerged and subsequently filled, and is now uplands because of human activity (e.g., dikes, berms, jetties) or by natural processes, and includes islands within navigable waterways resulting from human activity or by natural processes. ()~~
011. -- 014. (RESERVED)
015. CASUAL EXPLORATION ~~AND RECREATIONAL MINING.~~
- ~~01. **Lands Open.** All beds of navigable ~~rivers~~ waterways that have not been located, leased or withdrawn in accordance with statute or the terms of these rules, are free and open to casual exploration ~~and recreational mining~~ on a nonexclusive and first come basis. (3-18-22)()~~
- ~~02. **Equipment Limitations.** Mining equipment for casual exploration that may occur prior to the filing of a location or lease application is limited to suction dredges with a ~~two five~~ (25") inch intake or less, ~~pans, rockers, hand tools, hand operated sluices and other similar equipment~~ and powered equipment rated at fifteen (15) HP or less, or non-powered sluice equipment. (3-18-22)()~~
- ~~03. **No Approval for Casual Exploration Required.** No written approval is required from the Director for casual exploration. ()~~
- ~~04. **Recreational Mining Equipment.** Mining equipment for recreational mining is limited to suction dredges with an intake diameter of five (5") inches or less with attendant power sources rated at fifteen (15) horse power or less, pans, rockers, hand tools, hand operated sluices and other similar equipment. (3-18-22)~~
- ~~05. **Department of Water Resources Permits.** Possession of a valid Stream Protection Act Permit issued by the Idaho Department of Water Resources and a Recreational Mining Permit issued by the Idaho Department of Lands constitutes the Board's waiver of bond, waiver of royalty, and written approval to engage in recreational mining under Section 47-704(6), Idaho Code, and Title 47, Chapter 13, Idaho Code Casual exploration requires a valid Stream Channel Alteration Permit issued by the Idaho Department of Water Resources. (3-18-22)()~~
- ~~06. **Lake Encroachment Permits.** An encroachment permit pursuant to Title 58, Chapter 13, Idaho Code is required prior to any mineral exploration or extraction in a navigable lake. ()~~
- ~~07. **Department of Environmental Quality Permits.** Suction dredging requires a valid general or~~

individual permit issued under the Idaho Pollutant Discharge Elimination System. ()

016. EXPLORATION LOCATIONS.

01. Lands Open. The beds of navigable ~~rivers~~ waterways that have not been located or withdrawn, or are not under application to lease, in accordance with statute or the terms of these rules, are available for exploration location; provided that salable minerals are not subject to exploration location. Details of exploration locations on state lands can be found in Title 47, Chapter 7, Idaho Code. (3-18-22)()

02. Size of Location. Each exploration location is limited to one-half (1/2) mile in length on a navigable river or stream, or a 20-acre aliquot part on a navigable lake. (3-18-22)()

03. Record Keeping Requirement~~d~~. A locator must keep a record of all minerals recovered during exploration operations and must pay to the state a royalty of five percent (5%) of the gross value of the minerals recovered. Payment must be made each year with the filing of the assessment work report. (3-18-22)()

04. When No Written Approval Required. No written approval is required from the ~~Director~~ Department for ~~exploratory activity~~ casual exploration in a navigable river on an exploration location ~~when such exploration is limited to mining equipment such as suction dredges with a five (5") inch intake diameter or less and attendant power sources rated at fifteen (15) horsepower or less, pans, rockers, hand operated sluices, and other similar equipment; provided however, that recreational mining activity.~~ Casual exploration performed under a Recreational Mining Stream Channel Alteration Permit ~~as authorized under Section 015~~ does not serve to establish any basis for an exploration location. (3-18-22)()

05. When Written Approval Required. Written approval is required from the ~~Director~~ Department prior to entry for operators conducting motorized exploration ~~except as allowed in Subsection 016.04.~~ Approved operations must be bonded as outlined in Subsection 040.03~~2~~. (3-18-22)()

017. -- 019. (RESERVED)

020. RIVERBED MINERAL LEASE.

01. Limitations on Suction Dredges. Operators may not use suction dredges with an intake diameter larger than five inches (5") or attendant power sources rated greater than fifteen (15) horsepower, except under lease. ()

02. Approval Required Before Operations. Prior to entry upon navigable ~~rivers~~ waterways, operators are required to have written approval from the ~~Director~~ Department. (3-18-22)()

03. Bonding. Approved operations must be bonded as outlined in Subsection 040.01. ()

04. Simultaneous Filings. Two (2) or more lease applications received on the same date and hour, covering the same lands, are considered simultaneous filings. Simultaneous filings will be resolved by competitive bidding. ()

021. -- 024. (RESERVED)

025. PUBLIC NOTICE AND HEARING.

01. Publication of Notice. Upon receipt by the Board of an application to lease any lands that may belong to the state of Idaho by reason of being situated between the high water marks of navigable ~~rivers of the state~~ waterways, the Board will cause at the expense of the applicant, a notice of such application to be published once a week for two (2) issues in a newspaper of general circulation in the county or counties in which said lands described in said application are situated. (3-18-22)()

02. Public Hearing. The Board may order a public hearing on an application if it deems this action is in the best interest of the public. ()

03. Petition for Hearing. The Board or its authorized representative will hold a public hearing on the application, if requested in writing no later than thirty (30) days after the last published notice by ten (10) person whose lawful rights to use the waters applied for may be injured thereby, or by an association presenting a petition with signatures of not less than ten (10) such aggrieved parties; provided that the Board may order a public hearing in the first instance. The Board will consider fully all written and oral submissions respecting the application. ()

026. -- 029. (RESERVED)

030. RENTAL AND ROYALTY AND LATE PAYMENTS.

01. Minimum Annual Rental. The minimum annual rental is ~~one~~ five hundred ~~sixty~~ dollars (\$~~160~~500) ~~for any area up to one hundred sixty (160) acres, and one dollar (\$1) for each additional acre.~~ (3-18-22)()

02. Minimum Annual Royalty. ~~In addition to the annual rental, the commercial lessee pays an annual minimum royalty of five hundred dollars (\$500) per year and all other lessees pay an annual minimum royalty of three hundred forty dollars (\$340) per year.~~ (3-18-22)

03. Deduction of Royalty. ~~The annual minimum royalty and the annual rental for any year is deducted from the actual production royalty as it accrues for that year.~~ (3-18-22)

04. Royalty Schedule. ~~The appropriate Board approved~~ A royalty schedule for ~~each~~ the commodity ~~mined~~ leased must be attached and made a part of the mineral lease. (3-18-22)()

05. Late Payments. Rental or royalty not paid by the due date is considered late. ~~A twenty-five dollars (\$25) late payment charge or penalty interest from the due date, whichever is greater, will be added to the rental or royalty amount. The penalty interest is one percent (1%) for each calendar month or fraction thereof. and will result in the following monthly charges:~~ (3-18-22)()

a. A late charge of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal obligation, whichever is greater; and ()

b. An interest charge of one percent (1%) on the unpaid principal obligation. ()

04. Late Charge Accrual. The Department will send monthly statements with the outstanding balance that will remain on the account and will continue to accrue late charges and interest each month, or any portion of a month, until the balance is paid in full. All payments will be applied first to accrued interest and late charges, and then to principal. ()

031. ~~LEASE SIZE AND COMPOSITION OF LEASABLE TRACT.~~

01. One Mile Limitation. A riverbed lease may not exceed one (1) contiguous river mile in length or all the riverbed within one (1) section should all the available state lands within the section exceed one (1) river mile. ()

02. ~~Construction Materials~~ Salable Minerals. Leases for ~~construction materials~~ salable minerals may be limited to a smaller size tract at the Board's discretion. (3-18-22)()

032. -- 034. (RESERVED)

035. ASSIGNMENTS.

01. Prior Written Approval. No ~~location or~~ lease assignment is valid until approved in writing by the ~~Director, and no assignment takes effect until after the first day of the month following its approval~~ Department. A lease may be assigned to any person qualified to hold a lease. (3-18-22)()

02. ~~Partition~~ Partial Assignment. A ~~location or~~ lease may be partially assigned ~~to any person qualified~~

~~to hold a state location or lease, provided that in the event an assignment partitions leased lands between two (2) or more persons, if both the assigned and the retained part created by the assignment contain not less than one-half (1/2) mile length of river bed land. The resulting leases continue in full force and effect for the balance of the term of the original lease unless otherwise terminated in accordance with the terms of the lease.~~ (3-18-22)(____)

~~**03. Segregation of Lease.** If an assignment partitions leased lands between two (2) or more persons, it must clearly segregate the assigned and retained portions of the leasehold. Resulting segregated leases continue in full force and effect for the balance of the term of the original lease or as further extended pursuant to statute and these rules.~~ (3-18-22)

036. -- 039. (RESERVED)

040. BOND.

01. Minimum Lease Bond. Concurrent with the lessee's execution of the lease by the lessee, lessee must furnish to the ~~Director~~ Department a good and sufficient bond ~~or undertaking in favor of the state of Idaho~~ on a Department form in the amount of five thousand dollars (\$5,000) for commercial operations and one thousand dollars (\$1,000) for all other operations. ~~The bond will be in favor of the state of Idaho,~~ conditioned on the payment of all damages to the land and all improvements thereon which result from the lessee's operation and conditioned on complying with statute, these rules and the lease terms. This bond is in addition to ~~the~~ bonds required by ~~the Idaho Dredge and Placer Mining Protection Act~~ (Title 47, Chapter 13, Idaho Code). (3-18-22)(____)

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

~~**03. Motorized Exploration.** Motorized exploration on an site under exploration location is subject to a minimum bond in the amount of seven hundred fifty dollars (\$750). A larger bond not exceeding seven hundred fifty dollars (\$750) per acre may be required by the Department depending on the size and scope of the operation that covers the estimated reasonable cost of reclamation as provided in Section 47-703A, Idaho Code.~~ (3-18-22)(____)

041. -- 044. (RESERVED)

045. FEES.

The following fees apply ~~and are nonrefundable~~: (3-18-22)(____)

01. Nonrefundable Lease Application Fee for Lease. ~~Fifty~~ Four hundred twenty five dollars (\$~~50~~425) per application. (3-18-22)(____)

02. Nonrefundable Fee for Lease Application Advertising Application. ~~Forty~~ Seventy-five dollars (\$~~45~~75) per application. (3-18-22)(____)

03. Exploration Location Fee. ~~Two hundred fifty~~ Five hundred dollars (\$~~250~~500) per location. (3-18-22)(____)

04. Application Fee for Approval of Assignment. ~~Fifty~~ Two hundred dollars (\$~~50~~200) per lease ~~or location~~ involved in the assignment. (3-18-22)(____)

046. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.05.01 – RULES PERTAINING TO THE RECREATIONAL USE OF ENDOWMENT LAND

DOCKET NO. 20-0501-2301 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 58-156 and 58-104(6), Idaho Code.

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

Aside from misdemeanor or felony criminal trespass charges, Idaho Code 58-156 offers a less severe remedy for those who inflict relatively minor damage to endowment land while recreating. Idaho's increasing population has resulted in more people recreating on endowment land and more damage to the land. Allowing POST certified Idaho law enforcement to issue warnings/citations for relatively minor offenses will help discourage destructive behaviors on endowment land which both reduces the revenue generating potential of the land and costs money to remediate. Rulemaking is required under the new law before a warning or infraction ticket may be written.

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, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 516-519](#).

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Todd Wernex at (208) 334-0282 or twernex@idl.idaho.gov.

DATED this 21st of November, 2023.

Todd Wernex
Recreation Program Manager
Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0282
Fax: (208) 334-3698

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-156 and 58-104(6), Idaho Code.

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

<p>Wednesday, October 11, 2023 2:00 p.m. (MT)</p>
<p><i>In-person participation is available at:</i> Idaho Department of Lands Boise Staff Office Garnet Conference Room 300 N 6th St., Suite 103 Boise, Idaho 83702</p> <p><i>Join on your computer, mobile app, or room device via Zoom at:</i> https://idl.zoom.us/j/88116158144?from=addon</p> <p><i>To attend by telephone call:</i> +1 (253)-215-8782 Meeting ID: 881 1615 8144</p>

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

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

The purpose of this rulemaking is to address distinct problems at specific locations on state endowment trust lands. Endowment lands are different than other types of publicly managed land. Idaho's 2.5 million acres of endowment lands are meant to generate revenue through timber, grazing, and other management activities. This revenue helps fund the endowment beneficiaries, primarily K-12 education, and reduces taxes on hard-working Idahoans. Recreational use of endowment land is a secondary privilege allowed only if it does not cause damage or disturb the revenue-generating potential of the land. Unfortunately, damage to endowment land happens all too frequently.

Idaho's increasing population has resulted in more people recreating and compounding damage to endowment land. Destructive behaviors on endowment land reduce the revenue-generating potential of the land and are costly to mitigate.

This rulemaking implements Senate Bill 1049, passed during the 2023 legislative session to help deter destructive behaviors on endowment land. The new law, Section 58-156, Idaho Code, provides an alternative to heavy handed misdemeanor or felony criminal trespass changes for those who damage endowment land. Instead, it allows POST certified Idaho law enforcement to issue warnings/citations for minor offenses. Under the new law, rulemaking is required before a warning ticket or infraction citation may be written.

The proposed rule creates a targeted approach to curb damage to endowment land. The proposed rule addresses extended camping in one location, trail misuse, blocking access points, dumping, and damaging signs. It requires proper use of roads and trails on endowment land; campfires to be contained within a ring; and adherence to Stage 1 and Stage 2 fire restrictions as listed in the Idaho Fire Restrictions Plan. By regulating recreational use of endowment land, the proposed rule will help deter destructive behavior and preserve the lands' revenue-generating potential for the beneficiaries so endowment land can remain open to the public.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 7, 2023, Idaho Administrative Bulletin, Vol. 23-6, pages 58-59.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Todd Wernex at (208) 334-0282 or twernex@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 29th day of August, 2023.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0501-2301

20.05.01 – RULES PERTAINING TO THE RECREATIONAL USE OF ENDOWMENT LAND

000. LEGAL AUTHORITY.

Sections 58-104(6), 58-105, and 58-156, Idaho Code.

()

001. SCOPE.

These rules govern the closure, restriction, regulation, or prohibition of certain regulated recreational uses on Idaho endowment lands, that are subject to a warning ticket, citation, or misdemeanor pursuant to Idaho Code Section 58-156. Nothing in these rules precludes enforcement under any other applicable state statutes, including enforcement under Sections 18-7031, 18-3906, 18-7012, 18-7001, 18-7008, and 31-4410, Idaho Code. Uses of endowment land authorized by lease or permit are not regulated under this rule.

()

002. – 009. (RESERVED)

010. DEFINITIONS.

01. Camping. To use a location as a temporary or with the intent to use as a permanent place of dwelling, lodging or living accommodation. Indicators of camping may include, but are not limited to, storing personal belongings, using tents or other temporary structures for storing personal belongings or for sleeping, carrying on cooking activities, laying out bedding or making any fire.

()

02. Creation of a Trail or Road. Modifying the natural condition of the landscape by manipulating rocks, vegetation, soils or other materials to purposely create a travel way. ()

03. Department. The Idaho Department of Lands. ()

04. Endowment Lands. Lands held in trust by the State of Idaho and managed for the benefit of specific endowment beneficiaries. ()

011. – 019. (RESERVED)

020. REGULATED USES OF ENDOWMENT LAND.

01. Camping. Permanent camping is prohibited. Temporary camping on endowment land is allowed, provided: ()

a. Camping in one location is limited to a total of fourteen (14) days within a period of twenty-eight (28) consecutive days. Continued camping on endowment lands beyond fourteen (14) days is allowed if the camp, all camping equipment, and all personal belongings are moved outside of a five (5) mile radius of the prior site, and if the campers otherwise comply with the requirements of Subsection 20.01. ()

b. Campers must not leave any personal property unattended for more than forty-eight (48) hours; ()

c. The location is not posted as “closed to camping”; and ()

d. Campfires are contained within a ring no wider than three (3) feet in diameter. ()

02. Roads and Trails. Using roads and trails on endowment land is allowed, provided users: ()

a. May not create any roads or trails. ()

b. Follow vehicle width, weight, length, and type limitations. ()

c. Comply with any posted road or trail closures. ()

d. Follow road and trail limitations and closures posted at trailheads, gates, and local Department offices, as shown on maps and the Department website (www.idl.idaho.gov). ()

e. May not block, obstruct, or interfere with vehicular or pedestrian traffic, with vehicles or by any other means. ()

03. Motorized and Mechanized Use. Motorized and mechanized travel is permitted on department designated roads, trails, and cross-country travel areas. ()

04. Gates and Fences. Blocking gates, fence access points, or livestock handling equipment is prohibited. ()

05. Litter. Depositing any debris, paper, litter, glass bottles, glass, nails, tacks, hooks, hoops, cans, barbed wire, boards, trash, garbage, or other waste substances on endowment land is prohibited. ()

a. When toilet facilities are unavailable, solid human waste must be disposed of at least two hundred (200) feet from water sources, trails, parking areas and campsites. Waste can either be bagged and carried out or buried in a hole at least six (6) inches deep. ()

b. Any construction or placement of restroom facilities must be temporary in nature. All concentrations of solid human waste must be packed out. ()

06. Signs. Interfering with or damaging signs is prohibited. ()
07. Fire Restrictions. Prohibited acts enumerated in the annual Idaho Fire Restrictions Plan for Stage 1 and Stage 2 fire restrictions apply to endowment land. ()
021. – 999. (RESERVED)

IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

24.35.01 – RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 24-3501-2301

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 36-2107, 36-2110, 36-2113, 36-2119, 67-2614, 67-9406, and 67-9409, Idaho Code.

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

The pending rule is being adopted under [Executive Order 2020-01, Zero Based Regulation](#). Text amended since these rules were published as proposed are as follows:

- 259.01 Clark Fork 1 and 2 language was updated to ensure the geographical areas match and the annual cutoff is consistent.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9, pages 365-379](#).

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

Does not apply to this rulemaking.

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

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Katie Stuart at 208-577-2489.

DATED this 6th day of December, 2023.

Katie Stuart
Bureau Chief
11341 W. Chinden Blvd., Bldg. #4
Boise, ID 83714
Phone: (208) 577-2489
Email: katie.stuart@dopl.idaho.gov
Website: <https://dopl.idaho.gov/>

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 36-2107, 36-2110, 36-2113, 36-2119, 67-2614, 67-9406, and 67-9409, Idaho Code.

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

Monday, September 18, 2023, 10:00 a.m. MT

**Division of Occupational and Professional Licenses
Chinden Campus Building 4
11341 W. Chinden Blvd., Bldg. #4
Boise, ID 83714**

Telephone and web conferencing information will be posted on:
<https://dopl.idaho.gov/calendar/> and <https://townhall.idaho.gov/>

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

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

This proposed rulemaking is being presented to create better consistency between the statutes and rules. The rulemaking will clarify the impact of tag transfers and create better consistency with the tag allocations made by the Fish and Game Commission pursuant to Section 36-408(4), Idaho Code. The rulemaking will also address the outfitter limitations on Idaho rivers, lakes and reservoirs.

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

Fees are not affected or addressed by this rule change.

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

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-3501-2301. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2023 Idaho Administrative Bulletin, [Vol. 23-7, pp. 96-97](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this proposed rule, contact Greg Loos, Counsel, at (208) 577-2586. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts,

can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking/>.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 8th day of August, 2023.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-3501-2301

257. DESIGNATION OF ALLOCATED DEER AND ELK TAGS.

For the purposes of this section, an outfitting operation is an outfitter licensee whose licensed activities include hunting for the species in the area of the allocated tag being designated. When IFGC allocates tags, the allocated tags will be designated pursuant to Section 36-2120, Idaho Code, and this rule. The designation applies for the next season unless IFGC adjusts the number of allocated tags for the hunt. (4-6-23)

01. Notification. All notices, orders, or other documents may be made to the email address on file with the Board. (4-6-23)

02. Outfitted Hunter Tag Use History. Each outfitter's hunter tag use history will be determined from the use recorded by IFGC pursuant to Section 36-408(4), Idaho Code, and as may be adjusted as a result of a tag transfer or hardship request that is approved by the Board. (4-6-23)

a. Transfers. An outfitting operation is credited for use of an allocated tag that it transfers to another outfitting operation for use that year in the same hunt. The receiving outfitting operation is not credited for using the transferred tag. (4-6-23)

b. Surrenders. An outfitting operation may surrender a designated allocated tag(s) to the undesignated tag pool for use by any outfitting operation in the same hunt. The surrendering outfitting operation is not credited for use of the surrendered tag unless it later uses the tag from the pool. (4-6-23)

03. New Hunt Allocated Tag Designation. When the IFGC allocates tags for a newly capped or controlled hunt, the allocated tags will be designated proportionately as follows: (4-6-23)

a. Divide each outfitting operation's base allocation by the total of all base allocations in the hunt, resulting in a percentage of total use. Truncate the decimal at the hundredths place. (4-6-23)

b. Multiply the percentage of total use from Subsection 257.03.a. of these rules by the total number of allocated tags for the hunt, which determines the number of allocated tags designated to the outfitting operation. (4-6-23)

04. Use of Previously Designated Allocated Tags. For established capped or controlled hunts, allocated tags will first be designated to each outfitting operation in an amount equal to the outfitting operation's use of the allocated tags previously designated to it for the same hunt. (4-6-23)

a. In a capped hunt, the use of previously designated allocated tags is the average use of allocated tags in the preceding two (2) years; in the event that IFGC adjusts the number of allocated tags in a hunt where there is only one (1) year of allocation, the Board will not average the use. (4-6-23)

b. In a controlled hunt, the use of previously designated allocated tags is the highest year of use of allocated tags in the preceding two (2) years. (4-6-23)

05. Remaining or Additional Allocated Tags. Allocated tags not designated above will be designated proportionately as follows: (4-6-23)

a. Subtract each outfitting operation's use of previously designated allocated tags from Subsection 257.04 from its base allocation number to determine the number of non-allocated tags it used for a capped hunt or the matching hunt with non-allocated tags for a controlled hunt, when necessary to determine non-allocated tag use; then (4-6-23)

b. Divide the result by the total number of non-allocated tags used by all outfitting operations, resulting in a percentage of the total non-allocated tags used by outfitting operations in that hunt. Truncate the decimal at the hundredths place; and finally (4-6-23)

c. Multiply the percentage of total use from Subsection 257.05.b. by the number of allocated tags yet to be designated, which determines the number of allocated tags designated to the outfitting operation. (4-6-23)

06. Rounding. If allocated tag designation results in a partial tag, the calculation will be rounded up when a decimal equals or exceeds six tenths (0.6) and rounded down when a decimal is less than six tenths (0.6). When calculating after a reduction of allocated tags pursuant to Section 36-2120(4), Idaho Code, the calculation will be rounded up when a decimal equals or exceeds five tenths (0.5) and rounded down when a decimal is less than five tenths (0.5). (4-6-23)

07. Tie-breaker. If, after applying Subsections 257.03 through 06, there is a surplus or deficit of allocated tags to be designated, the unrounded proportion from Subsection 257.05, with as many decimal places as necessary, will be used, and then as follows: (4-6-23)

a. After a reduction in allocated tags, surplus tags will first be designated in amounts to restore outfitter operations to the number of tags that would have otherwise been designated pursuant to Subsection 257.04 or as close thereto as practicable. (4-6-23)

b. If a surplus, the outfitting operation whose unrounded proportion is the greatest will be designated one (1) tag, and if there are additional surplus tags, the outfitter with the next greatest unrounded proportion will be designated one (1) allocated tag, and repeated in descending unrounded proportions until all surplus tags are designated. In the event there is more than one outfitting operation with the same unrounded proportion and there are insufficient undesignated tags to designate to each outfitter, the undesignated tag will be designated based on a random drawing between those outfitting operations. (4-6-23)

c. A deficit will be resolved from the outfitting operation whose unrounded proportion is closest to six tenths (0.6), and then next closest to six tenths (0.6) when there is a deficit of more than one (1) allocated tag. If there is more than one (1) outfitting operation with the same unrounded proportion, a random drawing will be held between those outfitters. (4-6-23)

08. Stipulation by Outfitters. Outfitting operations in a hunt may submit to the Board a written stipulation determining the number of allocated tags designated to each outfitting operation in that hunt. The stipulation must be signed by all eligible outfitting operations for the hunt; however, under special circumstances, the Board may waive the requirement of approval from all other outfitting operations. If the Board approves the stipulation, the stipulation will be effective until the next designation of allocated tags for the hunt. On or before November 1 preceding the hunt, any outfitting operation may petition the Board to vacate the stipulation for good cause that would make it unconscionable or unjust to enforce the stipulation. If the Board vacates the stipulation, the allocated tags in that hunt will be designated pursuant to Section 36-2120, Idaho Code, and this rule. (4-6-23)

09. Undesignated Tag Pool. Any designated allocated tags that are surrendered or have not been utilized by an outfitting operation on or before July 16 or the next business day for a capped hunt, or on or before September 10 or the next business day for a controlled hunt, will be available in an undesignated pool for any outfitting operation, as follows: (4-6-23)

a. Beginning April 10 preceding the hunt, an outfitting operation may submit a request for an allocated tag from the pool. The request must be on a Board-approved form. (4-6-23)

b. Beginning April 20 preceding the hunt or next business day, an allocated tag will be designated from the pool on a first-come, first-served basis to an outfitting operation without any designated allocated tags or which has utilized all of its designated allocated tags, using a waiting list when necessary. A maximum of two (2) allocated tags will be designated to each requesting outfitting operation until all other requesting outfitting operations have been served, then a requesting outfitting operation is eligible to receive a maximum of two (2) additional allocated tags from the pool, repeated until all requesting outfitting operations are served or until no tags remain. (4-6-23)

c. No tags designated from the pool will be considered for historical use calculations until all tag transfers are recorded and all hardship requests have been resolved. ()

10. **Objection to Calculation.** If an outfitting operation believes the calculation is incorrect, it may object by filing a petition with the Board within fourteen (14) days from the date the notification was sent and in accordance with the Idaho Administrative Procedures Act. The petition will include any supporting information or documentation. (4-6-23)

a. All outfitting operations in the hunt in question will be notified of the petition. (4-6-23)

b. The outfitting operation bears the burden of establishing that the calculation was incorrect. (4-6-23)

11. **Hardship Request.** An outfitting operation may submit a written hardship request to maintain all or a portion of previous outfitted hunter tag use history when the outfitting operation shows good cause that its use of allocated designated tags was impacted by circumstances beyond the outfitting operation's control. The request must be submitted on or before a deadline set by the Board. The outfitting operation must provide information or documentation as requested by the Board to substantiate the request. (4-6-23)

12. **Change in Operating Area or Owner of Business.** When an outfitting operation is sold or when an operating area is adjusted through a sale and designated allocated tags are associated with the affected operating area, the associated designated allocated tags and tag use history will transfer to the new owner. (4-6-23)

(BREAK IN CONTINUITY OF SECTIONS)

259. RIVER, LAKE, AND RESERVOIR POWER AND FLOAT OUTFITTER LIMITS.

For the express purpose of safeguarding the health, safety and welfare of the public, for the conservation of wildlife and range resources, and to enable the outfitted and non-outfitted public to enjoy the recreational value of Idaho's rivers, streams, lakes, reservoirs and other natural resources, the Board has discretion to limit the number of outfitters licensed on waters that lie totally or partially within the State of Idaho. Pursuant to Section 36-2107(e), Idaho Code, the Board may cooperate with federal and state government to evaluate relevant factors in decisions related to setting outfitter licensure limits on navigable waterways. The following rivers and streams or sections that lie totally or partially within the state of Idaho are open to commercial boating operations by outfitters and guides. (4-6-23)

01. **Licensable Waters – River Sections (BL1) Blackfoot River through (PR1) Priest River – Table:**

River/Section	Maximum No. Power	Maximum No. Float
<p>(BL1) Blackfoot River - Blackfoot Reservoir/Government Dam to Trail Creek Bridge. For each license/permit issued, no more than two (2) boats per section/ per day may be used by any outfitter at any one time in each of the following river sections:</p> <p>a) Blackfoot Reservoir/Government Dam to Sage Hen Flats/Cutthroat Campground b) Sage Hen Flats/Cutthroat Campground to Morgan Bridge c) Morgan Bridge to Trail Creek Bridge</p> <p>No outfitter may have more than six (6) boats on the BL1 in any one (1) day.</p> <p>OGLB licenses are for the entire BL1 segment; a section of BL1 cannot be separated from BL1 for the purposes of selling a portion of an outfitter's business.</p>	none	2
<p>(BO1) Boise River, South Fork - Danskin Bridge to the Neal Bridge EXCEPT on weekends or holidays. Each outfitter may use only one (1) boat for fishing only with a maximum of two (2) fisherman. No overnight camping or walk-and-wade fishing allowed.</p>	none	2
<p>(BO1A) Boise River - Eckert Road Bridge to Main Street Bridge.</p>	none	
<p>(BO1B) Boise River - Main Street Bridge to West side of Garden City limits.</p>	none	
<p>(BO2) Boise River - Downstream from the west side of the Garden City municipal limits to the east side of the Caldwell municipal limits. A maximum of two (2) outfitters may be licensed for fishing in addition to float boating. Each outfitter may use at any time a maximum of four (4) boats for boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitters operating plan.</p>	none	4
<p>(CF1) Clark Fork River - Montana state line to Lake Pend Oreille (boating closing date September 30) <u>Entire river upstream of a straight line extending north of county boat dock (near mouth of Johnson Creek) to Bear Paw Point (southwest tip of Denton Slough). Each outfitter may use at any one time a maximum of two (2) boats prior to the Friday preceding Memorial Day of each year, there is no limit thereafter.</u></p>	42 outfitters for either power or float or combination thereof	
<p>(CF2) Clark Fork River - <u>Entire river upstream of a straight line extending north of county boat dock (near mouth of Johnson Creek) to Bear Paw Point (southwest tip of Denton Slough) (boating limited to the Friday preceding Memorial Day through December 31)</u></p>	2 outfitters for either power or float or combination thereof	
<p>(CL1) Clearwater River - Lowell to the Lower Bridge at Kooskia. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. Fishing may not be conducted downstream from the Upper Bridge at Kooskia by CL1 outfitters. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.</p>	none	5

River/Section	Maximum No. Power	Maximum No. Float
(CL2) Clearwater River - The Upper Bridge at Kooskia to the Orofino Bridge. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.	6	10
(CL3) Clearwater River - The Orofino Bridge to the mouth of the Clearwater River with the Snake River at Lewiston. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitters operating plan.	10	10
* (NFCL) North Fork Clearwater River - Kelly Forks Bridge downstream to backwaters of Dworshak Reservoir	none	4
(CDNF) Headwaters of North Fork Coeur d'Alene - Including tributaries (Independence and Tee Pee Creeks) upstream from Devils Elbow Campground. Three (3) walk and wade only licenses. Up to four (4) clients on the river at one time per license.	none	none
(CD1) Coeur d'Alene River - Devil's Elbow to South Fork confluence. Fishing limit is two (2) float boats per license with a maximum of two (2) clients at a time per boat. Two (2) additional walk and wade licenses can be issued. Walk and wade limited to a maximum of two (2) clients at a time per license.	none	1
(CD2) Coeur d'Alene River - South Fork confluence downstream to Cataldo Mission Boat Ramp. Fishing limit is one (1) float boat per license with a maximum of two (2) clients or two walk and wade clients per license at a time. Walk and wade activities do not have to be initiated from a float boat.	none	1
(CD3) Lateral (Coeur d'Alene chain) Lakes - Connected by the Coeur d'Alene River. Cataldo Mission Boat Ramp to Highway 97 Bridge. A limit of one (1) power boat per license with a maximum of two (2) clients at a time or a limit of one (1) guide per license and two (2) float tubes at a time or two (2) clients walking and wading. The walk and wade activities must be associated with the power boating.	3	none
* (JB1) Jarbidge/Bruneau Rivers	none	4
(KO1) Kootenai River - Montana state line to Canada boundary	5	5
(LCL1) Little North Fork Clearwater River - Mouth of Canyon Creek to first bridge on the Little North Fork Clearwater River. Fishing only. Each outfitter may use only two (2) boats per day with a maximum of two (2) fishermen per boat.	none	2
* (LO1) Lochsa River	none	5
(MO1) Moyie River - Canada boundary to Bonners Ferry Municipal Dam (boating closing date July 20)	none	5
* (OW1) Owyhee River - Nevada state line to Oregon state line or South Fork to confluence with Owyhee River and continuing on to a take-out point.	none	6

River/Section	Maximum No. Power	Maximum No. Float
(PN1) Payette River, North Fork - Payette Lakes Outlet to Hartsell Bridge. Four (4) boat or ten (10) canoe limit per trip, and only two (2) trips per day per outfitter.	none	2
(PN1A) Payette River, North Fork - Cascade City Park, 1/4 mile south of Cascade on Highway 55 to Cabarton. Restrictions: Catch and release for TROUT ONLY, other species F & G rules apply. No stopping by commercial groups from 1/4 mile above to 1/4 mile below heron nesting trees. Four (4) boat or ten (10) canoe limit per trip, and only two (2) trips per day per outfitter.	none	2
(PN2) Payette River, North Fork - Cabarton to Smiths Ferry Bridge	none	5
(PS1) Payette River, South Fork - Grandjean to Deadwood River	none	5
* (PS2) Payette River, South Fork - Deadwood River to Banks	none	5
(PA1) Payette River - Banks to Black Canyon Dam	none	5
(PO1) Pend Oreille River	5	5
(PR1) Priest River - Dickensheet Campground to Priest River City	none	5 2

(4-6-23)()

02. Licensable Waters – River Sections (MF1) Middle Fork Salmon River through (SE2) Selway River – Table:

River/Section	Maximum No. Power	Maximum No. Float
###(MF1) Salmon River, Middle Fork - Boundary Creek to Cache Bar on the Salmon River	none	27
(SA1) Salmon River - First bridge across Salmon River above Redfish Lake Creek to Torrey's Bar	none	6
(SA2) Salmon River - Torrey's Bar to first Highway 93 bridge above Challis. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are a part of an outfitter's operating plan.	none	5
(SA3) Salmon River - First Highway 93 bridge above Challis to Kilpatrick River access. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are a part of an outfitter's operating plan.	none	6
(SA4A) Salmon River - Kilpatrick River access to North Fork - License period from May 1 to September 30. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are a part of an outfitter's operating plan.	5	11

River/Section	Maximum No. Power	Maximum No. Float
(SA4B) Salmon River - Kilpatrick River access to North Fork - License period from October 1 to April 30. Each power boat outfitter may use at any one time a maximum of one (1) boat and each float boat outfitter may use at any one time a maximum of three (3) boats.	2	8
(SA5) Salmon River - North Fork to Corn Creek	3	9
###(SA6) Salmon River - Corn Creek to Spring Bar Boat Ramp with no outfitter fishing below Vinegar Creek from September 15 through March 31 except that on a case-by-case basis, outfitter fishing may occur when permitted by the BLM and with the notification to and concurrence of the Board Executive Officer.	14	31
* (SA7A) Salmon River - Vinegar Creek to Hammer Creek - License period from March 15 to October 15. No power boating is allowed from the Saturday before Memorial Day through Labor Day from 10:30 a.m./Mountain Time to 5:00 p.m./Mountain Time daily between the Riggins City Boat Dock and Lucile.	10	26
* (SA7B) Salmon River - Power boats from Vinegar Creek to Spring Bar Boat Ramp and float boats from Vinegar Creek to Island Bar Boat Ramp, open from September 15 to March 31 only. Each float boat outfitter may use at any one time a maximum of three (3) boats for fishing, or two (2) additional boats for fishing when permitted by the BLM and with the notification to and concurrence of the Board Executive Officer; and each power boat outfitter may use at any one time a maximum of two (2) boats for fishing, or one (1) additional boat for fishing when permitted by the BLM and with the notification to and concurrence of the Board Executive Officer.	6	12
* (SA7C) Salmon River - Riggins City Park Boat Ramp to Hammer Creek. Three (3) designated outfitters may utilize float boats to fish from the Riggins City Boat Dock to Hammer Creek during the period from September 15 to March 31.	none	3
###(SA8) Salmon River - Hammer Creek to Heller Bar or Lewiston on the Snake River	15	35
* (SE1) Selway River - Paradise Campground to Selway Falls	none	4
(SE2) Selway River - Selway Falls to the mouth of the Selway River at Lowell. Each outfitter may use at any one time a maximum of (a) three (3) boats for fishing, and (b) five (5) boats for other boating activities. The Board may approve adjustments to these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.	none	5

(4-6-23)

03. Licensable Waters – River Sections (SH1) Henry’s Fork Snake River through (TE3) Teton River – Table:

River/Section	Maximum No. Power	Maximum No. Float
<p>(SH1) Snake River, Henry's Fork - Henry's Lake Outlet to Hatchery Ford. (Each outfitter may use at any one time a maximum of (a) eight (8) boats for fishing No more than three (3) of these boats may be used at any one time on any of the following river reaches: Henry's Lake Outlet to Island Park Dam, Island Park Dam to Last Chance, Last Chance to Osborn Bridge, and Osborn Bridge to Hatchery Ford), and (b) five (5) boats for other boating activities. The Board may approve adjustments to these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.</p>	none	7
<p>(SH2) Snake River, Henry's Fork - Mesa Falls to St. Anthony. Each outfitter may use at any one time a maximum of (a) eight (8) boats for fishing, no more than three (3) of these boats may be used at any one time on any one of the following river reaches: Mesa Falls to Stone Bridge, Stone Bridge to Ashton Dam, and Ashton Dam to Chester Dam, and Chester Dam to St. Anthony, and (b) five (5) boats for other boating activities. The Board may approve adjustments of these boat limitations to accommodate canoeing or kayaking activities that are part of an outfitter's operating plan.</p>	none	8
<p>(SH3) Snake River, Henry's Fork - No more than three (3) boats for fishing may be used by an outfitter at any one (1) time in each of the following river sections:</p> <ul style="list-style-type: none"> a) St. Anthony to Red Road Bridge Boat Access (i.e., Parker/Salem or Fort Henry) b) Red Road Bridge Boat Access to Warm Slough Boat Access c) Warm Slough Boat Access to Menan Boat Access <p>No outfitter may have more than six (6) boats on the SH3 in any one (1) day.</p> <p>When permitted by the BLM and with the notification to and concurrence of the Board Executive Officer, each outfitter may be allowed adjustments to the maximum boat limits in order to accommodate non-fishing boating activities (e.g., canoeing, paddle boards, and kayaks) and hazardous excursions that are part of an outfitter's operating plan. These adjustments must be reviewed and approved annually.</p> <p>OGLB licenses are for the entire SH3 segment; a section of SH3 cannot be separated from SH3 for the purposes of selling a portion of an outfitter's business.</p>	none	4

River/Section	Maximum No. Power	Maximum No. Float
<p>(SS1) Snake River - South Fork - No more than four (4) boats per section/per day may be used by an outfitter at any one (1) time in each of the following river sections:</p> <p>a) Palisades Dam Boat Access to the Spring Creek Boat Access (Swan Valley Bridge) or Conant Boat Access. Exception: Not more than eight boats would be permitted between Spring Creek Boat Access and Conant Boat Access to allow for the flexibility to launch/take-out boats.</p> <p>b) Spring Creek or Conant Boat Access to Fullmer Boat Access. Exception: Not more than eight (8) boats would be permitted in Section (b) on the same day, provided that no more than four (4) of said boats are in this Section after 11:00 a.m. due to overnight use at designated outfitter camps.</p> <p>c) Fullmer Boat Access to Byington Boat Access.</p> <p>d) Byington Boat Access to Lorenzo Boat Access.</p> <p>e) Lorenzo Boat Access to Menan Boat Access.</p> <p>Additionally, no outfitter may have more than twelve (12) boats on the SS1 in any one day.</p> <p>A one-time per year exception after July 15 may be granted from Conant Boat Access to Byington Boat Access that would allow two (2) additional boats per section to accommodate large client groups. During this one-time exception, if the two (2) additional boats do not accommodate the large client group, additional boats must come from slots allocated to other outfitters. The maximum daily boat limit for SS1 may not be exceeded. This would require written concurrence from the BLM/USFS and the Board Executive Officer.</p> <p>Float boats may use motors (5HP or less) for downstream steerage only within the entire SS1 reach. Downstream steerage would not include holding or upstream travel of watercraft with a motor.</p> <p>OGLB licenses are for the entire SS1 segment; a section of SS1 cannot be separated from SS1 for the purposes of selling a portion of an outfitter's business.</p>	None*	8**

River/Section	Maximum No. Power	Maximum No. Float
<p>* Each licensed float boat outfitter may use one (1) supply boat (float or power) that does not carry clients. During periods of preparing overnight camps (i.e., setting up tents and portable toilet facilities, boating in grills and other cooking supplies) for the season, usually May or June of each year; and removing the same items listed above from overnight camps at the end of the season, usually October or November; multiple supply boats may be used.</p> <p>** One (1) license additional for waterfowl hunting covering both BLM and USFS managed lands and waters for the South Fork (Palisades Dam to Wolf Flats Boat Access may be issued. This license opportunity is in addition to the eight (8) float licenses and is limited to providing waterfowl hunting during waterfowl hunting season as defined by Idaho Fish and Game Rules and where no more than two (2) float or power boat boats per day per section a and b only can be used by the outfitter at any one time for that purpose. Fishing may not be provided or conducted unless the outfitter is also licensed and permitted as one (1) of the eight (8) outfitters addressed in this rule who may not provide hunting activities. This business opportunity may be sold separately.</p>		
<p>(SN1) Snake River - For each license/permit issued, no more than four (4) boats per section/per day may be used by an outfitter at any one time in each of the following river sections:</p> <p>a) Menan Boat Access to Mike Walker Boat Access (includes Federally managed lands).</p> <p>b) Mike Walker Boat Access to Gem State Power Plant (includes non-Federal lands).</p> <p>Float boats may use motors (5HP or less) for downstream steerage only within the entire SS1 reach. Downstream steerage would not include holding or upstream travel of watercraft with a motor.</p> <p>OGLB licenses are for the entire SN1 segment; a section of SN1 cannot be separated from SN1 for the purposes of selling a portion of an outfitter's business.</p>	<p>3 outfitters either float or power or combination thereof</p>	

River/Section	Maximum No. Power	Maximum No. Float
<p>(SN2) Snake River - Gem State Power Plant. Idaho Falls, downstream to headwaters of American Falls Reservoir. For each license/permit issued, no more than four (4) boats per section/per day may be used by any outfitter at any one time in each of the following river sections:</p> <p>a) Gem State Power Plant to Shelley/Firth b) Shelley/Firth to Porterville c) Porterville to Blackfoot (Boating limited, walk-wade if there is access) d) Blackfoot to Tilden Bridge e) Tilden Bridge to the headwaters of American Falls Reservoir</p> <p>No outfitter may have more than twelve (12) boats on the SN2 in any one day.</p> <p>OGLB licenses are for the entire SN2 segment; a section of SN2 cannot be separated from SN2 for the purposes of selling a portion of an outfitter's business.</p>	3 outfitters either float or power or combination thereof	
<p>(SN3) Snake River - American Falls Dam to Massacre Rocks State Park. For each license/permit issued, no more than five (5) boats per section/per day may be used by any outfitter at any one time in each of the following river sections:</p> <p>a) American Falls Dam to Pipeline (includes federally and non- federally managed lands) b) Pipeline to Vista (includes federally and non- federally managed lands) c) Vista to Eagle Rock (includes non-federally managed lands) d) Eagle Rock to Massacre Rocks (includes non-federally managed lands)</p> <p>No outfitter may have more than ten (10) boats on the SN3 in any one day.</p> <p>Float boats may use motors (5HP or less) for downstream steerage only. Downstream steerage does not include holding or upstream travel of watercraft with a motor.</p> <p>Sturgeon Fishing: Pipeline to Massacre Rocks, no more than five (5) boats per section/per day may be used by any outfitter at any one time in each of the river sections between Pipeline to Massacre Rocks.</p> <p>American Falls Dam to Pipeline, one (1) boat within this section/two (2) weekdays per week/two (2) weekend days per month. Idaho Department of Fish and Game, Southeast Region (Pocatello) needs to be notified prior to Sturgeon Fishing.</p> <p>OGLB licenses are for the entire SN3 segment; a section of SN3 cannot be separated from SN3 for the purposes of selling a portion of an outfitter's business.</p>	3 outfitters either float or power or combination thereof	
<p>(SN4) Snake River - Massacre Rocks State Park to Milner Dam</p>	3	3
<p>* (SN5) Snake River - Milner Dam to Star Falls</p>	none	3
<p>* (SN6) Snake River - Star Falls to Twin Falls</p>	none	5

River/Section	Maximum No. Power	Maximum No. Float
(SN7) Snake River - Twin Falls to Lower Salmon Falls Dam	3	3
(SN8) Snake River - Lower Salmon Falls Dam to Bliss Dam	3	5
(SN9) Snake River - Bliss Dam to headwaters of C.J. Strike Reservoir	5	5
(SN10) Snake River - C.J. Strike Dam to Walter's Ferry	5 outfitters for either power or float or combination thereof	
(SN11) Snake River - Walter's Ferry to headwaters of Brownlee Reservoir	5	none
* (SN12) Snake River - Hells Canyon Dam to Pittsburg Landing	18	15
* (SN13) Snake River - Hells Canyon Dam to Pittsburg Landing, two (2) one-day float trips only	none	2
(SN14) Snake River - Pittsburg Landing to Heller Bar or Lewiston	19	15
(SN15) Snake River - Washington/Oregon stateline to Lewiston	Limitations pending. (This section is set aside for future rules of fishing only outfitters.)	
(SJ1) St. Joe River - St. Joe River Headwaters to Red Ives. No outfitted boating. One (1) walk and wade only fishing outfitter.	none 2	none
(SJ2) St. Joe River - Red Ives to Avery. In addition to one (1) float boat license, three (3) walk and wade only outfitters. No fishing from float boats, boat clients may fish via walk and wade.	none	1
(SJ3) St. Joe River - Avery to St. Joe City Bridge	none	2
(SJ4) St. Joe River - St. Joe City Bridge to Lake Coeur d'Alene	2	none
(SM1) St. Maries River	5	5
(TE1) Teton River - Upper put-in to Cache Bridge, motors not to exceed 10 hp	5 outfitters for either power or float or combination thereof	
(TE2) Teton River - Cache Bridge to Harrop Bridge, motors not to exceed 10 hp	6 outfitters for either power or float or combination thereof	

River/Section	Maximum No. Power	Maximum No. Float
<p>(TE3) Teton River - No more than two (2) boats per section/per day may be used by an outfitter at any one time in each of the following river sections: a), b), d), e) and f). No more than four (4) boats per section/per day may be used by an outfitter at any one time on river section c) and where two (2) boats from same outfitter must be spaced at three-hour (3) intervals:</p> <p>a) Harrop Bridge Boat Access to Felt Dam Boat Access. b) Felt Dam Boat Access to Spring Hollow Boat Access. c) Spring Hollow Boat Access to Teton Dam Site Boat Access. d) Teton Dam Site Boat Access to Hog Hollow Bridge Boat Access. e) Hog Hollow Bridge Boat Access to Teton Highway. f) Teton Highway to confluence with the Henrys Fork of the Snake River. Note: No boat access exists at the confluence with the Henrys Fork of the Snake River. Outfitters would utilize Hibbard Bridge or Warm Slough Access on SH3. No fishing on SH3.</p> <p>No outfitter may have more than eight (8) boats on the TE3 in any one day.</p> <p>Float boats may use motors not to exceed 10 hp in section a) (Harrop Bridge to Felt Dam Access) only. Float boats may use motors (5HP or less) for downstream steerage only in sections d), e) and f). Motors are not allowed in other sections. Downstream steerage does not include holding or upstream travel of watercraft with a motor.</p> <p>OGLB licenses are for the entire TE3 segment; a section of TE3 cannot be separated from TE3 for the purposes of selling a portion of an outfitter's business.</p>	none	5

* Classified rivers

Floatboat and powerboat outfitters on these sections are considered within their area of operations when hiking from the river or fishing in tributaries away from the river but does not include overnight activities. Conflicts with land-based outfitters will be handled on a case-by-case basis. (4-6-23)

04. Other -- Table. The following lakes and reservoirs or portions thereof that lie totally or partially within the state of Idaho are open to fishing by outfitters with the following limitations:

Lake or Reservoir	Maximum No. of Operators	Maximum No. Boats per Operator per Lake or Reservoir
Lake Coeur d'Alene	8	1
Dworshak Reservoir	7	2
Hayden Lake	4	2
Henry's Lake	8	2
Island Park Reservoir	7	2
Magic Reservoir	3	2
Palisades Reservoir	10	2

Lake or Reservoir	Maximum No. of Operators	Maximum No. Boats per Operator per Lake or Reservoir
Lake Pend Oreille	11	1
Priest Lake	5	1
American Falls Reservoir	3	2
C.J. Strike Reservoir	4	2
Brownlee Reservoir	5	2
Oxbow Reservoir	3	2
Hells Canyon Reservoir	3	2

~~(4-6-23)~~()

05. Other Lakes and Reservoirs. All other Idaho lakes and reservoirs are limited to two (2) outfitters with a maximum of two (2) boats (float or power) per outfitter. (4-6-23)

IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION

26.01.10 – RULES GOVERNING THE ADMINISTRATION OF TEMPORARY PERMITS ON LANDS OWNED BY THE IDAHO DEPARTMENT OF PARKS AND RECREATION

DOCKET NO. 26-0110-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 67-4223 and 4249, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10 pages 558-564](#).

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

1. Raises the Processing Fees for Issuance or Modification.
2. Raises the Compensation for Cost per Acre to be set by official board action and vote.

The Park and Recreation Board is authorized under Section 67-4223, Idaho Code, to adopt, amend, or rescind rules as may be necessary for the proper administration of Title 67, Chapter 42, Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Seth Hobbs, (208) 514-2427, seth.hobbs@idpr.idaho.gov.

DATED this 7th day of November, 2023.

Seth Hobbs
Idaho Department of Parks and Recreation
5657 Warm Springs Ave.
Boise, ID 83716
Phone: (208) 514-2427

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4223 and 67-4249 Idaho Code.

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

<p>Thursday, October 26, 2023 10:00 a.m. to 11:00 a.m. (MT)</p>
<p>Meeting held via video conference: Click here to join the meeting Meeting ID: 237 765 287 372 Passcode: LZH8Ub Download Teams Join on the web</p> <p>Join with a video conferencing device idahogov@m.webex.com Video Conference ID: 112 753 588 1 Alternate VTC instructions</p> <p>Or call in (audio only) +1 208-985-2810,,288298300# United States, Boise Phone Conference ID: 288 298 300# Find a local number Reset PIN</p>

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

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

The proposed rule change updates definitions and standards, updates processing fees on issuance or modifications and updates fees on compensation for cost per acre to be set by official board action, updates processing time, and incorporates edits for clarity and brevity consistent with the Red Tape Reduction Act.

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

The Park and Recreation Board is authorized under Section 67-4223, Idaho Code, to adopt, amend, or rescind rules as may be necessary for the proper administration of Title 67, Chapter 42, Idaho Code. The proposed rule accomplishes the following:

1. Raises the Processing Fees for Issuance or Modification.
2. Raises the Compensation for Cost per Acre to be set by official board action and vote.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 02, 2023 Idaho Administrative Bulletin, [Vol. 23-8, page 327](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Seth Hobbs, (208) 514-2427, seth.hobbs@idpr.idaho.gov.

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 26, 2023.

DATED this 28th day of August, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 26-0110-2301

26.01.10 – RULES GOVERNING THE ADMINISTRATION OF TEMPORARY PERMITS ON LANDS OWNED BY THE IDAHO DEPARTMENT OF PARKS AND RECREATION

000. LEGAL AUTHORITY.

Idaho Code Section 67-4223(a). ()

001. SCOPE.

These rules are intended to set forth the procedures for the administration of temporary permits on lands owned by the department. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho Parks and Recreation Board or such representative as may be designated by the board. ()

02. Contract Officer. The person assigned by the director of the Idaho Department of Parks and Recreation that is responsible for the administration of temporary permits on lands owned by the Idaho Department of Parks and Recreation. ()

03. Department and IDPR. The Idaho Department of Parks and Recreation. ()

04. Director. The director of the Idaho Department of Parks and Recreation or such representative as may be designated by the director. ()

05. Grantee. The party to whom a temporary permit is granted and their assigns and successors in interest. ()

06. Grantor. The State of Idaho and its assigns and successors in interest. ()

07. Park Manager. The person responsible for administering and supervising a specific state park

area, or department owned land not yet a state park, as designated by the director of the Idaho Department of Parks and Recreation. ()

08. Person. An individual, partnership, association, or corporation qualified to do business in the state of Idaho, and any federal, state, county or local unit of government. ()

09. Temporary Permit. An instrument authorizing a temporary use of IDPR owned land for the construction, operation and maintenance of specific typically linear elements including but not limited to power and telephone lines, roadways, driveways, sewer lines, natural gas lines and water lines. ()

011. -- 049. (RESERVED)

050. POLICY.

01. Issuing Authority. Temporary permits are issued by the director, or designee in lieu of easements, and are required for all activities on, over, through IDPR owned land. ()

02. Discretion. The board retains absolute discretion to grant or withhold a temporary permit on land which it owns. ()

03. Consent Required. Temporary permits, their amendment, renewal and assignment and all subsequent actions are not valid without the written consent of the director. ()

04. Modifications. Temporary permits and subsequent modifications, assignments and renewals require a formal application, and payment of a processing fee to reimburse the agency for staff time devoted to processing the request. ()

05. Purpose Compatible. The purpose for which the temporary permit is sought must not interfere with the existing or anticipated values, objectives, or operation of department owned lands. ()

06. Compensation. An appropriate compensation for use of department-owned lands, as set out in Section 150 of this chapter, will be paid to IDPR in cash or in the form of offsetting benefits to be determined by the director. ()

07. Control. At all times the control of gates, roads and park lands is retained by the State. The permit granted is for the grantee's use only, is revocable for cause, is issued for a specific period of time, not to exceed ten (10) years, but usually five (5) years or less, and automatically expires if not used for a period of one (1) year. ()

051. -- 099. (RESERVED)

100. PROCESSING FEES.

01. Issuance or Modification. The processing fee for a new temporary permit, or modification of an existing temporary permit, is three-hundred dollars (\$300), which needs to be received from all applicants before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. ()

02. Assignment or Renewal. The processing fee for assignment or renewal of an existing temporary permit is fifty dollars (\$50), and needs to be received before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. ()

101. -- 149. (RESERVED)

150. COMPENSATION.

01. Payable in Advance. Cash compensation for the entire term of the temporary permit will be collected from the applicant prior to issuance. ()

02. Cost per Acre. Cash compensation for a temporary permit is charged at a rate set by official board action and vote per acre of IDPR land utilized per year or any portion thereof, and is specified in the temporary permit. Temporary permits of less than one (1) year in duration will not be prorated. ()

03. Noncash Compensation. Offsetting (non-cash) compensation for a temporary permit may be approved on an individual basis by the director, and the terms of the agreement will be outlined in the temporary permit. ()

04. Nonrefundable. Compensation to IDPR for a temporary permit is non-refundable, except as set out in Subsection 200.08 of this chapter. ()

151. -- 199. (RESERVED)

200. STANDARD CONDITIONS.

All temporary permits issued are subject to the following standard conditions: ()

01. Term Limited. The use and term of a temporary permit is limited solely to that specifically stated in the instrument. ()

02. Utilities. Except under special circumstances with approval of the director, all utilities need to be installed underground. ()

03. Construction, Operation and Maintenance. The grantee will construct, maintain and operate at grantee's sole expense the facility for which the temporary permit is granted, and maintain the permit site in a condition satisfactory to the Park Manager. ()

04. Hold Harmless. The grantee, its agents and contractors must indemnify and hold harmless the department, the state of Idaho and its representatives against and from any and all demands, claims or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with the use authorized under the temporary permit. ()

05. Withdrawal for Park Use. Should the land be needed for park development or recreation use, the director reserves the right to order the change of location or the removal of any structure(s) or facility(ies) authorized by a temporary permit at any time. Any such change or removal will be made at the sole expense of the grantee, its successors or assigns. When a temporary permit is terminated prior to its stated expiration date pursuant to this provision, the grantee will receive a pro-rata refund of compensation paid. ()

06. Permits Not Exclusive. The temporary permit is not exclusive to the grantee, and will not prohibit the department from granting other permits or franchise rights of like or other nature to other public or private entities, nor will it prevent the department from using or constructing roads and structures over or near the lands encompassed by the temporary permit, or affect the department's right to full supervision or control over any or all lands which are part of the temporary permit. ()

07. Cancellation. The director may cancel the temporary permit or amend any of the conditions of the temporary permit if the grantee fails to comply with any or all of the provisions, or requirements set forth or through willful or unreasonable neglect, fails to heed or comply with notices given. ()

08. Removal of Facilities. Upon termination of the temporary permit for any reason including cancellation, expiration, or relinquishment, the grantee will have thirty (30) days from the date of termination to remove any facilities and improvements constructed by the grantee, and will restore the permit site to the satisfaction of the park manager. Upon written request, and for good cause shown, the director may allow a reasonable additional time for the removal of improvements and facilities and the restoration of the site. ()

201. -- 249. (RESERVED)

250. SPECIAL CONDITIONS.

Special conditions addressing unique situations may be included in the temporary permit to protect natural or park resources, or to safeguard public health, safety or welfare. ()

251. -- 299. (RESERVED)

300. APPLICATION PROCEDURE.

01. Contents of Application. A temporary permit application will be completed on the form required by the Department: ()

02. Application Submission. Temporary permit applications need to be submitted to the Park Manager of the park in which the permit is requested. The park manager will forward it for processing as outlined in Section 800. of this chapter. ()

301. -- 349. (RESERVED)

350. MODIFICATION OF EXISTING TEMPORARY PERMIT.

A modification of an existing temporary permit will be processed in the same manner as a new application. Modification includes change of use, enlarging the permit area, or changing the location of the permit area. Modification does not include ordinary maintenance, repair, or replacement of existing facilities. ()

351. -- 399. (RESERVED)

400. ASSIGNMENT.

Temporary permits issued by the director cannot be assigned without the approval of the director, or designee. To request approval of an assignment, the assignor and assignee will complete the department's standard temporary permit application/action form and forward it and the assignment fee to the park manager, for processing as outlined in Section 800 of this chapter. ()

401. -- 449. (RESERVED)

450. RENEWAL.

Renewal of temporary permits may be sought by completing a temporary permit application/action form and forwarding it together with the renewal fee to the park manager for processing as outlined in Section 800 of this chapter. Renewal applications will be submitted at least forty-five (45) days prior to the expiration date of the temporary permit. ()

451. -- 499. (RESERVED)

500. ABANDONMENT.

A temporary permit not used for the purpose for which it was granted for a period of one (1) year is presumed abandoned and will automatically terminate. The director or designee will notify the grantee in writing of the termination. The grantee will have thirty (30) days from the date of the written notice to reply in writing to the director to show cause why the temporary permit should be reinstated. Within thirty (30) days of receipt of the statement to show cause, the director will notify the grantee in writing as to the director's decision concerning reinstatement. The grantee will have thirty (30) days after receipt of the director's decision to request to appear before the board as outlined in Section 003 of this chapter. Removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ()

501. -- 549. (RESERVED)

550. RELINQUISHMENT.

The Grantee may voluntarily relinquish a temporary permit any time by submitting a temporary permit application/action Form to the park manager. Upon relinquishment, removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ()

551. -- 599. (RESERVED)

600. EXPIRATION.

Upon expiration, and absent a request for renewal of the temporary permit, removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ()

601. -- 649. (RESERVED)

650. CANCELLATION.

The director or designee may cancel a temporary permit if the grantee fails to comply with any or all of its provisions, terms, conditions, or rules; or through willful or unreasonable neglect, fails to heed or comply with notices given. ()

651. -- 749. (RESERVED)

750. ADMINISTRATION.

01. Bureau Responsible. The IDPR contract officer will be responsible for uniform statewide administration of all IDPR temporary permits. ()

02. Disposition of Fees. All processing and compensation fees collected from applicants will be sent to the fiscal section for deposit into the appropriate account. ()

03. Status Report. The IDPR contract officer will maintain an up-to-date status report on all temporary permits issued. ()

751. -- 799. (RESERVED)

800. PROCESSING.

01. Receipt of Application. Upon receipt of a properly filed temporary permit application/action form and the appropriate application fee, the park manager will review the application and forward it, together with their comments, to the region manager. The region manager will review the application and forward their comments along with the temporary permit application/action package, to the IDPR contract office for processing. ()

02. Time. Processing of temporary permit application/action forms will not exceed ninety (90) days from the date of acceptance of a complete application by the park manager. Applications not acted on within ninety (90) days are deemed denied. ()

03. Notification. All applicants will be notified in writing, by the contract officer of the approval or denial of their application. ()

801. -- 999. (RESERVED)

[Agency redlined courtesy copy]

26.01.10 – RULES GOVERNING THE ADMINISTRATION OF TEMPORARY PERMITS ON LANDS OWNED BY THE IDAHO DEPARTMENT OF PARKS AND RECREATION

000. LEGAL AUTHORITY.

~~These rules set forth procedures concerning the issuance of temporary permits on all lands owned by the Idaho Department of Parks and Recreation. Requests for permits on lands administered, but not owned by IDPR must be made directly to the land owner. These rules are promulgated pursuant to Idaho Code Section 67-4223(a) and are~~

~~construed in a manner consistent with the duties and responsibilities of the Idaho Parks and Recreation Board as set forth in Idaho Code Title 67, Chapter 42. These rules are not be construed as affecting any valid existing rights.~~

~~(3-18-22)()~~

001. TITLE AND SCOPE.

~~01. Title. The title of this chapter is cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.10, "Rules Governing the Administration of Temporary Permits on Lands Owned by the Idaho Department of Parks and Recreation."~~

~~(3-18-22)~~

~~02. Scope. These rules are intended to set forth the procedures for the administration of temporary permits on lands owned by the department.~~

~~(3-18-22)()~~

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho Parks and Recreation Board or such representative as may be designated by the board. ()

02. Contract Officer. The person assigned by the director of the Idaho Department of Parks and Recreation that is responsible for the administration of temporary permits on lands owned by the Idaho Department of Parks and Recreation. ()

~~023. Department and IDPR.~~ The Idaho Department of Parks and Recreation. ()

034. Director. The director of the Idaho Department of Parks and Recreation or such representative as may be designated by the director. ()

045. Grantee. The party to whom a temporary permit is granted and their assigns and successors in interest. ()

056. Grantor. The State of Idaho and its assigns and successors in interest. ()

067. Park Manager. The person responsible for administering and supervising a specific state park area, or department owned land not yet a state park, as designated by the director of the Idaho Department of Parks and Recreation. ()

078. Person. An individual, partnership, association, or corporation qualified to do business in the state of Idaho, and any federal, state, county or local unit of government. ()

089. Temporary Permit. An instrument authorizing a temporary use of IDPR owned land for the construction, operation and maintenance of specific typically linear elements including but not limited to power and telephone lines, roadways, driveways, sewer lines, natural gas lines and water lines. ()

011. -- 049. (RESERVED)

050. POLICY.

01. Issuing Authority. Temporary permits are issued by the director, or designee in lieu of easements, and are required for all activities on ~~or~~ through IDPR owned land. ~~(3-18-22)()~~

02. Discretion. The board retains absolute discretion to grant or withhold a temporary permit on land which it owns. ()

03. Consent Required. Temporary permits, their amendment, renewal and assignment and all subsequent actions are not valid without the written consent of the director. ()

04. Modifications. Temporary permits and subsequent modifications, assignments and renewals require a formal application, and payment of a processing fee to reimburse the agency for staff time devoted to processing the request. ()

05. Purpose Compatible. The purpose for which the temporary permit is sought must not interfere with the existing or anticipated values, objectives, or operation of department owned lands. ()

06. Compensation. An appropriate compensation for use of department-owned lands, as set out in Section 150 of this chapter, ~~must will~~ be paid to ~~the~~ IDPR in cash or in the form of offsetting benefits to be determined by the director. (3-18-22)()

07. Control. At all times the control of gates, roads and park lands is retained by the State. The permit granted is for the grantee's use only, is revocable for cause, is issued for a specific period of time, not to exceed ten (10) years, but usually five (5) years or less, and automatically expires if not used for a period of one (1) year. ()

051. -- 099. (RESERVED)

100. PROCESSING FEES.

01. Issuance or Modification. The processing fee for a new temporary permit, or modification of an existing temporary permit, is ~~one~~three-hundred dollars (\$~~1~~300), which ~~must needs to~~ be received from all applicants before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. (3-18-22)()

02. Assignment or Renewal. The processing fee for assignment or renewal of an existing temporary permit is ~~twenty-five~~ fifty dollars (\$~~25~~50), and ~~must needs to~~ be received before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. (3-18-22)()

101. -- 149. (RESERVED)

150. COMPENSATION.

01. Payable in Advance. Cash compensation for the entire term of the temporary permit will be collected from the applicant prior to issuance. ()

02. Cost per Acre. Cash compensation for a temporary permit is charged at a rate ~~of fifty dollars (\$50)~~ set by official board action and vote per acre of IDPR land utilized per year or any portion thereof, and is specified in the temporary permit. Temporary permits of less than one (1) year in duration will not be prorated. (3-18-22)()

03. Noncash Compensation. Offsetting (non-cash) compensation for a temporary permit may be approved on an individual basis by the director, and the terms of the agreement ~~must will~~ be outlined in the temporary permit. (3-18-22)()

04. Nonrefundable. Compensation to IDPR for a temporary permit is non-refundable, except as set out in Subsection 200.08 of this chapter. ()

151. -- 199. (RESERVED)

200. STANDARD CONDITIONS.

All temporary permits issued are subject to the following standard conditions: ()

01. Term Limited. The use and term of a temporary permit is limited solely to that specifically stated in the instrument. ()

02. Utilities. Except under special circumstances with approval of the director, all utilities ~~must need to~~

be installed underground. (3-18-22)()

03. Construction, Operation and Maintenance. The grantee ~~must~~ will construct, maintain and operate at grantee's sole expense the facility for which the temporary permit is granted, and maintain the permit site in a condition satisfactory to the Park Manager. (3-18-22)()

~~**04. Compliance with Laws.** The grantee will comply with all applicable state and local laws, rules, and ordinances, including but not limited to: state fire laws and all rules of the State Land Board pertaining to forest and watershed protection, and with the Stream Channel Protection Act as designated in Chapter 38, Title 42 of the Idaho Code.~~ (3-18-22)

~~**05. Wetlands.** The grantee will comply with all state and federal statutes, rules, and regulations pertaining to wetlands protection.~~ (3-18-22)

~~**06. Land and Water Conservation Fund.** Temporary permits on land located within Land and Water Conservation Fund 6(f) boundaries, their amendment, renewal, assignment and all subsequent actions must be subject to the terms and the requirements of the Land and Water Conservation Fund Act of 1965 (P.L. 88-578, 16 U.S.C.S. Section 4601-4 et seq.).~~ (3-18-22)

~~**07. Hold Harmless.** The grantee, its agents and contractors must indemnify and hold harmless the department, the state of Idaho and its representatives against and from any and all demands, claims or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with the use authorized under the temporary permit.~~ ()

~~**08. Withdrawal for Park Use.** Should the land be needed for park development or recreation use, the director reserves the right to order the change of location or the removal of any structure(s) or facility(ies) authorized by a temporary permit at any time. Any such change or removal will be made at the sole expense of the grantee, its successors or assigns. When a temporary permit is terminated prior to its stated expiration date pursuant to this provision, the grantee will receive a pro-rata refund of compensation paid.~~ ()

~~**09. Permits Not Exclusive.** The temporary permit is not exclusive to the grantee, and ~~must~~ will not prohibit the department from granting other permits or franchise rights of like or other nature to other public or private entities, nor ~~must~~ will it prevent the department from using or constructing roads and structures over or near the lands encompassed by the temporary permit, or affect the department's right to full supervision or control over any or all lands which are part of the temporary permit.~~ (3-18-22)()

~~**10. Cancellation.** The director may cancel the temporary permit or amend any of the conditions of the temporary permit if the grantee fails to comply with any or all of the provisions, or requirements set forth or through willful or unreasonable neglect, fails to heed or comply with notices given.~~ ()

~~**11. Removal of Facilities.** Upon termination of the temporary permit for any reason including cancellation, expiration, or relinquishment, the grantee ~~must~~ will have thirty (30) days from the date of termination to remove any facilities and improvements constructed by the grantee, and ~~must~~ will restore the permit site to the satisfaction of the park manager. Upon written request, and for good cause shown, the director may allow a reasonable additional time for the removal of improvements and facilities and the restoration of the site.~~ (3-18-22)()

201. -- 249. (RESERVED)

250. SPECIAL CONDITIONS.

Special conditions addressing unique situations may be included in the temporary permit to protect natural or park resources, or to safeguard public health, safety or welfare. ()

251. -- 299. (RESERVED)

300. APPLICATION PROCEDURE.

01. Contents of Application. A temporary permit application ~~must contain~~ will be completed on the form required by the Department: (3-18-22)()

- ~~a.~~ A temporary permit application/action form; (3-18-22)
- ~~b.~~ A plat of the proposed permit location; (3-18-22)
- ~~c.~~ The appropriate application fee; (3-18-22)
- ~~d.~~ An acceptable written legal description based on a survey of the centerline, or a metes and bounds survey of the temporary permit tract. The survey must be performed by a registered professional land surveyor as required by Idaho Code Section 54-1229. (3-18-22)

~~**02. Engineering Certification.** As required in Section 58-601, Idaho Code, for any application for a ditch, canal or reservoir, the plats and field notes must be certified by the engineer under whose direction such surveys or plans were made and four (4) copies filed with the department and one (1) copy with the director, Idaho Department of Water Resources. (3-18-22)~~

~~**032. Application Submission.** Temporary permit applications ~~must need to~~ be submitted to the Park Manager of the park in which the permit is requested. The park manager will forward it for processing as outlined in Section 800. of this chapter. (3-18-22)()~~

301. -- 349. (RESERVED)

350. MODIFICATION OF EXISTING TEMPORARY PERMIT.

A modification of an existing temporary permit ~~must will~~ be processed in the same manner as a new application. Modification includes change of use, enlarging the permit area, or changing the location of the permit area. Modification does not include ordinary maintenance, repair, or replacement of existing facilities. (3-18-22)()

351. -- 399. (RESERVED)

400. ASSIGNMENT.

~~Temporary permits issued by the director cannot be assigned without the approval of the director, or designee. To request approval of an assignment, the assignor and assignee ~~must will~~ complete the department's standard temporary permit application/action form and forward it and the assignment fee to the park manager, for processing as outlined in Section 800 of this chapter. (3-18-22)()~~

401. -- 449. (RESERVED)

450. RENEWAL.

Renewal of temporary permits may be sought by completing a temporary permit application/action form and forwarding it together with the renewal fee to the park manager for processing as outlined in Section 800 of this chapter. Renewal applications ~~must will~~ be submitted at least forty-five (45) days prior to the expiration date of the temporary permit. (3-18-22)()

451. -- 499. (RESERVED)

500. ABANDONMENT.

A temporary permit not used for the purpose for which it was granted for a period of one (1) year is presumed abandoned and ~~must will~~ automatically terminate. The director ~~must or designee will~~ notify the grantee in writing of the termination. The grantee ~~must will~~ have thirty (30) days from the date of the written notice to reply in writing to the director to show cause why the temporary permit should be reinstated. Within thirty (30) days of receipt of the statement to show cause, the director ~~must will~~ notify the grantee in writing as to the director's decision concerning reinstatement. The grantee ~~must will~~ have thirty (30) days after receipt of the director's decision to request to appear before the board as outlined in Section 003 of this chapter. Removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. (3-18-22)()

501. -- 549. (RESERVED)

550. RELINQUISHMENT.

The Grantee may voluntarily relinquish a temporary permit any time by submitting a temporary permit application/action Form to the park manager. Upon relinquishment, removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ()

551. -- 599. (RESERVED)

600. EXPIRATION.

Upon expiration, and absent a request for renewal of the temporary permit, removal of property from and restoration of the site is governed by Subsection 200.11 of this chapter. ()

601. -- 649. (RESERVED)

650. CANCELLATION.

The director or designee may cancel a temporary permit if the grantee fails to comply with any or all of its provisions, terms, conditions, or rules; or through willful or unreasonable neglect, fails to heed or comply with notices given. (3-18-22)()

651. -- 699. (RESERVED)

700. ENFORCEMENT.

~~Should it become necessary to enforce the terms of a temporary permit in a court of law and the grantor prevails, the grantee must pay all costs and fees.~~ (3-18-22)

701. -- 749. (RESERVED)

750. ADMINISTRATION.

01. Bureau Responsible. The IDPR ~~Development Bureau must~~ contract officer will be responsible for uniform statewide administration of all IDPR temporary permits. (3-18-22)()

02. Disposition of Fees. All processing and compensation fees collected from applicants ~~must will~~ be sent to the fiscal section for deposit into the appropriate account. (3-18-22)()

03. Status Report. The IDPR ~~Development Bureau must~~ contract officer will maintain an up-to-date status report on all temporary permits issued. (3-18-22)()

751. -- 799. (RESERVED)

800. PROCESSING.

01. Receipt of Application. Upon receipt of a properly filed temporary permit application/action form and the appropriate application fee, the park manager ~~must will~~ review the application and forward it, together with his their comments, to the region ~~supervisor manager~~. The region ~~supervisor must manager will~~ review the application and forward his their comments along with the temporary permit application/action package, to the ~~chief, Development Bureau, IDPR~~ contract office for processing. (3-18-22)()

02. Time. Processing of temporary permit application/action forms ~~must will~~ not exceed ~~one hundred twenty (120) ninety (90)~~ days from the date of acceptance of a complete application by the park manager. Applications not acted on within ~~one hundred twenty (120) ninety (90)~~ days are deemed denied. (3-18-22)()

03. Notification. All applicants ~~must will~~ be notified in writing, by the ~~development bureau chief, contract officer~~ of the approval or denial of their application. (3-18-22)()

801. -- 999. (RESERVED)

IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION

26.01.20 – RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-2301 (FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 67-4223 and 4249, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10 pages 565-579](#).

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

1. Adds fees and fee caps for: admission for day, month, season; and modification of special use campsites and facilities.
2. Raises fee caps for: fee collection surcharge; daily MVEF; annual MVEF; commercial motor vehicle entrance; campsites; use of campground showers by non-campers; cleaning; reservation service charge for group campsites and facilities; vessel launching; overnight moorage; and cancellation of special use campsites and facilities.

The Park and Recreation Board is authorized under Section 67-4223, Idaho Code, to adopt, amend, or rescind rules as may be necessary for the proper administration of Title 67, Chapter 42, Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Seth Hobbs, (208) 514-2427, seth.hobbs@idpr.idaho.gov.

DATED this 7th day of November, 2023.

Seth Hobbs
Idaho Department of Parks and Recreation
5657 Warm Springs Ave.
Boise, ID 83716
Phone: (208) 514-2427

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4223 and 67-4249 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

<p>Thursday, October 26, 2023 10:00 a.m. to 11:00 a.m. (MT)</p>
<p>Meeting held via video conference: Click here to join the meeting Meeting ID: 237 765 287 372 Passcode: LZH8Ub Download Teams Join on the web</p>
<p>Join with a video conferencing device idahogov@m.webex.com Video Conference ID: 112 753 588 1 Alternate VTC instructions</p>
<p>Or call in (audio only) +1 208-985-2810,,288298300# United States, Boise Phone Conference ID: 288 298 300# Find a local number Reset PIN</p>

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: The proposed rule change updates definitions and standards; removes redundant or unnecessary sections; updates the check-out time for facilities, updates fee caps on items that are currently at or near the fee cap; adds ability for day, month, season admission to the admission fee; removes fee schedule for the winter recreational parking permit program as they are already in Idaho Code 67-7115; removes fee schedule for winter access passes which will be managed by the admission fee; updates the modification fee to separate out individual campsites and facilities from special use and group; and incorporates edits for clarity and brevity consistent with the Red Tape Reduction Act.

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

1. Adds fees and fee caps for: admission for day, month, season; and modification of special use campsites and facilities.
2. Raises fee caps for: fee collection surcharge; daily MVEF; annual MVEF; commercial motor vehicle entrance; campsites; use of campground showers by non-campers; cleaning; reservation service charge for group campsites and facilities; vessel launching; overnight moorage; and cancellation of special use campsites and facilities.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 02, 2023 Idaho Administrative Bulletin, [Vol. 23-8, page 329](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Seth Hobbs, (208) 514-2427, seth.hobbs@idpr.idaho.gov.

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 26, 2023.

DATED this 28th day of August, 2023.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0120-2301

000. LEGAL AUTHORITY.

~~The Idaho Parks and Recreation Board is authorized under Sections 67-4223 and 67-7115 through 67-7118, Idaho Code, to adopt, amend, or rescind rules as may be necessary for the proper administration of Title 67, Chapter 42, Idaho Code, and the use and protection of lands and facilities subject to its jurisdiction. The board is also authorized to further define and make specific the provisions regarding the winter recreational parking permit program as set forth in Sections 67-7115 through 67-7118, Idaho Code. (3-18-22)(____)~~

001. TITLE AND SCOPE.

~~01. Title. The title of this chapter is cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.20, "Rules Governing the Administration of Park and Recreation Areas and Facilities." (3-18-22)~~

~~02. Scope. This chapter establishes fees for and rules governing the use of lands and facilities administered by the Department and the winter recreational parking permit; establishes procedures for obtaining individual and group use reservations; sets rules regarding visitor behavior and use of park lands and facilities; and authorizes employees to enforce these rules. (3-18-22)~~

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. ADA. Americans with Disabilities Act (3-18-22)

02. Annual Motor Vehicle Entrance Fee Sticker. A sticker that allows a single motor vehicle to enter Idaho State Parks without being charged a motor vehicle entrance fee. (3-18-22)

03. Annual Motor Vehicle Entrance Fee Sticker Replacement. Replacement due to a motor vehicle sale or damage to an existing annual motor vehicle entrance fee sticker. (3-18-22)

- 04. Board.** The Idaho Parks and Recreation Board, a bipartisan, six (6) member board, appointed by the Governor. (3-18-22)
- 05. Camping Unit.** The combined equipment and people capacity that a campsite or facility will accommodate. (3-18-22)
- 06. Camping Day.** (3-18-22)
- a.** For individual and group campsites the period between 2 p.m. of one (1) calendar day and 1 p.m. of the following calendar day. (3-18-22)
- b.** For individual and group facilities, the period between 4 p.m. of one (1) calendar day and 12 noon of the following calendar day. (3-18-22)
- 07. Campsite.** (3-18-22)
- a.** Individual. An area within a department managed campground designated for camping use by an individual camping unit or camping party that includes a defined area for either a tent pad or RV pad/area and may include a table and/or grill. The definition includes companion campsites. (3-18-22)
- b.** Group. An area within a department managed campground designated for group camping use or a block of individual campsites designated for group use within a campground primarily managed for individual use. (3-18-22)
- 08. Commercial Motor Vehicle.** A vehicle that has seating capacity of more than fifteen (15) persons including the driver, or that is maintained for the transportation of persons for hire, compensation or profit. (3-18-22)
- 09. Day Use.** Use of any non-camping lands and/or facilities between the hours of 7 a.m. and 10 p.m. unless otherwise posted. (3-18-22)
- 10. Department.** The Idaho Department of Parks and Recreation. (3-18-22)
- 11. Designated Beach.** Waterfront areas designated by the park or program manager for water-based recreation activities. The length and width of each designated beach will be visibly identified with signs. (3-18-22)
- 12. Designated Roads and Trails.** Facilities recognizable by reasonable formal development, signing, or posted rules. (3-18-22)
- 13. Director.** The director and chief administrator of the department, or the designee of the director. (3-18-22)
- 14. Division Administrator.** An employee, or designee, within the department that has supervisory authority over park and program managers. (3-18-22)
- 15. Dock and Boating Facility.** Floats, piers, and mooring buoys owned or operated by the department. (3-18-22)
- 16. Encroachments.** Non-recreational uses of lands under the control of the board including any utilization for personal, commercial, or governmental use by a non-department entity. (3-18-22)
- 17. Extra Vehicle.** An additional motor vehicle without built-in temporary living quarters or sleeping accommodations registered to a camp site. (3-18-22)
- 18. Facilities.** (3-18-22)
- a.** Individual. A camping structure within department managed lands designated for use by an individual camping unit. (3-18-22)

- b. Group. A camping structure within department managed lands designated for group use. (3-18-22)
- c. Day Use. A non-camping area or structure within department managed lands designated for group use during day use periods. (3-18-22)

19. Group Use. Twenty-five (25) or more people, or any group needing special considerations or deviations from normal department rules or activities. (3-18-22)

20. Idaho State Parks Passport. A sticker, purchased from any county Department of Motor Vehicles' office in the state of Idaho, that matches a particular motor vehicle license number and expiration date, allowing that vehicle to enter Idaho State Parks without being charged a motor vehicle entrance fee. (3-18-22)

21. Idaho State Parks Passport Replacement. Replacement due to a motor vehicle registration transfer or damage to an existing passport. (3-18-22)

22. Motor Vehicle. Every vehicle that is self-propelled except for vehicles moved solely by human power, electric bikes, and motorized wheelchairs. (3-18-22)

23. Motor Vehicle Entrance Fee (MVEF). A fee charged for entry to or operation of a motor vehicle in an Idaho State Park. (3-18-22)

24. Overnight Use. Use of any non-camping lands for the parking of motor vehicles or trailers not associated with a campsite between the hours of 10 p.m. and 7 a.m. unless otherwise posted. (3-18-22)

25. Overnight Use Fee. A fee charged for overnight use of non-camping lands between the hours of 10 p.m. and 7 a.m. (3-18-22)

26. Park or Program Manager. The person, or the person's designee, responsible for administering and supervising particular lands, facilities, and employees that are under the jurisdiction of the department. (3-18-22)

27. Recreational Vehicle (RV). ~~A vehicular type unit primarily designed as temporary living quarters for recreational, camping, sleeping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The entities are travel trailer, camping trailer, truck camper, fifth wheel trailer, and motorhome (all as defined in Section 39-4201, Idaho Code) and including~~ **Includes** buses or van type vehicles which are converted to recreation, camping, or sleeping use. It does not include pickup hoods, shells, or canopies designed, created, or modified for occupational use. (3-18-22)()

28. Vessel. ~~Every description of watercraft, including a seaplane on the water, used or capable of being used as a means of transportation on water, but not including float houses, diver's aids operated and designed primarily to propel a diver below the surface of the water, and non-motorized devices not designed or modified to be used as a means of transportation on the water such as inflatable air mattresses, single inner tubes, and beach and water toys as defined in Section 67-7003(22), Idaho Code.~~ (3-18-22)

011. PURCHASE, EXPIRATION, DISPLAY AND PLACEMENT OF MVEF AND PASSPORT STICKERS.

- 01. Daily MVEF.** (3-18-22)
 - a. The daily MVEF may be purchased at any Idaho state park or online. (3-18-22)
 - b. The daily MVEF expires at 10 p.m. on date of purchase or as posted; MVEF for overnight camping use expires upon checkout which is 1 p.m. for a campsite and ~~12 noon~~ **11 a.m.** for a facility. (3-18-22)()
 - c. The proof of purchase of the MVEF must be visible and properly displayed. (3-18-22)
- 02. Annual MVEF.** (3-18-22)

a. The Annual MVEF may be purchased at any Idaho state park, the department's central or regional offices, or online. An applicant may, after establishing proof of purchase of the original MVEF, apply at any Idaho state park or at the department's central or regional offices for a replacement sticker due to damage. (3-18-22)()

b. The Annual MVEF expires December 31 of the year issued. (3-18-22)

c. The Annual MVEF sticker must be visible, legible at all times, and permanently affixed to the vehicle as follows. For vehicles with a windshield, the sticker must be clearly displayed on the lower corner of the driver's side windshield. For vehicles without a windshield, the sticker must be clearly displayed in a similar location. (3-18-22)

~~03. Annual MVEF Sticker Replacement. (3-18-22)~~

~~a. The applicant may apply at any Idaho state park or at the department's central or regional offices for a replacement sticker due to damage. (3-18-22)~~

~~b. The applicant must establish proof of purchase of the original Annual MVEF. (3-18-22)~~

~~e. Display and placement of the replacement sticker must comply with Subsection 011.02.e. of this chapter. (3-18-22)~~

~~043. Idaho State Parks Passport. (3-18-22)~~

a. The Idaho State Parks Passport, or a replacement, may be purchased from any county department of motor vehicles office in the state of Idaho. (3-18-22)()

b. Idaho State Parks Passport expires concurrent with the expiration of that vehicle's registration. (3-18-22)

c. Display and placement of the Idaho State Parks Passport sticker must comply with Subsection 011.02.c of this chapter. (3-18-22)

~~05. Idaho State Parks Passport Sticker Replacement. (3-18-22)~~

~~a. The applicant may apply in person to a county department of motor vehicles office for a replacement sticker. (3-18-22)~~

~~b. Display and placement of the replacement sticker must comply with Subsection 011.02.e. of this chapter. (3-18-22)~~

012. -- 074. (RESERVED)

075. AUTHORITY CONFERRABLE ON EMPLOYEES - ENFORCEMENT.

~~01. Director Authority. The director may, pursuant to Section 67-4239, Idaho Code, authorize any employee of the department to exercise any power granted to, or perform any duty imposed upon the director. (3-18-22)~~

~~02. Park or Program Manager Authority. A park or program manager may establish and enforce all rules, including interim rules. Interim rules apply to the public safety, use, and enjoyment or protection of natural, cultural, or other resources within lands administered by the department. Interim rules will be posted for public view and will be consistent with established state laws and these rules. Interim rules expire in one hundred twenty (120) days from the established effective date unless approved by the board. (3-18-22)~~

~~031. Additional Park or Program Manager Authority. A park or program manager may enforce all rules, deny entry to, or reservation of, any department day use area, campsite, or facility, to any individual or group~~

whose prior documented behavior has violated department rules, whose activities are incompatible with operations, or whose activities will violate department rules. (3-18-22)()

(BREAK IN CONTINUITY OF SECTIONS)

~~125. PRESERVATION OF PUBLIC PROPERTY.~~

~~The destruction, injury, defacement, removal, or disturbance in or of any public building, sign, equipment, monument, statue, marker, or any other structures; or of any tree, flower, or other vegetation; or of any cultural artifact or any other public property of any kind, is prohibited unless authorized by the park or program manager of a specific area. (3-18-22)~~

126~~5~~. -- 149. (RESERVED)

150. USE OF MOTOR VEHICLES.

Except where otherwise provided, motor vehicles may enter or be operated in park and recreation areas and facilities only upon payment of the motor vehicle entrance fee or display of a valid Idaho state Parks Passport or Annual Motor Vehicle Entrance Fee sticker. All motor vehicles must stay on authorized established department roadways or parking areas except for trails and areas which are clearly identified by signs for off-road use. Drivers and motor vehicles operated within lands administered by the department must be licensed or certified as required under state law. The operators of all motor vehicles must comply with the motor vehicle entrance fee requirements, speed and traffic rules of the department, and all other federal, state, local laws, and ordinances governing traffic on public roads. (3-18-22)

~~**01. Use of Parking Spaces for Persons With a Disability.** Special zones and parking spaces within state parks are designated and signed for exclusive use by vehicles displaying a special license plate or card denoting legal handicap status as provided in Section 49-213, Idaho Code. (3-18-22)~~

~~**02. Overdriving Road Conditions and Speeding Prohibited.** No person may drive a vehicle at a speed greater than the posted speed or a reasonable and prudent speed under the conditions, whichever is less. Every person must drive at a safe and appropriate speed when traveling on park roads, in congested areas, when pedestrians or bicyclists are present, or by reason of weather or hazardous highway conditions as provided in Section 49-654, Idaho Code. (3-18-22)~~

~~**03. Safety Helmets.** Persons under eighteen (18) years of age must wear a protective safety helmet when riding upon a motorcycle, motorbike, utility type vehicle, or an all-terrain vehicle as operator or passenger as provided in Section 49-666, Idaho Code. (3-18-22)~~

041. Snowmobile Operation. No person may operate a snowmobile on any regularly plowed park road unless authorized by park or program manager. Access on non-plowed roads and trails are only permitted when authorized by the park or program manager. (3-18-22)

~~**05. Compliance with Posted Regulatory Signs.** Persons operating vehicles within state parks are required to obey posted regulatory signs as provided in Section 49-807, Idaho Code. (3-18-22)~~

062. Obedience to Traffic Direction. No person may willfully fail or refuse to comply with any lawful order or directions of any park employee invested with authority to direct, control, or regulate traffic within a state park. (3-18-22)

073. Restrictions. The operation of motor vehicles within a designated campground is restricted to ingress and egress to a campsite or other in-park destination by the most direct route. (3-18-22)

084. Official Use. This rule does not prohibit official use of motor vehicles by department employees anywhere within lands administered by the department. (3-18-22)

095. Commercial Motor Vehicle. Commercial motor vehicles may only enter or be operated in park and recreation areas and facilities upon payment of the appropriate daily fee. (3-18-22)

151. PARKING VIOLATIONS.

01. Land or Facilities Administered by the Department. No person may stop, stand, or park a motor vehicle or trailer anywhere within land or facilities administered by the department unless proof of payment of all required fees or other lawful authorization for entry is plainly visible and properly displayed. (3-18-22)

02. Designated Campgrounds. No person may stop, stand, or park a motor vehicle within designated campgrounds unless proof of payment of the applicable campsite fees is plainly visible and properly displayed. (3-18-22)

03. Designated Overnight Use Area. Except for authorized campers, no person may stop, stand, park, or leave a motor vehicle or trailer unattended outside day use hours unless the motor vehicle or trailer is in a designated overnight use area and proof of payment of the overnight-use fee is plainly visible and properly displayed. (3-18-22)

04. Fee Collection Surcharge. Any person stopping, standing, or parking a motor vehicle or trailer without payment or properly displaying proof of payment of all required fees is subject to the fee collection surcharge as provided in Subsection 225.06 and Section 245 of this chapter. (3-18-22)

05. Citations for Violations. Citations for violations of this section may be issued to the operator of the motor vehicle. If the operator cannot be readily identified, the citation may be issued to the registered owner or lessee of the motor vehicle, subject to the provisions of Section 67-4237, Idaho Code. (3-18-22)

152. -- 174. (RESERVED)

175. PUBLIC BEHAVIOR.

01. Resisting and Obstructing a Park Employee. Persons may not willfully resist, delay, obstruct, or interfere with any park employee in his or her duties to protect the state's resources and facilities and to provide a safe place to recreate. (3-18-22)

02. Day Use. Between the hours of 10 p.m. and 7 a.m., unless otherwise posted, all personal property must be removed from day use areas. (3-18-22)

03. Quiet Hours. Within lands administered by the department, the hours between 10 p.m. and 7 a.m. are considered quiet hours unless otherwise posted. During that time, users are restricted from the production of noise that may be disturbing to other users. (3-18-22)

04. Noise. Amplified sound, poorly muffled vehicles, loud conduct, or loud equipment are prohibited within lands administered by the department, except in designated areas or by authority of the park or program manager. (3-18-22)

~~**05. Alcohol.** State laws regulating alcoholic beverages and public drunkenness are enforced within lands administered by the department. (3-18-22)~~

~~**06. Littering.** Littering is prohibited within lands administered by the department. (3-18-22)~~

~~**07. Smoking.** Persons may not smoke within park structures or facilities, or at posted "no smoking" outdoor areas. (3-18-22)~~

~~**08. Trespass.** It is unlawful to enter, use, or occupy land or facilities administered by the department where such lands or facilities are posted against entry, use, or occupancy, except as authorized by the department. (3-18-22)~~

~~**09. Pets.** Pets are allowed within lands administered by the department only if confined or controlled on a leash not longer than six (6) feet in length. No person may allow their pet to create a disturbance which might be~~

bothersome to other users. Excepting persons with disabilities who are assisted by service animals, no person may permit their pet animals to enter or remain on any swim area or beach. Pet owners are responsible to clean up after their animals. Pet owners may not leave pets unattended. Areas for exercising pets off leash may be designated by the park or program manager. Department employees may impound or remove any stray or unattended animals at the owner's expense. (3-18-22)

1406. Fires. The use of fires is restricted to fire rings, grills or other places otherwise designated by the park or program manager. All fires must be kept under control at all times and must be extinguished before checking out of the campsite or whenever fire is left unattended. Areas may be closed to open fires during extreme fire danger. (3-18-22)

1407. Fireworks. No person may use fireworks of any kind within lands administered by the department, except under special permit issued by the director for exhibition purposes, and then only by persons designated by the director. (3-18-22)

1408. Protection of Wildlife. All molesting, feeding, injuring, or killing of any wild creature is strictly prohibited, except as provided by action of the board and as established in board policy. Persons in possession of wildlife, which may be legally taken within state park boundaries, must comply with Idaho Fish and Game rules. (3-18-22)

1409. Protection of Historical, Cultural and Natural Resources. The digging, destruction or removal of historical, cultural or natural resources is prohibited. Collection for scientific and educational purposes may be allowed through a permit. (3-18-22)

140. Personal Safety, Firearms. No person may purposefully or negligently endanger the life of any person or creature within any land administered by the department. No person may discharge firearms or other projectile firing devices within any lands administered by the department, except as follows: in the lawful defense of person, persons, or property; in the course of lawful hunting; for exhibition; or at designated ranges as authorized by the director. (3-18-22)

151. Non-traditional Recreational Activities. Non-traditional recreational activities such as model airplane and glider operations, geo-caching, gold panning, drone operation, and metal detecting may be authorized by the park or program manager if such activities do not interfere with traditional uses of the park and are consistent with preservation of park resources. (3-18-22)

176. -- 199. (RESERVED)

200. CAMPING.

01. Occupancy and Capacity. (3-18-22)

a. Occupancy. Camping is permitted only in designated campsites, areas, or facilities. A campsite or facility will be determined occupied only after all required fees have been paid, registration information completed, and all permits properly displayed. Unique circumstances may arise, and specific sites or facilities by virtue of design may require exceptions to the capacity limits. (3-18-22)

b. Campsite Capacity. Maximum capacity limits on each campsite are subject to each site's design and size. Unless otherwise specified, and provided the combined equipment and people fit within the designated camping area of the site selected, the maximum capacity will be one (1) family unit or a party of no more than eight (8) persons, two (2) tents and two (2) motor vehicles. No more than one (1) RV may occupy a site. Two (2) motorcycles are the equivalent of one (1) motor vehicle when determining campsite capacity. Each motorcycle will be subject to the MVEF. In general, companion campsites have double the capacity listed above. (3-18-22)

c. Facility Capacity. Maximum capacity limits on each facility are based on facility design, size, and applicable occupancy code. (3-18-22)

02. Self Registration. In those areas so posted, campers must register themselves for the use of

campsites and facilities, paying all required fees as provided for herein and in accordance with all posted instructions. (3-18-22)

03. Length of Stay. Except as provided herein, no person, party or organization may be permitted to camp on any lands administered by the department for more than fifteen (15) days in any thirty (30) consecutive day period. This applies to both reservation and “first come first served” customers. The department operations division administrator may authorize shorter or longer periods for any individual area. (3-18-22)

04. Registration. All required fees must be paid, registration information completed, and all permits properly displayed prior to occupying a campsite or facility. Saving or holding campsites or facilities for individuals not physically present at the time of registration for “first come first served” camping is prohibited. (3-18-22)

05. Condition of Campsite. Campers must keep their individual or group campsite or facility and other use areas clean. (3-18-22)

06. Liquid Waste Disposal. All gray water and sewage wastes must be held in self-contained units or collected in water-tight receptacles in compliance with state adopted standards and dumped in sanitary facilities provided for the disposal of such wastes. (3-18-22)

07. Motorized Equipment. No generators or other motorized equipment emitting sound and exhaust are permitted to be operated during quiet hours. (3-18-22)

08. Campsite Parking. All motor vehicles and trailers, must fit entirely within the campsite parking pad/area provided with the assigned individual or group campsite or facility. All equipment that does not fit entirely within the designated campsite parking area must be parked at another location within the campground, or outside the campground, as may be designated by the park or program manager. If no outside parking is available, the park or program manager may require the party to register on a second campsite, if available. (3-18-22)

09. Equipment. All camping equipment and personal belongings of a camper must be maintained within the assigned individual or group campsite or facility perimeter. (3-18-22)

10. Check Out. Customers are required to clean, vacate, and check out of registered campsites or facilities as follows: (3-18-22)

- a. Individual or group campsite by 1 p.m. of the day following the last paid night of camping. (3-18-22)
- b. Individual or group facility by ~~12 noon~~ 11 a.m. of the day following the last paid night of camping. ~~(3-18-22)~~ ()

11. Visitors. Individuals visiting campers must park in designated areas, except with permission of the park or program manager. Visitors must conform to established day use hours and day use fee requirements. (3-18-22)

12. Responsible Party. The individual reserving or registering to use an individual or group campsite or facility is responsible for ensuring compliance with the rules within this chapter. (3-18-22)

13. Camping. Camping in individual or group facility sites is prohibited unless in areas specifically designated for camping or by authorization of the park or program manager. (3-18-22)

~~**14. ADA Designated Campsites.** Although the department offers campsites that are designated and built to meet ADA accessibility requirements, these campsites are not managed exclusively for ADA use. (3-18-22)~~

~~**15. ADA Accessible Facilities.** Although the department offers facilities that provide for ADA accessibility, these facilities are not managed exclusively for ADA use. (3-18-22)~~

(BREAK IN CONTINUITY OF SECTIONS)

225. FEES AND SERVICES.

01. Authority. (3-18-22)

a. All fees in this chapter are maximum fees unless otherwise stated. The board has the authority to set actual fees by board policy. (3-18-22)

b. Park and program managers have the authority to set fees for goods available for resale, equipment rentals, and services provided by employees to enhance the users experience unique to the individual park or program. (3-18-22)

02. Payment. Visitors must pay all required fees. (3-18-22)

03. **Camping.** Camping fees include the right to use designated campsites and facilities for the period camp fees are paid. Utilities and facilities may be restricted by weather or other factors. (3-18-22)

04. Group Use. (3-18-22)

a. Groups of twenty-five (25) persons or more, or any group needing special considerations or deviations from these rules must obtain a permit. Permits may be issued after arrangements have been made for proper sanitation, population density limitations, safety of persons and property, and regulation of traffic. (3-18-22)

b. Permits for groups of up to two hundred fifty (250) people may be approved by the park manager with thirty (30) days advance notice. Permits for groups of two hundred fifty (250) or more people may be approved by the director with forty-five (45) days advance notice. (3-18-22)

c. Group use fees for day use facilities, general use areas, and events may be negotiated by the park or program manager and will generally not fall below the cost of providing services. MVEF is required unless specifically waived by the park or program manager. (3-18-22)

05. **Fees and Deposits.** Fees and deposits, including cleaning fees or damage/cleaning deposits, may be required for certain uses or the reservation of certain facilities unique to an individual park. Where deposits are required, they are to be paid prior to check-in (3-18-22)

06. **Fee Collection Surcharge.** A surcharge may be added to all established fees when the operator of a motor vehicle or responsible party of a camping unit fails to pay all required fees or fails to properly display proof of payment for required fees prior to entering a park area or occupying a campsite. If the surcharge is assessed, and the operator of the vehicle or responsible party is not present, all required fees in addition to the surcharge will be assessed against the registered owner of the motor vehicle or camping unit. (3-18-22)

07. **Admission Fees.** An admission fee may be charged for ~~internal~~ park facilities, areas, programs, or recreational activities which provide an educational opportunity, ~~or~~ require special accommodations or special services. Admission fees are set by the park or program manager and will generally not fall below the cost of providing services. (3-18-22)()

08. **Cooperative Fee Programs.** The department may collect and disperse fees in cooperation with fee programs of other state and federal agencies. (3-18-22)

09. **Encroachment Permit Application Fee.** The department may assess an encroachment application fee as set by the board to cover administrative costs incurred by the department in reviewing the application and the site, and in preparing the appropriate document(s). (3-18-22)

~~10. Sales Tax. Applicable sales tax may be added to all sales.~~ (3-18-22)

~~140.~~ **Returned Checks.** The cost to the agency for returned checks will be passed on to the issuer of the

insufficient funds check.

(3-18-22)

226. -- 244. (RESERVED)

245. FEE SCHEDULE: FEE COLLECTION SURCHARGE.

Category	Fee
Fee Collection Surcharge	\$ 25 35/day

(3-18-22)()

246. (RESERVED)

247. FEE SCHEDULE: ENTRANCE.

Category	Fee
Daily MVEF	\$ 72 0/day/vehicle
Annual MVEF	\$ 80 120/year/vehicle
Annual MVEF Replacement	\$5/vehicle
Commercial Motor Vehicle Entrance	\$ 50 100/day/vehicle
Admission, <u>Day</u>	\$20/person
<u>Admission, Month</u>	\$100/Person
<u>Admission, Season</u>	\$500/Person

(3-18-22)()

248. -- 249. (RESERVED)

250. FEE SCHEDULE: INDIVIDUAL CAMPSITE OR FACILITY.

Category	Fee
Basic Campsite: site may have water	\$ 34 72/day
Electric Campsite: site has electricity and may have water	\$ 42 90/day
Full Hook-up Campsite: site has electricity, water, and sewer	\$ 46 96/day
Companion Campsite: site has electricity and may have water	\$ 84 192/day
Hike-in/Bike-in Campsite	\$ 12 36/person/day
Extra Vehicle	\$8/day
Overnight Use of Parking Areas	\$20/night/vehicle, trailer, or vehicle with attached trailer
Use of Campground Showers by Non-campers	\$ 3 10/person/day
Camping Cabins and Yurts	\$500/night
Each additional person above the base occupancy of camping cabin or yurt	\$12/person/night
Pets	\$15/pet/night

Category	Fee
Cleaning	\$ 50 500

(3-18-22)()

251. -- 253. (RESERVED)

254. FEE SCHEDULE: GROUP CAMPSITE OR FACILITY.

Group Facility Fees. Reservation service fee, designated group campground or facility.

(3-18-22)

Category	Fee
Reservation Service Charge (non-transferable, non-refundable)	\$ 25 50
Group use of day use facility, overnight facility, or group camp (set by park or program manager)	Varies
Each additional person above the base occupancy of the overnight facility	\$12/person/night

(3-18-22)()

255. (RESERVED)

256. FEE SCHEDULE: BOATING FACILITIES.

Boating Facilities:

Category	Fee
Vessel Launching	MVEF or \$ 7 20/ day/vessel
Overnight moorage at dock or buoy, person staying at campsite or facility and not staying on the vessel	\$ 9 30/night
Overnight moorage at dock, person staying on vessel	\$ 40 40/night
Overnight moorage at buoy, person staying on vessel	\$ 9 30/night

(3-18-22)()

257. -- 258. (RESERVED)

259. FEE SCHEDULE: WINTER RECREATION PROGRAMS.

Category	Fee
Winter Access Daily Pass, individual	\$6/person/day
Winter Access Daily Pass, family	\$100/family/season
Winter Access Season Pass, individual	\$50/person/season
Winter Access Season Pass, couple	\$75/couple/season
Winter Recreation Parking, temporary three-day permit	\$10/three days
Winter Recreation Parking, annual permit	\$30/year

(3-18-22)

~~260.~~—274. (RESERVED)

275. CRITERIA FOR RESERVATIONS.

01. Responsible Party. (3-18-22)

a. The person booking reservations for an individual campsite or facility is responsible for ensuring compliance with the rules within this chapter. (3-18-22)

b. The person booking reservations for multiple individual campsites is designated the group leader and is responsible for ensuring compliance with the rules within this chapter. The group leader may approve another person to register for a campsite as the primary occupant prior to check-in or at the park. Once the primary occupant registers for the campsite, the primary occupant becomes the responsible party. (3-18-22)

c. The person booking reservations for a group campsite or facility is designated the group leader and is responsible for ensuring compliance with the rules within this chapter. (3-18-22)

02. Reservation Service Charges, Individual or Group Campsite or Facility. Reservations are non-transferable (from one party to another). Reservation fees are non-refundable. (3-18-22)

a. A reservation service charge may be assessed for each individual or group campsite or facility reserved. (3-18-22)

b. The service charge for an individual campsite or facility will be waived for campers with a current Idaho RV registration sticker and reimbursed to the department by the RV Program. (3-18-22)

03. Cleaning Fee. A cleaning fee or a damage/cleaning deposit may be required by the park or program manager as a condition of reservation. (3-18-22)

04. Confirmation Requirements. (3-18-22)

a. Confirmation of an individual campsite or facility reservation. Full payment of all required fees must be made before a reservation is confirmed. (3-18-22)

b. Confirmation of a designated group campground, group campsite, or group facility reservation. Before a reservation is confirmed, the group leader must: (3-18-22)

i. Supply primary occupant (point of contact) name, address, and phone number for multiple bookings of individual campsites for a group. (3-18-22)

ii. Pay all required fees for each campsite or facility reserved. (3-18-22)

05. Reservation Modifications. A reservation service fee will be assessed for any modification to a previously made reservation that involves reducing the planned length of stay, or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window). Modifications that change the original stay so that no part of the new stay includes part of the original stay are to be considered a cancellation and re-book will be mandatory to keep a reservation. With the exception of the reservation service charge as defined in Section 276, any overpaid fees will be reimbursed at the time the reservation is modified. (3-18-22)

06. Reservation Cancellations. (3-18-22)

a. Individual Campsite or Facility. A reservation service fee will be assessed for the cancellation of a reservation. This service fee will be assessed for each campsite or facility involved. If the customer cancels after the scheduled arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after check-out time will result in the forfeiture of that day's usage fees for the campsite or facility. At no time will the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation

service provider may cancel a customer’s reservation for insufficient payment of fees due. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. (3-18-22)()

b. Park Board Designated Special Use Campsites and Facilities. A reservation service fee will be assessed for the cancellation of a reservation. If a cancellation for a group facility occurs twenty-one (21) or fewer calendar days prior to arrival, the customer forfeits the first night or daily facility usage fees (base rate). If a cancellation for a group facility occurs more than twenty-one (21) calendar days prior to arrival, a cancellation charge will be assessed. If the customer cancels after the arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day’s usage fees for the campsite or facility. At no time will the customer be charged a cancellation fee that exceeds the amount originally paid. The department or its reservation service provider may cancel a customer’s reservation for insufficient payment of fees due. An individual site cancellation fee applies to each campsite in a group campground. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. (3-18-22)

07. Insufficient Payment. The department may cancel a customer’s reservation for insufficient payment of fees due. (3-18-22)

276. FEE SCHEDULE: RESERVATIONS.

Category	Fee
Reservation Service Charge, individual campsite or facility	Current RV sticker or \$10/campsite or facility
Reservation Service Charge, group reservation for campsite or facility	\$2550
Modification, individual campsite or facility	\$10/campsite or facility
Modification, special use campsite, or facility	First night's fee or daily usage fee
Cancellation, individual campsite or facility, prior to check-in time	\$10/campsite or facility
Cancellation, individual campsite or facility, after check-in time	First night's fee
Cancellation, special use campsite or facility, more than 21 days in advance	First night's fee plus \$50/facility
Cancellation, individual special use campsite or facility, 21 days or less in advance	First night's or daily usage fee

(3-18-22)()

(BREAK IN CONTINUITY OF SECTIONS)

676. NONDISCRIMINATION.

~~No person may discriminate in any manner against any person or persons because of race, color, national origin, religion, gender, age or disability within lands administered by the department. Facilities constructed or maintained with, and programs supported by the cross-country skiing recreation account must be available for public use without discrimination and must comply with requirements as set out in the Americans with Disabilities Act. (3-18-22)~~

676. -- 999. (RESERVED)

IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION
26.01.34 – IDAHO PROTECTION AGAINST INVASIVE SPECIES STICKER RULES
DOCKET NO. 26-0134-2201 (ZBR CHAPTER REPEAL)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 67-4223 and 4249, Idaho Code.

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

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 2, 2023, Idaho Administrative Bulletin, [Vol. 23-8 pages 331-332](#).

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

Does not apply to this rulemaking.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Seth Hobbs, (208) 514-2427, seth.hobbs@idpr.idaho.gov.

DATED this 7th day of November, 2023.

Seth Hobbs
Idaho Department of Parks and Recreation
5657 Warm Springs Ave.
Boise, ID 83716
Phone: (208) 514-2427

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

EFFECTIVE DATE: The effective date of the temporary rule is August 30, 2023.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-4223 and 67-4249, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 16, 2023.

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

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

This temporary and proposed rule repeals the following chapter. All rules in this chapter were moved to Idaho statutes Title 67 Chapter 70 by the Idaho Legislature in the 2023 session.

IDAPA 26.01.34, Idaho Protection Against Invasive Species Sticker Rule.

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

This temporary rule is necessary to confer a benefit on its citizens. The temporary rule repealing the chapter implements the duly enacted laws of the state of Idaho, provides citizens with one location for the standards for complying with those laws, and assists in the orderly execution and enforcement of those laws.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 06, 2022 Idaho Administrative Bulletin, [Vol. 22-4, page 41](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Seth Hobbs at (208) 514-2427.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2023.

DATED this 21st day of June 2023.

IDAPA 26.01.34 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

37.03.08 – WATER APPROPRIATION RULES

DOCKET NO. 37-0308-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, Idaho Code, notice is hereby given that this agency has adopted a pending rule. This action is authorized pursuant to Section 42-1805(8), Idaho Code.

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

This rule sets the procedures for obtaining a permit to divert and use unappropriated public waters or a permit for a reallocation of trust water within the Swan Falls Trust Water Area. The rule governs the filing and processing of applications for permit to appropriate water.

There is one change to the pending rule: the inclusion of the definition of beneficial use from the existing rule (IDAPA 37.03.08 Rule 10.06 – Beneficial Use). With the exception of this single insertion, the pending rule is adopted as originally proposed.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 610–641](#).

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

IDAPA 37.03.08 sets the procedures for obtaining a permit to divert and use unappropriated public waters or a permit for a reallocation of trust water within the Swan Falls Trust Water Area. The rule governs the filing and processing of applications for permit to appropriate water. The rule also establishes the collection of fee(s) to file or republish notice of an application set forth in Idaho Code §§ 42-221A and 42-221F. The rule also establishes the collection of fee(s) to file a protest or petition to intervene in a protested matter set forth in Idaho Code § 42-221L.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Mathew Weaver at mathew.weaver@idwr.idaho.gov, (208) 287-4800.

DATED this 30th of November 2023.

Mathew Weaver, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720-0098
Phone: (208) 287-4800

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section § 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section § 42-1805(8), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

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

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

The Idaho Department of Water Resources (IDWR) initiated this rulemaking in compliance with [Executive Order No. 2020-01](#), Zero-Based Regulation (ZBR) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five-year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at <https://adminrules.idaho.gov>. This rule chapter was scheduled for review in 2023.

With this Notice, IDWR proposes a new chapter of water appropriation rules. The new chapter is approximately 10% shorter than the existing water appropriation rule chapter due to both internal agency analysis and external stakeholder negotiation, commentary, and editing. Changes to the rule come through a combination of (a) removal of obsolete provisions (such as the reprocessing of applications and permits in the Swan Falls Trust Water Area), (b) removal of unnecessary provisions (such as the definition and use of the term “legal subdivision”), and (c) modifications to existing rules regulating the processing and evaluation of applications to obtain a water right to divert and use public water in the state of Idaho.

The development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2023-2024/water-appropriation-rules/>. On the same website, IDWR also developed and published rulemaking support documents, which provide IDWR’s recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

Citizens of the state of Idaho, water users, governmental agencies, and environmental groups may be interested in commenting on the proposed rule text. After consideration of public comments received in response to this Proposed Rule, IDWR will present the final rule text to the Idaho Legislature in the late fall of 2023.

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

IDAPA 37.03.08 sets the procedures for obtaining a permit to divert and use unappropriated public waters or a permit for a reallocation of trust water within the Swan Falls Trust Water Area. The rule governs the filing and processing of applications for permit to appropriate water. The rule also establishes the collection of fee(s) to file or republish notice of an application set forth in Idaho Code §§ 42-221A and 42-221F.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2023, Idaho Administrative Bulletin, [Vol. 23-4, pages 70-71](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mathew Weaver at Mathew.weaver@idwr.idaho.gov, (208) 287-4800.

Anyone may submit written comments regarding this proposed rulemaking by mail to the address below or by email to rulesinfo@idwr.idaho.gov. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 1st day of September, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 37-0308-2301

37.03.08 – WATER APPROPRIATION RULES

000. LEGAL AUTHORITY.

The Director of the Idaho Department of Water Resources adopts these rules under the authority of Section 42-1805(8), Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 37.03.08, “Water Appropriation Rules.” ()

02. Scope. These rules set the procedures for obtaining a permit to divert and use unappropriated public waters or a permit for reallocation of trust water within the Swan Falls Trust Water Area. These rules govern the filing and processing of applications for permits to appropriate water pending on or filed after the adoption of these rules. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

The terms “consumptive use,” “digital boundary,” “local public interest,” “municipality,” “municipal provider,” “municipal purposes,” “planning horizon,” “reasonably anticipated future needs,” and “service area” have the meaning given for those terms in Section 42-202B, Idaho Code. The terms “ground water” and “low temperature geothermal resource” have the meaning given for those terms in Section 42-230, Idaho Code. The term “critical ground water area” has the meaning given for that term in Section 42-233a, Idaho Code. ()

01. Acre-Foot (af). A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to three hundred twenty-five thousand, eight hundred fifty (325,850) gallons. ()

02. Applicant. The person, corporation, association, firm, governmental entity or agency, or other entity, who applies to divert and beneficially use public waters. ()

03. Application. An application for permit to appropriate water filed with the Department. ()

04. Board. The Idaho Water Resource Board. ()

05. Beneficial Use. One (1) or more of the recognized beneficial uses of water including, but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, stockwatering, and fish propagation uses for which permits to appropriate water can be issued as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining, and processing uses of water. ()

06. Cubic Foot Per Second (cfs). A rate of flow approximately equal to four hundred forty-eight and eight-tenths (448.8) gallons per minute and also equals fifty (50) Idaho miner's inches. ()

07. Department. The Idaho Department of Water Resources. ()

08. Director. The Director of the Idaho Department of Water Resources. Per Section 42-1701(3), Idaho Code, the Director may delegate authority to perform duties imposed upon the Director by law, including duties described herein, to a Department employee. ()

09. Generally Described Place of Use. A place of use authorized by an existing water right or permit pursuant to Sections 42-202, 42-219, 42-222, or 42-1411, Idaho Code, consisting of a general area or boundary within which water diverted under the water right or permit is used. ()

10. Idaho State Water Plan. The current comprehensive state water plan formally adopted by the Idaho Water Resource Board pursuant to Sections 42-1734A and 42-1734B, Idaho Code. ()

11. Murphy Gage. The United States Geological Survey stream gage station (site identification number 13172500) located on the right bank of the Snake River at river mile 456.8, approximately eight point five (8.5) miles east-northeast of Murphy, Idaho and zero point nine (0.9) miles downstream from the Swan Falls power plant at latitude 43° 15' 17.33" N, longitude 116° 23' 26.30" W, North American Datum of 1983, in the NW ¼ of the NW ¼ of Section 18, T.2S., R.1E., Boise Meridian, Hydrologic Unit 17050103. ()

12. Permit. The water right document issued by the Director authorizing the diversion and use of unappropriated public waters or reallocated trust water. ()

13. Priority Date. The date of appropriation established when an application is filed in acceptable form, including the applicable filing fee, unless a later date is set in accordance with applicable law. ()

14. Project Works. A general term that includes diversion works, conveyance infrastructure, and any devices used to apply water to the intended use. ()

15. Public Interest. The interests that the people of the state of Idaho have in the effects of a proposed reallocation of trust water pursuant to Section 42-203C(2), Idaho Code. For the definition of "local public interest," see Section 42-202B, Idaho Code. ()

16. Reallocation of Trust Water. Appropriation of trust water for a use other than hydropower generation to the extent the water rights held in trust are subordinated to permits issued for such other uses of water pursuant to Section 42-203C, Idaho Code. ()

17. Subordinated. Subject to diminishment or depletion without compensation by water rights initiated later in time. ()

18. Swan Falls Trust Water Area. The reach of the Snake River extending downstream from Milner Dam (located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian) to Swan Falls Dam (located in Section 18, Township 2 South, Range 1 East, Boise Meridian) and all surface and ground water sources tributary to that reach of the Snake River. The area within which ground water is presently designated tributary to the reach of the Snake River extending downstream from Milner Dam to Swan Falls Dam is depicted in APPENDIX A. The Swan Falls Trust Water Area excludes any reach of the Snake River upstream of Milner Dam, any surface or ground water tributary to the Snake River upstream of Milner Dam, the Snake River downstream of Swan Falls Dam, and any surface or ground water tributary to the Snake River downstream of Swan Falls Dam. ()

19. Trust Water. Water in excess of the state established minimum stream flow at the Murphy Gage that was originally appropriated for hydropower generation purposes pursuant to the water rights now held in trust by the state of Idaho and that is made available for reallocation to uses other than hydropower generation to the extent the water rights held in trust are subordinated to permits issued for such other uses pursuant to Section 42-203C, Idaho Code. ()

20. Unappropriated Water. The public waters of the state of Idaho in streams, rivers, lakes, springs, other natural surface water bodies, ground water, or low temperature geothermal resources exceeding the amount necessary to satisfy existing water rights. ()

21. Water Right Held in Trust. A water right used for hydropower generation purposes that is in excess of a minimum stream flow established by state action and is held in trust by the state of Idaho pursuant to Subsections (2) or (3) of Section 42-203B, Idaho Code. The water rights held in trust for the Swan Falls Trust Water Area are numbered 02-02001A, 02-02001B, 02-02032B, 02-02036, 02-02056, 02-02057, 02-02059, 02-02060, 02-02064, 02-02065, 02-04000B, 02-04001B, 02-10135, 36-02013, 36-02018, 36-02026, 37-02128, 37-02471, 37-02472, 37-20709, and 37-20710. ()

011. -- 024. (RESERVED)

025. GENERAL DESCRIPTION OF THE PROCEDURE FOR APPLICATION REVIEW.

01. Applications to Appropriate Unappropriated Water. The Department will process an application to appropriate unappropriated public waters under Section 040, and will evaluate the application under Subsection 045.01, using the criteria of Section 42-203A(5), Idaho Code, and, for a low temperature geothermal resource, the criteria of Section 42-233, Idaho Code. ()

02. Applications to Appropriate Water from the Swan Falls Trust Water Area. The Department will process an application to appropriate water from the Swan Falls Trust Water Area under Section 040 and will evaluate the application as follows: ()

a. First, the Director will evaluate the application under Subsection 045.01 using the criteria of Section 42-203A(5), Idaho Code. ()

i. If the application is seeking to appropriate unappropriated water within the Swan Falls Trust Water Area rather than a reallocation of trust water and it satisfies all criteria of Section 42-203A(5), Idaho Code, the Director may approve the application for unappropriated water. An application for unappropriated water within the Swan Falls Trust Water Area must demonstrate the public waters sought for appropriation exceed the amount necessary to satisfy all existing water rights, including the water rights held in trust. ()

ii. If the application does not satisfy the criteria of Section 42-203A(5)(b) through (g), Idaho Code, or is found to reduce the water available to an existing water right other than a water right held in trust, the Director may deny the application. ()

iii. If the application satisfies all criteria of Section 42-203A(5), Idaho Code, except it is found to reduce the amount of water available to a water right held in trust it is seeking a reallocation of trust water and the Director will review the application under Paragraph 025.02.b. ()

b. Second, if the application is seeking a reallocation of trust water the Director will evaluate the application under Subsection 045.02 to determine whether it will cause a significant reduction to a water right held in trust pursuant to Section 42-203C(1), Idaho Code. ()

i. If the application will not cause a significant reduction to a water right held in trust pursuant to Section 42-203C(1), Idaho Code, the Director may approve the application without additional evaluation. ()

ii. If the application will cause a significant reduction to a water right held in trust pursuant to Section 42-203C(1), Idaho Code, the Director will review the application under Paragraph 025.02.c. ()

c. Third, if the application is seeking a reallocation of trust water and will cause a significant reduction to a water right held in trust the Director will evaluate the application under Subsection 045.03 to determine if the proposed reduction is in the public interest pursuant to Section 42-203C(2), Idaho Code. ()

i. If the application is in the public interest, the Director may approve the application. ()

ii. If the application is not in the public interest, the Director may deny the application. ()

026. -- 034. (RESERVED)

035. APPLICATION REQUIREMENTS.

01. General Provisions. ()

a. An application must be filed: ()

i. On the Department form titled "Application for Permit to Appropriate the Public Waters of the State of Idaho," with any application attachments; ()

ii. In accordance with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources," Section 053, either on paper, digitally in PDF format, or through the Department's online filing process; ()

iii. With the applicable filing fee prescribed in Section 42-221A, Idaho Code; and ()

iv. With all necessary information under Subsection 035.03. ()

b. The filing fee in Section 42-221A, Idaho Code, is based on the total rate (in cfs) or the total storage volume (in af) to be appropriated. Whenever the application diversion rate and storage volume elements lead to a different filing fee, the higher amount is the applicable filing fee. ()

c. The Department will determine whether an application is acceptable for filing under Subsection 035.03 or if it requires clarification or correction. ()

d. When an application is not acceptable for filing under Subsection 035.03, the Department will not accept the application and will proceed as directed in Section 42-204, Idaho Code. Filing fees for an unacceptable application will be refunded to the applicant if the application is not timely clarified or corrected. An unacceptable application does not establish a priority date. ()

e. When an application is accepted for filing but requires clarification or correction of the information required by Subsection 035.03, the Department will proceed as directed in Section 42-204, Idaho Code. ()

02. Effect of an Application. ()

a. The priority date of an application is the time and date the Department receives the application in a form acceptable for filing with the statutory filing fee. The priority date of the application remains fixed unless changed by an action of the Director in accordance with applicable law. ()

b. An application is not a water right and does not authorize diversion or use of water until approved by the Director in accordance with the laws in effect at the time the application is approved. ()

c. An applicant's interest in an application is personal property. An applicant may convey (assign) its interest in an application to another party or entity. The person or entity to whom the application is conveyed must notify the Department of the assignment, in writing, within thirty (30) days after the assignment and notify other parties in the contested case pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources," Section 202. ()

- 03. Requirements for Applications Acceptable for Filing.** An application is acceptable for filing if it is filed in a manner stated in Paragraph 035.01.a. and includes the following information: ()
- a.** Applicant’s name and mailing address. ()
 - i.** If the applicant is a corporation, also include the names of all directors. ()
 - ii.** If the applicant is a partnership, limited liability company, or joint venture, also include the names of all partners or members and the name of the managing partner or member, if any. ()
 - b.** Source of water to be appropriated. ()
 - i.** Identify only one (1) water source unless the application is for a single interconnected system that will divert water from more than one (1) source. ()
 - ii.** For a surface water source, include the official geographic name listed on the United States Geological Survey (USGS) Quadrangle map. If the surface water source is not named on the USGS Quadrangle map, describe it as an unnamed water body, such as “unnamed stream.” For surface water sources, also identify the first named stream or river to which the source is tributary. If the water source sinks into the ground prior to reaching a stream named on the USGS Quadrangle map, describe the “tributary to” stream as “sinks.” If the water source flows into a stream named on the USGS Quadrangle map for part of the year and sinks into the ground for the other part of the year, identify the “tributary to” stream as the named stream on the USGS Quadrangle map. ()
 - iii.** For a water source under the ground surface, identify the source as “ground water.” ()
 - iv.** For a low temperature geothermal resource, state how the source will be used primarily for its heat value and secondarily for its value as water or how the use qualifies for an exemption pursuant to Section 42-233(1), Idaho Code. ()
 - v.** For an application within the Swan Falls Trust Water Area, state if the application is seeking unappropriated water or a reallocation of trust water. ()
 - c.** Legal description of the point of diversion and place of use. ()
 - i.** Describe the location of the point of diversion and the place of use to the nearest forty (40) acre subdivision or United States Government Lot of the Public Land Survey System. ()
 - ii.** Subdivision names, lot and block numbers, and any name in local common usage for the point of diversion or place of use may be included. ()
 - iii.** If irrigation use is proposed, state the number of acres to be irrigated to the nearest whole acre in each forty (40) acre subdivision of the place of use. For an application proposing irrigation of less than ten (10) acres, acreage shall be shown to the nearest one-tenth (0.1) acre. The number of acres per forty (40) acre subdivision is not required when the place of use is a generally described place of use for an existing water right or permit. If the proposed place of use is a generally described place of use with an established digital boundary authorized by a water right or permit, state the name of the generally described place of use, list the water right number serving the generally described place of use, attach a map depicting the generally described place of use boundary, and state the total number of acres to be irrigated. ()
 - iv.** If the application proposes water use for municipal purposes or fire protection by a municipal provider within a service area, the service area need not be described by legal description. Describe the service area in terms sufficient to identify the general location where water will be used and attach a map depicting the service area. ()
 - d.** Quantity of water to be diverted. ()

i. Include the rate of flow in cfs or the volume of water to be stored in af per year for each beneficial use proposed, using values with a maximum of three (3) significant figures with no more precision than hundredths for rate and tenths for volume. ()

ii. For an application to store water, the maximum af per year may not exceed the storage facility capacity unless the application includes a plan of operation for filling the facility more than once per year. The refill plan may include refills for seepage, evaporation, use from storage, and other purposes the applicant intends to replace in the storage facility throughout the year. ()

iii. For an application to store water in an off-stream storage facility, include a maximum rate of diversion to storage and the total storage volume. ()

e. Beneficial use of water. ()

i. Describe the proposed use of water. When a narrative or other application material describes details of the proposed use, the description used in the purpose of use field may be in general terms such as irrigation, industrial, or municipal. ()

ii. For a municipal purposes application, attach a complete “Municipal Water Right Application Checklist.” The “Municipal Water Right Application Checklist” is a form available on the Department’s website or from the Department upon request. ()

iii. For a municipal purposes application that proposes to appropriate water for reasonably anticipated future needs, include justification for the planning horizon, the anticipated service area at the end of the planning horizon, the anticipated population within the anticipated service area at the end of the planning horizon, and the anticipated water demand within the anticipated service area at the end of the planning horizon. Also include a gap analysis showing the extent to which an existing water right will not be sufficient to meet the anticipated water demand at the end of the planning horizon. ()

iv. For a municipal purposes application that does not propose to appropriate water for reasonably anticipated future needs, include a water requirement narrative with a map of the service area, current water needs, water needs after five (5) years, and any existing plan for conveying ownership of the water right to a subdivision homeowner’s association or entity other than individual land parcel owners. ()

v. For an application proposing multi-home domestic use where the applicant intends to convey a portion of the place of use land to an individual parcel or lot owner, describe the applicant’s plan, if any, to keep the permit in single ownership by conveying the permit to a homeowner’s association, water system operator, or other entity prior to conveying an individual parcel or lot with an appurtenant portion of the permit. ()

f. Period of use. ()

i. A period of use must be listed for each beneficial use proposed in the application. ()

ii. For irrigation use, the period must coincide with the annual season of use established by the Department. The Department established irrigation season of use is available on the Department’s website or from the Department upon request. If a longer season of use is proposed, the application must justify that the longer season of use is necessary. ()

g. Description of the project works. ()

h. Any other water right used at the place of use for the same purpose. Include the water right number or name of the delivery organization, such as a municipal provider, canal company, irrigation district, or other delivery entity that supplies water for the proposed use at the proposed place of use. Also state if the applicant is entitled to distribution of water from a water delivery entity, but the entity’s distribution system is not capable of delivering water to the proposed place of use. ()

i. Ownership or other legal access to the point of diversion, place of use, and conveyance system. If a

person or entity other than the applicant owns the land at the point of diversion, place of use, or where the conveyance system will be established, include a description of the arrangement enabling the applicant to access the land for the purpose proposed in the application. ()

j. Period of time required to complete project works and apply water to beneficial use. While a permit holder may request a permit development period extension pursuant to Section 42-204, Idaho Code, the period of time stated on an application may not exceed five (5) years unless the application proposes municipal purposes for reasonably anticipated future needs. ()

k. Map or plat of sufficient scale to show the proposed project. ()

l. Applicant's signature or evidence to show the signatory has authority to sign on behalf of the applicant. ()

i. For an application in more than one (1) name, each applicant must sign the application unless "or" connects the applicant names. ()

ii. For an application by a corporation, company, municipality, governmental entity or organization, or other organization, include the signature and title of an officer of the corporation or company or an elected official of the municipality or an individual authorized by the governmental entity or agency or other organization to sign the application.. Alternatively, the application may be signed by an authorized agent of the applicant in accordance with Subparagraph 035.03.l.iii. ()

iii. If the signatory is an authorized agent of the applicant, include a power of attorney or other documentation demonstrating the signatory has authority to sign on behalf of the applicant. If the signatory is a licensed attorney, power of attorney or other documentation is not required. ()

04. Amended Applications. ()

a. An applicant or the applicant's agent must amend an application if the applicant intends to change the purpose of use, period of use, amount of diversion, point of diversion, place of use, or make other substantial changes. The Department may clarify a source or tributary name or the irrigation period of use that do not meet Paragraphs 035.03.b. and 035.03.f. requirements by documenting the official record without requiring the applicant to amend the application. ()

b. An applicant or the applicant's agent may amend an application to clarify the name of the source of water but may not amend an application to change the source of water. ()

c. An applicant or the applicant's agent may not amend a municipal purposes application not originally seeking water for reasonably anticipated future needs to seek water for reasonably anticipated future needs. ()

d. An amendment that increases the rate of diversion, increases the volume of water diverted per year, lengthens the period of use, or adds an additional beneficial use will result in the Department changing the priority date to the date the Department received the amended application. ()

e. An applicant or the applicant's agent may amend an application by: ()

i. Striking each item to be changed on the original application form and initialing and dating each change; ()

ii. Filing a new application form designated as an amended application; or ()

iii. Changing an application electronically via the Department's online filing process. ()

f. If an amendment increases the total diversion rate or total storage volume requested, the amended application must include any additional filing fee required by Section 42-221A, Idaho Code. ()

g. If the applicant's name or mailing address changes, the applicant or the applicant's agent must notify the Department of the change in writing. ()

036. DELAYED PROCESSING.

An applicant may request in writing that the Department delay commencement or interrupt processing of the applicant's application for a period not to exceed one (1) year. The Department may approve the request unless the delay will injure existing water rights, the applicant seeks the delay for speculative purposes, or the delay does not serve the interest of the people of Idaho. The Department may approve a request for delay for a shorter period or upon conditions. Upon written request, the Department may renew the authorized delay successive times as long as the delay meets the requirements stated above. ()

037. -- 039. (RESERVED)

040. PROCESSING APPLICATIONS FOR PERMIT.

01. Public Notice Requirement. ()

a. Publication of an application will be pursuant to Section 42-203A, Idaho Code. ()

b. For an application that proposes diversion in excess of ten (10) cfs or storage of one thousand (1,000) af, the Department will accomplish statewide circulation pursuant to Section 42-203A(2), Idaho Code, by publication of a legal notice at least once each week for two (2) successive weeks in; ()

i. A newspaper, as defined in Section 60-106, Idaho Code, of general circulation in the county in which the point of diversion is located; and ()

ii. At least one (1) daily newspaper, as defined in Section 60-107, Idaho Code, that the Director determines is of general circulation within each of the Department's four (4) administrative regions. ()

c. The Department shall make an application accepted for filing available on the Department's website pursuant to Section 42-203A(3), Idaho Code. ()

d. Publication in the newspaper pursuant to Section 42-203A(2), Idaho Code, constitutes the official notice of the application. ()

e. An application amended under Paragraph 035.04.a. after publication requires republication. The applicant must file the amended application with the republication fee required by Section 42-221F, Idaho Code. ()

f. If a moratorium order is amended or repealed allowing the Director to continue processing an application previously held without final action, the Department will republish an application that was published prior to being held for the moratorium. Before republication, the applicant must pay the republication fee required by Section 42-221F, Idaho Code. ()

g. Failure to pay a required republication fee within thirty (30) days after the applicant is notified to do so is cause for the Director to void the application, unless a processing delay is approved under Section 036. ()

h. The Director may deny approval of an application filed for diversion of ground water in a designated critical ground water area without publication of the application if the Director believes that there is insufficient water available for the proposed water use. An application that includes a mitigation plan proposing to offset injury to existing water rights will be published prior to the Director's evaluation of the application under Subsection 045.01. ()

02. Protests, Intervention, Hearings, and Appeals. ()

a. Section 42-203A, Idaho Code, governs protests against application approval. The Department will treat a protest as a pleading filed pursuant to IDAPA 37.01.01, “Rules of Procedure of the Idaho Department of Water Resources.” ()

b. A protest may be filed on a form supplied by the Department or in any other format that includes the same information as the Department’s form. ()

c. If a single protest names more than one (1) individual protestant and does not identify a representative, the Department will consider the first person listed to be the spokesperson and primary contact for service of documents for the group of individuals named as protestants. ()

d. The Department will not consider a general protest (blanket protest) against an application for a particular class of use or from a particular source of water a valid protest. A protest must identify the specific application being protested. ()

e. The Department will not accept a protest or petition to intervene unless the protest or petition to intervene is filed with the statutory filing fee required by Section 42-221L, Idaho Code, except any subdivision of the state, as defined in Section 67-2301, Idaho Code, is exempt from paying filing fees. ()

f. Petitions to intervene in a protested application matter must comply with IDAPA 37.01.01, “Rules of Procedure of the Idaho Department of Water Resources.” ()

g. Hearings will be scheduled and held pursuant to IDAPA 37.01.01, “Rules of Procedure of the Idaho Department of Water Resources.” ()

h. A decision of the Department may be appealed pursuant to IDAPA 37.01.01, “Rules of Procedure of the Idaho Department of Water Resources.” ()

03. Burden of Proof. ()

a. Burden of proof has two (2) parts: first, the burden of producing evidence to present a prima facie case, and second, the ultimate burden of persuasion. ()

b. For evaluation of Section 42-203A(5), Idaho Code, criteria for a protested application: ()

i. The applicant has the initial burden of producing evidence for the evaluation of Section 42-203A(5)(a) through (d) and (f) through (g), Idaho Code, criteria and of producing evidence of which the applicant is knowledgeable for the evaluation of Section 42-203A(5)(e), Idaho Code, criteria. ()

ii. The protestant has the initial burden of producing evidence of which the protestant can reasonably be expected to be more cognizant than the applicant for Section 42-203A(5)(e), Idaho Code criteria. ()

iii. The applicant has the ultimate burden of persuasion of Section 42-203A(5)(a) through (g), Idaho Code criteria. ()

c. For evaluation of Section 42-203C, Idaho Code, criteria for a protested application: ()

i. The protestant has the initial burden of producing evidence under Subsection 045.02, that the application will cause a significant reduction, except that the applicant has the initial burden of producing evidence of the proposed project design, construction, operation, and directly associated operations of which the applicant is knowledgeable or can reasonably be expected to be knowledgeable. ()

ii. The protestant has the ultimate burden of persuasion on whether the application causes a significant reduction under Subsection 045.02 and whether it meets the public interest criteria in Section 42-203C(2), Idaho Code, under Subsection 045.03. ()

d. For an unprotested application or an application for which all protests have been resolved, the ()

Director will evaluate the application, any information submitted pursuant to Subsections 040.04, 045.01, 045.02, and 045.03, and information in the Department's files and records to determine compliance with Sections 42-203A(5) and 42-203C, Idaho Code. For an unprotested application or an application for which all protests have been resolved, the applicant has the burden of producing evidence and the ultimate burden of persuasion on whether the application satisfies the applicable statutory criteria. ()

04. Additional Information Requirements. ()

a. The Department may require the applicant to file any of the additional information under Paragraph 040.04.c. or 040.04.d. if the official record for the application does not contain sufficient information to evaluate the applicable criteria in Section 045 and other statutory criteria. The Department will notify the applicant of the additional information required. ()

b. Unless the Department extends the time for filing, the additional information must be filed within thirty (30) days after the Department notifies the applicant of the additional information requirements. ()

i. The Department may grant an extension of time to file the required additional information if the applicant files a written request showing good cause. ()

ii. If the required additional information is not filed within the time allowed, including any extensions granted, the Department may void the application. ()

c. For purposes of evaluating the application under Subsection 045.01, the Department may request additional information, including, but not limited to, the following: ()

i. Project design, construction, operation techniques, or mitigation measures that the applicant will employ to eliminate or reduce the impact on other water rights. ()

ii. The proposed project water requirements including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year. ()

iii. The quantity of water available from the source applied for, including, but not limited to, the flow rates for surface water sources available during periods of peak and average project water demand, the properties of the aquifers from which water is to be taken from for ground water sources, and other sources of supply that may be used to supplement the water source proposed in the application. ()

iv. Evidence documenting an interest in the lands necessary for all project works and the place of use including, but not limited to, copies of deeds, leases, easements, or well sharing agreements. In the instance the land necessary to construct and operate the proposed project is privately-owned land not in the applicant's ownership, the applicant must submit evidence documenting that the applicant has an interest in the land, has authority to exercise eminent domain to obtain the interest, or has another arrangement with the landowner establishing an interest. In the instance of a project diverting water from or conveying water across federally owned land, the applicant must submit evidence documenting that the applicant filed the appropriate form to request or initiate access and that access is authorized or a decision is pending. ()

v. For hydropower use, evidence demonstrating compliance with Sections 42-205 and 42-206, Idaho Code. ()

vi. Requests for other needed permits, licenses, and approvals. The applicant must keep the Department apprised of the status of the requests and any subsequent approvals or denials. ()

vii. Evidence to show that it is reasonably probable that financing will be available to appropriate the water and put it to the beneficial use proposed. ()

viii. If the applicant is a governmental entity proposing to use taxing, bonding, or contracting authority to raise the funds needed to commence and pursue project construction, a proposed project construction schedule and

a plan describing how the applicant intends to utilize its taxing, bonding, or contracting authority in connection with the proposed project construction schedule. ()

ix. Plans, specifications, and estimated construction costs for the project works definite enough to allow for determination of project impacts and implications. ()

x. Letters requesting comment and any responding comment on the proposed project construction and operation from the governing body of the city, county, or tribal reservation within which the point of diversion and place of use are located: any irrigation district, canal company, or other water delivery entity within which the proposed project is located; and from other people, entities, or agencies with interests in the local area that may be affected by the proposed water use as determined by the Department. ()

xi. Design, construction, operation techniques, or mechanical equipment that will be employed to achieve efficiency in conveyance or use of water and to minimize waste. ()

xii. Evidence demonstrating compliance with the Idaho State Water Plan. ()

d. For purposes of evaluating the application under Subsections 045.02 and 045.03, the Department may request additional information including, but not limited to, the following: ()

i. If the project proposes irrigation use, the crop rotation, including acres under each crop type, for newly developed land. Also the kinship, if any, of the operator of the land to be irrigated by the project to the applicant; the location and acreage of other irrigated land owned, leased, or rented by the applicant; a soil survey prepared in accordance with the Natural Resources Conservation Service irrigable land classification system; a schedule for bringing into production the project land; the name, address, and number of shares held by each shareholder if the applicant is a corporation; and evidence of tax-exempt status if the applicant is a corporation so claiming. ()

ii. The number and kinds of jobs created or eliminated as a direct result of project development including both the construction and operating phases of the project. If jobs are seasonal, the estimated number of months per year of employment. ()

iii. For an application that proposes appropriating more than twenty-five (25) cfs, or more than ten thousand (10,000) af of storage, or generating more than five (5) megawatts of power, the changes to community services required during the construction and operation phases of the project including, but not limited to, changes to schools, roads, housing, public utilities, and public health and safety facilities, if any. ()

iv. The source of energy for diverting and using water for the project, the estimated instantaneous demand and total amount of energy that will be used, the efficiency of use, and energy conservation methods. ()

v. The location, amount, and quality of return flow water, and any water conservation features of the project. ()

vi. The availability, foreseeability, and cost of alternative energy sources to ameliorate the economic impact the proposed use will have on electric utility rates in the state of Idaho. ()

e. Unless the Director determines otherwise, information under Paragraph 040.04.c. or 040.04.d. is not required for: ()

i. An application that seeks to appropriate five (5) cfs or less, or store five hundred (500) af or less of unappropriated water. ()

ii. An application that proposes to use water from a source in the Swan Falls Trust Water Area to irrigate two hundred (200) acres or less or any other use that the Director determines will reduce the flow of the Snake River measured at the Murphy Gage by two (2) af per day or less. ()

f. Unless the Director determines otherwise, information under Paragraph 040.04.d. is required for an

application that proposes to use water from a source in the Swan Falls Trust Water Area to irrigate more than two hundred (200) acres or any other use that the Director determines will reduce the flow of the Snake River measured at the Murphy Gage by more than two (2) af per day. ()

041. -- 044. (RESERVED)

045. EVALUATION CRITERIA.

01. Criteria for Evaluating All Applications to Appropriate Water. The Director will use the following criteria in evaluating whether an application should be approved, denied, approved for a smaller amount of water, or approved with conditions. ()

a. Reduction of water available under an existing water right (injury) criteria. A proposed use will be determined to reduce the quantity of water under an existing water right if: ()

i. The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree, claim, or the historical amount beneficially used by the water right holder of such permit, license, decree, or claim, whichever is less; ()

ii. The holder of an existing water right will be forced to an unreasonable effort or expense to divert water for an existing water right. The reasonable pumping level provisions of Section 42-226, Idaho Code, govern protection of existing ground water rights; or ()

iii. The proposed use would make the quality of the water available unusable by an existing water right and could not be restored to usable quality without unreasonable effort or expense. ()

iv. An application that would otherwise be denied because of injury to another water right may be approved upon conditions that mitigate losses of water for an existing water right, as determined by the Director. ()

v. If an existing water right is subordinated to future beneficial uses which include the application's proposed use, the existing subordinated water right cannot be injured. ()

b. Sufficiency of water supply. The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval in quantities sufficient to accomplish the proposed beneficial use. ()

c. Good faith criteria. The evaluation of whether an application is not made in good faith or whether it is made for delay or speculative purposes requires an analysis of the applicant's intent to follow application requirements and diligently pursue permit development. Speculation for this rule is an intention to obtain a water right permit without the intention of putting the water to beneficial use with reasonable diligence. Speculation does not prevent an applicant from subsequently selling the project for a profit or from making a profit from the use of the water. An application will be found to have not been made in good faith if: ()

i. In the instance the land necessary to construct and operate the proposed project is privately owned and not in the applicant's ownership, the applicant does not have an interest in the land at the time of the application filing or the authority to exercise eminent domain; or ()

ii. In the instance of a project diverting water from or conveying water across federally owned land, the applicant has not filed the appropriate form to request access; or ()

iii. The applicant is not in the process of obtaining other permits, licenses, and approvals needed to construct and operate the project; or ()

iv. There are obvious impediments that prevent the successful completion of the project. ()

d. Financial resources criteria. The Director will find an applicant does not have sufficient financial

resources: ()

i. Upon a showing that it is not reasonably probable that funding is or will be available for project construction; or ()

ii. If the applicant is a governmental entity without taxing, bonding, or contracting authority necessary to raise the funds needed to commence and pursue project construction consistent with the proposed project construction schedule. ()

e. Local public interest criteria. The Director will consider the following in determining whether the project will conflict with the local public interest: ()

i. The direct effect the project will have on public water resources that are of interest to people in the local area directly affected by the proposed water use including, but not limited to, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, transportation, navigation, water quality, and the effect of such use on the availability of water for alternative water uses that might be made within a reasonable time; and ()

ii. Whether the proposed water use is consistent with Idaho's policy of securing the maximum use and benefit from the public water resources. ()

iii. Although the Director has independent responsibility for the overall assessment and balancing of factors weighing on the local public interest, the Director will give due regard to expertise of other state and federal regulatory agencies charged with assessing individual issues under Subparagraphs 045.01.e.i. and ii., recognizing that it is not the primary job of the Department to protect all aspects of the health and welfare of Idaho's citizens and visitors. ()

iv. The Director may condition approval of an application on compliance with orders, rules, requirements, and authorizations issued or to be issued by state and federal regulatory agencies with jurisdiction over subject matter relevant to the local public interest. ()

v. The Director will deny an application that conflicts with the local public interest unless the project can be approved with conditions to resolve the local public interest conflict. ()

f. Conservation of water resources within the state of Idaho criteria. The application will be determined contrary to the conservation of water resources if: ()

i. A diversion rate greater than two hundredths (0.02) cfs per acre is proposed, but is not necessary for irrigation use; ()

ii. Design, construction, operation techniques, or mechanical equipment will not be employed to achieve a water use efficiency consistent with contemporary engineering, industry, and regulatory standards; ()

iii. A proposed storage facility will exceed a seepage rate of zero point two (0.2) feet per day. This criterion does not apply if the proposed storage facility will be used as an infiltration basin for ground water recharge, an excavated pond filled by intercepting ground water, or an impoundment for irrigation use not exceeding five (5) af of stored water per acre of irrigation; or ()

iv. The proposed irrigation use is not consistent with the requirements of Section 42-204A, Idaho Code. ()

g. In the case where the place of use is outside the watershed or local area where the source of water originates, the project effect on the local economy or local area criteria. The Director will consider the extent of adverse effect on the local economy of the watershed or local area within which the source of water for the proposed use originates. ()

h. Idaho State Water Plan criteria. The Director will consider whether the proposed diversion and use of water complies with the Idaho State Water Plan, including plans developed for specific geographic areas. ()

02. Criteria for Evaluating Whether an Application for Reallocation of Trust Water in the Swan Falls Trust Water Area Will Cause a Significant Reduction Under Section 42-203C(1), Idaho Code. The Director will find an application for a reallocation of trust water within the Swan Falls Trust Water Area will cause a significant reduction when the proposed use, individually or cumulatively with other existing uses and uses reasonably likely to exist within twelve months of the proposed use, would significantly reduce the amount of trust water available to the user for hydropower generation purposes under a water right held in trust. The Director will presume an application for a reallocation of trust water within the Swan Falls Trust Water Area will not cause a significant reduction if the Director determines that the application meets both the individual and cumulative tests for evaluating significant reduction under Paragraphs 045.02.a. and 045.02.b. ()

a. Individual test. The Director will presume: ()

i. A proposed use, when fully developed and its impact is fully felt, that individually does not reduce the flow of the Snake River at the Murphy Gage by more than two (2) acre-feet per day does not cause a significant reduction; and ()

ii. An irrigation project of two hundred (200) acres or less diverting water from a source other than the Snake River or springs directly tributary to the Snake River located in the Swan Falls Trust Water Area will not reduce the flow at Murphy Gage by more than two (2) acre-feet per day and does not cause a significant reduction. However, this presumption is not applicable to an application the Director determines to be part of a larger development. ()

b. Cumulative test. The Director will presume a proposed use meets the cumulative test if the use, when fully developed and its impact is fully felt and when considered cumulatively with other existing uses and other uses reasonably likely to exist within twelve (12) months of the proposed use, will not deplete the flow of the Snake River measured at Murphy Gage by more than: ()

i. Forty thousand (40,000) af per calendar year when considered with all other uses approved for development of trust water during that calendar year; ()

ii. Forty thousand (40,000) af per calendar year using a four (4) year moving average when considered with all other uses approved for development of trust water during that four (4) year period; and ()

iii. Twenty thousand (20,000) af per calendar year from filings approved for reallocation of trust water that meet the criteria of Paragraph 045.02.a. ()

c. The presumptions in Subsection 045.02, Paragraph 045.02.a., and Paragraph 045.02.b. may be rebutted by the protestant. In rebutting the presumptions that an application does not cause a significant reduction, the Director may consider: ()

i. The amount of the reduction in hydropower generation that the proposed use will cause individually and cumulatively with other uses expected to be developed within twelve (12) months of the proposed use as compared to the existing hydropower generation output of the affected facility. ()

ii. The relative importance of the affected hydropower facility to other sources of electrical power generation available to the holder of the facility. ()

iii. The timing of the reduction in hydropower generation both on an annual basis and on a long-term basis considering the lag time between the beginning of diversion by the proposed use and the resulting reduction in hydropower generation. ()

iv. The effect of the reduction in hydropower generation on the unit cost of hydropower from the facility and the average cost of electrical power offered by the facility holder. ()

v. The terms of contracts, mortgages, or regulatory permits and licenses which require the hydropower generation facility holder to retain the capability to produce hydroelectric power at a specific level. ()

()

03. Criteria for Evaluating Whether an Application for Reallocation of Trust Water in the Swan Falls Trust Water Area is in the Public Interest Under Section 42-203C(2), Idaho Code. If the Director determines that an application for reallocation of trust water within the Swan Falls Trust Water Area will cause a significant reduction, the Director will consider the criteria of Section 42-203C(2), Idaho Code, before approving or denying the application. The Director will presume an application is in the public interest if it proposes a use consistent with Paragraph 045.03.f. The Director will presume an application is not in the public interest if it proposes a use consistent with Paragraph 045.03.g. In evaluating the public interest criteria, no single public interest criterion will be entitled to greater weight than any other public interest criterion. When evaluating the public interest criteria, the Director will consider: ()

a. The potential benefits, both direct and indirect, that the proposed use would provide to the state and local economy. The economic evaluation will be based upon generally accepted economic analysis procedures which uniformly evaluate the following factors within the state of Idaho and the county directly affected by the project: ()

i. Direct project benefits. ()

ii. Indirect benefits including net revenues to the processing, transportation, supply, service, and government sectors of the economy. ()

iii. Indirect project costs, including verifiable costs to government in net lost revenue and increased regulation costs, verifiable reductions in net revenue resulting from losses to other existing instream uses, and the increased cost of replacing reduced hydropower generation from unsubordinated hydropower generating facilities. ()

b. The economic impact the proposed use would have upon the electric utility rates in the state of Idaho, and the availability, foreseeability, and cost of alternative energy sources to ameliorate such impact. These evaluations will include the following considerations: ()

i. Projections of electrical supply and demand for Idaho and the Pacific Northwest made by the Bonneville Power Administration and the Northwest Power Planning Council and information available from the Idaho Public Utilities Commission or from the electric utility from whose water right trust water is being reallocated. ()

ii. The long-term reliability of the substitute source and the cost of alternatives including the resulting impact on electrical rates. ()

c. Whether the proposed use will promote the family farming tradition in the state of Idaho. For purposes of this evaluation the Director will presume the application promotes the family farming tradition if the total land to be irrigated by the applicant, including currently owned and leased irrigated land and land proposed to be irrigated in the application and other applications and permits of the applicant, does not exceed nine hundred sixty (960) acres. For an application proposing to divert water within the service area of a water delivery organization or to divert water through infrastructure shared by otherwise independent farming operations, the Director will evaluate this presumption on an individual basis within the relevant service area or place of use. This presumption may be rebutted by the protestant under Paragraph 040.03.c.ii. If the presumption above does not apply, the Director will consider whether the proposed use has the following characteristics: ()

i. The farming operation developed or expanded as a result of the application is operated by the applicant or a member of the applicant's family (spouse, parents or grandparents, lineal descendants, including those that are adopted, lineal descendants of parents, and spouse of lineal descendants); ()

ii. In the event the application is filed in the name of a partnership, one (1) or more of the partners operates the farming operation; and ()

iii. If the application is in the name of a corporation, the number of stockholders does not exceed

fifteen (15) persons, and one (1) or more of the stockholders operates the farming operation unless the application is filed by an irrigation district, drainage district, canal company, or other entity authorized to appropriate water for landowners within the district or for stockholders of the company all of whom satisfy the presumption in Paragraph 045.03.c. ()

d. Whether the proposed project will promote full economic and multiple use development of the water resources of the state of Idaho: ()

- i. Promoting and conforming with the adopted Idaho State Water Plan; ()
- ii. Providing for coordination of proposed and existing uses of water to maximize the beneficial use of available water supplies; ()
- iii. Utilizing technology economically available to enhance water and energy use efficiency; ()
- iv. Providing multiple use of the water, including multipurpose storage; ()
- v. Allowing opportunity for reuse of return flows; ()
- vi. Preserving or enhancing water quality, fish, wildlife, recreation, and aesthetic values; or ()
- vii. Providing supplemental water supplies for existing uses with inadequate supplies. ()

e. Whether a proposed irrigation development will conform to a staged development policy of up to twenty thousand (20,000) acres per year or eighty thousand (80,000) acres in any four (4) year period in the Swan Falls Trust Water Area. In applying these criteria, the Director will consider the following: ()

i. Twenty thousand (20,000) acres per year or eighty thousand (80,000) acres per four (4) year period is a four (4) year moving average of twenty thousand (20,000) acres per year of permits issued during a calendar year for irrigation development. If permits for development of less than twenty-thousand (20,000) acres are issued in a year, additional development in excess of twenty thousand (20,000) acres can be permitted in succeeding years. Likewise, if more than twenty thousand (20,000) acres is permitted in one year (recognizing that a single large project could exceed twenty thousand (20,000) acres) the permitted development in succeeding years must be correspondingly less to maintain no greater than a twenty thousand (20,000) acres per year average for any four (4) year period; ()

ii. The criteria of Paragraph 045.03.e. applies to multiple-use projects with irrigation as a principal purpose. Projects which use irrigation as only an incidental purpose, such as the land treatment of waste, will not be included within this policy; and ()

iii. The Director may approve an application determined to be otherwise approvable but found to exceed the acreage limitations of Paragraph 045.03.e., when considered with other applications approved for development, with conditions prescribing the construction of project works and beneficial use of water commence in a future year. ()

f. The Director will presume an application is in the public interest if it proposes: ()

- i. To store surface water from the Snake River and surface tributaries upstream from the Murphy Gage consistent with the Idaho State Water Plan; or ()
- ii. A state of Idaho-sponsored ground water recharge project that is consistent with the Idaho State Water Plan; or ()
- iii. Domestic, commercial, municipal, or industrial use that does not have a maximum consumptive use of more than two (2) af per day. ()
- iv. The presumptions of Subparagraphs 045.03.f.i. through iii. may be rebutted by the protestant under

Paragraph 040.03.c. In evaluating a proposed rebuttal to these presumptions, the Director may consider the criteria in Paragraphs 045.03.a. through e. ()

g. The Director will presume an application is not in the public interest if it proposes an irrigation project diverting water directly from the Snake River or from springs directly tributary to the Snake River in the Swan Falls Trust Water Area. Such proposals are presumed to prevent the full economic and multiple use of water in the Snake River Basin and to adversely affect hydropower availability and electrical energy rates in the state of Idaho. This presumption may be rebutted by the applicant. In evaluating a rebuttal to this presumption, the Director may consider the criteria in Paragraphs 045.03.a. through e. ()

046. -- 049. (RESERVED)

050. CONDITIONS OF APPROVAL.

01. Issuance of Permits with Conditions. The Director may issue a permit with conditions to ensure compliance with: ()

a. Chapter 2, Title 42, Idaho Code, and other applicable laws and statutes; ()

b. Efficient administration of water rights by priority date; ()

c. The Idaho State Water Plan as required by Section 42-1734B(4), Idaho Code; ()

d. The criteria of Section 42-203A, Idaho Code: ()

e. Requirements of Section 42-203B, Idaho Code, including conditions to subordinate a permit for hydropower generation to all rights to the use of water, other than hydropower, and limit a permit for hydropower generation to a term in connection with the power project; ()

f. Requirements of Section 42-203C, Idaho Code, including conditions to promote efficient use and conservation of water; ()

g. The intent of agreements entered into by and between the state of Idaho and holders of water rights for power purposes and the state of Idaho's obligation to continually review the reallocation of trust water consistent with Section 42-203, Idaho Code; or ()

h. The requirement to obtain authorization necessary to access the point of diversion, place of use, or to convey water across federal land prior to diversion and use of water under the permit. ()

02. Voiding Approval of Permit. Permits may be conditioned to authorize the Director to void the permit if the Director determines that the applicant submitted false or misleading information on the application or supporting documents. ()

051. -- 054. (RESERVED)

055. MORATORIUM.

01. Applications or Permits. ()

a. The Director may cease action on an application or stay further development of a permit for which the permit holder has not submitted proof of beneficial use in a designated geographical area upon finding a need to: ()

i. Protect existing water rights; ()

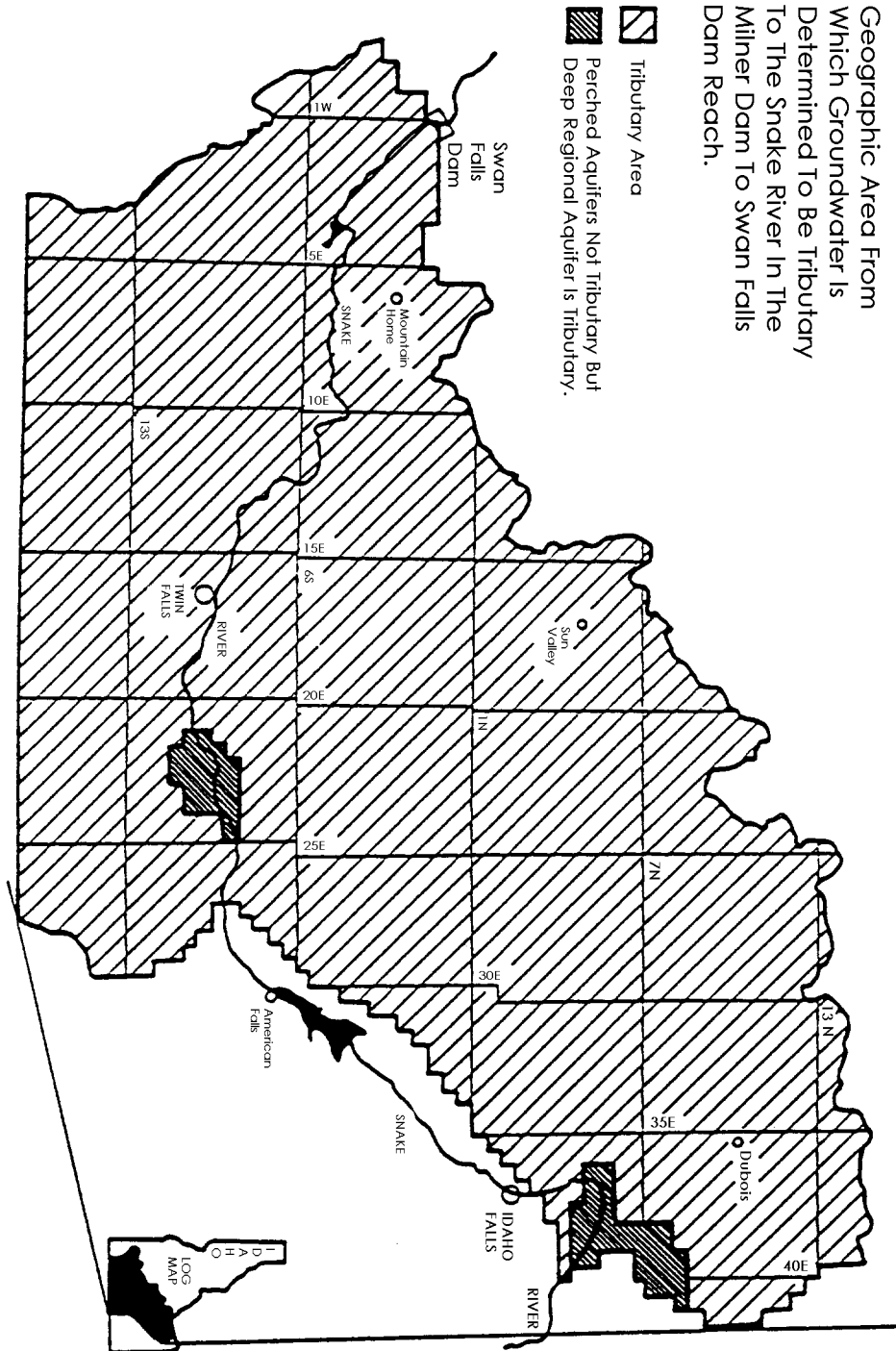
ii. Ensure compliance with Chapter 2, Title 42, Idaho Code; or ()

- iii. Prevent reduction of flows below a minimum stream flow held by the Board pursuant to applicable law. ()
- b. Notice of the Director’s action to cease further action on an application or stay further development of a permit will be by: ()
 - i. Order served by certified mail upon the then affected applicant or permit holder; and ()
 - ii. Publication for three (3) consecutive weeks in a newspaper of general circulation in the area affected. ()
- c. The order of the Director’s action to stay further development of a permit will require a permit holder to file, within sixty (60) days of order issuance, either; ()
 - i. Proof of beneficial use for the extent of diversion and beneficial use accomplished prior to issuance of the order; or ()
 - ii. A response with supporting information demonstrating the permit holder made a substantial investment, prior to receipt of the order, in project works to divert and beneficially use water under the permit that merits the granting of additional time to complete all or part of the project. ()
 - iii. Failure to submit proof of beneficial use or a response will result in suspension of further development of the permit. ()
- d. Objections to the Director’s action will be considered pursuant to IDAPA 37.01.01, “Rules of Procedure of the Idaho Department of Water Resources,” and applicable law. ()

056. -- 999. (RESERVED)

APPENDIX A

Geographic Area From Which Groundwater Is Determined To Be Tributary To The Snake River In The Milner Dam To Swan Falls Dam Reach.



[Agency redlined courtesy copy]

Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.

37.03.08 – WATER APPROPRIATION RULES

000. LEGAL AUTHORITY ~~(RULE 0)~~.

The Director of the Idaho Department of Water Resources adopts these rules under the authority ~~provided by o-Sf~~ Section 42-1805(8), Idaho Code. (3-18-22)()

001. TITLE AND SCOPE ~~(RULE 1)~~.

01. Title. These rules are titled IDAPA 37.03.08, “Water Appropriation Rules.” ()

02. Scope. (3-18-22)

~~a. Background and Purpose. The 1985 Idaho Legislature authorized reallocation of certain hydropower water rights to new upstream beneficial uses. The reallocation is to be accomplished using statutes designed to provide for the appropriation of unappropriated public water supplemented by a public interest review of those reallocations which significantly reduce existing hydropower generation. These rules provide set the procedures for obtaining the right a permit to divert and use unappropriated public waters as well as water previously appropriated for hydropower use which has been placed in or a permit for reallocation of trust with the State of Idaho and is subject to reallocation water within the Swan Falls Trust Water Area. Guidelines are provided for These rules govern the filing and processing of applications, and criteria are established for determining the actions to be taken by the Director for permits to appropriate water pending on or filed after the adoption of these rules.~~ (3-18-22)()

~~b. Scope and Applicability. These rules are applicable to appropriations from all sources of unappropriated public water in the state of Idaho under the authority of Chapter 2, Title 42, Idaho Code. Sources of public water include rivers, streams, springs, lakes and groundwater. The rules are also applicable to the reallocation of hydropower water rights held in trust by the state of Idaho. The rules are applicable to all applications to appropriate water filed with the Department of Water Resources prior to the effective date of these rules upon which an action to approve or deny the application is pending and to all applications filed subsequent to adoption of the rules and regulations. In addition, the rules are applicable to existing permits to appropriate water required to be reviewed under the provisions of Section 42-203D, Idaho Code.~~ (3-18-22)

002. -- 009. (RESERVED)

010. DEFINITIONS ~~(RULE 10)~~.

~~Unless the context otherwise requires, the following definitions govern these rules: The terms “consumptive use,” “digital boundary,” “local public interest,” “municipality,” “municipal provider,” “municipal purposes,” “planning horizon,” “reasonably anticipated future needs,” and “service area” have the meaning given for those terms in Section 42-202B, Idaho Code. The terms “ground water” and “low temperature geothermal resource” have the meaning given for those terms in Section 42-230, Idaho Code. The term “critical ground water area” has the meaning given for that term in Section 42-233a, Idaho Code.~~ (3-18-22)()

01. Acre-Foot (AFaf). A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to ~~forty-three thousand hundred twenty-five thousand, eight hundred sixty (43,560) cubic feet~~ fifty (325,850) gallons. (3-18-22)()

02. Advertisement. The action taken by the Director to provide notice, usually by publication of a legal notice in one (1) or more newspapers, of a proposed appropriation or other notice required in administration of his duties and responsibilities. (3-18-22)

~~032.~~ **Applicant.** The person, corporation, association, firm, governmental entity or agency, or other entity, ~~or the holder of a permit being reprocessed pursuant to Section 42-203D, Idaho Code, who initiates an appropriation of water or related~~ applies to divert and beneficially use public waters ~~matter for the Director's consideration.~~ (3-18-22)()

~~043.~~ **Application ~~for Permit.~~** ~~The written request to the department on forms furnished by the department proposing to appropriate the public waters or trust waters of the state~~ An application for permit to appropriate water filed with the Department. (3-18-22)()

~~054.~~ **Board.** The Idaho Water Resource Board. ()

~~065.~~ **Beneficial Use.** One (1) or more of the recognized beneficial uses of water including, but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, stockwatering, and fish propagation uses for which permits to appropriate water can be issued as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining, and processing uses of water. ()

~~076.~~ **Cubic Foot Per Second (~~CFS~~cfs).** A rate of flow approximately equal to four hundred forty-eight and eight-tenths (448.8) gallons per minute and also equals fifty (50) Idaho miner's inches. (3-18-22)()

~~08.~~ **DCMI.** ~~An acronym for domestic, commercial, municipal and industrial. In these rules it designates certain classes of these uses presumed to satisfy public interest requirements. Domestic use, for purposes of this definition, is water for one or more households and water used for all other purposes including irrigation of a residential lot in connection with each of the households where the diversion to each household does not exceed thirteen thousand (13,000) gallons per day. Also for purposes of this definition, commercial, municipal and industrial uses are any such uses which do not deplete the system containing the trust water more than two (2) acre feet per day.~~ (3-18-22)

~~097.~~ **Department.** The Idaho Department of Water Resources. ()

~~10.08.~~ **Director.** The Director of the Idaho Department of Water Resources. Per Section 42-1701(3), Idaho Code, the Director may delegate authority to perform duties imposed upon the Director by law, including duties described herein, to a Department employee. (3-18-22)()

~~09.~~ **Generally Described Place of Use.** A place of use authorized by an existing water right or permit pursuant to Sections 42-202, 42-219, 42-222, or 42-1411, Idaho Code, consisting of a general area or boundary within which water diverted under the water right or permit is used. ()

~~11.~~ **Legal Subdivision.** ~~A tract of land described by the government land survey and usually is described by government lot or quarter quarter, section, township and range. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the quarter quarter, section, township and range description.~~ (3-18-22)

~~10.~~ **Idaho State Water Plan.** The current comprehensive state water plan formally adopted by the Idaho Water Resource Board pursuant to Sections 42-1734A and 42-1734B, Idaho Code. ()

~~11.~~ **Murphy Gage.** The United States Geological Survey stream gage station (site identification number 13172500) located on the right bank of the Snake River at river mile 456.8, approximately eight point five (8.5) miles east-northeast of Murphy, Idaho and zero point nine (0.9) miles downstream from the Swan Falls power plant at latitude 43° 15' 17.33" N, longitude 116° 23' 26.30" W, North American Datum of 1983, in the NW ¼ of the NW ¼ of Section 18, T.2S., R.1E., Boise Meridian, Hydrologic Unit 17050103. ()

~~12.~~ **Permit ~~or Water Right Permit.~~** The water right document issued by the Director authorizing the diversion and use of unappropriated public waters ~~of the state or water held in or reallocated~~ trust ~~by the state~~ water. (3-18-22)()

~~13. **Priority, or Priority of Appropriation, or Priority Date.** The date of appropriation established in the development of a water right. The priority of a water right for public water or trust water is used to determine the order of water delivery from a source during times of shortage. The earlier or prior date being the better right. when an application is filed in acceptable form, including the applicable filing fee, unless a later date is set in accordance with applicable law.~~ (3-18-22)()

~~14. **Project Works.** A general term ~~which that~~ includes diversion works, conveyance ~~works infrastructure~~, and any devices ~~which may be~~ used to apply the water to the intended use. ~~Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works.~~ (3-18-22)()~~

~~15. **Single Family Domestic Purposes.** Water for household use or livestock and water used for all other purposes including irrigation of up to one half (1/2) acre of land in connection with said household where total use is not in excess of thirteen thousand (13,000) gallons per day.~~ (3-18-22)

~~15. **Public Interest.** The interests that the people of the state of Idaho have in the effects of a proposed reallocation of trust water pursuant to Section 42-203C(2), Idaho Code. For the definition of "local public interest," see Section 42-202B, Idaho Code.~~ ()

~~16. **Reallocation of Trust Water.** Appropriation of trust water for a use other than hydropower generation to the extent the water rights held in trust are subordinated to permits issued for such other uses of water pursuant to Section 42-203C, Idaho Code.~~ ()

~~167. **Subordinated Water Right.** A water right used for hydropower generation purposes that is subject ~~Subject~~ to ~~diminishment or~~ depletion without compensation by ~~upstream~~ water rights ~~which are~~ initiated later in time ~~and which are for a purpose other than hydropower generation purposes.~~ (3-18-22)()~~

~~18. **Swan Falls Trust Water Area.** The reach of the Snake River extending downstream from Milner Dam (located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian) to Swan Falls Dam (located in Section 18, Township 2 South, Range 1 East, Boise Meridian) and all surface and ground water sources tributary to that reach of the Snake River. The area within which ground water is presently designated tributary to the reach of the Snake River extending downstream from Milner Dam to Swan Falls Dam is depicted in APPENDIX A. The Swan Falls Trust Water Area excludes any reach of the Snake River upstream of Milner Dam, any surface or ground water tributary to the Snake River upstream of Milner Dam, the Snake River downstream of Swan Falls Dam, and any surface or ground water tributary to the Snake River downstream of Swan Falls Dam.~~ ()

~~179. **Trust Water.** ~~That portion of an unsubordinated water right used~~ Water in excess of the state established minimum stream flow at the Murphy Gage that was originally appropriated for hydropower generation purposes ~~which is in excess of a minimum stream flow established pursuant to the water rights now held in trust by the state action either with agreement of the holder of the~~ of Idaho and that is made available for reallocation to uses other than hydropower ~~right as provided by~~ generation to the extent the water rights held in trust are subordinated to permits issued for such other uses pursuant to Section 42-203B(5)C, Idaho Code ~~or without an agreement as provided by Section 42-203B(3), Idaho Code.~~ (3-18-22)()~~

~~1820. **Unappropriated Water.** The public waters of the state of Idaho in streams, rivers, lakes, springs, or other natural surface water bodies, ground water ~~in excess of that,~~ or low temperature geothermal resources exceeding the amount necessary to satisfy ~~prior existing water~~ rights ~~including prior rights reserved by federal law.~~ (3-18-22)()~~

~~21. **Water Right Held in Trust.** A water right used for hydropower generation purposes that is in excess of a minimum stream flow established by state action and is held in trust by the state of Idaho pursuant to Subsections (2) or (3) of Section 42-203B, Idaho Code. The water rights held in trust for the Swan Falls Trust Water Area are numbered 02-02001A, 02-02001B, 02-02032B, 02-02036, 02-02056, 02-02057, 02-02059, 02-02060, 02-02064, 02-02065, 02-04000B, 02-04001B, 02-10135, 36-02013, 36-02018, 36-02026, 37-02128, 37-02471, 37-02472, 37-20709, and 37-20710.~~ ()

011. -- 024. (RESERVED)

**025. GENERAL DESCRIPTION OF THE PROCEDURE ~~TO BE USED FOR ALLOCATION (RULE 25)~~
APPLICATION REVIEW.**

01. Applications to Appropriate Unappropriated Water ~~and Water Held in Trust.~~ Applications ~~The Department will process an application~~ to appropriate unappropriated public waters and water held in trust as provided by Section 42-203B(3), Idaho Code, under Section 040, and will be evaluated the application under Subsection 045.01, using the criteria of Section 42-203A(5), Idaho Code, ~~which requires an assessment to be made of the impact of the proposed use on water availability for existing water rights, the adequacy of the water supply for the proposed use, whether the application is filed for speculative purposes, the financial ability of the applicant to complete the project, and the effect of the proposed use on the local public interest and, for a low temperature geothermal resource, the criteria of Section 42-233, Idaho Code.~~ (3-18-22)()

02. Applications to Appropriate Water from ~~Sources Held by State in~~ the Swan Falls Trust Water Area. Applications ~~The Department will process an application~~ to appropriate water from ~~sources on which the state holds water in trust, pursuant to Section 203B(5), Idaho Code, will be processed in a three-step analysis. Evaluation will consider the purposes of "trust water" established in Section 42-203B, Idaho Code~~ Swan Falls Trust Water Area under Section 040 and will evaluate the application as follows:- (3-18-22)()

a. First, ~~the proposed use must be evaluated using the procedures and~~ the Director will evaluate the application under Subsection 045.01 using the criteria of Section 42-203A(5), Idaho Code. ()

i. If the application is seeking to appropriate unappropriated water within the Swan Falls Trust Water Area rather than a reallocation of trust water and it satisfies all criteria of Section 42-203A(5), Idaho Code, ~~are satisfied, the Director may approve the application may be approved~~ for unappropriated water. An application for unappropriated water within the Swan Falls Trust Water Area must demonstrate the public waters sought for appropriation exceed the amount necessary to satisfy all existing water rights, including the water rights held in trust. ()

ii. If the application does not satisfy the criteria of Section 42-203A(5) ~~(b, c, d, and e) through (g),~~ Idaho Code, or is found to reduce the water available to an existing water rights other than ~~those a water right~~ held in trust ~~by the state,~~ the Director may deny the application ~~will be denied.~~ ()

iii. If the application satisfies all criteria of Section 42-203A(5), Idaho Code, except ~~Section 42-203A(5)a, Idaho Code, but~~ it is found to reduce the amount of water available to a water right held in trust by the state, the application will be reviewed under criteria of Section 42-203C, Idaho Code it is seeking a reallocation of trust water and the Director will review the application under Paragraph 025.02.b. (3-18-22)()

b. Second, ~~Section 42-203C, Idaho Code, requires a determination of whether the proposed use will significantly reduce, individually or cumulatively with existing uses and other uses reasonably likely to exist within twelve months of the proposed use, the amount of~~ if the application is seeking a reallocation of trust water ~~available to the holder of the~~ Director will evaluate the application under Subsection 045.02 to determine whether it will cause a significant reduction to a water right used for power production that is defined by agreement held in trust pursuant to ~~subsection (5) of~~ Section 42-203C(1), Idaho Code ~~(hereinafter termed "significant reduction").~~ ()

i. If a the application will not cause a significant reduction will not occur to a water right held in trust pursuant to Section 42-203C(1), Idaho Code, the Director may approve the application may be approved without an additional evaluation of the public interest criteria of Section 42-203C(2), Idaho Code. ()

ii. If the application will cause a significant reduction to a water right held in trust pursuant to Section 42-203C(1), Idaho Code, the Director will review the application under Paragraph 025.02.c. (3-18-22)()

c. Third, ~~based upon a finding of if the application is seeking a reallocation of trust water and will cause a significant reduction to a water right held in trust;~~ the Director will evaluate the application under Subsection 045.03 to determine if the proposed use will be evaluated reduction is in terms of the public interest ~~criteria of~~ pursuant to Section 42-203C(2), Idaho Code. (3-18-22)()

- i. If the application is in the public interest, the Director may approve the application. ()
- ii. If the application is not in the public interest, the Director may deny the application. ()

~~026.—029. (RESERVED)~~

~~030. LOCATION AND NATURE OF TRUST WATER (RULE 30):~~

~~01. Snake River Water Rights Agreement.~~ The legislation ratifying the Snake River water rights agreement between the state of Idaho and Idaho Power Company places in trust a part of the flows available to Idaho Power Company under its hydropower water rights in the Snake River Basin between Swan Falls Dam and Milner Dam. The flows subject to the trust water provisions and reallocation under Section 42-203C(2), Idaho Code, are as follows: (3-18-22)

~~a.~~ Trust water flows under the Snake River water rights agreement are located in the Snake River between Swan Falls Dam located in Section 18, Township 2 South, Range 1 East, Boise Meridian (B.M.) and Milner Dam located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian (B.M.) and all surface and groundwater sources tributary to the Snake River in that reach. (3-18-22)

~~b.~~ Surface water and groundwater tributary to the Snake River upstream from Milner Dam is not trust water. After giving notice and considering public comment, the Director will designate the area in which groundwater is presumed to be tributary to the Snake River upstream from Milner Dam. Modification or changes in the designated boundary may be made only after providing notice and considering public comment. The area presently designated as tributary to the Snake River in the Milner Dam to Swan Falls Dam reach is appended to these rules (See Attachment A in APPENDIX A located at the end of this chapter), for information purposes only. (3-18-22)

~~e.~~ Trust water flows under the Snake River water rights agreement are those occurring in the Snake River and tributaries in the geographic area designated in Subsection 030.01.a. that exceed the established minimum stream flows but are less than the water rights for hydropower generating facilities in the Swan Falls Dam to Milner Dam reach of Snake River, to the extent such rights were unsubordinated prior to the Snake River water rights agreement. Minimum average daily flows have been established by action of the Board and legislature at the U.S. Geological Survey gauging station located near Murphy (Section 35, Township 1 South, Range 1 West B.M.) in the amount of three thousand nine hundred (3900) cfs from April 1 to October 31 and five thousand six hundred (5600) cfs from November 1 to March 31, and at Milner gauging station located in Section 29, Township 10 South, Range 21 East, B.M. in the amount of zero (0) cfs from January 1 to December 31. (3-18-22)

~~02. Trust Water Created by State Action.~~ Section 42-203B(3), Idaho Code, provides that trust water can be created by state action establishing a minimum flow without an agreement with the holder of the hydropower water right. Allocation of trust water so established will be pursuant to state law except the criteria of Section 42-203C, Idaho Code, will not be considered. (3-18-22)

~~03. Sources of Public Water Not Trust Water.~~ The following sources of public water are not trust water and are not subject to the public interest provisions of Section 42-203C, Idaho Code: (3-18-22)

~~a.~~ Sources or tributaries to sources upon which no hydropower generating facilities are located downstream within the state of Idaho. (3-18-22)

~~b.~~ Sources or tributaries to sources which have a state hydropower water right permit or license or Federal Energy Regulatory Commission license which have not been subordinated, and the state of Idaho has not entered into an agreement with the holder of the hydropower water right pursuant to Section 42-203B(2), Idaho Code, and the State of Idaho has not established a minimum stream flow for purposes of protecting hydropower generation. (3-18-22)

~~e.~~ Sources or tributaries to sources for which a state hydropower water right permit or license, or the Federal Energy Regulatory Commission license included a subordination condition. Such flows are considered to be public waters subject to appropriation under the provisions of Section 42-203A, Idaho Code. (3-18-22)

~~d.~~ Flows in excess of established rights including rights used for hydropower purposes. Such flows are unappropriated waters subject to allocation under Section 42-203A, Idaho Code. (3-18-22)

~~e.~~ Flows in the Snake River upstream from Milner Dam and all surface and groundwater tributaries to that reach. Such flows are subject to allocation under Section 42-203A, Idaho Code, without consideration of water rights existing downstream from Milner Dam (Reference: 42-203B(2), Idaho Code). (3-18-22)

~~03126.~~ -- 034. (RESERVED)

035. APPLICATION REQUIREMENTS ~~(RULE 35).~~

01. General Provisions. ()

~~a.~~ No person shall commence the construction of any project works or commence the diversion of the public water or trust water of the state of Idaho from any source without first having filed an application for permit to appropriate the water or other appropriate form with the department and received approval from the Director, unless exempted by these rules or by statute. (3-18-22)

~~b.~~ Any person proposing to commence a diversion of the public water or the trust water of the state of Idaho from a groundwater source for single family domestic purposes is exempt from the application and permit requirements of Subsection 035.01.a. (3-18-22)

~~e.~~ Any person watering livestock directly from a natural stream or natural lake without the use of a constructed diversion works is exempt from Subsection 035.01.a. (3-18-22)

~~da.~~ All applications for permit to appropriate public water or trust water of the state of Idaho shall An application must be filed: ()

~~i.~~ On the Department form provided by the department entitled "Application for Permit to Appropriate the Public Waters of the State of Idaho," and include all necessary information as described in with any application attachments; ()

~~ii.~~ In accordance with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources," Section 053, either on paper, digitally in PDF format, or through the Department's online filing process; ()

~~iii.~~ With the applicable filing fee prescribed in Section 42-221A, Idaho Code; and ()

~~iv.~~ With all necessary information under Subsection 035.03. An application for permit that is not complete as described in ()

~~b.~~ The filing fee in Section 42-221A, Idaho Code, is based on the total rate (in cfs) or the total storage volume (in af) to be appropriated. Whenever the application diversion rate and storage volume elements lead to a different filing fee, the higher amount is the applicable filing fee. ()

~~c.~~ The Department will determine whether an application is acceptable for filing under Subsection 035.03 or if it requires clarification or correction. ()

~~d.~~ When an application is not acceptable for filing under Subsection 035.03, the Department will not be accepted for filing and will be returned along with any accept the application and will proceed as directed in Section 42-204, Idaho Code. Filing fees submitted for an unacceptable application will be refunded to the person submitting the application applicant if the application is not timely clarified or corrected. No An unacceptable application does not establish a priority will be established by an incomplete application date. Applications meeting the requirements of ()

~~e.~~ When an application is accepted for filing but requires clarification or correction of the information required by Subsection 035.03, the Department will be accepted for filing and will be endorsed by the department as

~~to the time and date received. The acceptability of applications requiring clarification or corrections shall be determined by the Director proceed as directed in Section 42-204, Idaho Code. (3-18-22)()~~

~~e. The department will correspond with the applicant concerning applications which have been accepted for filing by the department which require clarification or correction of the information required by Subsection 035.03. If the additional or corrected information is supplied after thirty (30) days, the priority date of the application will be determined by the date the additional or corrected information is received by the department unless the applicant has requested within the thirty (30) day period additional time to provide the information, has shown good reasons for needing additional time, and the Director has granted additional time. (3-18-22)~~

~~f. Failure to submit the additional or corrected information is cause for the Director to void the department's records of the application. (3-18-22)~~

02. Effect of an Application. ()

~~a. Any application that seeks to appropriate water from a source upon which the state holds trust water shall be considered an application for appropriation of unappropriated water. If the Director determines unappropriated water is not available, the application, if otherwise approvable, will be reviewed for compliance with provisions of Section 42-203C, Idaho Code. (3-18-22)~~

~~ba. The priority date of an application for unappropriated or trust water is established as of the time and date the Department receives the application is received in complete a form along acceptable for filing with the statutory filing fee in any official office of the department. The priority date of the application remains fixed unless changed by an action of the Director in accordance with applicable law. (3-18-22)()~~

~~eb. An application for permit to appropriate water is not a water right and does not authorize diversion or use of water until approved by the Director in accordance with statutes the laws in effect at the time the application is approved. (3-18-22)()~~

~~dc. An applicant's interest in an application for permit to appropriate water is personal property. An assignment of applicant may convey (assign) its interest in an application to another party or entity. The person or entity to whom the application is conveyed must include evidence satisfactory to notify the Director that Department of the application was not filed for speculative purposes assignment, in writing, within thirty (30) days after the assignment and notify other parties in the contested case pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources," Section 202. (3-18-22)()~~

03. Requirements for Applications ~~to Be~~ Acceptable for Filing. (3-18-22)()

~~a. The following information shall be shown on a An application is acceptable for filing if it is filed in a manner stated in Paragraph 035.01.a. and includes the following information: for permit form and submitted together with the statutory fee to an office of the department before the application for permit may be accepted for filing by the department. (3-18-22)()~~

~~ia. The Applicant's name and post office mailing address of the applicant shall be listed. ()~~

~~i. If the application applicant is in the name of a corporation, also include the names and addresses of its all directors and officers shall be provided. ()~~

~~ii. If the application applicant is filed by or on behalf of a partnership, limited liability company, or joint venture, the application shall provide also include the names and addresses of all partners or members and designate the name of the managing partner or member, if any. (3-18-22)()~~

~~iiib. The name of the Source of water source sought to be appropriated shall be listed. ()~~

~~i. Identify only one (1) water source unless the application is for a single interconnected system that will divert water from more than one (1) source. ()~~

~~ii.~~ For ~~a~~ surface water sources, ~~the source of water shall be identified by~~ include the official geographic name listed on the ~~U.S. United States~~ Geological Survey (USGS) Quadrangle map. If the surface water source ~~has is~~ not ~~been~~ named on the USGS Quadrangle map, it can be described describe it as an unnamed water body, such as “unnamed ~~stream.~~” ~~but~~ For surface water sources, also identify the ~~system first named stream~~ or river to which ~~it the source~~ is tributary ~~shall be identified.~~ If the water source sinks into the ground prior to reaching a stream named on the USGS Quadrangle map, describe the “tributary to” stream as “sinks.” If the water source flows into a stream named on the USGS Quadrangle map for part of the year and sinks into the ground for the other part of the year, identify the “tributary to” stream as the named stream on the USGS Quadrangle map. ()

~~iii.~~ For ~~groundwater sources~~ a water source under the ground surface, identify the source ~~shall be listed~~ as “ground water.” ~~Only one source shall be listed on an application unless the application is for a single system which will have more than one source.~~ (3-18-22)()

~~iv.~~ For a low temperature geothermal resource, state how the source will be used primarily for its heat value and secondarily for its value as water or how the use qualifies for an exemption pursuant to Section 42-233(1), Idaho Code. ()

~~v.~~ For an application within the Swan Falls Trust Water Area, state if the application is seeking unappropriated water or a reallocation of trust water. ()

~~iii.c.~~ The ~~l~~legal description of the point of diversion and place of use ~~shall be listed.~~ ()

~~i.~~ Describe ~~the~~ the location of the point(s) of diversion and the place of use ~~shall be described~~ to the nearest forty (40) acre subdivision or ~~U.S. United States~~ Government Lot of the Public Land Survey System. ~~The location of springs shall be described to the nearest ten (10) acre tract.~~ ()

~~ii.~~ Subdivision names, lot and block numbers, and any name in local common usage for the point of diversion, or place of use ~~shall may~~ be included ~~in the comments section of the application form.~~ ()

~~iii.~~ If irrigation ~~is listed as a purpose of use is proposed,~~ state the number of acres to be irrigated to the nearest whole acre in each forty (40) acre subdivision of the place of use ~~shall be listed.~~ For an application proposing irrigation of less than ten (10) acres, acreage shall be shown to the nearest one-tenth (0.1) acre. The number of acres per forty (40) acre subdivision is not required when the place of use is a generally described place of use for an existing water right or permit. If the proposed place of use is a generally described place of use with an established digital boundary authorized by a water right or permit, state the name of the generally described place of use, list the water right number serving the generally described place of use, attach a map depicting the generally described place of use boundary, and state the total number of acres to be irrigated. (3-18-22)()

~~iv.~~ If the application proposes water use for municipal purposes or fire protection by a municipal provider within a service area, the service area need not be described by legal description. Describe the service area in terms sufficient to identify the general location where water will be used and attach a map depicting the service area. ()

~~iv.d.~~ The ~~q~~Quantity of water to be diverted ~~shall be listed as a~~. ()

~~i.~~ Include the rate of flow in ~~cubic feet per second cfs and/ or as a~~ the volume of water to be stored in ~~acre feet~~ af per year for each ~~purpose of beneficial use requested proposed,~~ using values with a maximum of three (3) significant figures with no more precision than hundredths for rate and tenths for volume. (3-18-22)()

~~vii.~~ Impoundment (storage) applications shall showFor an application to store water, the maximum ~~acre feet requirement af~~ per year ~~which shall may~~ not exceed the storage facility capacity ~~of the impoundment structure~~ unless the application ~~describes~~ includes a plan of operation for filling the ~~reservoir facility~~ more than once per year. The refill plan may include refills for seepage, evaporation, use from storage, and other purposes the applicant intends to replace in the storage facility throughout the year. (3-18-22)()

~~viii.~~ EveryFor an application to store water in an off-stream storage ~~impoundment application shall show facility.~~ include a maximum rate of diversion to storage ~~as well as and~~ the total storage volume.

(3-18-22)()

- ~~vii.e.~~ The nature of the proposed beneficial use or uses of the water shall be listed. ()
- ~~i.~~ While the purpose may be described, describe the proposed use of water. When a narrative or other application material describes details of the proposed use, the description used in the purpose of use field may be in general terms such as irrigation, industrial, or municipal, a description sufficient to identify the proposed use or uses of the water shall also be included. (3-18-22)()
- ~~ii.~~ For a municipal purposes application, attach a complete “Municipal Water Right Application Checklist.” The “Municipal Water Right Application Checklist” is a form available on the Department’s website or from the Department upon request. ()
- ~~iii.~~ For a municipal purposes application that proposes to appropriate water for reasonably anticipated future needs, include justification for the planning horizon, the anticipated service area at the end of the planning horizon, the anticipated population within the anticipated service area at the end of the planning horizon, and the anticipated water demand within the anticipated service area at the end of the planning horizon. Also include a gap analysis showing the extent to which an existing water right will not be sufficient to meet the anticipated water demand at the end of the planning horizon. ()
- ~~iv.~~ For a municipal purposes application that does not propose to appropriate water for reasonably anticipated future needs, include a water requirement narrative with a map of the service area, current water needs, water needs after five (5) years, and any existing plan for conveying ownership of the water right to a subdivision homeowner’s association or entity other than individual land parcel owners. ()
- ~~v.~~ For an application proposing multi-home domestic use where the applicant intends to convey a portion of the place of use land to an individual parcel or lot owner, describe the applicant’s plan, if any, to keep the permit in single ownership by conveying the permit to a homeowner’s association, water system operator, or other entity prior to conveying an individual parcel or lot with an appurtenant portion of the permit. ()
- ~~viii.f.~~ The period of each year during which water will be diverted, stored and beneficially used shall be listed use. ()
- ~~i.~~ A period of use must be listed for each beneficial use proposed in the application. ()
- ~~ii.~~ The period of use for irrigation purposes shall use, the period must coincide with the annual periods season of use shown in Figure 1 in APPENDIX B (located at the end of this chapter), unless it can be shown to the satisfaction of the Director established by the Department. The Department established irrigation season of use is available on the Department’s website or from the Department upon request. If a longer season of use is proposed, the application must justify that a different period the longer season of use is necessary. (3-18-22)()
- ~~ix.g.~~ The proposed method of diversion, conveyance system and system for distributing and using the water shall be described Description of the project works. (3-18-22)()
- ~~h.~~ Any other water right used at the place of use for the same purpose. Include the water right number or name of the delivery organization, such as a municipal provider, canal company, irrigation district, or other delivery entity that supplies water for the proposed use at the proposed place of use. Also state if the applicant is entitled to distribution of water from a water delivery entity, but the entity’s distribution system is not capable of delivering water to the proposed place of use. ()
- ~~i.~~ Ownership or other legal access to the point of diversion, place of use, and conveyance system. If a person or entity other than the applicant owns the land at the point of diversion, place of use, or where the conveyance system will be established, include a description of the arrangement enabling the applicant to access the land for the purpose proposed in the application. ()
- ~~*i.~~ The period of time required for completion of the to complete project works and application of apply water to the proposed beneficial use shall be listed. This While a permit holder may request a permit

~~development period extension pursuant to Section 42-204, Idaho Code, the period of time shall stated on an application may not exceed the time required to diligently and uninterruptedly apply the water to beneficial use and shall not exceed five (5) years unless the application proposes municipal purposes for reasonably anticipated future needs.~~ (3-18-22)()

~~xi.k. A Map or plat of sufficient scale (not less than two (2) inches equal to one (1) mile) to show the proposed project proposed shall be included. The map or plat shall agree with the legal descriptions and other information shown on the application.~~ (3-18-22)()

~~xii.l. The application form shall be signed by the applicant listed on the application. Applicant's signature or evidence must be submitted to show that the signatory has authority to sign the application on behalf of the applicant.~~ ()

~~i. For An application in more than one (1) name shall be signed by, each applicant must sign the application unless the names are joined by "or" or "and/or connects the applicant names."~~ (3-18-22)()

~~xiii.i. Applications For an application by corporations, companies or municipalities a corporation, company, municipality, governmental entity or organization, or other organizations shall be signed organization, include the signature and title of by an officer of the corporation or company or an elected official of the municipality or an individual authorized by the governmental entity or agency or other organization to sign the application. The signator's title shall be shown with the signature. Alternatively, the application may be signed by an authorized agent of the applicant in accordance with Subparagraph 035.03.l.iii.~~ (3-18-22)()

~~xiv.ii. Applications may be signed by a person having a current "If the signatory is an authorized agent of the applicant, include a power of attorney" or other documentation demonstrating the signatory has authority to sign on behalf of authorized by the applicant. A copy of the "If the signatory is a licensed attorney, power of attorney" shall be included with the application or other documentation is not required.~~ (3-18-22)()

~~xv. Applications to appropriate water in connection with Carey Act or Desert Land Entry proposals shall include evidence that appropriate applications have been filed for the lands involved in the proposed project.~~ (3-18-22)

~~xvi. The application form shall be accompanied with a fee in the amount required by Section 42-221A, Idaho Code.~~ (3-18-22)

04. Amended Applications. ()

~~a. Applications for permit shall be amended whenever significant changes An applicant or the applicant's agent must amend an application if the applicant intends to change the place purpose of use, period or nature of the intended use, method or location of diversion or proposed use of the water amount of diversion, point of diversion, place of use, or make other substantial changes. from that shown on the pending application are intended. An application shall be amended if the proposed change will result in a greater rate of diversion or depletion (see Subsection 035.04.e.), if the point of diversion, place of use, or point of discharge of the return flow are to be altered, if the period of the year that water will be used is to be changed, or if the nature of the use is to be changed. The Department may clarify a source or tributary name or the irrigation period of use that do not meet Paragraphs 035.03.b. and 035.03.f. requirements by documenting the official record without requiring the applicant to amend the application.~~ (3-18-22)()

~~b. An applicant or the applicant's agent may amend an application can be amended to clarify the name of the source of water but may not be amended amend an application to change the source of water.~~ (3-18-22)()

~~c. An applicant or the applicant's agent may not amend a municipal purposes application not originally seeking water for reasonably anticipated future needs to seek water for reasonably anticipated future needs.~~ ()

~~ed. An amendment which that increases the rate of diversion, increases the volume of water diverted per year or the volume of water depleted, lengthens the period of use, or adds an additional purpose of beneficial use~~

~~shall will~~ result in the ~~Department changing the~~ priority of the application for permit being changed ~~date~~ to the date the ~~Department received the~~ amended application ~~is received by the department.~~ (3-18-22)()

~~de.~~ An application for permit ~~applicant or the applicant's agent~~ may ~~be amended~~ amend an application ()
by:

~~i.~~ ~~endorsement by the applicant or his agent~~ Striking each item to be changed on the original application for permit form ~~which endorsement shall be initialed and dated, and initialing and dating each change;~~ ()

~~ii.~~ If the changes required to the information on the application are, in the judgment of the Director, substantial enough to cause confusion in interpreting the application form, the Filing a new application form designated as an amended application ~~shall be submitted on a new application for permit form to be designated as an amended application;~~ or (3-18-22)()

~~iii.~~ Changing an application electronically via the Department's online filing process. ()

~~ef.~~ An amended application shall be accompanied by the additional fee required by Section 42-221A, Idaho Code, ~~if~~ If an amendment increases the total rate of diversion rate or total volume of storage volume requested ~~is increased and by the fee required by Section 42-221F, Idaho Code, for readvertising if notice of the original application has been published,~~ the amended application must include any additional filing fee required by Section 42-221A, Idaho Code. (3-18-22)()

~~fg.~~ If the applicant's name or mailing address changes, the applicant ~~shall~~ or the applicant's agent must notify the Department of the change in writing ~~notify the department of the change.~~ (3-18-22)()

036. DELAYED PROCESSING.

An applicant may request in writing that the Department delay commencement or interrupt processing of the applicant's application for a period not to exceed one (1) year. The Department may approve the request unless the delay will injure existing water rights, the applicant seeks the delay for speculative purposes, or the delay does not serve the interest of the people of Idaho. The Department may approve a request for delay for a shorter period or upon conditions. Upon written request, the Department may renew the authorized delay successive times as long as the delay meets the requirements stated above. ()

037.6. -- 039. (RESERVED)

040. PROCESSING APPLICATIONS FOR PERMIT ~~AND REPROCESSING PERMITS (RULE 40).~~

~~01. General:~~ (3-18-22)

~~a.~~ Unprotested applications, whether for unappropriated water or trust water, will be processed using the following general steps: (3-18-22)

~~i.~~ Advertisement and protest period; (3-18-22)

~~ii.~~ Department review of applications and additional information, including department field review if determined to be necessary by the Director; (3-18-22)

~~iii.~~ Fact finding hearing if determined to be necessary by the Director; (3-18-22)

~~iv.~~ Director's decision; (3-18-22)

~~v.~~ Section 42-1701A, Idaho Code, hearing, if requested; and (3-18-22)

~~vi.~~ Director's decision affirmed or modified. (3-18-22)

~~b.~~ Protested applications, whether for unappropriated water or trust water, will be processed using the

- following general steps: (3-18-22)
- i. Advertisement and protest period; (3-18-22)
 - ii. Hearing and/or conference; (3-18-22)
 - iii. Department review of applications, hearing record and additional information including department field review if determined to be necessary by the Director. (3-18-22)
 - iv. Proposed decision (unless waived by parties); (3-18-22)
 - v. Briefing or oral argument in accordance with the department's adopted Rules of Procedure. (3-18-22)
 - vi. Director's decision accepting or modifying the proposed decision. (3-18-22)
- ~~e. The Director's decision rejecting and denying approval of an application for permit filed for diversion from a source previously designated as a critical groundwater area or upon which a moratorium has previously been entered may be issued without advertisement of the application. (3-18-22)~~
- ~~d. An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The Director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. The Director may approve a request for delay for a shorter period of time or upon conditions, and may renew the approval upon written request. (3-18-22)~~

021. Public Notice Requirement. (3-18-22)()

- ~~a. Applications for permit which have not been advertised~~Publication of an application will be pursuant to Section 42-203A, Idaho Code. (3-18-22)()
- ~~i. b. Advertisement of applications for permit proposing a rate of~~For an application that propose ds
~~diversion in excess of ten (10) cfs or less or storage of one thousand (1,000) AF or less shall comply with Section 42-203A, Idaho Code. The first required advertisement will be published on the first or third Thursday of a month when published in daily newspapers and on the first or third publishing day of the month for weekly newspapers. (3-18-22)~~
- ~~ii. Advertisement of applications for permit in excess of the amounts in Subsection 040.02.a.i. shall comply with Subsection 040.02.a.i. and shall also be published in a newspaper or newspapers to achieve statewide circulation. (3-18-22)~~
- ~~iii. Statewide circulation with respect~~af, the Department will accomplish statewide circulation pursuant to Section 42-203A(2), Idaho Code, shall be obtained by publication of a legal notice at least once each week for two (2) successive weeks in; ()
- ~~i. a~~A newspaper, as defined in Section 60-106, Idaho Code, of general circulation in the county in which the point of diversion is located; and ()
- ~~ii. by publication of a legal notice at least once each week for two (2) successive weeks in a~~At least one (1) daily newspaper, as defined in Section 60-107, Idaho Code, published in each of the department's four (4) administrative regions and determined by that the Director to be determines is of general circulation within each of the dDepartment's four (4) administrative regions, within which it is published. The administrative regions of the department are identified on Figure 2 in APPENDIX C (located at the end of this chapter). The names of newspapers used for statewide publication are available from any department office. (3-18-22)()
- ~~b. Applications for permit which have been advertised. (3-18-22)~~

~~i. Notice of applications for permit for water from the Snake River between Swan Falls Dam and Milner Dam or surface and groundwater tributaries to that reach of Snake River which were advertised prior to July 1, 1985 and have been held without final action by the department due to the Swan Falls controversy shall be readvertised by the Director in accordance with Subsection 040.02.a. as appropriate to allow opportunity for protests to be entered with respect to the public interest criteria of Section 42-203C(2), Idaho Code. (3-18-22)~~

~~ii. Applications for permit from the Snake River or surface and groundwater sources upstream from Milner Dam which have been held without action due to the Swan Falls controversy may be processed without readvertisement. (3-18-22)~~

~~iii. The applicant shall pay the readvertisement fee provided in Section 42-221F, Idaho Code, prior to the readvertisement. (3-18-22)~~

~~iv. Failure to pay the readvertising fee within thirty (30) days after the applicant is notified to do so is cause for the Director to void the application. (3-18-22)~~

~~e. Notice of existing permits. (3-18-22)~~

~~i. Existing permits appropriating water held in trust by the state of Idaho issued prior to July 1, 1985, unless exempted by Subsection 040.02.c.ii. shall be subject to the review requirements of Section 42-203D, Idaho Code, and shall be readvertised in accordance with Subsection 040.02.a. as appropriate. The review is limited to the criteria described in Section 42-203C(2), Idaho Code. (3-18-22)~~

~~ii. Permits exempt from the provisions of Section 42-203D, Idaho Code, include: (3-18-22)~~

~~(1) Permits appropriating water not held in trust by the state of Idaho; (3-18-22)~~

~~(2) Permits for DCMI uses, stockwater uses and other essentially non-consumptive uses as determined by the Director; and (3-18-22)~~

~~(3) Permits for which an acceptable proof of beneficial use submittal was received by the department prior to July 1, 1985, or permits for which an acceptable proof of beneficial use was submitted after July 1, 1985, if evidence satisfactory to the Director has been received to show that the permit was fully developed prior to July 1, 1985 to the extent claimed on the proof of beneficial use. (3-18-22)~~

~~c. The Department shall make an application accepted for filing available on the Department's website pursuant to Section 42-203A(3), Idaho Code. ()~~

~~d. Publication in the newspaper pursuant to Section 42-203A(2), Idaho Code, constitutes the official notice of the application. ()~~

~~iii.e. Holders of permits subject to the review requirement of Section 42-203D, Idaho Code, shall pay in advance, upon the request of the Director, the readvertising fee. An application amended under Paragraph 035.04.a. after publication requires republication. The applicant must file the amended application with the republication fee required by Section 42-221F, Idaho Code. (3-18-22)()~~

~~f. If a moratorium order is amended or repealed allowing the Director to continue processing an application previously held without final action, the Department will republish an application that was published prior to being held for the moratorium. Before republication, the applicant must pay the republication fee required by Section 42-221F, Idaho Code. ()~~

~~iv.g. Failure to pay the readvertising a required republication fee within thirty (30) days after the applicant is notified to do so is cause for the Director to cancel the permit void the application, unless a processing delay is approved under Section 036. (3-18-22)()~~

~~h. The Director may deny approval of an application filed for diversion of ground water in a designated critical ground water area without publication of the application if the Director believes that there is~~

insufficient water available for the proposed water use. An application that includes a mitigation plan proposing to offset injury to existing water rights will be published prior to the Director's evaluation of the application under Subsection 045.01. ()

032. Protests, Intervention, Hearings, and Appeals. ()

a. Protests. (3-18-22)

i. Protests ~~Section 42-203A, Idaho Code, governs protests against the application approval of an application for permit or against a permit being reprocessed shall comply with the requirements for pleadings as described in the department's adopted. The Department will treat a protest as a pleading filed pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources."~~ (3-18-22) ()

ii. Protests against the approval of an application for permit or against a permit being reprocessed will only be considered if received by the department after receipt of the application by the department and prior to the expiration of the protest period announced in the advertisement unless the protestant successfully intervenes in the proceeding. (3-18-22)

b. A protest may be filed on a form supplied by the Department or in any other format that includes the same information as the Department's form. ()

c. If a single protest names more than one (1) individual protestant and does not identify a representative, the Department will consider the first person listed to be the spokesperson and primary contact for service of documents for the group of individuals named as protestants. ()

iii.d. General statements of ~~The Department will not consider a general~~ protest (blanket protests) against appropriations an application for a particular class of use or from a particular source of water ~~will not be considered as a valid protests by the Director. A protest must identify the specific application being protested.~~ (3-18-22) ()

e. The Department will not accept a protest or petition to intervene unless the protest or petition to intervene is filed with the statutory filing fee required by Section 42-221L, Idaho Code, except any subdivision of the state, as defined in Section 67-2301, Idaho Code, is exempt from paying filing fees. ()

bf. Intervention. Requests ~~Petitions~~ to intervene in a ~~proceeding pending before the department shall protested application matter must~~ comply with ~~the Department's adopted~~ IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." (3-18-22) ()

eg. Hearings. ~~Hearings will be scheduled and held in accordance with the department's adopted pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources."~~ (3-18-22) ()

dh. Appeals. ~~Any final~~ A decision of the ~~Director~~ Department may be appealed ~~in accordance with Section 42-1701A, Idaho Code pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources."~~ (3-18-22) ()

043. Burden of Proof. ()

a. Burden of proof ~~is divided into~~ has two (2) parts: first, the burden of ~~coming forward with producing~~ evidence to present a prima facie case, and second, the ultimate burden of persuasion. (3-18-22) ()

b. The burden of coming forward with evidence is divided between the applicant and the protestant as follows ~~For evaluation of Section 42-203A(5), Idaho Code, criteria for a protested application:~~ (3-18-22) ()

i. The applicant ~~shall bear~~ has the initial burden of ~~coming forward with producing~~ evidence for the evaluation of Section 42-203A(5)(a) through (d) and (f) through (g), Idaho Code, criteria (a) through (d) of and of producing evidence of which the applicant is knowledgeable for the evaluation of Section 42-203A(5) ~~(e), Idaho Code; criteria.~~ (3-18-22) ()

~~ii. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criterion (e) of Section 42-203A(5), Idaho Code, as to any factor affecting local public interest of which he is knowledgeable or reasonably can be expected to be knowledgeable. The protestant shall bear has the initial burden of coming forward with producing evidence of which the protestant can reasonably be expected to be more cognizant than the applicant for those factors relevant to criterion (e) of Section 42-203A(5)(e), Idaho Code, of which the protestant can reasonably be expected to be more cognizant than the applicant criteria. (3-18-22)()~~

~~iii. The protestant shall bear the initial burden of coming forward with evidence for the evaluation of the public interest criteria of Section 42-203C(2), Idaho Code, and of demonstrating a significant reduction, except that the applicant shall provide details of the proposed design, construction, and operation of the project and directly associated operations to allow the impact of the project to be evaluated. (3-18-22)~~

~~e.iii. The applicant has the ultimate burden of persuasion for the criteria of Section 42-203A(5)(a) through (g), Idaho Code, and the protestant has the ultimate burden of persuasion for the criteria of Section 42-203C, Idaho Code. criteria. (3-18-22)()~~

~~c. For evaluation of Section 42-203C, Idaho Code, criteria for a protested application: ()~~

~~i. The protestant has the initial burden of producing evidence under Subsection 045.02, that the application will cause a significant reduction, except that the applicant has the initial burden of producing evidence of the proposed project design, construction, operation, and directly associated operations of which the applicant is knowledgeable or can reasonably be expected to be knowledgeable. ()~~

~~ii. The protestant has the ultimate burden of persuasion on whether the application causes a significant reduction under Subsection 045.02 and whether it meets the public interest criteria in Section 42-203C(2), Idaho Code, under Subsection 045.03. ()~~

~~d. For an unprotested applications or permits to be reprocessed application or an application for which all protests have been resolved, the Director will evaluate the application, any information submitted pursuant to Subsections ~~040.05.e~~ 040.04, 045.01, 045.02, and 045.03, and information in the Department's files and records ~~of the department, and the results of any studies the department may conduct~~ to determine compliance with ~~the appropriate~~ Sections 42-203A(5) and 42-203C, Idaho Code. For an unprotested application or an application for which all protests have been resolved, the applicant has the burden of producing evidence and the ultimate burden of persuasion on whether the application satisfies the applicable statutory criteria. (3-18-22)()~~

~~e. In protested matters the Director will take official notice of information as described in the department's adopted Rules of Procedure, and will, prior to considering, circulate to the parties information from department studies and field examinations concerning the protested application or permit being reprocessed, if such information has not otherwise been made a part of the hearing record. (3-18-22)~~

~~**054. Additional Information Requirements. ()**~~

~~a. The Department may require the applicant to file any of the additional information under Paragraph 040.04.c. or 040.04.d. if the official record for the application does not contain sufficient information to evaluate the applicable criteria in Section 045 and other statutory criteria. The Department will notify the applicant of the additional information required. ()~~

~~ab. For unprotested applications and permits being reprocessed, Unless the Department extends the time for filing, the additional information required by Subsection 040.05.e. shall be submitted must be filed within thirty (30) days after the Director Department notifies the applicant that the application or permit is being reviewed for decision of the additional information requirements. ()~~

~~i. The Director Department may extend the grant an extension of time within which to submit file the required additional information upon if the applicant files a written request by the applicant and upon a showing of good cause. ()~~

~~ii. Failure to submit If the required additional information is not filed within the time period allowed~~

~~will be cause for, including any extensions granted, the Director to Department may void an the application, or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late. The Director will provide opportunity for hearing as provided in Section 42-1701A, Idaho Code. (3-18-22)(____)~~

~~b. For protested applications or protested permits being reprocessed, the information required by Subsection 040.05.e. may be requested by the Director to be submitted within thirty (30) days after notification by the Director, may be made a part of the record of the hearing held to consider the protest, or may be made available in accordance with any pre-hearing discovery procedures. Failure to submit the required information within the time period allowed will be cause for the Director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late. (3-18-22)~~

~~c. The following information shall be submitted for applications to appropriate unappropriated water or trust water and for permits being reprocessed for trust water. The additional information submittal requirements of this rule are waived for filings which seek to appropriate five (5) cfs or less or storage of five hundred acre feet (500 AF) or less and for filings seeking reallocation of trust water which the Director determines will reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. However, the Director may specifically request submittal of any of the following information for any filing, as he determines necessary. Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows: For purposes of evaluating the application under Subsection 045.01, the Department may request additional information, including, but not limited to, the following: (3-18-22)(____)~~

~~i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted. (3-18-22)~~

~~ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well. (3-18-22)~~

~~iii. Information shall be submitted concerning any Project design, construction, or operation techniques which, or mitigation measures that the applicant will be employed to eliminate or reduce the impact on other water rights. (3-18-22)(____)~~

~~d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows: (3-18-22)~~

~~ii. Information shall be submitted on the The proposed project water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year. (3-18-22)(____)~~

~~iii. Information shall be submitted on The quantity of water available from the source applied for, including, but not limited to, information concerning the flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that from which water is to be taken from for ground water sources, and information on other sources of supply that may be used to supplement the applied for water source proposed in the application. (3-18-22)(____)~~

~~e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows: (3-18-22)~~

~~iv. The applicant shall submit Evidence documenting an interest in the lands necessary for all project works and the place of use including, but not limited to, copies of deeds, leases, easements, or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by well sharing agreements. In the instance the land necessary to construct and operate the proposed project is privately-owned land not in the applicant's ownership, the applicant must submit evidence documenting that the applicant has an interest in the land, has authority to exercise eminent~~

~~domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest, or has another arrangement with the landowner establishing an interest. In the instance of a project diverting water from or conveying water across federally owned land, the applicant must submit evidence documenting that the applicant filed the appropriate form to request or initiate access and that access is authorized or a decision is pending. ()~~

~~v. Applicants For hydropower uses shall also submit information required to demonstrate, evidence demonstrating compliance with Sections 42-205 and 42-206, Idaho Code. (3-18-22)()~~

~~ii.vi. The applicant shall submit copies of applications Requests for other needed permits, licenses, and approvals, and The applicant must keep the Department apprised of the status of the applications requests and any subsequent approvals or denials. (3-18-22)()~~

~~f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows: (3-18-22)~~

~~ii.vii. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence Evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply put it to the beneficial use proposed. (3-18-22)()~~

~~viii. If the applicant is a governmental entity proposing to use taxing, bonding, or contracting authority to raise the funds needed to commence and pursue project construction, a proposed project construction schedule and a plan describing how the applicant intends to utilize its taxing, bonding, or contracting authority in connection with the proposed project construction schedule. ()~~

~~ii.ix. The applicant shall submit plans and Plans, specifications, along with and estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications. (3-18-22)()~~

~~g.x. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows: The applicant shall seek comment and shall submit all letters of Letters requesting comment and any responding comment on the proposed project construction and operation effects of the construction and operation of the proposed project from the governing body of the city and/or county and, or tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and; any irrigation district or, canal company, or other water delivery entity within which the proposed project is located; and from other people, entities, or agencies with interests in the local area that may be affected by the proposed water use as determined by the Director Department. (3-18-22)()~~

~~xi. Design, construction, operation techniques, or mechanical equipment that will be employed to achieve efficiency in conveyance or use of water and to minimize waste. ()~~

~~xii. Evidence demonstrating compliance with the Idaho State Water Plan. ()~~

~~hd. The following information Relative to the Public Interest Criteria of Section 42-203C(2), Idaho Code, shall be submitted by an applicant seeking reallocation of trust water for a project which the Director determines will reduce the flow of the Snake River by more than two (2) acre feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. The Director may request any or all of the following information for any filing seeking the reallocation of trust water. For purposes of evaluating the application under Subsections 045.02 and 045.03, the Department may request additional information including, but not limited to, the following: (3-18-22)()~~

~~i. A project design and estimate of cost of development shall be submitted. For applications appropriating more than twenty five (25) cfs, or ten thousand (10,000) AF of storage, or generating more than five (5) megawatts, the information shall be prepared and submitted by a qualified engineer licensed under the provisions of Chapter 12, Title 54, Idaho Code, unless waived by the Director. The design shall be definite enough to reflect the project's impacts and implications as required in subsequent rules. (3-18-22)~~

~~ii. If the project proposes development for irrigation purposes use, information shall be submitted on the crop rotation, including acreages acres under each crop type, for lands when newly developed land. Also the kinship, if any, of the operator of the land to be irrigated by the project to the applicant; the location and acreage of other irrigated land owned, leased, or rented by the applicant; a soil survey prepared in accordance with the Natural Resources Conservation Service irrigable land classification system; a schedule for bringing into production the project land; the name, address, and number of shares held by each shareholder if the applicant is a corporation; and evidence of tax-exempt status if the applicant is a corporation so claiming. (3-18-22)()~~

~~iii. Information shall be submitted concerning tThe number and kinds of jobs that will be created or eliminated as a direct result of project development including both the construction and operating phases of the project. If jobs are seasonal, the estimated number of months per year of employment shall be submitted. (3-18-22)()~~

~~iviii. For applications or permits being reprocessed for an application that proposes appropriating more than twenty-five (25) cfs, or more than ten thousand (10,000) AF af of storage, or generating more than five (5) megawatts of power, information shall be submitted concerning the changes to community services that will be required during the construction and operation phases of the project including, but not limited to, changes to schools, roads, housing, public utilities, and public health and safety facilities, if any. (3-18-22)()~~

~~iv. Information shall be submitted concerning tThe source of energy for diverting and using water for the project, the estimated instantaneous demand and total amount of energy that will be used, the efficiency of use, and energy conservation methods. (3-18-22)()~~

~~vi. Information shall be submitted concerning tThe location, amount, and quality of return flow water, and any water conservation features of the proposed project. (3-18-22)()~~

~~vii. If the project proposes irrigation as a use, information shall be submitted concerning the kinship, if any, of the operator of the land to be irrigated by the project to the applicant, the location and acreage of other irrigated lands owned, leased, or rented by the applicant, the names, addresses and number of shares held by each shareholder if the applicant is a corporation, evidence of tax-exempt status if a corporation is so claiming, a soil survey prepared in accordance with the U.S. Soil Conservation Service irrigatable land classification system, and a schedule for bringing into production the project lands. (3-18-22)~~

~~vi. The availability, foreseeability, and cost of alternative energy sources to ameliorate the economic impact the proposed use will have on electric utility rates in the state of Idaho. ()~~

~~e. Unless the Director determines otherwise, information under Paragraph 040.04.c. or 040.04.d. is not required for: ()~~

~~i. An application that seeks to appropriate five (5) cfs or less, or store five hundred (500) af or less of unappropriated water. ()~~

~~ii. An application that proposes to use water from a source in the Swan Falls Trust Water Area to irrigate two hundred (200) acres or less or any other use that the Director determines will reduce the flow of the Snake River measured at the Murphy Gage by two (2) af per day or less. ()~~

~~f. Unless the Director determines otherwise, information under Paragraph 040.04.d. is required for an application that proposes to use water from a source in the Swan Falls Trust Water Area to irrigate more than two hundred (200) acres or any other use that the Director determines will reduce the flow of the Snake River measured at the Murphy Gage by more than two (2) af per day. ()~~

041. -- 044. (RESERVED)

045. EVALUATION CRITERIA (RULE 45).

01. Criteria for Evaluating All Applications to Appropriate Water. The Director will use the

following criteria in evaluating whether an application ~~to appropriate unappropriated water or trust water~~ should be approved, denied, approved for a smaller amount of water, or approved with conditions. (3-18-22)()

a. ~~Criteria for determining whether the proposed use will reduce the quantity~~ Reduction of water available under an existing water rights (injury) criteria. A proposed use will be determined to reduce the quantity of water under an existing water right ~~(i.e., injure another water right)~~ if: (3-18-22)()

i. The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree, ~~or valid claim,~~ or the historical amount beneficially used by the water right holder under such recorded rights of such permit, license, decree, or claim, whichever is less; (3-18-22)()

ii. The holder of an existing water right will be forced to an unreasonable effort or expense to divert his water for an existing water right. ~~Protection~~ The reasonable pumping level provisions of Section 42-226, Idaho Code, govern protection of existing ground water rights ~~are subject to reasonable pumping level provisions of Section 42-226, Idaho Code;~~ or (3-18-22)()

iii. The proposed use would make the quality of the water available ~~to the holder of~~ unusable by an existing water right ~~is made unusable for the purposes of the existing user's right, and the water cannot~~ and could not ~~be~~ restored to usable quality without unreasonable effort or expense. (3-18-22)()

iv. An application that would otherwise be denied because of injury to another water right may be approved upon conditions ~~which will~~ that mitigate losses of water ~~to the holder of~~ for an existing water right, as determined by the Director. (3-18-22)()

v. ~~The provisions of Subsection 045-01.a.v. are not intended to require compensation or mitigation for loss of flow to holders of~~ If an existing water right is subordinated ~~hydropower rights or those from which trust water is reallocated to future beneficial uses which include the application's proposed use, the existing subordinated water right cannot be injured.~~ (3-18-22)()

b. ~~Criteria for determining whether the~~ Sufficiency of water supply ~~is insufficient for the proposed use.~~ The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval in quantities sufficient to ~~make the project economically feasible (direct benefits to applicant must exceed direct costs to applicant), unless there are noneconomic factors that justify application approval. In assessing such noneconomic factors, the Director will also consider the impact on other water rights if the project is abandoned during construction or after completion, the impact on public resource values, and the cost to local, state and federal governments of such an abandonment~~ accomplish the proposed beneficial use. (3-18-22)()

c. ~~Criteria for determining whether the~~ Good faith ~~criteria~~. The ~~criteria requiring that the Director evaluate~~ evaluation of whether an application is not made in good faith or whether it is made for delay or speculative purposes requires an analysis of the ~~intentions of the applicant with respect to the filing and diligent pursuit of~~ applicant's intent to follow application requirements and diligently pursue permit development. ~~The judgment of another person's intent can only be based upon the substantive actions that encompass the proposed project.~~ Speculation for ~~the purpose of~~ this rule is an intention to obtain a water right permit ~~to appropriate water~~ without the intention of applying putting the water to beneficial use with reasonable diligence. Speculation does not prevent an applicant from subsequently selling the ~~developed~~ project for a profit or from making a profit from the use of the water. An application will be found to have not been made in good faith if: (3-18-22)()

i. ~~The applicant shall have legal access to the property~~ In the instance the land necessary to construct and operate the proposed project is privately owned and not in the applicant's ownership, has the applicant does not have an interest in the land at the time of the application filing or the authority to exercise eminent domain ~~authority to obtain such access;~~ or ()

ii. In the instance of a project diverting water from or conveying water across federally owned land ~~in state or federal ownership, has filed all applications for a right-of-way. Approval of applications involving Desert Land Entry or Carey Act filings will not be issued until the United States Department of Interior, Bureau of Land Management has issued a notice classifying the lands suitable for entry, the applicant has not filed the appropriate~~ ()

- form to request access; and or (3-18-22)()
- iii. The applicant is not in the process of obtaining other permits, licenses, and approvals needed to construct and operate the project; and or (3-18-22)()
- ~~iii~~iv. There are no obvious impediments that prevent the successful completion of the project. (3-18-22)()
- d. Criteria for determining whether the applicant has sufficient financial resources to complete the project criteria. The Director will find an applicant does not (3-18-22)
- i. An applicant will be found to have sufficient financial resources; (3-18-22)()
- i. Upon a showing that it is not reasonably probable that funding is or will be available for project construction or upon a financial commitment letter acceptable to the Director. This showing is required as described in Subsection 040.05.c. or at the time the hearing provided by Subsection 040.05.c. is conducted; or (3-18-22)()
- ii. If the applicant is a governmental entity will be determined to have satisfied this requirement if it has the without taxing, bonding, or contracting authority necessary to raise the funds needed to commence and pursue project construction in accordance consistent with the proposed project construction schedule. (3-18-22)()
- e. Criteria for determining whether the project conflicts with the local public interest criteria. The Director will consider the following, along with any other factors he finds to be appropriate, in determining whether the project will conflict with the local public interest: (3-18-22)()
- i. The direct effect the project will have on the economy of public water resources that are of interest to people in the local area directly affected by the proposed water use as determined by the employment opportunities, both short and long term, revenue changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains; (3-18-22)
- ii. The effect the project will have on recreation, including, but not limited to, fish and wildlife resources in the local area affected by the proposed use habitat, aquatic life, recreation, aesthetic beauty, transportation, navigation, water quality, and the effect of such use on the availability of water for alternative water uses that might be made within a reasonable time; and (3-18-22)()
- ii. Whether the proposed water use is consistent with Idaho's policy of securing the maximum use and benefit from the public water resources. ()
- iii. Although the Director has independent responsibility for the overall assessment and balancing of factors weighing on the local public interest, the Director will give due regard to expertise of other state and federal regulatory agencies charged with assessing individual issues under Subparagraphs 045.01.e.i. and ii., recognizing that it is not the primary job of the Department to protect all aspects of the health and welfare of Idaho's citizens and visitors. ()
- iv. The Director may condition approval of an application on compliance with orders, rules, requirements, and authorizations issued or to be issued by state and federal regulatory agencies with jurisdiction over subject matter relevant to the local public interest. ()
- ~~iii~~v. AnThe Director will deny an application which the Director determines will conflict that conflicts with the local public interest will be denied unless the Director determines that an over riding state or national need exists for the project or that the project can be approved with conditions to resolve the local public interest conflict with the local public interest. (3-18-22)()
- f. Conservation of water resources within the state of Idaho criteria. The application will be determined contrary to the conservation of water resources if: ()

- i. A diversion rate greater than two hundredths (0.02) cfs per acre is proposed, but is not necessary for irrigation use; ()
- ii. Design, construction, operation techniques, or mechanical equipment will not be employed to achieve a water use efficiency consistent with contemporary engineering, industry, and regulatory standards; ()
- iii. A proposed storage facility will exceed a seepage rate of zero point two (0.2) feet per day. This criterion does not apply if the proposed storage facility will be used as an infiltration basin for ground water recharge, an excavated pond filled by intercepting ground water, or an impoundment for irrigation use not exceeding five (5) af of stored water per acre of irrigation; or ()
- iv. The proposed irrigation use is not consistent with the requirements of Section 42-204A, Idaho Code. ()
- g. In the case where the place of use is outside the watershed or local area where the source of water originates, the project effect on the local economy or local area criteria. The Director will consider the extent of adverse effect on the local economy of the watershed or local area within which the source of water for the proposed use originates. ()
- h. Idaho State Water Plan criteria. The Director will consider whether the proposed diversion and use of water complies with the Idaho State Water Plan, including plans developed for specific geographic areas. ()

02. Criteria for Evaluating Whether ~~a Proposed Use~~ an Application for Reallocation of Trust Water ~~in the Swan Falls Trust Water Area Will Cause a Significant Reduction~~ Reference: Under Section 42-203C(1), Idaho Code, and Subsection 025.02.b. ~~For purposes of reallocating trust water made available by the Snake River water rights agreement, The Director will find an application for a reallocation of trust water within the Swan Falls Trust Water Area will cause a significant reduction when the proposed use, individually or cumulatively with other existing uses and uses reasonably likely to exist within twelve months of the proposed use, would significantly reduce the amount of trust water available to the user for hydropower generation purposes under a water right held in trust. The Director will presume an application for permit or a permit being reprocessed, a reallocation of trust water within the Swan Falls Trust Water Area will be presumed to not cause a significant reduction if the Director determines that it complies with the application meets both the individual and cumulative tests for evaluating significant reduction as provided in Subsections under Paragraphs 045.02.a. and 045.02.b.~~ (3-18-22)()

- a. Individual test ~~for evaluating significant reduction.~~ The Director will presume: ()
 - i. A proposed use ~~will be presumed to not cause a significant reduction if~~ when fully developed and its impact is fully felt, ~~the use will that~~ individually does not reduce the flow of the Snake River ~~measured at the~~ Murphy ~~Gauge~~ Gage by ~~not~~ more than two (2) acre-feet per day. does not cause a significant reduction; and ()
 - ii. An irrigation project of two hundred (200) acres or less diverting water from a source other than the Snake River or springs directly tributary to the Snake River located ~~anywhere~~ in the ~~Snake River Basin above~~ ~~Murphy Gauge~~ proposing to use trust water is presumed to Swan Falls Trust Water Area will not reduce the flow at ~~Murphy Gauge~~ Gage by more than two (2) acre-feet per day and does not cause a significant reduction. ~~The However, this presumption of this section is not applicable to applications or permits to be reprocessed which an application the Director determines to be part of a larger development.~~ (3-18-22)()
- b. Cumulative test ~~for evaluating significant reduction.~~ A. The Director will presume a proposed use will be presumed to not cause a significant reduction, meets the cumulative test if the use, when fully developed and its impact is fully felt and when considered cumulatively with other existing uses and other uses reasonably likely to exist within twelve (12) months of the proposed use, will not deplete the flow of the Snake River measured at ~~Murphy~~ Gauge Gage by more than: (3-18-22)()
 - i. Forty thousand (40,000) ~~acre-feet af~~ per calendar year when considered with all other uses approved for development of trust water during that calendar year; (3-18-22)()
 - ii. Forty thousand (40,000) ~~acre-feet af~~ per calendar year using a four (4) year moving average when

considered with all other uses approved for development of trust water during that four (4) year period; and (3-18-22)()

iii. Twenty thousand (20,000) ~~acre-feet~~ af per calendar year from filings approved for reallocation of trust water ~~which that~~ meet the criteria of Subsection Paragraph 045.02.a. (3-18-22)()

~~c. The Director will determine on a case-by-case basis from available information whether a permit to be reprocessed or The presumptions in Subsection 045.02, Paragraph 045.02.a., and Paragraph 045.02.b. may be rebutted by the protestant. In rebutting the presumptions that an application for trust water which exceeds the flow depletion limits of Subsection 045.02, or one which meets the flow depletion limits but has been protested, will does not cause a significant reduction. In making this determination, the Director will may consider:~~ (3-18-22)()

i. The amount of the reduction in hydropower generation that the proposed use will cause individually and cumulatively with other uses expected to be developed within twelve (12) months of the proposed use as compared to the existing hydropower generation output of the affected facility ~~or facilities~~. (3-18-22)()

ii. The relative importance of the affected hydropower facility ~~or facilities~~ to other sources of electrical power generation available to the holder of the facility ~~or facilities~~. (3-18-22)()

iii. The timing of the reduction in hydropower generation both on an annual basis and on a long-term basis considering the lag time between the beginning of diversion by the proposed use and the resulting reduction in hydropower generation. ()

iv. The effect of the reduction in hydropower generation on the unit cost of hydropower from the facility ~~or facilities~~ and the average cost of electrical power offered by the facility holder ~~of the facility~~. (3-18-22)()

v. The terms of contracts, mortgages, or regulatory permits and licenses which require the hydropower generation facility holder ~~of the hydropower generation facility~~ to retain the capability to produce hydroelectric power at a specific level. (3-18-22)()

~~d. Other provisions of these rules notwithstanding, applications or permits to be reprocessed proposing a direct diversion of water for irrigation purposes from the Snake River between Milner Dam and Swan Falls Dam or from tributary springs in this reach are presumed to cause a significant reduction.~~ (3-18-22)

~~e. Other provisions of these rules notwithstanding, applications or permits to be reprocessed for DCMI purposes are presumed to not cause a significant reduction.~~ (3-18-22)

03. Criteria for Evaluating Whether an Application for Reallocation of Trust Water in the Swan Falls Trust Water Area is in the Public Interest Under Section 42-203C(2), Idaho Code. If the Director determines that ~~a proposed use an application for reallocation~~ of trust water ~~held by the state pursuant to Section 42-203B(5), Idaho Code, within the Swan Falls Trust Water Area~~ will cause a significant reduction, the Director will consider the criteria of Section 42-203C(2), Idaho Code, before ~~acting on the application or permit being reprocessed approving or denying the application.~~ The Director shall consider and balance the relative benefits and detriments for each factor required to be weighed under Section 42-203C(2), Idaho Code, to determine whether a proposed reduction of the amount of water available for power production serves the greater public interest. The Director shall evaluate whether the proposed use sought in the permit being reprocessed or the application will provide the greater benefit to the people of the state of Idaho when balanced against other uses for the same water resource. In The Director will presume an application is in the public interest if it proposes a use consistent with Paragraph 045.03.f. The Director will presume an application is not in the public interest if it proposes a use consistent with Paragraph 045.03.g. In evaluating the public interest criteria, no single public interest criterion will be entitled to greater weight than any other public interest criterion. When evaluating the public interest criteria, the Director will ~~use the following guidelines consider:~~ (3-18-22)()

a. ~~The Director will consider the~~ potential benefits, both direct and indirect, ~~and~~ that the proposed use would provide to the state and local economy. The economic ~~appraisal shall~~ evaluation will be based upon generally accepted economic analysis procedures which uniformly evaluate the following factors within the state of Idaho and

the county ~~or counties~~ directly affected by the project: (3-18-22)()

- i. Direct project benefits. ()
- ii. Indirect benefits including net revenues to the processing, transportation, supply, service, and government sectors of the economy. (3-18-22)()

~~iii. Direct project costs, to include the opportunity cost of previous land use. (3-18-22)~~

~~iv.iii.~~ Indirect project costs, including verifiable costs to government in net lost revenue and increased regulation costs, verifiable reductions in net revenue resulting from losses to other existing instream uses, and the increased cost of replacing reduced hydropower generation from unsubordinated hydropower generating facilities. ()

b. The ~~Director will consider the~~ economic impact the proposed use would have upon the electric utility rates in the state of Idaho, and the availability, foreseeability, and cost of alternative energy sources to ameliorate such impact. These evaluations will include the following considerations: (3-18-22)()

i. Projections of electrical supply and demand for Idaho and the Pacific Northwest made by the Bonneville Power Administration and the Northwest Power Planning Council and information available from the Idaho Public Utilities Commission or from the electric utility from whose water right trust water is being reallocated. ()

ii. The long-term reliability of the substitute source and the cost of alternatives including the resulting impact on electrical rates. (3-18-22)()

c. ~~The Director will consider w~~Whether the proposed use will promote the family farming tradition in the state of Idaho. For purposes of this evaluation the Director will presume the application promotes the family farming tradition if the total land to be irrigated by the applicant, including currently owned and leased irrigated land and land proposed to be irrigated in the application and other applications and permits of the applicant, does not exceed nine hundred sixty (960) acres. For an application proposing to divert water within the service area of a water delivery organization or to divert water through infrastructure shared by otherwise independent farming operations, the Director will evaluate this presumption on an individual basis within the relevant service area or place of use. This presumption may be rebutted by the protestant under Paragraph 040.03.c.ii. If the presumption above does not apply, the Director will consider whether the proposed use has the following factors characteristics:- (3-18-22)()

i. The farming operation developed or expanded as a result of the application is operated by the applicant or a member of the applicant's family (spouse, parents or grandparents, lineal descendants, including those that are adopted, lineal descendants of parents, and spouse of lineal descendants); ()

ii. In the event the application is filed in the name of a partnership, one (1) or more of the partners operates the farming operation; and ()

iii. If the application is in the name of a corporation, the number of stockholders does not exceed fifteen (15) persons, and one (1) or more of the stockholders operates the farming operation unless the application is filed by an irrigation district, drainage district, canal company, or other entity authorized to appropriate water for landowners within the district or for stockholders of the company all of whom satisfy the presumption in Paragraph 045.03.c. ()

~~d. If the total land to be irrigated by the applicant, including currently owned and leased irrigated land and land proposed to be irrigated in the application and other applications and permits of the applicant, do not exceed nine hundred sixty (960) acres, the application will be presumed to promote the family farming tradition. (3-18-22)~~

~~e. If the requirement of Subsection 045.03.c.i. is not met, the Director will consider the extent the applicant conforms to the following characteristics: (3-18-22)~~

~~i. The farming operation developed or expanded as a result of the application is operated by the~~

~~applicant or a member of his family (spouse, parents or grandparents, lineal descendants, including those that are adopted, lineal descendants of parents; and spouse of lineal descendants);~~ (3-18-22)

~~ii. In the event the application is filed in the name of a partnership, one or more of the partners shall operate the farming operation; and~~ (3-18-22)

~~iii. If the application is in the name of a corporation, the number of stockholders does not exceed fifteen (15) persons, and one or more of the stockholders operates the farming operation unless the application is submitted by an irrigation district, drainage district, canal company or other water entity authorized to appropriate water for landowners within the district or for stockholders of the company all of whom shall meet the family farming criteria.~~ (3-18-22)

~~fd. The Director will consider the promotion of~~ **Whether the proposed project will promote** full economic and multiple use development of the water resources of the state of Idaho. ~~In this regard, the extent to which the project proposed complies with the following factors will be considered:~~ (3-18-22)()

- ~~i. Promotes~~**ing** and conforms~~ing~~**ing** with the adopted **Idaho** State Water Plan; (3-18-22)()
- ~~ii. Provides~~**ing** for coordination of proposed and existing uses of water to maximize the beneficial use of available water supplies; (3-18-22)()
- ~~iii. Utilizes~~**ing** technology economically available to enhance water and energy use efficiency; (3-18-22)()
- ~~iv. Provides~~**ing** multiple use of the water, including multipurpose storage; (3-18-22)()
- ~~v. Allows~~**ing** opportunity for reuse of return flows; (3-18-22)()
- ~~vi. Preserves~~**ing** or enhances~~ing~~**ing** water quality, fish, wildlife, recreation, and aesthetic values; ~~or~~ (3-18-22)()
- ~~vii. Provides~~**ing** supplemental water supplies for existing uses with inadequate supplies. (3-18-22)()

~~ge. The Director will consider w~~ **Whether a proposed use, which includes irrigation, irrigation development** will conform to a staged development policy of up to twenty thousand (20,000) acres per year or eighty thousand (80,000) acres in any four (4) year period in the ~~Snake River drainage above Murphy Gauge Swan Falls Trust Water Area.~~ **In applying these** criteria, the Director will consider the following: (3-18-22)()

~~i. "Above Murphy gauge" means the Snake River and any of its surface or groundwater tributaries upstream from Murphy gauge which gauge is located on the Snake River approximately four (4) miles downstream from Swan Falls Dam from which trust water is to be reallocated;~~ (3-18-22)

~~ii. Twenty thousand (20,000) acres per year or eighty thousand (80,000) acres per four (4) year period is a four (4) year moving average of F~~ **Twenty thousand (20,000) acres/ per** year of permits issued during a calendar year for irrigation development. If permits for development of less than twenty-thousand (20,000) acres are issued in a year, additional development in excess of twenty thousand (20,000) acres can be permitted in succeeding years. Likewise, if more than twenty thousand (20,000) acres is permitted in one year (recognizing that a single large project could exceed twenty thousand (20,000) acres) the permitted development in succeeding years must be correspondingly less to maintain no greater than a twenty thousand (20,000) acres/ **per** year average for any four (4) year period; (3-18-22)()

~~iii. The criteria of Subsection Paragraph 045.03.ge. applies to multiple-use projects with irrigation as a principal purpose. Projects which use irrigation as only an incidental purpose, such as the land treatment of waste, shall will~~ not be included within this policy; and (3-18-22)()

~~iviii. An~~ **The Director may approve an** application determined ~~by the Director~~ to be otherwise approvable

but found to exceed the acreage limitations of Paragraph 045.03.e., when considered with other applications approved for development, ~~may be approved~~ with conditions ~~providing for prescribing~~ the construction of project works and beneficial use of water ~~to be commenced~~ in a future year. (3-18-22)()

~~h.~~ ~~No single public interest criterion will be entitled to greater weight than any other public interest criterion.~~ (3-18-22)

~~i.f.~~ ~~The Director will presume an application is in the public interest if it proposes:~~ ()

~~i.~~ ~~Until such time as the studies prescribed in Policy 32 I of the State Water Plan are completed and accepted by the Idaho Water Resource Board, applications and permits reprocessed which propose to divert water to surface storage~~ To store surface water from the Snake River and surface tributaries upstream from the Murphy Gauging Station shall be presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code. Applications or reprocessed permits which are approved prior to completion of the studies, will not be subject to additional reprocessing Gage consistent with the Idaho State Water Plan; or (3-18-22)()

~~ii.~~ ~~A state of Idaho-sponsored ground water recharge project that is consistent with the Idaho State Water Plan; or~~ ()

~~iii.~~ ~~Domestic, commercial, municipal, or industrial use that does not have a maximum consumptive use of more than two (2) af per day.~~ ()

~~iv.~~ ~~The presumptions of Subparagraphs 045.03.f.i. through iii. may be rebutted by the protestant under Paragraph 040.03.c. In evaluating a proposed rebuttal to these presumptions, the Director may consider the criteria in Paragraphs 045.03.a. through e.~~ ()

~~j.~~ ~~Applications for permit for trust water sources filed prior to July 1, 1985, for projects for which diversion and beneficial use was complete prior to October 1, 1984, are presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code.~~ (3-18-22)

~~kg.~~ ~~Applications or permits to be reprocessed proposing a direct diversion of water for~~ The Director will presume an application is not in the public interest if it proposes an irrigation purposes project diverting water directly from the Snake River ~~between Milner Dam and Swan Falls Dam~~ or from tributary springs in this reach are ~~presumed not to be in the public interest as defined by Section 42-203C, Idaho Code~~ directly tributary to the Snake River in the Swan Falls Trust Water Area. Such proposals, are presumed to prevent the full economic and multiple use of water in the Snake River Basin and to adversely affect hydropower availability and electrical energy rates in the state of Idaho. This presumption may be rebutted by the applicant. In evaluating a rebuttal to this presumption, the Director may consider the criteria in Paragraphs 045.03.a. through e. (3-18-22)()

~~l.~~ ~~Proposed DCMI uses which individually do not have a maximum consumptive use of more than two acre feet/day are presumed to meet the public interest criteria of Section 42-203C(2), Idaho Code, unless protested.~~ (3-18-22)

046. -- 049. (RESERVED)

050. CONDITIONS OF APPROVAL ~~(RULE 50).~~

01. **Issuance of Permits with Conditions.** The Director may issue ~~a~~ permits with conditions to ~~ensure~~ compliance with: ()

~~a.~~ ~~the provisions of Title 42, Chapter 2, Title 42,~~ Idaho Code, ~~and other statutory duties, the public interest, and specifically to meet~~ applicable laws and statutes; ()

~~b.~~ Efficient administration of water rights by priority date; ()

~~c.~~ The Idaho State Water Plan as required by Section 42-1734B(4), Idaho Code; ()

- ~~d.~~ The criteria of Section 42-203A, Idaho Code; and to meet ()
- ~~e.~~ Requirements of Section 42-203B, Idaho Code, including conditions to subordinate a permit for hydropower generation to all rights to the use of water, other than hydropower, and limit a permit for hydropower generation to a term in connection with the power project; ()
- ~~f.~~ the Rrequirements of Section 42-203C, Idaho Code, to the fullest extent possible including conditions to promote efficient use and conservation of ~~energy and~~ water; (3-18-22)()
- ~~g.~~ The intent of agreements entered into by and between the state of Idaho and holders of water rights for power purposes and the state of Idaho's obligation to continually review the reallocation of trust water consistent with Section 42-203, Idaho Code; or ()
- ~~h.~~ The requirement to obtain authorization necessary to access the point of diversion, place of use, or to convey water across federal land prior to diversion and use of water under the permit. ()
- ~~02.~~ **Requirements to Mitigate Impact of Flow Depletion.** Permits to be reprocessed or applications approved to appropriate water from the main stem of the Snake River between Milner and Murphy gauging station for diversion to off-stream storage during the period November 1 to March 31 shall include requirements to mitigate, in accordance with the State Water Plan, the impact of flow depletions on downstream generation of hydropower. (3-18-22)
- ~~03.~~ **Applications and Existing Permits That Are Junior and Subordinate.** Applications and existing permits approved for hydropower generation shall be junior and subordinate to all rights to the use of water, other than hydropower, within the state of Idaho that are initiated later in time than the priority of the application or existing hydropower permit. A subordinated permit shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the state of Idaho initiated later in time than the priority of the application or existing hydropower permit. A permit issued for hydropower purposes shall contain a term condition on the hydropower use in accordance with Section 42-203B(6), Idaho Code. (3-18-22)
- ~~04.~~ **Permanent Flow Measuring Device Requirement.** Applications approved for on-stream storage reservoirs will, unless specifically waived by the Director, require permanent flow measuring devices both upstream and downstream from the reservoir. (3-18-22)
- ~~05.~~ **Well Spacing and Well Construction Requirements.** Applications approved for diversion of groundwater may include conditions requiring well spacing and well construction requirements. (3-18-22)
- ~~06.~~ **Reprocessed Permits.** Permits reprocessed pursuant to Section 42-203D, Idaho Code, may be cancelled, modified or conditioned by the Director to make the permit comply in every way with any permit that would be issued for the same purpose based upon a new application processed under these rules. (3-18-22)
- ~~07.~~ **Voiding Approval of Permit.** Permits may be conditioned to authorize the Director to void ~~the approval of~~ the permit if ~~he~~ the Director determines that the applicant submitted false or misleading information on the application or supporting documents. (3-18-22)()
- ~~08.~~ **Retention of Jurisdiction.** The Director may condition permits to retain jurisdiction to insure compliance with the design, construction and operation provisions of the permit. (3-18-22)
- ~~09.~~ **Insuring Minimum Stream Flows and Prior Rights.** The Director may condition permits to insure that established minimum stream flows and prior rights including prior rights reserved by federal law are not injured. (3-18-22)
- ~~10.~~ **Insuring Compliance with Water Quality Standards.** The Director may condition permits to insure compliance with Idaho's water quality standards. (3-18-22)
- ~~11.~~ **Insuring Assignment of Interest.** The Director may condition a permit issued for trust water to require that any amendment (Section 42-211, Idaho Code), transfer (Section 42-222, Idaho Code), or assignment of

~~interest in the permit by any method whatsoever shall not result in the project failing to meet the public interest criteria of Section 42-203C, Idaho Code except, however, lenders obtaining title to the project through default will have a reasonable period of time, as determined by the Director, to meet such criteria or to convey the project to a person or entity that does meet the criteria.~~ (3-18-22)

051. -- 054. (RESERVED)

055. MORATORIUM ~~(RULE 55).~~

01. Applications for Permits. (3-18-22)()

~~a.~~ The Director may cease ~~to approve applications~~ action on an application or stay further development of a permit for which the permit holder has not submitted proof of beneficial use in a designated geographical area upon finding a need to: (3-18-22)()

i. Protect existing water rights; ()

ii. ~~E~~nsure compliance with the provisions of Chapter 2, Title 42, Idaho Code; and or (3-18-22)()

iii. Prevent reduction of flows below a minimum stream flow ~~which has been established~~ held by the ~~Director or the b~~ Board pursuant to applicable law. (3-18-22)()

~~b.~~ Notice of the Director's action to cease further action on an application ~~approval or stay further development of a permit~~ will be by: (3-18-22)()

i. ~~Summary~~ Order served by certified mail upon the then ~~existing~~ affected applicants or permit holder; and (3-18-22)()

ii. Publication ~~of the order~~ for three (3) consecutive weeks in a newspaper ~~or newspapers~~ of general circulation in the area affected. (3-18-22)()

~~c.~~ The order of the Director's action to stay further development of a permit will require a permit holder to file, within sixty (60) days of order issuance, either: ()

i. Proof of beneficial use for the extent of diversion and beneficial use accomplished prior to issuance of the order; or ()

ii. A response with supporting information demonstrating the permit holder made a substantial investment, prior to receipt of the order, in project works to divert and beneficially use water under the permit that merits the granting of additional time to complete all or part of the project. ()

iii. Failure to submit proof of beneficial use or a response will result in suspension of further development of the permit. ()

~~ed.~~ Objections to the Director's action ~~shall~~ will be considered ~~under the department's adopted~~ pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources," and applicable law. (3-18-22)()

02. Permits. (3-18-22)

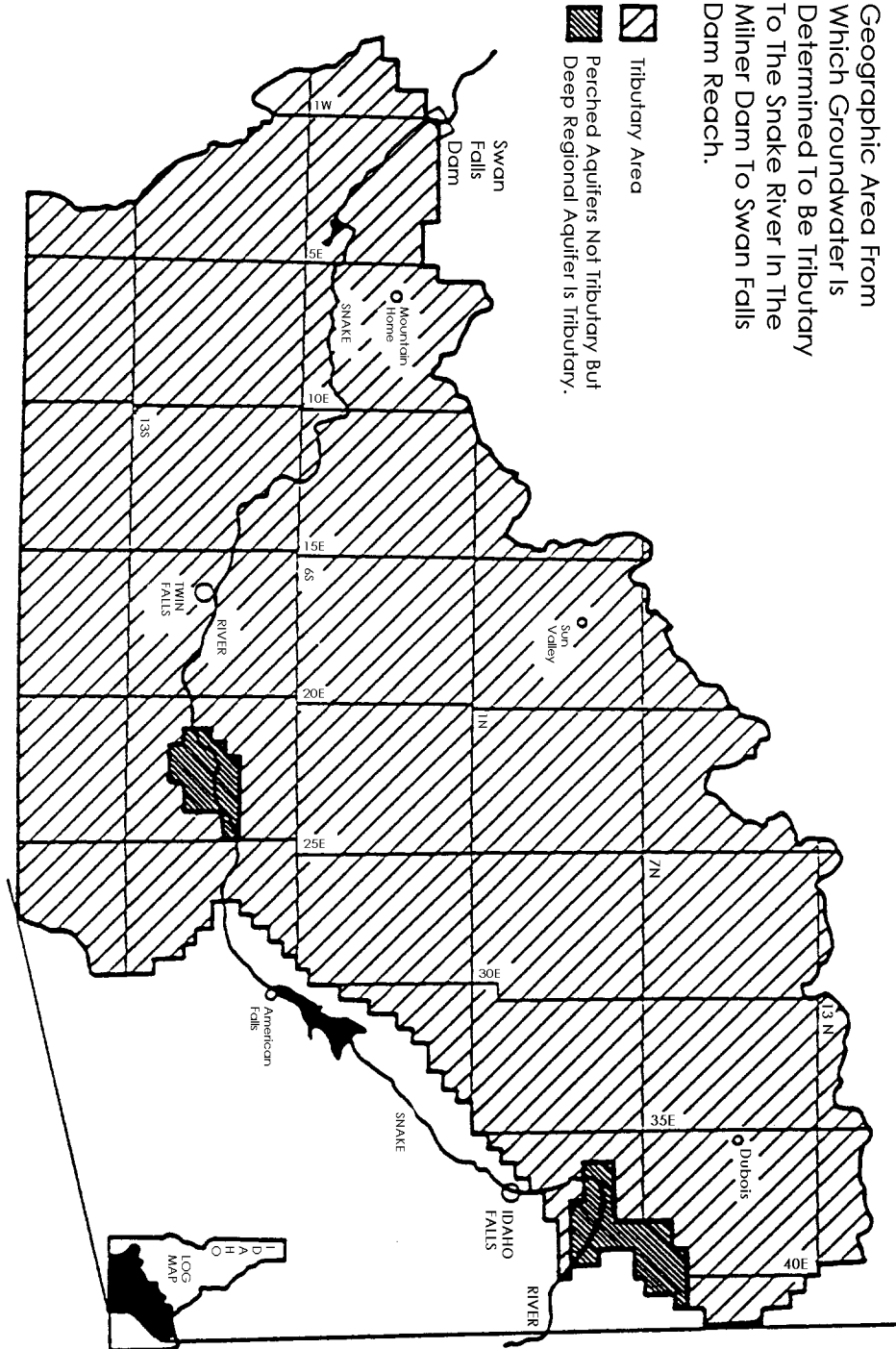
~~a.~~ ~~To the extent a permit has not been developed, the Director may cancel, or modify permits for which proof of beneficial use has not been submitted in a designated geographical area as an extension of Subsection 055.01.~~ (3-18-22)

~~b.~~ Notice of the Director's action to cancel or modify permits shall be by: (3-18-22)

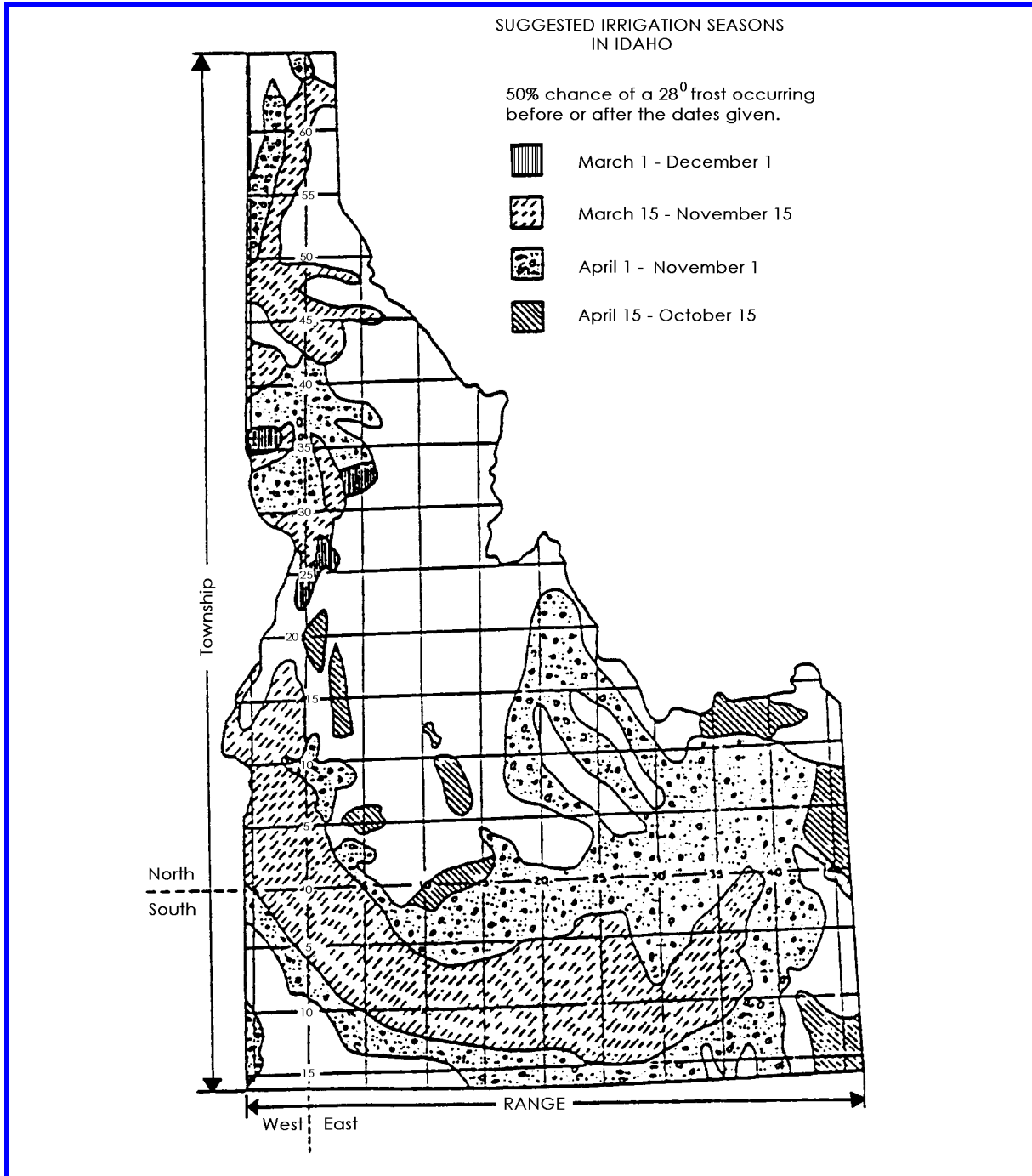
- ~~i. Summary Order served by certified mail upon the affected permit holders in the designated area.
(3-18-22)~~
 - ~~ii. Publication of the order for three (3) consecutive weeks in a newspaper or newspapers of general circulation in the area.
(3-18-22)~~
 - ~~e. Objections to the Director's action shall be considered under the department's adopted Rules of Procedure and applicable law.
(3-18-22)~~
- 056. -- 999. (RESERVED)**

APPENDIX A

Geographic Area From Which Groundwater Is Determined To Be Tributary To The Snake River In The Milner Dam To Swan Falls Dam Reach.



APPENDIX B



APPENDIX C

