SENATE RESOURCES & ENVIRONMENT COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2006 Legislative Session

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RESOURCES & ENVIRONMENT

IDAPA 13 - DEPARTMENT OF FISH AND GAME

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 36-104(b), 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 current military raincheck and refund rule is specific to Special Operation Iraqi Freedom and has been amended previously to extend its applicability to subsequent calendar years. An amendment to the rule is necessary to broaden the scope to include members of the military who have been deployed to other war zones or in armed conflict, and to remove the reference to a specific year. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 153-155.

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 Steve Barton (208) 287-2798.

DATED this 27th day of October, 2005.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, ID 83707
(208) 334-3715, Fax (208) 334-2148

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is May 23, 2005.

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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 current military rain check and refund rule is specific to Special Operation Iraqi Freedom and has been amended previously to extend its applicability to subsequent calendar years. An amendment to the rule is necessary to broaden the scope to include members of the military who have been deployed to other war zones or in armed conflict, and to remove the reference to a specific year.

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

The temporary rule confers a benefit to military personnel who do not have an opportunity to hunt or fish due to deployment to a combat zone.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to continue the rain check or refund rule beyond the 2004 calendar year and the military personnel who are most interested in the rule are deployed to combat zones.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Barton (208) 287-2798.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 17th day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

602. SPECIAL ~~*OPERATION IRAQI FREEDOM*~~ MILITARY DEPLOYMENT REFUND AND RAIN CHECK.

01. ~~*2004*~~ Special Refund and Rain Check Rule. This special refund and rain check rule applies ~~*only*~~ to the ~~*2004*~~ appropriate calendar hunting season. Because of military deployment to ~~*Operation Iraqi Freedom*~~ areas of armed conflict, some hunters will be unable to hunt big game animals for which they purchased tags in the state of Idaho. ~~*(4-6-05)*~~(5-23-05)T

02. ~~*2005*~~ Special Refund and Rain Check Eligibility. Hunters who have purchased tags and who can show in good faith they could not participate in hunting activities due to military deployment ~~*for Operation Iraqi Freedom*~~ to areas of armed conflict will be eligible for a refund or rain check for license and tags for the ~~*2005*~~ next calendar year hunting season as outlined in this rule. ~~*(4-6-05)*~~(5-23-05)T

03. General Season Tag. Holders of a general season tag for deer or elk may request: (3-20-04)

a. A refund of the hunting license and tag fee; (3-20-04)

b. A rain check for a hunting license and same tag for the ~~*2005*~~ next calendar year hunting season; or ~~*(4-6-05)*~~(5-23-05)T

c. An exchange in ~~*2004*~~ the calendar year for a tag in another zone or area so long as tags are available in that area or zone. ~~*(4-6-05)*~~(5-23-05)T

04. Controlled Hunt Permit and Tag. Holders of a controlled hunt permit and tag for deer, elk, or antelope may request: (3-20-04)

a. A refund of the hunting license, controlled hunt permit, and tag fee; (3-20-04)

b. A rain check for a hunting license, controlled hunt permit, and tag for the same controlled hunt in the ~~*2005*~~ next calendar year hunting season; or ~~*(4-6-05)*~~(5-23-05)T

c. An exchange in ~~*2004*~~ the calendar year for a hunting license and a general season

tag in another zone or area so long as tags are available in that area or zone. ~~*(4-6-05)*~~(5-23-05)T

05. Nonresident Bear or Mountain Lion Tags. Holders of nonresident bear or mountain lion tags may request: (3-20-04)

a. A refund of the hunting license and tag fee; or (3-20-04)

b. A rain check for a hunting license and tag for the ~~*2005*~~ next calendar year hunting season. ~~*(4-6-05)*~~(5-23-05)T

06. Moose, Bighorn Sheep, or Mountain Goat Controlled Hunt Permits. Holders of moose, bighorn sheep, or mountain goat controlled hunt permits may request: (3-20-04)

a. A refund of the hunting license, controlled hunt permit, and controlled hunting tag fee; or (3-20-04)

b. A rain check for a hunting license, controlled hunt permit, and controlled hunt tag for the ~~*2005*~~ next calendar year hunting season. ~~*(4-6-05)*~~(5-23-05)T

07. Ineligible to Request Tag or Permit Refund or Rain Check. If the person hunts a species of wildlife before requesting a refund or rain check, then the tag or permit fee for that species will not be refunded or eligible for a rain check for the ~~*2005*~~ next calendar year season. ~~*(4-6-05)*~~(5-23-05)T

08. Ineligible to Request License Fee Refund or Rain Check. If the person hunts for any species during the ~~*2004*~~ applicable year hunting season before requesting a refund or rain check, then the hunting license fee will not be refunded or eligible for a rain check for the ~~*2005*~~ next calendar year season. ~~*(4-6-05)*~~(5-23-05)T

09. Rain Check Requests Must be for Same Species. All rain check requests must be made for the same species. For example, a deer tag will not be eligible for a rain check of an elk tag in the ~~*2005*~~ next calendar year season. ~~*(4-6-05)*~~(5-23-05)T

10. Refunds Will be for the Amount Paid. All refunds will be for the amount the person paid for the hunting license or tag. (3-20-04)

11. Use of Department-Approved Form for Rain Check or Refund Request. Resident and nonresident military personnel who have purchased general season tags or controlled hunt tags and are unable to participate in any hunting activities due to military deployment must submit a request for a refund or rain check on the department-approved form (found on Idaho Fish and Game website ~~*www2.state.id.us/fishgame*~~ http://fishandgame.idaho.gov/) by January 1, ~~*2005*~~ next calendar year, along with a copy of their deployment papers, or a letter from their commanding officers stating the dates the individual was deployed for duty in ~~*Operation Iraqi Freedom*~~ areas of armed conflict. Those requests received after this date will not be eligible for the special refund or rain check. ~~*(4-6-05)*~~(5-23-05)T

RESOURCES & ENVIRONMENT

IDAPA 13 - DEPARTMENT OF FISH AND GAME

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

DOCKET NO. 13-0108-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

Season setting for Big Game. A proposed rule amendment to increase eligibility for left-over Moose permits, allow the use of round ball or conical lead bullets in traditional muzzleloader hunts, and require applicants for outfitter allocated controlled hunts to have a written agreement with an outfitter before submitting a controlled hunt application. The development of application criteria, drawing criteria and marketing procedures for certain controlled hunt tags to support the Department's Access Yes program. Grant priority to military personnel returning from active duty for emergency depredation hunts.The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 156-166.

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 Brad Compton (208) 287-2756.

DATED this 27th day of October, 2005.

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

Boise, Idaho 83707

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is January 24, 2005.

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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: Season setting for Big Game. A proposed rule amendment to increase eligibility for left-over Moose permits, allow the use of round ball or conical lead bullets in traditional muzzleloader hunts, and require applicants for outfitter allocated controlled hunts to have a written agreement with an outfitter before submitting a controlled hunt application. The development of application criteria, drawing criteria and marketing procedures for certain controlled hunt tags to support the Department's Access Yes program. Grant priority to military personnel returning from active duty for emergency depredation hunts.

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

The temporary rule confers a benefit to hunters and outfitters.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to continue the controlled hunt applications and drawings

without interruption and to publish the Big Game Seasons Proclamation Brochures.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brad Compton (208) 287-2756.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 17th day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

260. PERMITS FOR CONTROLLED HUNTS.

01. Use of Controlled Hunt Permits. No person may hunt in any controlled hunt without having a valid controlled hunt permit in possession. (7-1-93)

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

b. In the event a permit is issued based on erroneous information, the permit will be invalidated by the Department and may NOT be used. The Department will notify the permittee of the invalidation of the permit. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (7-1-93)

c. Any person who receives a controlled hunt permit and tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT the holder of a deer controlled hunt permit and tag may purchase a tag for and hunt in an extra tag hunt, or controlled hunt permit/extra tag hunt for deer. (3-20-97)

d. Any person who receives a combination controlled hunt permit/extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (7-1-93)

e. Any person who receives a controlled hunt permit for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT a controlled hunt permit holder may purchase a tag for and hunt in an extra tag hunt for elk. (7-1-93)

f. Any person who receives a combination controlled hunt permit/tag for antelope is prohibited from hunting in any archery antelope hunt. The holder of an antelope combination controlled hunt permit/extra tag may apply for a combination controlled hunt permit/tag for antelope or may purchase a tag for an archery antelope hunt. (7-1-93)

g. Any person who receives a spring controlled hunt permit for black bear is prohibited from hunting in any other spring bear hunt - April 15 to June 30. (7-1-99)

h. Any person who receives a fall controlled hunt permit for black bear is prohibited

from hunting in any other fall bear hunts--September 15 to October 31. (10-26-94)

02. Nonresident Permit Limitations. (3-20-04)

a. In controlled hunts with ten (10) or fewer permits, not more than one (1) nonresident permit will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) permits, not more than ten percent (10%) of the permits will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-6-05)

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

c. For each species, the total number of outfitter allocated controlled hunt permits shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt permits; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt permits that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (3-20-04)

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

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

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn permit for two (2) years. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat permit for two (2) years. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of permits nor Landowner Preference Permits. EXCEPT all successful and unsuccessful antelope, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) “Super” controlled antelope/deer/elk tags to hunt in any open general and/or controlled antelope, deer or elk hunt in the following hunting season. (3-15-02)

c. Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, or a designated depredation or extra tag hunt for deer, elk or antelope. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in first-come, first-served deer, elk and antelope controlled hunt permit sales. (10-26-94)

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

or a moose on any controlled hunt may not apply for a permit for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram permit for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram permit for any hunt south of Interstate Highway 84. Auction tag and lottery tag winners are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-5-00)

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

f. Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt permit for five (5) years. The harvest of a bighorn ewe does not make the permittee ineligible to apply for a permit to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (7-1-93)

g. Any person who has killed a mountain goat since 1977 may not apply for a mountain goat permit. (7-1-93)

h. Any person who has killed a<u>n antlered</u> moose in Idaho may not apply for a moose permit <u>for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a permit for antlerless moose EXCEPT that any person may apply for permits remaining unfilled after the controlled hunt draw</u>. ~~*(4-5-00)*~~<u>(1-24-05)T</u>

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

j. Any person may apply for both a controlled hunt permit/tag and a controlled hunt permit/extra tag. (7-1-93)

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

<u>**l.** Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (1-24-05)T</u>

04. Applications. Individual applications or group applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has

incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; they may not be resubmitted after correction. (10-26-94)

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

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

c. Deer, elk, antelope and fall black bear - Application period for first drawing - May 1 - 31. (4-6-05)

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

e. Deer, elk, antelope, and fall black bear - Application period for second drawing - August 5 - 15. (4-6-05)

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

a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt permit/extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (10-26-94)

b. Only one (1) controlled hunt permit/extra tag will be issued for each person on any application submitted. (10-26-94)

c. Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt permit/tag hunts or controlled hunt permit/extra tag hunts. (10-26-94)

d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, antelope, moose, bighorn sheep, mountain goat, black bear, and lion, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, antelope, black bear, or mountain lion. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a permit tag in the mail. (4-6-05)

e. Any controlled hunt permits, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold forty five (45) days following the close of each respective controlled hunt drawing by any Point-of-Sale vendor on a first-come, first-served basis UNLESS such day is a Sunday, in which case the permits will go on sale the next legal

business day. A controlled hunt permit and tag will be issued to successful applicants. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. The fee for the exchanged tag is the fee for a duplicate tag. (3-15-02)

f. A "group application" for deer, elk, and antelope is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (10-26-94)

g. A "group application" for moose, bighorn sheep, mountain goat, and black bear is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (10-26-94)

h. If a group application exceeds the number of permits available in a hunt that group application will not be selected for that hunt. (7-1-98)

i. Landowner permission hunt permits will be sold first-come, first-served basis at the Nampa, McCall and Headquarters offices of the Idaho Department of Fish and Game after July 15. (7-1-98)

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

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

b. Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

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

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

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

08. Unclaimed Permits. Successful applicants for the first deer, elk, black bear, or antelope controlled hunt drawing must purchase and pick up their controlled hunt permit and tag by August 1. All controlled hunt tags and permits not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags and permits left over or

unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-6-05)

261. SPECIAL CONTROLLED HUNTS.

01. Special Controlled Hunt Program. The Special Controlled Hunt Permit Program is a program to partially fund a sportsman access program adopted by the Fish and Game Commission. This program will offer forty (40) tags valid for the current year hunting seasons; including, twelve (12) tags each for elk, deer, and antelope, and four (4) tags for moose. (1-24-05)T

a. The rules for controlled hunts set forth in Section 260, of these rules, do not apply to the Special Controlled Hunt Program. (1-24-05)T

b. The Special Controlled Hunt application will be marketed by the Department of Fish and Game. The Department will issue these tags to eligible persons selected by an impartial random lottery draw process. The successful applicants will receive the tag and controlled hunt permit necessary to hunt the appropriate species. The Department's various license issuing systems and other methods may be used to market the applications. (1-24-05)T

02. Moneys. The Department shall deposit all moneys received from the sale of Special Controlled Hunt Applications in accordance with state law. The Department shall specifically use funds for the sportsman access program. (1-24-05)T

03. General Rules. (1-24-05)T

a. Any individual, resident or nonresident, may purchase and submit applications without limit. (1-24-05)T

b. Blank special controlled hunt applications may be given or transferred to other individuals, or entered in the name of individuals other than the purchaser. (1-24-05)T

c. Each successful applicant must have or be eligible to obtain a valid Idaho hunting license. (1-24-05)T

d. Each tag will be issued to the individual named on the drawn application that meets license eligibility requirements and cannot be transferred. (1-24-05)T

e. An individual may be drawn for only one (1) special controlled hunt tag for each species. (1-24-05)T

f. Each special controlled hunt tag is valid for the designated species and allows the hunter to hunt in any open hunt, general or controlled, for the designated species in the applicable year's season. (1-24-05)T

g. The special controlled hunt tag shall be in addition to any other tag the hunter is eligible to obtain. (1-24-05)T

h. Any applicant, including those who harvest an animal on a special controlled hunt tag, shall be eligible to apply for any controlled hunt for the same species in the same year or subsequent years. (1-24-05)T

i. Prior to the Department issuing any license, tag or permit to a successful applicant, the individual must complete and sign a statement certifying his eligibility to obtain and possess an Idaho hunting license and the required permits and tags. In the event a license, tag or permit is issued based on erroneous information, all documents issued based on the erroneous information will be invalidated by the Department and may not be used. The Department will notify the individual at his last known place of residence of the invalidation of the license, tag or permit. (1-24-05)T

04. **Application Fees**. The Commission intent for this special controlled hunt program is to provide some of the funding for a statewide sportsman access program. Applications may be sold for individual species (Super Hunt) or grouped for combined species (Super Hunt Combo). The application fees will be set by Commission Order under Section 36-415, Idaho Code, or will be the same as the controlled hunt fee set in Section 36-416, Idaho Code. (1-24-05)T

05. **Drawing Dates**. There will be two (2) drawings. All drawings shall be held at 10 a.m. at the Department of Fish and Game offices in Boise, Idaho. The first drawing will be on or about June 15, and the second drawing will be on or about August 15 each year. The Commission may order a different drawing day in case of business emergency, holiday, or non-business days. (1-24-05)T

06. **Department Marketed Applications**. (1-24-05)T

a. Individual applications for special controlled hunts shall be made on a form prescribed by the Department. (1-24-05)T

b. All applications must be received at the Licenses Section, Headquarters Office, Idaho Department of Fish and Game, 1075 Park Blvd., PO Box 25, Boise, Idaho 83707-0025, no later than 5 p.m. (MST), May 31 of the current calendar year for the first drawing and no later than 5 p.m. (MST), July 31, of the current calendar year for the second drawing. Applications received after July 31 shall be ineligible for any drawing. If either drawing date is a Saturday, Sunday or other legal holiday, then the applications must be received on the next legal business day. (1-24-05)T

c. All applications entered into the first drawing are not eligible for and will not be entered into the second drawing. (1-24-05)T

d. Any individual application that is unreadable, has multiple or no species box checked, has incomplete or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; they may not be resubmitted after correction. (1-24-05)T

e. The Department shall sell applications through its electronic licensing system from July 28 through November 30. (1-24-05)T

f. For each tag available, the Department shall draw one (1) winner and two (2) alternates. All alternates will be drawn after all winners have been drawn. Should the winner be ineligible, deceased or incapacitated to hunt, the first alternate drawn will be declared the winner. Should the first alternate be ineligible, deceased or incapacitated to hunt, the second alternate drawn will declared the winner. Should the second alternate be ineligible, deceased or incapacitated to hunt, that special controlled hunt permit shall be null and void and shall not be issued to any other person. The names and addresses of the alternates shall be confidential until the winner is issued all required licenses, tags or permits. (1-24-05)T

07. Refunds of Special Controlled Hunt Fees. (1-24-05)T

a. The application fee is not refundable. (1-24-05)T

b. The special controlled hunt tag, permit and related hunting license are not refundable for any reason. (1-24-05)T

~~261~~262. -- 269.(RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

410. UNLAWFUL METHODS OF TAKE.
No person shall take big game animals as outlined in this section. (7-1-93)

01. Firearms. (7-1-93)

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

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

c. With any rimfire rifle, rimfire handgun or any muzzleloading handgun, EXCEPT for mountain lion. (7-1-93)

d. With a fully automatic firearm. (10-26-94)

e. With any electronic device attached to, or incorporated in, the firearm (including handguns and shotguns) or scope. (3-30-01)

02. Bows, Crossbows, Arrows, Bolts, Chemicals or Explosives. (3-20-97)

a. With arrows or bolts having broadheads measuring less than seven-eighths (7/8) inch in width and having a primary cutting edge less than fifteenth-thousandths (0.015) inch thick. (7-1-93)

b. With any bow having a peak draw weight of less than forty (40) pounds up to or at

a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of less than one hundred-fifty (150) pounds. (3-20-97)

c. With any chemicals or explosives attached to the arrow or bolt. (7-1-93)

d. With arrows or bolts having expanding broadheads. (7-1-93)

e. With arrows or bolts having barbed broadheads. A barbed broadhead is a broadhead which has any portion of the rear edge of the broadhead forming an angle less than ninety (90) degrees with the shaft or ferrule. (7-1-93)

f. With any electronic or tritium-powered device attached to, or incorporated into, an arrow, bolt, crossbow, or bow. (3-30-01)

g. With any bow capable of shooting more than one (1) arrow at a time. (7-1-93)

h. With any compound bow with more than sixty-five percent (65%) let-off. (7-1-93)

i. With an arrow and broadhead, or bolt and broadhead, with a combined total weight of less than four hundred (400) grains. (3-20-97)

j. With an arrow less than twelve (12) inches from the broadhead to the nock inclusive. (3-30-01)

k. With an arrow wherein the broadhead does not proceed the shaft and nock. (3-30-01)

l. During an ARCHERY ONLY season, with any firearm, crossbow (except disabled archers), or other implement other than a longbow, compound bow, or recurve bow, or: (3-20-97)

i. With any device attached that holds a bow at partial or full draw. (7-1-93)

ii. With any bow or crossbow equipped with magnifying sights. (3-20-97)

m. During a TRADITIONAL ARCHERY ONLY season, with any firearm, crossbow, or other implement other than a longbow or recurve bow, or: (3-15-02)

i. With an arrow not constructed of wood or fletched with non-natural material. (3-15-02)

ii. With any bow equipped with sights. (3-15-02)

n. With any crossbow pistol. (3-20-97)

03. Muzzleloaders. (7-1-93)

a. With a muzzleloading rifle or musket which is less than forty-five (.45) caliber for deer, antelope, or mountain lion, or which is less than fifty (.50) caliber for elk, moose, bighorn

sheep, mountain goat, or black bear. (7-1-93)

b. With any electronic device attached to, or incorporated in, the muzzleloader. (3-30-01)

c. During a MUZZLELOADER ONLY season, with any firearm, muzzleloading pistol or other implement other than a muzzleloading rifle or musket which: (7-1-93)

i. Is at least forty-five (.45) caliber for deer, antelope or mountain lion or at least fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat or black bear. (7-1-93)

ii. Is capable of being loaded only from the muzzle. (7-1-93)

iii. Is equipped only with open or peep sights. (7-1-93)

iv. Is loaded only with black powder or, Pyrodex or other synthetic black powder. (3-20-97)

v. Is equipped with no more than two (2) barrels. (7-1-93)

vi. Is loaded only with a projectile of at least four hundred twenty-eight (.428) caliber. (3-20-97)

vii. Is equipped only with flint, musket cap, or percussion cap. (4-6-05)

d. During a TRADITIONAL MUZZLELOADER ONLY season, with any firearm other than a muzzleloader rifle or musket with an exposed hammer that pivots: (3-15-02)

i. Is loaded only with loose black powder or Pyrodex. (3-15-02)

ii. Is loaded only with a patched round ball or conical non-jacketed projectile comprised wholly of lead or lead alloy. Sabots are not allowed. ~~*(3-15-02)*~~(1-24-05)T

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

a. With any shotgun using any slug or double-aught (#00) or larger buckshot. (7-1-99)

b. With any muzzleloader that is at least forty-five (0.45) caliber for deer, antelope, or mountain lion or at least fifty (0.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (7-1-99)

c. With any bow having a peak draw weight of not less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of not less than one hundred fifty (150) pounds. (7-1-99)

05. Other. (7-1-93)

a. With electronic calls EXCEPT for the hunting of mountain lions in Units 41, 42 and that portion of Unit 12 north of State Highway 12 southwest of the Doe Creek Road (Forest Service Road 566) and northeast of Cabin Creek and Forest Service Road 486. (3-15-02)

b. With any bait including grain, salt in any form (liquid or solid), or any other substance (not to include liquid scent) to constitute an attraction or enticement, with the exception of applicable rules for the black bear baiting permit. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.17, "Rules Governing the Use of Bait for Taking Big Game Animals". (3-30-01)

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

d. With any net, snare, trap, chemical, deadfall or device other than legal firearm, archery or muzzleloader equipment. (7-1-93)

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

(BREAK IN CONTINUITY OF SECTIONS)

412. MOTORIZED VEHICLE USE RESTRICTION UNITS.
The motorized vehicle use restriction applies to areas and hunts in units 29, 30, 30A, 32, 32A, 36A, 37, 37A, 45, 47, 48, 50, 51, 52, 53, 56, 58, 59A, 66, 70, 72 (late season), 73, 75, 77, and 78. The specific hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Season Proclamation, which is published in a brochure available at department offices and license vendors. (1-24-05)T

41~~2~~3. -- 419. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

800. EMERGENCY DEPREDATION HUNTS.

01. Eligibility. (7-1-93)

a. Only Idaho residents with a valid Idaho hunting or combination license are eligible to apply to participate in emergency depredation hunts. (7-1-93)

b. Persons submitting applications for emergency depredation hunts are eligible to apply for controlled hunts or may hunt in the general season. (7-1-93)

02. Applications. (7-1-93)

a. Applicants must submit a depredation hunt application and mail it to the regional office of the Idaho Department of Fish and Game in the area(s) they are willing to hunt. Applicants may apply to different areas for deer, elk and antelope. (7-1-93)

b. Applicants may submit only one (1) application per year for each species. An individual or a group may apply on an application. A group is defined as two (2) hunters applying for the same depredation hunt on the same application. On a group application both hunters must comply with all regulations, complete the application properly, and abide by the same depredation hunt choice. If an individual submits application for more than one (1) species, he does not have to be in the same group for each application Separate applications may be submitted for deer, elk and antelope. (7-1-93)

c. Application can be made in only one (1) region for deer, one (1) for elk, and one (1) for antelope. (7-1-93)

d. Any form not properly completed will be ineligible for selection. (7-1-93)

e. Any holder of an antlerless or doe/fawn controlled hunt permit/tag will be considered an applicant for any depredation hunt for that species which is: (7-1-93)

i. Held prior to the antlerless or doe/fawn controlled hunt; and (7-1-93)

ii. Is in the same area as the depredation. (7-1-93)

f. Any holder of an antlerless or doe/fawn controlled hunt permit/tag may also apply for a depredation hunt in any region. (7-1-93)

g. A list of depredation hunt applications received will be maintained for the time period July 1 to June 30. Applications are valid only for the time period for which they are submitted. (7-1-93)

h. Military personnel returning from active duty after June 30 may apply at any time and will be given priority in the selection process. (1-24-05)T

03. Selection Of Participants. The Department shall place all applications (individual or group) for each depredation hunt received by June 30 in random order. All applications received after June 30 shall be placed at the end of the list in the order received, except that military personnel returning from active duty will be given priority. The Department shall select participants for a hunt in the order in which applicants appear on the list EXCEPT for those hunts which precede, or at the discretion of the Regional Supervisor, follow a controlled hunt for doe/fawn or antlerless animals. If a depredation hunt is scheduled before or at the discretion of the Regional Supervisor a doe/fawn or antlerless hunt in the same unit, the holders of the doe/fawn or antlerless permit/tags will be given the option to hunt in the depredation hunt. If no doe/fawn or

antlerless hunts are scheduled in that unit, or if some depredation hunt permits are not taken by controlled hunt permittees, participants will be selected from applicants for that depredation hunt. If a group application is selected, both hunters will be offered depredation hunt permits.

~~*(7-1-98)*~~(1-24-05)T

RESOURCES & ENVIRONMENT

IDAPA 13 - DEPARTMENT OF FISH AND GAME

13.01.10 - RULES GOVERNING THE IMPORTATION, POSSESSION, RELEASE, SALE OR SALVAGE OF WILDLIFE

DOCKET NO. 13-0110-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b) and 36-2205(c), Idaho Code.

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

Address the requirements and specifications for possessing or raising wildlife for medical research. Correct terminology throughout the chapter. Clarify the requirement for an importation permit. Clarify and update the allowed species importation list. Set bird disease standards and bird marking standards for shooting preserves.The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 169 through 181.

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 Dr. Mark Drew (208) 454-7646.

DATED this 27th day of October, 2005.

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

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is May 23, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-2205(c) Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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:

Address the requirements and specifications for possessing or raising wildlife for medical research. Correct terminology throughout the chapter. Clarify the requirement for an importation permit. Clarify and update the allowed species importation list. Set bird disease standards and bird marking standards for shooting preserves.

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

The temporary rule confers a benefit to commercial wildlife farms and wildlife research facilities, and other persons who possess wildlife.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to address the immediate concerns of a proposed wildlife research facility and the lack of a unified source to represent the divergent interests and types of wildlife possession.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN

COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dr. Mark Drew (208) 454-7646.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 17th day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. DEFINITIONS.

01. Commercial Wildlife Farm. Any facility where the operator obtains or possesses ~~*big game animals*~~ or breeds ~~*big game animals*~~ wildlife to produce young for any commercial purpose. Such facilities require a license. ~~*and/or*~~ Additional permits may be required from the Idaho Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service (USDA APHIS) where applicable. ~~*(7-1-99)*~~(5-23-05)T

02. Private Wildlife Park. Any facility where the operator obtains, possesses or, propagates ~~*big game animals*~~ wildlife for his own personal pleasure but not for any commercial purpose. Such facilities require a license. ~~*(7-1-99)*~~(5-23-05)T

03. Wildlife. As defined in Section 36-202, Idaho Code. (3-23-94)

04. Bona Fide Pet Store. A legitimate retail store with a set location and regular business hours. (7-1-99)

05. Big Game Animal. As classified in IDAPA 13.01.06, "Classification and Protection of Wildlife". (3-23-94)

06. Agriculture or Domestic Fish. Shall include only rainbow trout (all color phases), coho salmon and blue or channel catfish. (3-23-94)

07. Agriculture or Domestic Animals. Shall not include any species of wildlife as defined by Idaho Code 36-202. (3-23-94)

08. Game Bird. As defined by IDAPA 13.01.06, "Classification and Protection of Wildlife". (3-23-94)

09. Commercial Wildlife Facility. Any facility where the operator obtains, possesses, or propagates wildlife for any commercial purpose, including exhibition, education, entertainment, or sale. A commercial wildlife farm is included in this definition. Such facilities require a facility license. (7-1-99)

10. Not Permanently Located Within the State of Idaho. A traveling circus, menagerie, or trained act of wild animals which shall not be located within the state of Idaho more

than two (2) months out of any calendar year. (7-1-99)

11. Traveling Circus, Menagerie, or Trained Act of Wild Animals. Any mobile display or exhibit of wildlife maintained for instructional, educational, entertainment, or other commercial purposes. (7-1-99)

12. Publicly Owned Zoo or Wildlife Exhibit. Any facility owned by any municipal, county, state, or federal agency. (7-1-99)

13. Captive Wildlife Facility. Any facility where the owner obtains or possess up to three (3) individual captive wildlife, except wolves and wolf hybrids, for his own pleasure but with no breeding or any commercial purpose. Such facilities require a license. (5-23-05)T

14. Commercial Wildlife Research Facility. Any facility where the operator obtains, possesses, or propagates wildlife for commercial research purposes. Such facilities require a license. (5-23-05)T

(BREAK IN CONTINUITY OF SECTIONS)

101. IMPORT PROCEDURE.

01. Importation of Live Wildlife. Persons wishing to import any live wildlife, except those species exempt by Section 100 of this rule, into Idaho must obtain a license from the Idaho Fish and Game Department and must comply with the following requirements prior to importation. (7-1-99)

02. Obtain an Import Permit. Obtain a Wildlife Importation Permit from the Bureau of Wildlife, Idaho Department of Fish and Game covering each animal or group of animals from the same source. ~~*a*~~An Import Permit ~~*when*~~ may also be required from the Division of Animal Industries, Idaho Department of Agriculture, Boise, Idaho covering each animal or group of animals from the same source. ~~*(7-1-99)*~~(5-23-05)T

03. Possession of Valid License. Possess a valid, appropriate commercial wildlife facility license or possession permit from the Department of Fish and Game for all species of wildlife they possess ~~*classified as big game animals*~~. ~~*(7-1-99)*~~(5-23-05)T

04. Inspection and Examination Requirements. Obtain an examination of each animal by a licensed veterinarian, and a valid Certificate of Veterinary Inspection on animal(s). For fish, obtain (a) Certificate of Veterinary Inspection by a licensed veterinarian, or (b) CFR Title 50 certification, or (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. The Director of the Department of Fish and Game and the Director of the Department of Agriculture (or their designees which should include the Wildlife Veterinarian and the Administrator of the Division of Animal Industries) shall mutually determine the diseases, parasites and genetic characteristics of concern and the testing/certification procedures and

statements necessary to prevent introduction of diseases, parasites and genetically-related problems into the state of Idaho. Such testing and certification shall be implemented by the Division of Animal Industries of the Department of Agriculture and verified by the approved Certificate for the imported animal(s). Copies of the approved certificate must be sent to the Idaho Department of Fish and Game veterinarian by the importer within ten (10) days prior to arrival into Idaho. (7-1-99)

05. Wildlife in Transit. All required licenses and certificates must accompany said wildlife while in transit. (7-1-99)

06. Issuance of Licenses. Licenses will not be issued after the fact for wildlife imported without necessary health certificates. (7-1-99)

07. Permits, Licenses, and Invoices Required. (7-1-99)

a. Each facility must have appropriate licenses. License application forms are available from the Idaho Department of Fish and Game. (7-1-99)

b. Animals may only be imported or possessed after a license is issued. (7-1-99)

c. In addition to any criminal penalties assessed by a court, licenses may be revoked by the Director of the Idaho Fish and Game Department for failure to comply with Chapter 7, Title 36, Idaho Code or rules promulgated pursuant thereto. (7-1-99)

102. -- 199. (RESERVED).

200. NON-COMMERCIAL POSSESSION AND CONFINEMENT OF WILDLIFE REQUIREMENTS <u>FOR CAPTIVE WILDLIFE FACILITIES,</u> PRIVATE <u>WILDLIFE</u> PARKS AND COMMERCIAL WILDLIFE FARMS.

01. General. No person shall possess, hold in captivity, or propagate any ~~*big game animals*~~ <u>wildlife</u> without obtaining the proper permit from the Idaho Department of Fish and Game. All licensees shall comply with the following rules. ~~*(7-1-99)*~~<u>(5-23-05)T</u>

02. Compliance With City and County Ordinances and Federal Law. No person shall possess, hold in captivity, or propagate any ~~*big game animals*~~ <u>wildlife</u> without obtaining certification from the relevant city or county zoning and planning commissions that such facility is in compliance with all county ordinances. In addition, all such persons must obtain certification from the U.S. Department of Agriculture that they are in compliance with federal laws. ~~*(7-1-99)*~~<u>(5-23-05)T</u>

03. Marking ~~*Big Game*~~ <u>Wildlife</u>. All ~~*big game animals*~~ <u>wildlife</u> shall be uniquely marked with U.S. Department of Agriculture official, valid eartags or other Department of Fish and Game approved marking system. ~~*(3-23-94)*~~<u>(5-23-05)T</u>

04. Wildlife in Transit. All required licenses and certificates must accompany said wildlife while in transit. (7-1-99)

05. Issuance of Licenses. Licenses will not be issued after the fact for wildlife imported without necessary licenses and health certificates. (7-1-99)

06. License Required. (7-1-99)

a. Each facility must have an appropriate license. Licenses are available from Idaho Department of Fish and Game. (7-1-99)

b. In addition to any criminal penalties assessed by a court, permits and licenses may be revoked by the Director of the Idaho Fish and Game Department for failure to comply with Chapter 7, Title 36, Idaho Code or regulations promulgated pursuant thereto. (3-23-94)

07. Applications. Application for licenses shall be on a form prescribed by the Department of Fish and Game. A separate application shall be made for each facility. (7-1-99)

08. Inspections. The licensee or anyone holding wildlife in captivity shall make available for inspection all records, all wildlife, and the facilities where the wildlife are kept at any reasonable time upon request of the Idaho Department of Fish and Game. (7-1-99)

09. Records Requirements. Records of all captive wildlife shall be kept current and up to date and made available as specified in Section 36-709(c) Idaho Code. (3-23-94)

10. Cages or Enclosures. (7-1-93)

a. It shall be required of each owner of ~~*big game animals*~~ wildlife to pen such animals in suitable pens and restrain them for inspection at any reasonable time when requested to do so by the Director or his representative. ~~*(3-23-94)*~~(5-23-05)T

b. ~~*Big game animals, including b*~~Bear and mountain lion shall be confined in enclosures that meet the following minimum requirements: ~~*(7-1-99)*~~(5-23-05)T

i. Has a floor made of cement or concrete at least three (3) inches thick into which metal fence stakes are permanently placed or a floor that consists of chain link or other material that will preclude the animal digging through the floor to escape; (7-1-93)

ii. Has a chain link fence of at least eight (8) feet in height; (3-23-94)

iii. Has a chainlink cage top, or has any other Department approved configuration such as a pit that will preclude escape. (3-23-94)

iv. Cages, fencing and guard rails shall be kept in good repair at all times and gates or doors shall be securely fastened and locked. (3-23-94)

c. All such cages and/or enclosures for ~~*big game animals*~~ wildlife shall be of sufficient size to give the animal confined ample space for exercise and to avoid being overcrowded. ~~*(3-23-94)*~~(5-23-05)T

i. The length of the cage or enclosure shall be a minimum of four (4) times the body

length (tip of nose to base of tail) of the animal being kept. (3-23-94)

ii. The width shall be at least three-fourths (3/4) of the minimum cage length. (3-23-94)

iii. For the second animal housed in cage, floor space shall be increased twenty-five percent (25%) and for each additional animal housed in the cage, floor space shall be increased fifteen percent (15%). Cages with tops shall be of reasonable height to accommodate the animals contained therein. No nails or other sharp protrusions which might injure or impair the animal shall be allowed within the cages. (3-23-94)

d. A suitable shelter or shield shall be provided for ~~*big game animals*~~ wildlife for protection from inclement weather and from the sun. ~~*(3-23-94)*~~(5-23-05)T

e. Cages or enclosures for ~~*big game animals*~~ wildlife shall be kept in a clean and sanitary condition consistent with good animal husbandry. ~~*(3-23-94)*~~(5-23-05)T

f. All venomous reptiles in captivity shall be kept in a cage or in a safety glass enclosure sufficiently strong, and in the case of a cage, of small enough mesh to prevent the animal's escape and with double walls sufficient to prevent penetration of fangs to the outside. All cages and glass enclosures must be locked. (3-23-94)

11. Humane Treatment. (7-1-93)

a. All native wildlife that may be legally taken from the wild and held in captivity under the provisions of Title 36, Idaho Code and these rules and all captive ~~*big game animals*~~ wildlife shall be handled in a humane manner and kept free from parasites, sickness or disease, and if they become infected, injured or unsightly shall be removed from public display by the permit holder. ~~*(3-23-94)*~~(5-23-05)T

b. Any ~~*big game animal*~~ wildlife afflicted with a disease shall immediately be given medical attention consistent with good animal husbandry. A complete record of illness, treatment and disposition must be maintained by the permit holder. (3-23-94)

c. A certificate from a licensed veterinarian shall be supplied to the Idaho Department of Fish and Game upon demand stating the physical condition or health of all ~~*big game animals*~~ wildlife confined under the permit. ~~*(3-23-94)*~~(5-23-05)T

d. Daily feeding schedules shall be maintained for all ~~*big game animals*~~ wildlife. Food must be adequate and varied and so far as possible consistent with food ordinarily eaten by such animals. ~~*(3-23-94)*~~(5-23-05)T

e. Fresh or running water for drinking purposes shall be available in cages or enclosures at all times and shall be kept clean and in a sanitary condition. (3-23-94)

f. Any animals with a propensity to fight or which are otherwise incompatible shall be kept segregated. (7-1-93)

g. At no time shall any wildlife held in captivity be chained or otherwise tethered. Except raptors, see falconery rules. (3-23-94)

12. Intrastate Movement. Intrastate movement will be allowed for nonquarantined ~~*big game animals*~~ wildlife, from one licensed facility to another which possesses a license for that subspecies, provided that: ~~*(3-23-94)*~~(5-23-05)T

a. Such ~~*big game animals*~~ wildlife shall be individually identified by an accredited veterinarian on a Certificate of Veterinary Inspection that shall accompany the animal while in transit, and shall be marked with U. S. Department of Agriculture official, valid eartags or other Department of Fish and Game approved marking system. ~~*(7-1-99)*~~(5-23-05)T

b. A wildlife invoice and bill of sale, properly filled out and signed by the licensee or his agent shall accompany each such animal while being transported. (3-23-94)

i. The invoice shall state the name of the wildlife facility from which the animal is being transported and the facility it is being transported to, and shall state the date of disposition, the species and the number disposed of. (3-23-94)

ii. The invoice shall be in triplicate with one (1) copy being retained by the transferrer, one (1) copy delivered to the transferee with the animal and one (1) copy to be mailed to the Department of Fish and Game by the transferrer within ten (10) days of the date of disposition. (3-23-94)

c. An intrastate transport license is obtained from the Director or his designee. (7-1-99)

13. Release of Wildlife Without a Permit. Any wildlife, except fish, that is released without a permit or escapes from an owner or operator shall be captured or destroyed by the owner, or by the Idaho Department of Fish and Game at the owner's expense. (3-23-94)

14. Unpermitted Fish Species. Any fish species unpermitted for import, possession, transport or release that is released by or escapes from an owner or operator shall be captured or destroyed by the owner, or by the Department of Fish and Game at the owner's expense. (3-23-94)

15. Diseases of Captive Wildlife. The Director of the Department of Fish and Game and the Director of the Department of Agriculture (or their designees which should include the Wildlife Veterinarian and the Administrator of the Division of Animal Industries) shall mutually determine the diseases and parasites of concern and the mechanisms and procedures for control of diseases and parasites in captive wildlife within the state of Idaho. Such mechanisms and procedures shall include but not be limited to examination, testing, quarantine and slaughter or destruction of individual animals and/or herds that are infected with or affected by diseases and/or parasites that may have significant detrimental effect on native wildlife, other captive wildlife, livestock or the public health of the citizens of the state of Idaho. Such disease and parasite control measures shall be included in and enforced by regulations of the Division of Animal Industries of the Department of Agriculture. Such examinations, testing, quarantine and slaughter of animals or herds shall be conducted at the expense of the owner of said animals or herds.

(3-23-94)

201. -- 299. (RESERVED).

300. RECOVERY, POSSESSION AND SALE OF WILDLIFE PARTS.

01. Wildlife Legally Killed. (3-23-94)

a. The possession, sale and purchase of wildlife or parts of wildlife that have been legally killed is lawful except as provided below and as provided in Chapter 5, Title 36, Idaho Code. (3-23-94)

i. The edible flesh of wildlife classified as big game animals, upland game animals, game birds or migratory birds taken from the wild may not be purchased, bartered or sold. (3-23-94)

ii. The edible flesh of wildlife classified as game fish or crustacea that are taken from the wild may not be purchased, bartered or sold except as provided in Idaho Code Sections 36-501 and 36-801 through 36-805 and rules promulgated pursuant thereto. (3-23-94)

b. A written statement showing the taker's name, address, license and tag numbers, date and location of kill, signed by the taker, must be provided to the buyer of any black bear or mountain lion head, hide or parts (except tanned hides finished into rugs or mounts). A copy of the sales statement must be forwarded by the buyer to the Idaho Department of Fish and Game within ten (10) days after such sale. (3-23-94)

02. Animals Found Dead. Protected species of wildlife that have died naturally or accidentally remain in public trust to be disposed of by the Department of Fish and Game. However, a person may recover, possess, sell or purchase the wildlife parts as specified below, but ONLY under the conditions specified and ONLY if the wildlife has NOT been unlawfully killed. Natural causes shall not include any man-caused mortality. (7-1-98)

a. Horns of Bighorn Sheep. (7-1-93)

i. Bighorn sheep horns of animals that have died of natural causes may be recovered and possessed but may not be sold, bartered or purchased and may not be transferred to another person without a permit issued by the Director. All such pickup horns must be presented to an Idaho Department of Fish and Game regional or subregional office for marking by placement of a permanent metal pin in the horn within thirty (30) days of recovery. The insertion of a pin does not in itself certify that the animal was legally taken or possessed. The pin only identifies the horn(s) and indicates that mandatory check and report requirements were complied with. (3-23-94)

ii. No person shall alter, deface or remove a pin placed in a bighorn sheep horn by the Idaho Department of Fish and Game. No person shall possess the horn(s) of a bighorn sheep that bears an altered, defaced or counterfeit Idaho pin or from which the Idaho pin has been removed. (3-23-94)

b. Antlers and horns of deer, elk, moose, pronghorn antelope and mountain goat, ~~*and*~~ parts of bear and mountain lion, and elk teeth of animals that have died of natural causes may be recovered, possessed, purchased, bartered or sold. ~~*(3-23-94)*~~(5-23-05)T

c. Antlers of deer, elk and moose that have been naturally shed in Idaho may be recovered, possessed, purchased or sold year around, EXCEPT in units 60, 60A, 66, 66A, 67, 68, 68A, 69, 70, 71, 72, 73, 73A, 74, 75, 76, 77 and 78 antlers may be picked up in the field only from May 1 through December 31. (7-1-99)

03. Wildlife Taken in Other States. Wildlife or parts thereof that have been legally taken outside of Idaho, may be possessed or sold in Idaho if such sale is not prohibited in Idaho or the state, province or country where taken, or by federal law or regulation; (3-23-94)

301. -- 399. (RESERVED).

400. COMMERCIAL WILDLIFE FACILITIES.

01. General. No person shall operate or maintain a commercial wildlife facility without obtaining the proper facility licenses from the Idaho Department of Fish and Game. All permittees and licensees shall comply with the following rules. (7-1-99)

02. Compliance With City and County Ordinances and Federal Law. No person shall maintain a wildlife facility without first obtaining certification from the relevant city or county zoning and planning commissions that such establishment is in compliance with all existing county ordinances. In addition, all such persons must obtain certification from the U.S. Department of Agriculture that they are in compliance with federal laws. (7-1-99)

03. Licenses. (7-1-99)

a. Each facility must have an appropriate facility license. Licenses are available from Idaho Department of Fish and Game. Cost of the license shall be determined in Section 36-703(a)(6), Idaho Code. (7-1-99)

b. Licenses shall be displayed at the licensed facility in plain view at all times. (7-1-99)

c. Licenses may be revoked by the Director of the Idaho Fish and Game Department for failure to comply with Chapter 7, Title 36, Idaho Code or rules promulgated pursuant thereto or for violating any license or permit conditions. In case of revocation, all animals shall be removed by owner or by the Idaho Department of Fish and Game at owner's expense. (7-1-99)

d. Permits and licenses may be revoked by the Director of the Idaho Fish and Game Department for failure to comply with Chapter 7, Title 36, Idaho Code or rules promulgated pursuant thereto. (7-1-93)

e. Persons in violation of Chapter 7 of Title 36, Idaho Code and/or these rules shall be notified in writing and shall have ten (10) days to correct the violation. If at the end of that time the violation is not corrected, the Director may revoke any existing permit or license and may

refuse to issue any future permit. Such revocation or refusal to issue a future permit shall be in addition to any criminal charges that may be filed. (7-1-93)

04. Applications. Application for permits or licenses to import and/or possess wildlife shall be on a form prescribed by the Department of Fish and Game. A separate application shall be made for each facility and for any animal(s) imported after a facility is licensed. The application shall include: (7-1-99)

a. The name and address of the applicant. (7-1-93)

b. Proof of compliance with existing city/county zoning and/or ordinance. (7-1-99)

c. The name and address of the owner(s) of the wildlife if not the applicant. (7-1-93)

d. The location of the proposed facility, including a legal description of the land and the approximate space devoted to the facility. (7-1-93)

e. The name and address of the owner of the property if not the applicant. (7-1-93)

f. The number and kinds of wildlife being or to be kept. (7-1-93)

g. The date upon which each animal is to be obtained. (7-1-99)

h. The source, including address and telephone number, from which each animal was, or is to be, obtained, and health certificate for all animals (see Rule 101) addressing diseases of concern. If already in possession, the type of permit or license under which each animal is possessed. (7-1-99)

i. Specifications of pens and shelters furnished for each kind of animal. (7-1-93)

j. Specifications of the guard fence or other security measures to prevent escape or protect the public from injury by the animals. (7-1-99)

05. Inspections. The licensee shall make available for inspection all records, all wildlife, and the facilities covered by the license at any reasonable time upon request of the Idaho Department of Fish and Game. (7-1-99)

06. Evidence of Legal Possession. Records shall include evidence of legal possession of all wildlife kept at the facility or under the licenses, including licenses, permits, receipts, invoices, bills of lading, or other satisfactory evidence of ownership. The records shall also identify all animals born at the facility, exported from the facility, or transported within the state. (7-1-99)

07. Dead Wildlife. Record of inspection by a licensed veterinarian shall be kept for all wildlife which die on the premises, and a copy shall be forwarded to the Department of Fish and Game Wildlife Laboratory within ten (10) days of the death of the animal. (7-1-99)

08. Cages or Enclosures. (7-1-93)

a. All wildlife held in captivity in a wildlife facility shall be confined at all times in cages or pens of such structure or type of construction that it will be impossible for such animals to escape. (7-1-93)

b. ~~*Big game animals, including b*~~Bear and mountain lion, shall be confined in enclosures that meet the following minimum requirements: ~~*(7-1-99)*~~(5-23-05)T

i. Has a floor made of cement or concrete at least three (3) inches thick into which metal fence stakes are permanently placed or a floor that consists of chain link or other material that will preclude the animal digging through the floor to escape; (7-1-93)

ii. Has a chain link fence of at least eight (8) feet in height with barbed wire overhang; (7-1-93)

iii. Has a cage top; (7-1-93)

iv. Has any other configuration such as a pit that will preclude escape. (7-1-93)

c. All such cages and/or enclosures shall be of sufficient size to give the animal or bird confined ample space for exercise and to avoid being overcrowded. (7-1-93)

i. The length of the cage or enclosure shall be a minimum of four (4) times the body length (tip of nose to base of tail) of the animal being kept, reptiles excepted. (7-1-93)

ii. The width shall be at least three-fourths (3/4) of the cage length. (7-1-93)

iii. For the second animal housed in cage, floor space shall be increased twenty-five percent (25%) and for each additional animal housed in the cage, floor space shall be increased fifteen percent (15%). Cages with tops shall be of reasonable height to accommodate the animals contained therein. No nails or other sharp protrusions which might injure or impair the animal shall be allowed within the cages. (7-1-93)

d. All cages or enclosures shall be constructed to prevent entrance by other animals and prevent harm to or by the general public. Cages, fencing, and guardrails shall be kept in good repair at all times; and gates shall be securely fastened with latches or locks. (7-1-99)

e. Each cage or enclosure for birds and smaller animals shall be provided with a den, nest box or other suitable housing containing adequate bedding material as may be required for the comfort of the species held. A suitable shelter or shield shall be provided for larger animals for protection from inclement weather and from the sun. At least one (1) wall of the enclosure shall be constructed so as to provide a windbreak for the animal confined. (7-1-93)

f. Cages or enclosures shall be kept dry if containing terrestrial animals and with adequate water if containing aquatic animals. Where natural climate of the species being held differs from the climate of the area where the wildlife facility is located, provisions shall be made to adjust holding conditions, as nearly as possible, to natural habitat. (7-1-93)

g. Cages or enclosures shall be kept free of offensive odors and/or other unhealthy conditions. All cages or enclosures shall be properly disinfected and cleaned at least once each day. (7-1-93)

09. Large Commercial Wildlife Facilities. Commercial wildlife facilities which are of a size large enough or with a large number of animals which are incompatible with the cage or enclosure requirements of Subsection 400.07 may, in the director's discretion, be addressed on a case-by-case basis. It is intended that such facilities would house three (3) or more species or encompass display or exhibit areas larger than one (1) acre to qualify for consideration. (7-1-99)

a. Animals that are exhibited will be displayed in such a way as to preserve their dignity and in a natural appearing environment. The displays should enhance appreciation for the species and its natural history. ~~*(7-1-99)*~~(5-23-05)T

b. The cages and/or enclosures shall be of such structure or type of construction to prevent escape of the captive wildlife, or damage to native wildlife through habitat degradation, genetic contamination, competition, or disease. (7-1-99)

c. Applications for a commercial wildlife facility license shall generally meet the requirements of Subsection 400.04. Additionally, the application shall identify the veterinarian of record for the facility. (7-1-99)

d. The department will refer to the standards such as those set by the American Zoological Association or the United States Department of Agriculture, Animal and Plant Health Inspection Service Animal Care to develop cage, open space, shelter, and enclosure requirements. Such requirements may include, but not limited to, fence specifications, electric fence specifications, pits or moats, or buried fencing. ~~*(7-1-99)*~~(5-23-05)T

e. All applications shall be accompanied by a bond to the state of Idaho, Department of Fish and Game in the amount of fifty thousand dollars ($50,000) or an amount equal to ten percent (10%) of the total facility construction cost plus two thousand dollars ($2,000) per animal, which ever is greater, executed by a qualified surety duly authorized to do business in the state of Idaho, to guarantee performance of license conditions and to reimburse the Department for any costs incurred for clean-up of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. With prior approval, the applicant may submit a cash bond to the Department including, but not limited to, certificates of deposit, registered checks, certified funds, and money orders. (7-1-99)

f. The specific requirements shall be set forth as license conditions. Violation of a license condition shall be a violation of these rules. (7-1-99)

10. Humane Treatment. (7-1-93)

a. All wildlife being held in captivity under the provisions of Title 36, Idaho Code and these rules shall be handled in a humane manner and kept free from parasites, sickness or disease, and if they become infected, injured or unsightly shall be removed from public display by the permit holder. (7-1-93)

b. Any animal afflicted with parasites or disease shall immediately be given professional medical attention or be destroyed in a humane manner. A complete record of illness, treatment and disposition must be maintained by the permit holder. (7-1-93)

c. A certificate from a licensed veterinarian shall be supplied to the Idaho Department of Fish and Game at least once each year or upon demand stating the physical condition or health of animals confined under the permit. Certificates shall be upon forms furnished by the Department. (7-1-93)

d. Regular feeding schedules shall be maintained for all animals. Food must be adequate and varied and so far as possible consistent with food ordinarily eaten by such animals. Food must be of good quality and stores of same shall be kept in suitable containers with tight fitting covers so as to render it inaccessible to rats, flies, or other vermin. (7-1-99)

i. Food must be of good quality and stores of same shall be kept in suitable containers with tight fitting covers so as to render it inaccessible to rats, flies, or other vermin. (7-1-93)

ii. The public shall not be permitted to feed any animals ~~*other than monkeys*~~. Proper signs shall be conspicuously posted on cages or enclosures advising the public to refrain from feeding or annoying the birds or animals. ~~*(7-1-93)*~~(5-23-05)T

e. Fresh or running water for drinking purposes shall be available in cages or enclosures at all times. Drinking fountains or other receptacles shall be available in cages or enclosures at all times and shall be kept clean and in a sanitary condition. (7-1-93)

f. Any animals with a propensity to fight or which are otherwise incompatible shall be kept segregated. (7-1-93)

g. At no time shall any wildlife held for public display or exhibition be chained or otherwise tethered to any stake, post, tree, building, or other anchorage. (7-1-93)

11. Sale of Animal Meat or Parts. (7-1-99)

a. A commercial wildlife facility licensee may sell or otherwise dispose of the carcass, parts, or by-products of a properly identified ~~*big game animal*~~ wildlife taken from a commercial wildlife facility only upon preparing an invoice or bill of sale as specified by the Idaho Department of Fish and Game and attaching a copy of it to the lot shipment, carcass, or container and keeping a copy for his records. Upon the attaching of the invoice or bill of sale to the carcass, parts, or by-products of the animal, the same may be transported to the transferee named on the invoice or bill of sale. ~~*(7-1-99)*~~(5-23-05)T

b. The licensee may sell commercial wildlife facility animals for meat upon compliance with all applicable health laws, USDA, and Idaho Department of Agriculture regulations. (7-1-99)

12. Responsibility of License Holder. The license holder shall be responsible for the care of the wildlife in possession and the protection of the public. The license holder shall be

liable for the expense of capture or destruction of any escaped wildlife, including any costs incurred by the Department. The Department is concerned only with the protection of wildlife and makes no representation concerning public safety of the licensed animals or facilities. (7-1-99)

13. **Commercial Wildlife Research Facilities**. Commercial wildlife research facilities are facilities in which wildlife are used for commercial research purposes and will be addressed on a case-by-case basis. It is intended that such facilities would house wildlife for research purposes that benefit wildlife or human health and comply with USDA research facility requirements. (5-23-05)T

a. Animals will be housed in such a way as to preserve their dignity and in compliance with USDA research facility requirements. (5-23-05)T

b. The cages and/or enclosures shall be of such structure or type of construction to prevent escape of the captive wildlife, or damage to native wildlife through habitat degradation, genetic contamination, competition, or disease and to prevent the egress of native wildlife. (5-23-05)T

c. Applications for a commercial wildlife research facility license shall generally meet the requirements of Subsection 400.04. Additionally, the application shall identify the veterinarian of record for the facility. (5-23-05)T

d. The Department will refer to the standards such as those set by the American Zoological Association or USDA to develop cage, open space, shelter, and enclosure requirements. Such requirements may include, but are not limited to, fence specifications, electric fence specifications, pits or moats, or buried fencing. (5-23-05)T

e. All applications shall be accompanied by a bond to the state of Idaho, Department of Fish and Game in the amount of fifty thousand dollars ($50,000) or an amount equal to ten percent (10%) of the total facility construction cost, which ever is greater, executed by a qualified surety duly authorized to do business in the state of Idaho, to guarantee performance of license conditions and to reimburse the Department for any costs incurred for clean-up of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. With prior approval, the applicant may submit a cash bond to the Department including, but not limited to, certificates of deposit, registered checks, certified funds, and money orders. (5-23-05)T

f. The specific requirements shall be set forth as license conditions. Violation of a license condition shall be a violation of these rules. (5-23-05)T

14. **Captive Wildlife Facility**. Captive Wildlife Facilities are facilities in which small numbers, up to three (3) individual animals, may be possessed by a private person, but with no breeding or commercial use allowed. Captive Wildlife Facilities must comply with the appropriate sections of these rules concerning importation, possession, housing and other requirements. (5-23-05)T

401. -- 499. (RESERVED).

500. SHOOTING PRESERVE RULES.

01. Shooting Preserves. Shooting preserves in the state of Idaho may be operated only under a permit from the Director of the Department of Fish and Game. (7-1-93)

02. Applications. Application for a shooting preserve license shall be on a form prescribed by the Department of Fish and Game. (7-1-93)

03. Licenses. The operator of each shooting preserve shall execute and maintain a vendorship contract with the Department and shall maintain a supply of shooting preserve hunting licenses on hand for issuance to clients of the preserve. (7-1-93)

04. Species Permitted. Only those species of upland game birds approved by the Director or his designee as specified on the shooting preserve permit may be held and/or released on such shooting preserve facility. All birds released must be certified as disease free under the standards set forth by the National Poultry Improvement Program (NPIP). ~~*(7-1-93)*~~(5-23-05)T

05. Disease Free Birds. All upland game birds shipped into Idaho for release on an authorized shooting preserve shall be certified free from disease as evidenced by a statement to that effect executed in writing by a licensed veterinarian. (7-1-93)

06. Holding Facilities. All rearing pens, holding pens and other rearing or holding facilities shall be maintained in accordance with Subsection 400.01 et seq. (7-1-93)

07. Habitat Requirements. No shooting preserve permit shall be issued except upon verification by the Department that the proposed area has suitable habitat to provide food and cover for birds released for hunting purposes. The Department shall provide technical advice to the applicant in developing proper habitat needs for the various species permitted under the shooting preserve license. (7-1-93)

08. Inspection. The Director or his designee shall be allowed reasonable access to the premises of any authorized shooting preserve for the purpose of inspecting rearing and holding facilities for upland game birds and to inspect licenses, hunters' bag limits, storage facilities and records pertaining to the operation of said shooting preserve. (7-1-93)

09. Marking. In addition to the methods set by Section 36-2205(c), Idaho Code, artificially propagated upland game birds released on a shooting preserve may be marked by a nasal scar, a permanent deformity caused by a blinder or device that partially obstructs the bird's vision. (5-23-05)T

(BREAK IN CONTINUITY OF SECTIONS)

700. LIST OF SPECIES APPROVED FOR IMPORTATION INTO IDAHO.
The following species are generally approved to be possessed, imported into or transported, sold, bartered or traded within Idaho. (7-1-99)

01. Approved License Required. No person shall import any species of live wildlife without a license approved by the director or his designee. (7-1-99)

02. Species Allowed For Importation. The following species have been approved for importation into Idaho by private citizens for purposes consistent with these rules (a license is still required): ~~(7-1-99)~~(5-23-05)T

~~***a.*** *Rocky Mountain Elk. Cervus elaphus canadensis.* (7-1-93)~~

~~***b.*** *Roosevelt Elk. Cervus elaphus roosevelti.* (7-1-93)~~

~~***c.*** *Manitoba Elk. Cervus elaphus manitobensis.* (7-1-93)~~

~~***d.*** *Reindeer/Caribou. Rangifer tarandus spp. Only allowed south of the Salmon River.* (7-1-93)~~

~~***e.*** *Rocky Mountain Mule Deer. Odocoileus hemionus hemionus.* (7-1-93)~~

~~***f***~~**a.** Pronghorn/Antelope. Antilocapra americana americana. (7-1-93)

~~***g.*** *Bison/Buffalo. Bison bison.* (7-1-93)~~

~~***h.*** *Fallow Deer. Dama dama spp.* (7-1-93)~~

~~***i***~~**b.** Muntjac Deer. Muntiacus muntjak spp. (7-1-93)

~~***j.*** *Wild Turkey (Merriams, Rio Grande And Eastern). Melagris gallapavo spp.* (7-1-93)~~

~~***k***~~**c.** Pheasants. All species. (7-1-93)

~~***l***~~**d.** Columbian Sharp-Tailed Grouse. Pedioecetes phasianellus. (7-1-93)

~~***m***~~**e.** Gray/Hungarian Partridge. Perdix perdix. (7-1-93)

~~***n***~~**f.** Chukar Partridge. Alectoris graeca. (7-1-93)

~~***o***~~**g.** Blue Grouse. Dendrogapus obscurus. (7-1-93)

~~***p***~~**h.** Spruce Grouse. Canochites canadensis. (7-1-93)

~~***q***~~**i.** Ruffed Grouse. Bonasa umbellus. (7-1-93)

~~***r***~~**j.** Wild Quail (Northern Bobwhite, California, Mountain And Gambel's). Colinus virginianus, Callipepla californica, Oreortyx pictus and Callipepla gambelii. (7-1-93)

03. Fur Farms, Fish Farms, Domestice Cervidae, and Bona Fide Pet Stores. Fur

farms, fish farms, domestic cervidae, and bona fide pet stores are regulated by the Idaho Department of Agriculture. ~~*However, a license to import those animals into the state shall be obtained from the Idaho Department of Fish and Game prior to importation.* *(7-1-99)*~~(5-23-05)T

04. All Other Species. All species of live wildlife not listed above for importation will be considered on a case-by-case basis. Application shall be made on a department-prepared form and comply with the procedures of Section 101 of these rules. The decision on whether import and possession will be allowed shall be in the director's discretion, based on the protection of Idaho's wildlife from habitat degradation, genetic contamination, competition, or disease.

(7-1-99)

RESOURCES & ENVIRONMENT

IDAPA 13 - DEPARTMENT OF FISH AND GAME

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

DOCKET NO. 13-0117-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

Allow bear baiting one week prior to the opening of bear season in several wilderness areas; including Units 17, 19, 20, 20A, 26 and 27. This will encourage bear hunting in these backcountry areas and was requested by several hunters and outfitters. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 182 and 183.

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 Jim Unsworth (208) 287-2738.

DATED this 27th day of October, 2005.

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

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is April 4, 2005.

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Allow bear baiting one week prior to the opening of bear season in several wilderness areas; including Units 17, 19, 20, 20A, 26 and 27. This will encourage bear hunting in these backcountry areas and was requested by several hunters and outfitters.

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

The temporary rule confers a benefit to hunters and outfitters.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to continue the hunting seasons without interruption and to publish the Big Game Hunting Seasons Proclamation Brochure.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jim Unsworth (208) 287-2738.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 17th day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

100. Use Of Bait.
Bait is defined as any substance placed to attract big game animals, except liquid scent for deer and elk. Bait may be used to hunt ONLY black bear and ONLY under the following conditions. (7-9-93)

01. Time. (7-1-93)

a. No bait may be placed for the purpose of attracting or taking black bear prior to the opening of black bear take season EXCEPT in that portion of Unit 12 north of State Highway 12 southwest of the Doe Creek Road (Forest Service Road 566) and northeast of Cabin Creek and Forest Service Road 486, and bait may be placed one (1) week prior to the opening of bear season in Units 17, 19, 20, 20A, 26 and 27. ~~*(3-15-02)*~~(4-4-05)T

b. All bait containers and materials must be removed and all excavations refilled no later than seven (7) days after the close of the spring and fall black bear seasons. (3-20-97)

02. Location. (7-1-93)

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

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

03. Types. (7-1-93)

a. No parts of or whole game animals, game birds, or game fish may be used as bait. (7-1-93)

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

04. Containers. (7-1-93)

a. No bait may be contained within paper, plastic, glass, metal, wood or other nonbiodegradable materials, except that a single, metal container with a maximum size of fifty-five (55) gallons may be used if securely attached at the bait site. (7-1-93)

b. No bait may be contained in any excavated hole greater than four (4) feet in

diameter. (7-1-93)

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

a. Any structures constructed at bait sites using nails, spikes, ropes, screws, or other materials must be removed by the permit holder within seven (7) days of the close of the spring and fall black bear seasons. (3-20-97)

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

RESOURCES & ENVIRONMENT

IDAPA 20 - DEPARTMENT OF LANDS

20.02.01 - RULES PERTAINING TO THE IDAHO FOREST PRACTICES ACT

DOCKET NO. 20-0201-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 58-104, Idaho Code.

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

The pending rules are being made upon the recommendation of the Idaho Forest Practices Act Advisory Committee and public comments received during public hearings and the public comment period. The public comments received were supportive of the proposed rules and contained no substantive changes. They did recommend some edits to help clarify the rules. The Idaho Forest Practices Act Advisory Committee incorporated those recommendations to help clarify rule intent.

The pending rule changes are based upon the 2000 and 2004 Forest Practices Interagency Audit findings. Changes include: amending the stream protection rules pertaining to shade, large organic debris and slash removal from streams; clarifying the rules pertaining to stream crossings; and reuse of existing roads within stream protection zones. New language within the rule is proposed for prescribed burning within stream protection zones.

Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 190 through 205.

FISCAL IMPACT: There is no impact to the State general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Craig Foss, Chief - Bureau of Forestry Assistance at (208)

769-1525.

DATED this 15th day of November, 2005.

Winston A Wiggins
Director
Idaho Department of Lands
954 W. Jefferson Street
P.O. Box 83720
Boise, Idaho 83720-0050
Phone (208) 334-0200/ Fax (208) 334-2339

The Following Notice Was Published With The Proposed Rule

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Monday September 19, 2005 **7:00 p.m.** **Lodge at River's Edge,** **615 Main,** **Orofino, ID**	**Tuesday September 20, 2005** **7:00 p.m.** **Idaho Department of Lands,** **555 Deinhard Lane,** **McCall, ID**	**Wednesday September 21, 2005** **7:00 p.m.** **Idaho Department of Lands,** **3780 Industrial Avenue S,** **Coeur d'Alene, ID**

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:

These changes are being made upon the recommendation of the Idaho Forest Practices Act Advisory Committee, based upon the 2002 Forest Practices Interagency Audit Report. The changes include: amending the stream protection rules pertaining to shade, large organic debris and slash removal from streams; clarifying the rules pertaining to stream crossings; and reuse of existing roads within stream protection zones. New language within the rule is proposed for prescribed burning within stream protection zones.

FEE SUMMARY: No fee or charge is to be imposed or increased.

FISCAL IMPACT: There is no impact to the State general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the Idaho Forest Practices Act Advisory Committee (FPAAC) has been discussing the proposed rule changes for the past three years. The FPAAC consists of forest landowners and operators, private citizens and agency representatives that have already sought input from their constituent organizations are the interest groups that will be directly affected by the proposed rule changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Craig Foss, Chief – Bureau of Forestry Assistance at (208) 769-1525.

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 28, 2005.

DATED this 3rd day of August, 2005.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0201-0501

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 20.02.01, "Rules Pertaining to the Idaho Forest Practices Act". ( )

02. Scope. These rules constitute the minimum standards for the conduct of forest practices on forest land and describe administrative procedures necessary to implement those standards. ~~*(7-1-96)*~~( )

002. WRITTEN INTERPRETATIONS.
~~*The board does not rely on any written interpretive statements concerning these rules.*~~ *Pursuant to Idaho Code Section 67-5201(19)(b)(iv), the Department maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals, Attorney General formal and informal opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals are available for public inspection and copying at the Idaho Department of Lands, 954 West Jefferson Street, Boise, Idaho 83702.* ~~*(7-1-96)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.
There are no documents incorporated herein by reference. ( )

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
The principal place of business of the Idaho Department of Lands is the Director's Office at 954 W. Jefferson, Boise, Idaho 83720 and is open from 8 a.m. to 5 p.m. (MST), except Saturday, Sunday and legal holidays. The mailing address is Idaho Department of Lands, PO Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200. ( )

006. PUBLIC RECORDS ACT COMPLIANCE.
All records relating to this chapter are public records except to the extent such records are by law exempt from disclosure. ( )

~~004~~007. -- 009.(RESERVED).

010. DEFINITIONS.
Unless otherwise required by context as used in these rules: (10-14-75)

01. **Act**. The Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code. (7-1-96)

02 **Acceptable Tree Species**. Any of the tree species normally marketable in the region, which are suitable to meet stocking requirements. Acceptable trees must be of sufficient health and vigor to assure growth and harvest. (7-1-96)

03. **Additional Hazard**. The debris, slashings, and forest fuel resulting from a forest practice. (10-14-75)

04. **Average DBH**. Average diameter in inches of trees cut or to be cut, measured at four and one-half (4.5) feet above mean ground level on standing trees. All trees to be cut that do not have a measurable DBH will fall in the one inch (1") class. (7-1-96)

05. **Best Management Practice (BMP)**. A practice or combination of practices determined by the board, in consultation with the department and the forest practices advisory committee, to be the most effective and practicable means of preventing or reducing the amount of nonpoint pollution generated by forest practices. BMPs shall include, but not be limited to, those management practices included in these rules. (9-11-90)

06. **Board**. The Idaho State Board of Land Commissioners or its designee. (10-14-75)

07. **Buffer Strip**. A protective area adjacent to an area requiring special attention or protection. (10-14-75)

08. **Chemicals**. Substances applied to forest lands or timber to accomplish specific purposes and includes pesticides, as defined in the Idaho Pesticide Law, Title 22, Chapter 34, Idaho Code, fertilizers, soil amendments, road dust abatement products and other materials that may present hazards to the environment. (7-1-98)

09. **Clear Cut**. A harvest *method* where trees are removed and the residual stocking is below the minimum stocking levels of Subsection 050.04. ( )

~~09~~10. **Constructed Skid Trail**. A skid trail created by the deliberate cut and fill action of

a dozer or skidder blade resulting in a road-type configuration. (7-1-96)

1~~0~~1. Commercial Products. Saleable forest products of sufficient value to cover cost of harvest and transportation to available markets. ~~(10-14-75)~~(____)

1~~1~~2. Condition of Adjoining Area. Those fuel conditions in adjoining areas that relate to spread of fire and to economic values of the adjoining area. (1-24-78)

1~~2~~3. Contaminate. To introduce into the atmosphere, soil, or water sufficient quantities of substances that are injurious to public health, safety, or welfare or to domestic, commercial, industrial, agricultureal or recreational uses or to livestock, wildlife, fish or other aquatic life. ~~(10-14-75)~~(____)

1~~3~~4. Cross-Ditch. A diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation, duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion. (3-13-90)

1~~4~~5. Cull. Nonmerchantable, alive, standing trees of greater height than twenty (20) feet. (1-24-78)

1~~5~~6. Department. The Idaho Department of Lands. (10-14-75)

1~~6~~7. Deterioration Rate. Rate of natural decomposition and compaction of fuel debris which decreases the hazard and varies by site. (1-24-78)

1~~7~~8. Director. The Director of the Idaho Department of Lands or his designee. (10-14-75)

1~~8~~9. Emergency Forest Practice. A forest practice initiated during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event to minimize damage to forest lands, timber, or public resources. (10-14-75)

~~19~~20. Fertilizers. Any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment. (10-14-75)

2~~0~~1. Fire Trail. Access routes that are located and constructed in a manner to be either useful in fire control efforts or deterring the fire spread in the hazard area. (10-14-75)

2~~1~~2. Forest Land. Federal, state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term includes federal, state and private land from which forest tree species have been removed but have not yet been restocked. It does not include land affirmatively converted to uses other than the growing of forest tree species. (7-1-96)

2~~2~~3. Forest Practice. (10-14-75)

a. The harvesting of forest tree species including felling, bucking, yarding, decking, loading and hauling; road construction, improvement or maintenance including installation or

improvement of bridges, culverts or structures which convey stream flows within the operating area; also including the clearing of forest land for conversion to non-forest use when harvest occurs; (7-1-98)

b. Road construction, reconstruction or maintenance of existing roads including installation or improvement of bridges, culverts or structures which convey streams not within the operating area associated with harvesting of forest tree species; (7-1-98)

c. Reforestation; (10-14-75)

d. Use of chemicals for the purpose of managing forest tree species or forest land; (7-1-98)

e. The management of slash resulting from harvest, management or improvement of forest tree species or the use of prescribed fire on forest land. (7-1-98)

f. "Forest Practice" shall not include preparatory work such as tree marking, surveying, and road flagging or removal or harvesting of incidental vegetation from forest lands; such as berries, ferns, greenery, mistletoe, herbs, mushrooms, or other products which cannot normally be expected to result in damage to forest soils, timber, or public resources. (10-14-75)

2~~3~~4. **Forest Regions**. Two (2) regions of forest land: one (1) being north of the Salmon River and one (1) being south of the Salmon River. (7-1-96)

2~~4~~5. **Fuel Quantity**. The diameter, the number of stems and the predominate species to be cut or already cut, and the size of the continuous thinning block all of which determine quantity of fuel per unit of area. (1-24-78)

2~~5~~6. **Ground Based Equipment**. Mobile equipment such as tractors, dozers, skidders and mechanized harvesters used for harvesting, site preparation or hazard reduction. This does not include cable systems associated with stationary yarding equipment. (7-1-96)

2~~6~~7. **Habitat Types**. Forest land capable of producing similar plant communities at climax. (7-1-96)

2~~7~~8. **Harvesting**. A commercial activity related to the cutting or removal of forest tree species to be used as a forest product. A commercial activity does not include the cutting or removal of forest tree species by a person for his own personal use. (10-14-75)

2~~8~~9. **Hazard**. Any vegetative residue resulting from a forest practice which constitutes fuel. (1-24-78)

~~29~~30. **Hazard Offset**. Improvements or a combination of practices which reduces the spread of fire and increases the ability to control fires. (10-14-75)

3~~0~~1. **Hazard Points**. The number of points assigned to certain hazardous conditions on an operating area, to actions designed to modify conditions on the same area or to actions by the operator, timber owner or landowner to offset the hazardous conditions on the same area.

(1-24-78)

3~~1~~2. Hazard Reduction. The burning or physical reduction of slash by treatment in some manner which will reduce the risk from fire after treatment. (10-14-75)

3~~2~~3. Lake. A body of perennial standing open water, natural or human-made, larger than one (1) acre in size. Lakes include the beds, banks or wetlands below the ordinary high water mark. Lakes do not include drainage or irrigation ditches, farm or stock ponds, settling or gravel ponds. Any reference in these rules to Class I streams shall also apply to lakes. (7-1-96)

3~~3~~4. Landowner. A person, partnership, corporation, or association of whatever nature that holds an ownership interest in forest lands, including the state. (10-14-75)

3~~4~~5. Large Organic Debris (LOD). Live or dead trees and parts or pieces of trees that are large enough or long enough or sufficiently buried in the stream bank or bed to be stable during high flows. Pieces longer than the channel width or longer than twenty (20) feet are considered stable. LOD creates diverse fish habitat and stable stream channels by reducing water velocity, trapping stream gravel and allowing scour pools and side channels to form. (3-13-90)

3~~5~~6. Merchantable Material. That portion of forest tree species suitable for the manufacture of commercial products which can be merchandised under normal market conditions. (10-14-75)

3~~6~~7. Merchantable Stand of Timber. A stand of trees that will yield logs or fiber: (7-1-96)

a. Suitable in size and quality for the production of lumber, plywood, pulp, or other forest products; (10-14-75)

b. Of sufficient value at least to cover all costs of harvest and transportation to available markets. (10-14-75)

3~~7~~8. Noncommercial Forest Land. Habitat types not capable of producing twenty (20) cubic feet per acre per year. (7-1-96)

3~~8~~9. Operator. A person who conducts or is required to conduct a forest practice. (10-14-75)

~~39~~40. Operating Area. That area where a forest practice is taking place or will take place. (1-24-78)

4~~0~~1. Ordinary High Water Mark. That mark on all water courses, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter. (10-14-75)

4~~1~~2. Outstanding Resource Water. A high quality water, such as water of national and

state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. ORW constitutes as outstanding national or state resource that requires protection from nonpoint activities, including forest practices, that may lower water quality. (7-1-96)

~~42~~3. Partial Cutting. The well distributed removal of a portion of the merchantable volume in a stand of timber. This includes seed tree, shelterwood, or individual tree selection harvesting techniques. (10-14-75)

~~43~~4. Prescribed Fire. The controlled application of fire to wildland fuels in either their natural or modified state, under such conditions of weather, fuel moisture and soil moisture, to allow the fire to be confined to a predetermined area and at the same time to produce the intensity of heat and rate of spread required to meet planned objectives. (7-1-96)

~~44~~5. Present Condition of Area. The amount or degree of hazard present before a thinning operation commences. (1-24-78)

~~45~~6. Public Resource. Water, fish, and wildlife, and in addition means capital improvements of the State or its political subdivisions. (10-14-75)

~~46~~7. Reforestation. The establishment of an adequately stocked stand of trees of species acceptable to the department to replace the ones removed by a harvesting or a catastrophic event on commercial forest land. (10-14-75)

~~47~~8. Relief Culvert. A structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity. (10-14-75)

~~48~~9. Rules. Rules adopted by the Board pursuant to Section 38-1304, Idaho Code. (7-1-96)

~~49~~50. Slash. Any vegetative residue three inches (3”) and under in diameter resulting from a forest practice or the clearing of land. (7-1-96)

5~~0~~1. Site. An area considered as to its ecological factors with reference to capacity to produce forest vegetation; the combination of biotic, climatic, and soil conditions of an area. (10-14-75)

5~~1~~2. Site Factor. A combination of percent of average ground slope and predominate aspect of the forest practice area which relate to rate of fire spread. (1-24-78)

5~~2~~3. Site Specific Best Management Practice. A BMP that is adapted to and takes account of the specific factors influencing water quality, water quality objectives, on-site conditions, and other factors applicable to the site where a forest practice occurs, and which has been approved by the Department, or by the Board in consultation with the Department and the Forest Practices Advisory Committee. (7-1-96)

5~~3~~4. Size of Thinning Block. Acres of continuous fuel creating an additional hazard within a forest practice area. Distance between the perimeter of thinning blocks containing

continuous fuel must be a minimum of six (6) chains apart to qualify as more than one (1) block. (1-24-78)

5~~4~~5. **Snags**. Dead, standing trees twenty (20) feet and greater in height. (1-24-78)

5~~5~~6. **Soil Erosion**. Movement of soils resulting from forest practices. (10-14-75)

5~~6~~7. **Soil Stabilization**. The minimizing of soil movement. (10-14-75)

5~~7~~8. **State**. The state of Idaho or other political subdivision thereof. (10-14-75)

5~~8~~9. **Stream**. A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously or intermittently flowing water. Definite beds are defined as having a sandy or rocky bottom which results from the scouring action of water flow. Any reference in these rules to Class I streams shall also apply to lakes. (7-1-96)

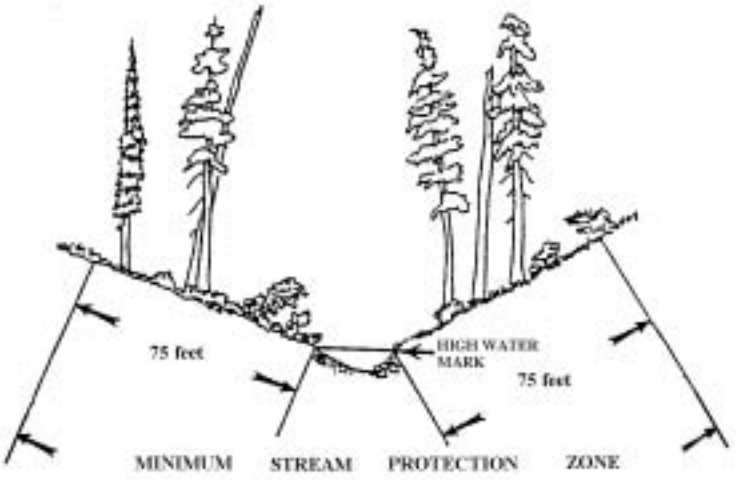
a. Class I streams are used for domestic water supply or are important for the spawning, rearing or migration of fish. Such waters shall be considered to be Class I upstream from the point of domestic diversion for a minimum of one thousand three hundred and twenty (l,320) feet. (11-7-86)

b. Class II streams are usually headwater streams or minor drainages that are used by only a few, if any, fish for spawning or rearing. Where fish use is unknown, consider streams as Class II where the total upstream watershed is less than two hundred and forty (240) acres in the north forest region and four hundred and sixty (460) acres in the south forest region. Their principle value lies in their influence on water quality or quantity downstream in Class I streams. (7-1-96)

c. Class I Stream Protection Zone means the area encompassed by a slope distance of seventy-five (75) feet on each side of the ordinary high water marks. (Figure 1.) (7-1-96)

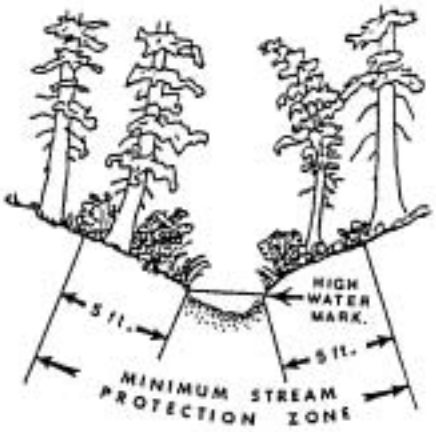
FIGURE 1

CLASS 1 STREAM PROTECTION ZONE



d. Class II Stream Protection Zone means the area encompassed by a minimum slope distance of thirty (30) feet on each side of the ordinary high water marks. (Figure 2.) For Class II streams that do not contribute surface flow into Class I streams, provide soil stabilization and water filtering effects by leaving undisturbed soils in widths sufficient to prevent washing of sediment. In no case shall this width be less than five (5) feet slope distance on each side of the ordinary high water marks. (7-1-96)

FIGURE 2
CLASS II STREAM PROTECTION ZONE



59**60.** **Timber Owner**. A person, partnership, corporation, or association of whatever nature, other than the landowner, that holds an ownership interest in forest tree species on forest land. (10-14-75)

6~~0~~1. Time of Year of Forest Practice. Those combinations of months during which time the forest practice is taking place. Points assigned are: October through December - two (2) points; August through September - four (4) points; January through April - seven (7) points; May through July - ten (10) points. (1-24-78)

(BREAK IN CONTINUITY OF SECTIONS)

030. TIMBER HARVESTING.

01. Purpose. Harvesting of forest tree species is a part of forest management by which wood for human use is obtained and by which forests are established and tended. It is recognized that during harvesting operations there will be a temporary disturbance to the forest environment. It is the purpose of these rules to establish minimum standards for forest practices that will maintain the productivity of the forest land and minimize soil and debris entering streams and protect wildlife and fish habitat. (10-14-75)

02. Quality of Residual Stocking. Reforestation is required if harvesting reduces stocking of acceptable trees below minimums of Subsection 050.04. (7-1-96)

03. Soil Protection. Select for each harvesting operation the logging method and type of equipment adapted to the given slope, landscape and soil properties in order to minimize soil erosion. (8-13-85)

a. Ground based skidding shall not be conducted if it will cause rutting, deep soil disturbance, or accelerated erosion. On slopes exceeding forty-five percent (45%) gradient and which are immediately adjacent to a Class I or II stream, ground based skidding shall not be conducted except with an approved variance. Where slopes in the area to be logged exceed forty-five percent (45%) gradient the operator, landowner or timber owner shall notify the department of these steep slopes upon filing the notification as provided for in Subsection 020.05. (7-1-96)

b. Limit the grade of constructed skid trails on geologically unstable, saturated, or highly erodible or easily compacted soils to a maximum of thirty percent (30%). (7-1-96)

c. In accordance with appropriate silvicultural prescriptions, skid trails shall be kept to the minimum feasible width and number. Tractors used for skidding shall be limited to the size appropriate for the job. (8-13-85)

d. Uphill cable yarding is preferred. Where downhill yarding is used, reasonable care shall be taken to lift the leading end of the log to minimize downhill movement of slash and soils. (8-13-85)

04. Location of Landings, Skid Trails, and Fire Trails. Locate landings, skid trails, and fire trails on stable areas to prevent the risk of material entering streams. (10-14-75)

a. All new or reconstructed landings, skid trails, and fire trails shall be located on stable areas outside the appropriate stream protection zones. Locate fire and skid trails where sidecasting is held to a minimum. (3-13-90)

b. Minimize the size of a landing to that necessary for safe economical operation. (8-13-85)

c. To prevent landslides, fill material used in landing construction shall be free of loose stumps and excessive accumulations of slash. On slopes where sidecasting is necessary, landings shall be stabilized by use of seeding, compaction, riprapping, benching, mulching or other suitable means. (8-13-85)

05. Drainage Systems. For each landing, skid trail or fire trail a drainage system shall be provided and maintained that will control the dispersal of surface water to minimize erosion. (4-21-92)

a. Stabilize skid trails and fire trails whenever they are subject to erosion, by water barring, cross draining, outsloping, scarifying, seeding or other suitable means. This work shall be kept current to prevent erosion prior to fall and spring runoff. (8-13-85)

b. Reshape landings as needed to facilitate drainage prior to fall and spring runoff. Stabilize all landings by establishing ground cover or by some other means within one (1) year after harvesting is completed. (8-13-85)

06. Treatment of Waste Materials. All debris, overburden, and other waste material associated with harvesting shall be left or placed in such a manner as to prevent their entry by erosion, high water, or other means into streams. (10-14-75)

a. Wherever possible trees shall be felled, bucked, and limbed in such a manner that the tree or any part thereof will fall away from any Class I streams. Continuously remove slash that enters Class I streams as a result of harvesting operations. Continuously remove other debris that enters Class I streams as a result of harvesting operations whenever there is a potential for stream blockage or if the stream has the ability for transporting such debris. Place removed material five (5) feet slope distance above the ordinary high water mark. (3-13-90)

b. Remove slash and other debris that enters Class II streams whenever there is a potential for stream blockage or if the stream has the ability for transporting the debris immediately following skidding and place removed material above the ordinary high water mark or otherwise treat as prescribed by the department. No formal variance is required. (11-7-86)

c. Deposit waste material from construction or maintenance of landings and skid and fire trails in geologically stable locations outside of the appropriate Stream Protection Zone. (8-13-85)

07. Stream Protection. During and after forest practice operations, stream beds and streamside vegetation shall be protected to leave them in the most natural condition as possible to maintain water quality and aquatic habitat. (8-13-85)

a. Lakes require an approved site specific riparian management prescription prior to conducting forest practices within the stream protection zone. (7-1-96)

b. Ground based skidding in or through streams shall not be permitted. When streams must be crossed, adequate temporary structures to carry stream flow shall be installed. Cross the stream at right angles to its channel if at all possible. (Construction of hydraulic structures in stream channels is regulated by the Stream Channel Protection Act - Title 42, Chapter 38, Idaho Code). Remove all temporary crossings immediately after use and, where applicable, water bar the ends of the skid trails. (7-1-96)

c. Operation of ground based equipment shall not be allowed within the Stream Protection Zone except at approaches to stream crossings. (7-1-96)

d. When cable yarding is necessary, across or inside the Stream Protection Zones it shall be done in such a manner as to minimize stream bank vegetation and channel disturbance. (8-13-85)

e. Provide for large organic debris (LOD), shading, soil stabilization, wildlife cover and water filtering effects of vegetation along streams. (7-1-96)

i. Leave hardwood trees, shrubs, grasses, and rocks wherever they afford shade over a stream or maintain the integrity of the soil near a stream. (10-14-75)

ii. Leave seventy-five percent (75%) of the current shade over the Class I streams. Limit re-entry until shade recovers. ~~*(7-1-96)*~~( )

iii. During harvesting, ~~C~~carefully remove timber from the Stream Protection Zone in such a way that large organic debris, shading and filtering effects are ~~*not destroyed*~~ maintained and protected. When portions of felled trees fall into or over a Class I stream, leave the portion consistent with the LOD definition of Subsection 010.35. ~~*(7-1-96)*~~( )

iv. *When harvesting portions* of trees that have fallen naturally into or over a Class I stream, leave *the portion(s) over the steam* consistent with the LOD definition of Subsection 010.35. Leaving the section with the root ball attached is preferred. ( )

v. During harvesting operations, portions of *felled or bucked* trees not meeting the LOD definition shall be removed, consistent with the slash removal requirements of Subsection 030.06. ( )

~~*i*~~vi. Standing trees, including conifers, hardwoods and snags will be left within fifty (50) feet of the ordinary high water mark on each side of all Class I streams, and within thirty (30) feet on each side of those Class II streams that require thirty (30) feet stream protection zones, in the following minimum numbers per one thousand (1000) feet of stream:

Minimum Standing Trees Per One Thousand (1000) Feet Required (each side)

	-- STREAM WIDTH --			
	Class I			Class II*
Tree Diameter (DBH)	Over 20'	10'- 20'	Under 10'	
3 - 7.9"	200	200	200	140
8 - 11.9"	42	42	42	--
12 - 19.9"	21	21	--	--
20"+	4	--	--	--

*For those Class II streams that require a minimum five (5) foot stream protection zone, no standing trees are required. ~~(7-1-96)~~(____)

vii. Snags will be counted as standing trees in each diameter class if snag height exceeds one and one-half (1 ½) times the distance between the snag and the stream's ordinary high water mark. Not more than fifty percent (50%) of any class may consist of snags. (7-1-96)

viii. ~~*As an alternative*~~ ~~*t*~~*T*o *obtain a variance from* the standing tree and shade requirements, the operator ~~*may notify the department that*~~ *must* develop a site specific riparian management prescription ~~*is requested*~~ and submit it to the department for approval. The ~~*department and operator may jointly develop a plan upon consideration of*~~ prescription should consider stream characteristics and the need for large organic debris, stream shading and wildlife cover which will ~~*meet*~~ *achieve* the objective of these rules. ~~*(3-13-90)*~~(____)

~~*vi*~~ix. Where the opposite side of the stream does not currently meet the minimum standing tree requirements of the table, the department and the operator should consider a site specific riparian prescription that meets the large organic debris needs of the stream. (3-13-90)

~~*viii*~~x. Stream width shall be measured as average between ordinary high water marks. (3-13-90)

f. Direct ignition of prescribed burns will be limited to hand piles within stream protection zones (SPZ), all other *direct* ignitions shall occur outside of SPZs, so a backing (cooler) fire will more likely occur within the SPZ. (____)

i. Hand piles shall be at least *five (5)* feet from the ordinary high water-mark of streams. (____)

ii. No mechanical piling of slash or natural forest fuels is allowed in a SPZ (an exception is filter windrows for erosion control which shall not be ignited. (____)

08. Maintenance of Productivity and Related Values. Harvesting practices will first be designed to assure the continuous growing and harvesting of forest tree species by suitable economic means and also to protect soil, air, water, and wildlife resources. (10-14-75)

a. Where major scenic attractions, highways, recreation areas or other high-use areas

are located within or traverse forest land, give special consideration to scenic values by prompt cleanup and regeneration. (10-14-75)

b. Give special consideration to preserving any critical wildlife or aquatic habitat. Wherever practical, preserve fruit, nut, and berry producing trees and shrubs. (10-14-75)

c. Avoid conducting operations along bogs, swamps, wet meadows, springs, seeps, wet draws or other sources where the presence of water is indicated, protect soil and vegetation from disturbance which would cause adverse affects on water quality, quantity and wildlife and aquatic habitat. (7-1-96)

d. ~~*Whenever practical, as determined by the department, plan c*~~Clear cutting operations within a single ownership shall be planned so that adequate wildlife escape cover *(e.g. topography, vegetation, stream protection zones, etc.)* is available within one-quarter (¼) mile. ~~*(10-14-75)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

040. ROAD CONSTRUCTION, RECONSTRUCTION AND MAINTENANCE.

01. Purpose. Provide standards and guidelines for road construction, reconstruction, and maintenance that will maintain forest productivity, water quality, and fish and wildlife habitat. (4-5-00)

02. Road Specifications and Plans. Road specifications and plans shall be consistent with good safety practices. Plan each road to the minimum use standards adapted to the terrain and soil materials to minimize disturbances and damage to forest productivity, water quality, fish, and wildlife habitat. (4-5-00)

a. Plan transportation networks to avoid road construction within stream protection zones, except at approaches to stream crossings. Leave or reestablish areas of vegetation between roads and streams. (4-5-00)

b. Roads shall be no wider than necessary to safely accommodate the anticipated use. Minimize cut and fill volumes by aligning the road to fit the natural terrain features as closely as possible. Adequately compact fill material. Dispose of excess material on geologically stable sites. (4-5-00)

c. Plan roads to drain naturally by out-sloping or in-sloping with cross-drainage and by grade changes where possible. Plan dips, water bars, cross-drainage, or subsurface drainage on roads when necessary. (4-5-00)

d. Relief culverts and roadside ditches shall be planned whenever reliance upon natural drainage would not protect the running surface, cut slopes or fill slopes. Plan culvert installations to prevent erosion of the fill by properly sizing, bedding and compacting. Plan

drainage structures to achieve minimum direct discharge of sediment into streams. (4-5-00)

e. The following rule applies to installations of new culverts and re-installations during road reconstructions or reinstallations caused by flood or other catastrophic events. Culverts used for temporary crossings are exempt from the fifty (50) year design requirement, but they must be removed immediately after they are no longer needed and before the spring run-off period. (4-5-00)

i. Culvert installations on fish bearing streams must provide for fish passage. (4-5-00)

ii. Design culverts for stream crossings to carry the fifty (50) year peak flow using engineering methods acceptable to the department or determine culvert size by using the culvert sizing tables below. The minimum size culvert required for stream crossings shall not be less than eighteen (18) inches in diameter, with the exception of that area of the Snake River drainage upstream from the mouth of the Malad River, including the Bear River basin, where the minimum size shall be fifteen (15) inches. (7-1-96)

CULVERT SIZING TABLE - I
USE FOR NORTH IDAHO AND THE SALMON RIVER DRAINAGE

This culvert sizing table will be used for the area of the state north of the Salmon River and within the South Fork Salmon River drainage. It was developed to carry the fifty (50) year peak flow at a headwater-to-diameter ratio of one (1).

Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)
less than 32	18	6
33 - 74	24	12
75 - 141	30	20
142 - 240	36	32
241 - 366	42	46
367 - 546	48	65
547 - 787	54	89
788 - 1027	60	112

Strongly consider having culverts larger than sixty (60) inches designed, or consider alternative structures, such as bridges, mitered culverts, arches, etc.

Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)
1028 - 1354	66	142
1355 - 1736	72	176

Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)
1737 - 2731	84	260
2732 - 4111	96	370
4112 - 5830	108	500
5831 - 8256	120	675

Culverts larger than one hundred twenty (120) inches must be designed; consider alternative structures. (4-21-92)

CULVERT SIZING TABLE - II
USE FOR SOUTH IDAHO

This culvert sizing table will be used for the area of the state south of the Salmon River and outside the South Fork Salmon River drainage. It was developed to carry the fifty (50) year peak flow at a headwater-to-diameter ratio of one (1).

Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)
less than 72	18#	6
73 - 150	24	12
151 - 270	30	20
271 - 460	36	32
461 - 720	42	46
721 - 1025	48	65
1026 - 1450	54	89
1451 - 1870	60	112

Strongly consider having culverts larger than sixty (60) inches designed, or consider alternative structures, such as bridges, mitered culverts, arches, etc.

Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)
1871 - 2415	66	142
2416 - 3355	72	176
3356 - 5335	84	260
5336 - 7410	96	370
7411 - 9565	108	500
9566 - 11780	120	675

Culverts larger than one hundred twenty (120) inches must be designed; consider alternative structures.

See exception for southeast Idaho in Subsection 040.02.ii. of this rule. (4-5-00)

iii. Relief culverts, and those used for seeps, springs, wet areas, and draws shall not be less than twelve (12) inches in diameter for permanent installations. (7-1-96)

f. On existing roads that are not reconstructed or damaged by catastrophic events, landowners or operators are encouraged, but not required, to replace or provide mitigation for culverts that do not provide for fish passage in accordance with Subsection 040.02.e.i. or cannot carry the fifty (50) year peak flow of Subsection 040.02.e.ii. ( )

~~f~~g. Stream crossings, including fords, shall be minimum in number and planned and installed in compliance with the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and with culvert sizing requirements of Subsection 040.02.e. Fords are an acceptable stream crossing structure on small, shallow streams, with flat, less than four percent (4%) gradients. Fords should cross the stream at right angles. Approaches shall be adequately cross-drained and rocked for at least seventy-five (75) feet. During times of salmonid spawning and egg incubation or to protect active domestic water diversions, use shall be limited to low water, dry, or frozen conditions and hauling or equipment crossing trips limited to minimize sediment delivery to streams. ~~*(4-5-00)*~~( )

~~g~~h. Avoid reconstruction ~~*or reuse*~~ of existing roads located in stream protection zones, except for approaches to stream crossings, unless it will result in the least long-term impact on site productivity, water quality, and fish and wildlife habitat. Reconstruction ~~*or reuse*~~ of existing roads in stream protection zones will require a variance. Reusing existing roads in stream protection zones for skidding or landing logs shall require a variance. Reusing existing roads in stream protection zones for hauling fully suspended logs only, where no reconstruction will occur, does not require a variance. ~~*(4-5-00)*~~( )

03. Road Construction. Construct or reconstruct roads in a manner to prevent debris, overburden, and other material from entering streams. (4-5-00)

a. Roads shall be constructed in compliance with the planning guidelines of Subsection 040.02. (7-1-96)

b. Clear all debris generated during construction or maintenance which potentially interferes with drainage or water quality. Deposit excess material and slash on geologically stable sites outside the stream protection zones. (4-5-00)

c. Where exposed material (road surface, cut slopes or fill slopes, borrow pits, waste piles, etc.) is potentially erodible, and where sediments would enter streams, stabilize prior to fall or spring runoff by seeding, compacting, rocking, riprapping, benching, mulching or other suitable means. (4-5-00)

d. In the construction of road fills, compact the material to reduce the entry of water,

minimize erosion, and settling of fill material. Minimize the amount of snow, ice, or frozen soil buried in embankments. No significant amount of woody material shall be incorporated into fills. Available slash and debris may be utilized as a filter windrow along the toe of the fill, but must meet the requirements of the Idaho Forestry Act and Fire Hazard Reduction Laws, Title 38, Chapters 1 and 4, Idaho Code. (4-5-00)

e. During and following operations on out-sloped roads, retain out-slope drainage and remove berms on the outside edge except those intentionally constructed for protection of road grade fills. (8-13-85)

f. Provide for drainage of quarries to prevent sediment from entering streams. (8-13-85)

g. Construct cross drains and relief culverts to minimize erosion of embankments. Installation of erosion control devices should be concurrent with road construction. Use riprap, vegetative matter, downspouts and similar devices to minimize erosion of the fill. Install drainage structures or cross drain incompleted roads which are subject to erosion prior to fall or spring runoff. Install relief culverts with a minimum grade of one percent (1%). (4-5-00)

h. Earthwork or material hauling shall be postponed during wet periods if, as a result, erodible material would enter streams. (4-5-00)

i. Cut slopes shall be reconstructed to minimize sloughing of material into road surfaces or ditchlines. Remove or stabilize material subject to sloughing concurrent with the construction operation. (4-5-00)

j. Roads constructed on slopes greater than sixty percent (60%) in unstable or erodible soils shall be full benched without fill slope disposal. At stream and draw crossings keep fills to a minimum. A variance is required if a full bench is not used. (4-5-00)

04. Road Maintenance. Conduct regular preventive maintenance operations to minimize disturbance and damage to forest productivity, water quality, and fish and wildlife habitat. (4-5-00)

a. Place all debris or slide material associated with road maintenance in a manner to prevent their entry into streams. (4-5-00)

b. Repair slumps, slides, and other erosion sources causing stream sedimentation to minimize sediment delivery. (4-5-00)

c. Active roads. An active road is a forest road being used for hauling forest products, rock and other road building materials. The following maintenance shall be conducted on such roads. (8-13-85)

i. Culverts and ditches shall be kept functional. (8-13-85)

ii. During and upon completion of seasonal operations, the road surface shall be crowned, out-sloped, in-sloped or cross-ditched, and berms removed from the outside edge except

those intentionally constructed for protection of fills. (4-5-00)

iii. The road surface shall be maintained as necessary to minimize erosion of the subgrade and to provide proper drainage. (8-13-85)

iv. Hauling shall be postponed during wet periods if necessary to minimize sediment delivery to streams. (4-5-00)

v. If road surface stabilizing materials are used, apply them in such a manner as to prevent their entry into streams. (4-5-00)

d. Incidental Haul Road. An incidental haul road is a multi-use road (residential traffic; its primary purpose is other than forest practices) that has log haul during active harvest activities. Active road maintenance requirements apply. Once active road maintenance is completed, no other maintenance is required under the Forest Practices Act (FPA). ( )

~~d~~e. Inactive roads. An inactive road is a forest road (primary purpose is for forest practices) no longer used for commercial hauling but maintained for access (e.g., for fire control, forest management activities, recreational use, and occasional or incidental use for minor forest products harvesting). The following maintenance shall be conducted on inactive roads. ~~(8-13-85)~~( )

i. Following termination of active use, ditches and culverts shall be cleared and the road surface shall be crowned, out-sloped or in-sloped, water barred or otherwise left in a condition to minimize erosion. Drainage structures shall be maintained thereafter as needed. (7-1-96)

ii. The roads may be permanently or seasonally blocked to vehicular traffic. (8-13-85)

~~e~~f. Long-term Inactive Roads. A long-term inactive road is not intended to be used again in the near future but will likely be used again at some point in the future. No subsequent maintenance of a long-term inactive road is required after the following procedures are completed: (4-5-00)

i. The road is left in a condition suitable to control erosion by out-sloping, water barring, seeding, or other suitable methods. (8-13-85)

ii. The road is blocked to vehicular traffic. (8-13-85)

iii. The department may require the removal of bridges, culverts, ditches and unstable fills. Any bridges or culverts left in place shall be maintained by the landowner. (4-5-00)

~~f~~g. Permanently Abandoned Roads. Permanently abandoned roads are not intended to be used again. All drainage structures must be removed and roadway sections treated so that erosion and landsliding are minimized. (4-5-00)

i. Drainage structures shall be removed and stream gradients restored to their natural

slope. (4-5-00)

ii. The road prism shall be treated to break up compacted areas. (4-5-00)

iii. Fill slopes of roads within stream protection zones shall be pulled back to a stable configuration unless long-term stability has already been achieved. (4-5-00)

iv. Unstable sidehill fills shall be pulled back to a stable configuration. (4-5-00)

v. Ditch line erosion shall be controlled by cross-ditching, outsloping, or regrading to eliminate ditches. (4-5-00)

vi. All bare earth areas created by regrading, ripping, and drainage removal shall be stabilized by seeding, mulching, armoring, or other suitable means. (4-5-00)

05. Winter Operations. Due to risk of erosion and damage from roads and constructed skid trails inherent in winter logging, at minimum the following shall apply: (4-21-92)

a. Roads to be used for winter operations must have adequate surface and cross drainage installed prior to winter operations. Drain winter roads by installing rolling dips, driveable cross ditches, open top culverts, outsloping, or by other suitable means. (4-21-92)

b. During winter operations, roads will be maintained as needed to keep the road surface drained during thaws or break up. This may include active maintenance of existing drainage structures, opening of drainage holes in snow berms and installation of additional cross drainage on road surfaces by ripping, placement of native material or other suitable means. (4-21-92)

RESOURCES & ENVIRONMENT

IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD

25.01.01 - RULES OF THE OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 25-0101-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. A pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If a pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) (36-2107(b) and (d), Idaho Code.

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

The change in Rule 030 clarifies that a name shall be kept on a waiting list for a period of five years or until December 31 of the fifth year the name is placed on the list. Rule 034 provides that a guide application must be accompanied by an affidavit signed by the employing outfitter that the applicant will have a valid first aid card before they are employed as a guide. The changes in Rule 044 define "Field Supervisor". Changes in Rule 059 clarify the boundaries of the CL1 Section of the Clearwater River shall be from Lowell to the Lower Bridge at Kooskia with no fishing between the upper an lower bridges for CL1 outfitters, on CL2 of the Clearwater River at the Upper Bridge at Kooskia to the Bridge at Orofino, and on CL3 of the Clearwater River from the Orofino Bridge to the Clearwater River's confluence with the Snake River at Lewiston. The sections of Coeur d'Alene river have been clarified with four sections, CDNF which is the Headwaters of the North Fork of the Coeur d'Alene River, CD1 which is the Coeur d'Alene River from Devil's Elbow to the South Fork confluence and CD2, the South Fork confluence downstream to Cataldo Mission Boat Ramp, and CD3, the Lateral (Coeur d'Alene chain) Lakes connected by the Coeur d'Alene River from the Cataldo Mission Boat Ramp to the Highway 97 Bridge.

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 7, 2005, Idaho Administrative Bulletin, Vol. 05-9, pages 242 through 266.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions

concerning the pending rule, contact: Jake Howard, Executive Director (208) 327-7380 - FAX (208) 327-7382.

DATED this 21st day of October, 2005.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 36-2107(b) and (d), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2005.

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 changes in Rule 002 provide that an "incidental" amendment would be a "minor" amendment; deletes the definition of "nonuse" because it is defined elsewhere; adds selling lifetime hunts to the definition of "unethical/unprofessional conduct"; and deletes the definition of "zero use" because "nonuse" is already defined elsewhere. The changes in Rule 007 provide that temporary employment or short term loan or transfer shall not be on a routine basis, the employing outfitter or authorized agent shall keep written documentation of the loan or transfer, and that repeated transfers or loans of guides should be done by using the amendment process. The word "guide" is changed to "individual" in this rule because these individuals are not licensed guides. The changes in Rule 015 provide that instead of a late fee, a penalty fee shall be paid before the license is issued, that an outfitter shall pay an annual license fee for each license they hold and, if required, to submit use reports for each license, and be able to differentiate between each business and its clients. The change in Rule 019 deletes the requirement that the bond name the business and the designated agent since the statute only requires proof of a bond. The change in Rule 021 provides that the outfitter application shall include the name of the business entity registered as a "d.b.a." or the name registered with the Secretary of State. The change in Rule 022 provides that the outfitter shall operate under the name(s) licensed by the Board and under no other names and that certain business entities must have a Designated Agent in order to be licensed and to operate. The change in Rule 024 deletes the current intent and descriptions of nonuse and waiver and provides for new definitions for these terms as well as definitions of "Zero Use," "Negligible Use," the process for finding non-use and what acceptable use is. It also provides for required records, for non-use during a sale and for waiver of compliance. The change in Rule 030 clarifies that outfitter waiting lists apply to all

licensed rivers, lakes and reservoirs in Rule 59 and for each specific Idaho Department of Fish and Game unit. They also clarify the directions the Board may take if there is no waiting list for an operating area and the application process and fee for each area to be considered, and that a name shall be kept on a waiting list for a period of two years or until December 31 of the second year the name is placed on the list. Criteria used in making selections shall include those used to consider new outfitter applications or license amendments. Rule 034 provides that a licensee will produce upon request, a valid first aid card while guiding. It also provides for gender-neutral wording. The changes in Rule 044 provide that the existing rule be replaced in its entirely with new language that reflects changes in this rapidly changing industry. Rule 45 is deleted due to language being consolidated in rule 44. The changes in Rule 054 correct the spelling of anadromous and makes Clearwater River stickers on guide boats permanent. Changes in rule 59 clarify the boundaries of the CL1 Section of the Clearwater River shall be from Lowell to the Upper Bridge at Kooskia, on CL2 at the Upper Bridge at Kooskia to the Bridge at Orofino, and on CL3 from the Orofino Bridge to the Railroad Bridge at Lewiston. On this section each outfitter may use at any one time a maximum of (a) three (3) power boats or three float boats or combination thereof if licensed for both fishing, and (b) five (5) boats for other boating activities per license. The Coeur d'Alene river has been added with four sections, CDNF which is the Headwaters of the North Fork of the Coeur d'Alene River, CD1 which is the Coeur d'Alene River from Devil's Elbow to the South Fork confluence and CD2, the South Fork confluence downstream to Cataldo Mission Boat Ramp, and CD3, the Lateral (Coeur d'Alene chain) Lakes connected by the Coeur d'Alene River from the Cataldo Mission Boat Ramp to the Highway 97 Bridge. Subsection 02 of this Rule includes the Salmon River through the Snake River and Section 03 of this Rule includes the Snake River through the Teton River.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees discussed in the rulemaking are implementation of existing fees.

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 IDAPA 04.11.01.811, negotiated rulemaking was conducted prior to submission involving the Idaho Outfitter and Guides Association. Input was taken from the industry in June of 2004 though a postcard notification and email posting of the rules. Meetings were held Dec. 9, 2004 with the IOGA Governmental Affairs Committee, Jan. 18, 2005 with Representatives of the IOGA Executive Committee, April 27, 2005 IOGA Executive Director Appeared before the Board, June 2 2005, a meeting was held with the Governmental Affairs Committee, June 29, 2005. Mr. Simonds appeared before the Board during a conference call. An additional post card notification and email posting was conducted in August 2005 and the public will have the opportunity to comment on the rules as provided hereunder and may request a hearing as provided by Section 67-5222, Idaho Code.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2005.

DATED this 19th day of July, 2005.

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

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

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

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

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

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

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

03. Authorized Person. An investigator or enforcement agent in the employ of the Board, a conservation officer of the Idaho Department of Fish and Game, or any local, state, or federal law enforcement officer. (4-1-92)

04. Board. The Idaho Outfitters and Guides Licensing Board. (4-1-92)

05. Board Meeting. The set schedule of meeting dates established for conduct of regular Board business on a calendar year basis. Additional meetings may be scheduled as necessary (See Section 071). (4-1-92)

06. Booking Agent. Any individual, firm, business, partnership, or corporation that makes arrangements for the use of the services of a licensed outfitter and receives compensation therefore. A booking agent does not supply personnel or facilities and services to outfitter

clientele. (4-1-92)

07. Compensation. The receipt or taking of goods, services, or cash in exchange for outfitted or guided activities. A bona fide charging of out-of-pocket travel expenses by members of a recreational party shall not be deemed compensation. However, such out-of-pocket expenses may not include depreciation, amortization, wages, or other recompense. (4-1-92)

08. Completed Application. An application submitted for Board consideration which contains all of the material required to be submitted by the Board for that license category. (4-1-92)

09. Consideration. The receipt or taking of goods, services, or cash in exchange for the provision of facilities and services in the conduct of outfitted or guided activities. (4-1-92)

10. Desert. A region of scarce rainfall and vegetation in areas often having great differences between day, night and seasonal temperatures. A desert is a land surface ranging from level, plateau land, or undulating to sharply breaking hill-lands and sand dunes that, in addition, may be broken by poor to well-defined, deeply entrenched drainage systems, rims, cliffs, and escarpments. (4-1-92)

11. Designated Agent. An individual who meets all qualifications for an outfitter's license who is employed as an agent by any person, firm, partnership, corporation, or other organization or combination thereof that is licensed by the Board to operate as an outfitter and who shall, together with the licensed outfitter, be responsible and accountable for the conduct of the licensed outfitter's operations. ~~*The name of each designated agent employed by an outfitter shall appear on the outfitter's bond.*~~ A designated agent may act as a guide if he possesses the qualifications of a guide as determined by the Board. (Previously referred to as Managing Agent). ~~*(4-1-92)*~~(____)

12. Drift Boats. Shall be substituted for and have the same meaning as “float boats” defined below. (4-1-92)

13. Enforcement Agent. An individual employed by the Board having the power of peace officers to enforce the provisions of the Idaho Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21) and the Rules promulgated thereunder. (4-1-92)

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

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

16. Fishing. Fishing activities on those waters and for those species described in the

rules of the Idaho Department of Fish and Game, IDAPA 13.01.11, "Rules Governing Fish," general fishing seasons and any anadromous fishing rules; for purposes of the "Act", fishing is defined as follows: (4-1-92)

a. Anadromous fishing means fishing for salmon or steelhead trout. (4-1-92)

b. Float boat fishing means the use of floatboats without motors for the conduct of fishing as a major activity on those waters open to commercial activities as set forth in Section 059. (4-1-92)

c. Fly fishing means a licensed activity restricted to the use of fly fishing equipment and procedures, as defined by Idaho Department of Fish and Game rules. (4-1-92)

d. Incidental fishing means fishing conducted as a minor activity. (4-1-92)

e. Power boat fishing means the use of power boats in conduct of fishing as a major activity on those Idaho waters open to commercial outfitting activities as set forth in Section 059. (4-1-92)

f. Walk and wade fishing means fishing conducted along or in a river, stream, lake or reservoir, and may include the use of personalized flotation equipment, but does not include the use of watercraft. (4-1-92)

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

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

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

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

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

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

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

24. ~~***Incidental***~~ **Minor Amendment**. All outfitter license amendment requests that can be processed by the Board without requiring outside research or recommendation of a land managing agency or other agency before the Board takes final action on said amendment request. ~~*(4-1-92)*~~(____)

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

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

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

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

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

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

31. **Nonresident**. An individual, corporation, firm, or partnership who is not a resident of the state of Idaho. (See "Resident"). (4-1-92)

~~***32.*** ***Nonuse****. Inactivity, such as incidental activity only, or an outfitter's making zero (0) use of major licensed activities for any two (2) of the three (3) preceding years. See Definitions, "Zero (0) use," and Subsection 024.01.* ***(3-23-98)***~~

3~~*3*~~2. **Operating Area**. The area assigned by the Board to an outfitter for the conduct of outfitting activities. (4-1-92)

3~~*4*~~3. **Operating Plan**. A detailed schedule or plan of operation which an outfitter

proposes to follow in the utilization of licensed privileges, areas, or activities. (See Subsection 018.03). (4-1-92)

3~~5~~4. Outfitter. An individual, corporation, firm, partnership, or other organization or combination thereof that meets the criteria as set forth in Idaho Code 36-2102(b), and has further met the required qualifications as prescribed in the Rules to conduct an outfitting business in Idaho. (4-1-92)

3~~6~~5. Outfitter License. A license issued by the Board to an individual, partnership, corporation, or other duly constituted organization to conduct activities as defined in Section 36-2102(b), Idaho Code. The conduct of an outfitted operation on any land(s) is not authorized unless signed permission, a permit, or a lease is obtained from the land owner(s), or their agent(s), and filed with the Board. (3-15-02)

3~~7~~6. Out-of-Pocket Costs. The direct costs attributable to a recreational activity. Such direct costs shall not include: (4-1-92)

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

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

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

3~~8~~7. Power Boats. All motorized watercraft used on Idaho waters open to commercial outfitting activities as set forth in Subsections 059.01 and 059.02. Excluded as power boats are hovercraft, jetskis or similar devices, and float boats using motors for downstream steerage. (4-1-92)

3~~9~~8. Relinquishment of License Privileges. The failure to re-apply at the expiration of a license; the loss through nonuse, inactivity, revocation, or voluntary surrender of a license; or other loss of license. (See Subsection 030.03). (3-23-98)

~~40~~39. Resident. An individual, corporation, firm, or partnership who has resided in the state of Idaho for a period of six (6) months next preceding the time of application for license. (4-1-92)

4~~1~~0. Rules. The Rules of the Board. (4-1-92)

4~~2~~1. Stay of Board Action. An order, pursuant to Idaho Code 67-5215(c), stopping or delaying the enforcement of a Board decision, order or action. (4-1-92)

4~~3~~2. Third Party Agreement. The allowing of the conduct of an outfitted or guided activity by the outfitter licensed to conduct those activities by any persons not directly employed by said outfitter. (See Section 023). (4-1-92)

4~~4~~3. Trainee. A person not less than sixteen (16) years of age who does not possess the necessary experience or skill qualifications required to obtain a guide license, but who is working toward obtaining the necessary experience or skill qualifications. This required training shall be

recorded on a form provided by the Board. A trainee may not provide any direct guiding services for clients, but may assist while under direct supervision. (5-1-95)

4~~5~~4. Boat Trainee Under Supervision. A boat trainee must be in a boat operated by a licensed boatman, or one in which the operation is closely monitored by a licensed boatman. The licensed boatman need not be in the same boat during training as long as the trainee's activity is closely monitored. (3-10-03)

4~~6~~5. Unethical/Unprofessional Conduct. Any activity(ies) by an outfitter or guide which is inappropriate to the conduct of the outfitting or guiding profession. These activities include, but are not limited to: (3-30-01)

a. An outfitter employing an unlicensed guide; (3-30-01)

b. Providing false, fraudulent or misleading information to the Board; (3-30-01)

c. Failure to obey an order of the Board; (3-30-01)

d. Failure to provide services as advertised or contracted; (3-30-01)

e. Harassment of the public in their use of Idaho's outdoor recreational opportunities; (3-30-01)

f. Violation of state or federal fish and game laws; (3-30-01)

g. Engaging in unlicensed activities or conducting outfitter/guide services outside the operating area for which the licensee is licensed; (3-30-01)

h. Disregard for the conservation, maintenance or enhancement of fish, game, land and water resources; (3-30-01)

i. Failure to pay a supplier of goods or services to the outfitter business; (3-15-02)

j. Failure to pay state taxes; or (3-15-02)

k. Operating in a manner which endangers the health, safety, or welfare of the public. (3-30-01)

l. Selling lifetime excursions, lifetime hunts, or selling of outfitted activities to an individual for the life of that individual and collecting fees accordingly. ( )

4~~7~~6. Validated Training Form. An approved form bearing the "Great Seal of the State of Idaho" and the official stamp of the Board affixed thereon. (4-1-92)

4~~8~~7. Watercraft. A boat or vessel propelled mechanically or manually, capable of operating on inland water surfaces. Excluded as watercraft are hovercraft, jetskis, personal flotation devices (PFD's), or similar devices. (4-1-92)

~~***49.*** ***Zero Use****. No or negligible use by an outfitter of his licensed activity unless the lack of use is due to an act of nature or season or hunting or fishing restrictions by a state or federal agency that limit the ability of the outfitter to seek and accommodate clientele.* *(4-1-92)*~~

(BREAK IN CONTINUITY OF SECTIONS)

007. LICENSE RESTRICTIONS.
A license issued by the Board shall, for an outfitter license, specify the operating area and all activities for which the outfitter is licensed; for a guide license, specify all activities for which a guide is qualified to guide and shall indicate the outfitter(s) who signed the guide license application as the employing outfitter(s); and identify such limitation(s) or qualification(s) as may be imposed by the Board in issue of said license. (10-15-88)

01. Restriction. An outfitter shall not conduct any activities not specified on the outfitter license, nor operate in any area(s), nor on any water(s) for which he is not licensed. (10-15-88)

02. Qualified. All outfitters must be qualified to guide or have in their employment a licensed guide or guides who are qualified for the activity(ies) for which the outfitter is licensed. (10-15-88)

03. Review. An outfitter's qualifications to guide shall be reviewed by the Board, and, if approved, he will be issued both an outfitter and guide license at no additional fee. (10-15-88)

04. Guide Restrictions. A guide shall not guide for any activity(ies), or on any water, or in any operating area for which his employing outfitter is not licensed. (5-1-95)

05. Qualifications. The qualification(s) of an outfitter or guide licensee shall be determined in accordance with Idaho Code, Title 36, Chapter 21, and Rules promulgated thereunder. (10-15-88)

06. Limitation. A limitation in number of clientele served, operating area, or any other criteria affecting the safety, health, and welfare, of the public or viability of the fish, and wildlife, or other natural resources shall be imposed in licensing where such limitation is deemed necessary by the Board in accordance with Idaho Code, Title 36, Chapter 21, and the Idaho Outfitters and Guides Licensing Board Rules. (10-15-88)

07. Notification. An outfitter shall notify the Board: (10-15-88)

a. When an outfitter permanently terminates the services of a licensed guide during the season, the Board shall be notified within fifteen (15) days, stating the date of termination. (10-15-88)

b. When an outfitter employs a <u>licensed</u> guide who is not currently licensed under his outfitter's license, said outfitter shall notify the Board within fifteen (15) days. ~~*(10-15-88)*~~(____)

c. The above requirements shall not apply in the case of a temporary employment, or short term "loan" or transfer (less than fifteen (15) days duration and not on a routine basis) of a guide between outfitters, or termination of employment of a guide upon completion of the seasonal activity for which the guide was employed. When there is a loan or transfer, the employing outfitter or authorized agent shall keep written documentation of the loan or transfer and dates and times. Repeated transfers or loans of guides are required to be done by using the amendment process. ~~*(10-15-88)*~~(____)

d. In addition, an outfitter may employ an individual to guide for ten (10) days or for one (1) excursion, whichever is less, using a ~~*one-time temporary guide license on a form*~~ letter of authorization provided by the Board. With the exception of a current first-aid card, the ~~*guide*~~ individual shall be otherwise fully qualified to provide guiding services in the area and for the activity guided. The employing outfitter shall certify to the Board prior to employment that the ~~*guide*~~ individual is qualified and may only use one (1) ~~*guide*~~ individual in this manner per license year. ~~*(3-23-98)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

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

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

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

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

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

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

02. Outfitter and Designated Agent ~~*Late*~~ Penalty Fee. When a completed renewal application is filed with the Board after the last day of the license year, the following penalty shall apply: ~~*(3-20-04)*~~(____)

a. A completed application received by the Board the last day of the license year - no ~~*late*~~ penalty fee shall apply. ~~*(3-10-03)*~~(____)

b. A completed application received by the Board after the last day of the license year - a ~~*fifty dollar ($50) late*~~ penalty fee shall be paid before the license is issued. ~~*(3-10-03)*~~(____)

03. License Lapsed and Relinquished. A completed outfitter application received by the Board after ninety (90) days after the last day of the license year will not be accepted for

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

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

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

a. Beginning in license year 2004, outfitter and designated agent licenses may be issued for a one (1) year or three (3) year period. All new applicants must be licensed for two (2) years before the applicant may apply for a three (3) year license. (3-20-04)

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

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

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

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

06. Payment. (____)

a. Prior to the issuance of a license, an applicant must submit the appropriate fee in the form of a certified check, cashier's check, money order, outfitter's company check or use of outfitter and designated agent credit cards. ~~(3-20-04)~~(____)

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

c. Designated Agents must pay an annual license fee for each license issued. (____)

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

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

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

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

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

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

a. One hundred dollars ($100) for an outfitter license; (3-16-04)

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

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

d. Five dollars ($5) for allocation fee recovery. (3-16-04)

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

a. Twenty dollars ($20) for an outfitter license; (3-16-04)

b. Seven dollars ($7) for a designated agent license; and (3-16-04)

c. Five dollars and twenty-five cents ($5.25) for a guide license. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

019. DESIGNATED AGENT.
When the applicant is a corporation, firm, partnership, or other organization or combination thereof, a supplemental form shall be completed and it shall designate at least one (1) designated agent who is a qualified outfitter who shall be responsible for the outfitting business. The outfitter business and designated agent(s) must each make application and obtain licenses. ~~*One (1)*~~ Proof of a bond ~~*naming the business and the designated agent(s)*~~ must be submitted to the Board to complete a renewal application. Any new applicant who has been approved by the Board must submit a bond prior to the issuance of a license. ~~*(10-15-88)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

021. EVALUATION OF THE OUTFITTER APPLICATION.
In evaluating an outfitter application for approval or denial, the Board shall consider, but not be limited to, the following criteria: (3-1-86)

01. Compliance. Applicant compliance with qualification criteria as prescribed in the Act and the Rules. (3-1-86)

02. Need for Services. The public need for the proposed service(s) in the area requested on the application. (3-1-86)

03. Other. The extent of the applicant's experience, knowledge, and ability in the area and in the conduct of activities requested. (3-1-86)

04. Equipment and Resources to Operate. The applicant's qualifications by reason of equipment or resources to operate. (3-1-86)

05. Previous Record. The applicant's previous record. (3-1-86)

06. Accessibility of Area. The accessibility of the area and use by the general public, the commercial use already licensed in the area, the particular terrain, and normal weather conditions during the season of operation.
(3-1-86)

07. Area Requested. The total amount of area requested, giving due consideration to the effect such license would have upon the environment, the amount of game available to be harvested, the probable impact on the area should additional licenses be issued, and the number of persons who can be adequately served in the area. (3-1-86)

08. Operating Plan. The adequacy and acceptability of the proposed operating plan.
(3-1-86)

a. The applicant's knowledge of financial and business management needs and practices. (3-1-86)

b. The applicant's ability to manage and direct personnel and guests. (3-1-86)

09. Name. The name registered as a d.b.a. (doing business as), or the name of the business entity, registered with the Secretary of State. ( )

022. ISSUANCE OF AN OUTFITTER LICENSE.
When the Board issues an outfitter license, said license shall specify the activity(ies) for which the applicant is licensed, designate specific operating area(s) for each activity, and be based on an operating plan acceptable to the Board. In order to safeguard the health, safety, and welfare of the public and for the conservation of wildlife resources, the Board may place a limit on the number of outfitter licenses issued within an operating area. An outfitter may not operate in an area for which there is no landowner or land manager ~~signoff~~ statement where applicable. The outfitter shall operate only under the names licensed by the Board and under no other names. An outfitter business that is a corporation, partnership, LLC or LLP must have a Designated Agent in order to

be licensed and to operate. ~~*(3-15-02)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

024. STANDARDS FOR NON-USE.
~~*Prior to the renewal of a license, the Board shall review the outfitter's use reports for the preceding three (3) years to determine whether the operation falls within a nonuse category as defined in Subsection 024.01. If the outfitter falls within a nonuse category, a "notice of nonuse" may be issued to the outfitter. The notice shall include the activity(ies) and operating area(s) deemed to be in nonuse, an explanation of how the determination was made, and the hearing date on which the Board will consider whether the license or any part thereof should not be renewed because of nonuse.*~~ An outfitter license is a publicly issued license enabling the holder to provide outfitted and guided services to the public. Because many outfitters operate on public lands and waters, there is an expectation that these services be provided adequately and that the public's natural resources are utilized appropriately. It is important to determine whether the outfitter is providing, or attempting to provide, the public service intended. It is recognized that there are various factors outside the control of an outfitter that may affect an outfitter's business operation. This rules establishes the process used by the Board to monitor the use of outfitter assigned activities and operating areas, to determine the causes for outfitter inactivity, and to fairly administer identified remedies when this service is inadequately provided or the resource is inadequately used. The Board will prioritize the need for action on non-use based on, among other factors, interest or demand for the particular activity or area. ~~*(3-1-86)*~~(____)

01. ~~***Nonuse****. For the purpose of this section shall mean zero (0) use of an outfitter's licensed activity(ies) for any two (2) of the three (3) preceding years as reported by the licensee in his annual report to the Board.*~~ **Requirement**. The Board may annually review the outfitter's use reports for the preceding three (3) years to determine whether any licensed activity or operating area fall within non-use. If the outfitter falls within non-use, a "notice of non-use" may be issued to the outfitter. (3-1-86)

02. ~~***Waiver****. Upon a showing of good cause, the Board may waive compliance with the nonuse standard.*~~ **Definitions**. ~~*(3-1-86)*~~(____)

a. Non-use. When an outfitter is making zero (0) or negligible use of major licensed activities for any two (2) of the three (3) preceding years unless the lack of use is due to an act of nature or because of state or federal agency restrictions on hunting or fishing that limit the ability of the outfitter to seek and accommodate clients; (____)

b. Zero (0) use. No recorded use by an outfitter of their licensed area or activities; (____)

c. Negligible use. An unreasonable lack of use as determined by the Board for any one (1) or more of the particular activities in the assigned operating area. Typically, use may be determined by comparison of use levels for the same activity(s) in similar operating areas. Other factors in determining use are found in Subsection 024.04. (____)

03. **Process**. ( )

a. Outfitters are required to submit use reports each year during the license renewal. ( )

b. A "notice of non-use" may be issued to an outfitter who appears to be in non-use. The notice shall include the activity(s) and operating area(s) that appear to be in non-use and an explanation of how the determination was made. The outfitter will be given the opportunity to correct the use records by supplying staff with evidence of use, prior to a hearing being scheduled. If adequate proof of use is not provided, the matter will be scheduled for a hearing. ( )

c. When it is determined by the Board that any activity or operating area has had zero (0) use or negligible use, certain requirements may be imposed by the Board up to and including revocation of some or all of the outfitter's operating areas and activities. ( )

04. **Examples of Acceptable Use**: ( )

a. Paying clients participating in activities occurring within a designated operating area; ( )

b. Donated trips; ( )

c. Outfitter initiated applications for controlled hunts in their licensed operating area; ( )

d. Outfitter initiated applications for trophy species; and ( )

e. Use in conformance with a current and accepted operating plan. ( )

05. **Required Records**. Outfitters may be required to submit client records that include the name, address, and date of activity of individual clients or groups for a period of three (3) consecutive years. ( )

06. **Non-Use During a Sale**. Board staff shall review all full or partial business sales for non-use. If it is determined a major activity or operating area has had zero (0) or negligible use, the Board may review the sale and the issuance of a license may be denied. In some instances the Board may approve the sale with notification to the buyer that use must be established within the following two (2) out of the next three (3) years or the area or activity may be removed from their license. ( )

07. **Waiver of Compliance**. The Board may waive compliance with the non-use standard upon a showing of good cause. Waivers of non-use may be issued when the lack of use is a result of an act of nature, or by state or federal agency seasonal restrictions on hunting or fishing that limit the ability of the outfitter to seek and accommodate clients. Waivers may also be considered when personal circumstances such as illness or injury limit the ability of the outfitter to seek and accommodate clients. Non-use waivers must be applied for prior to the beginning of the license year or immediately upon the advent of extenuating circumstances. If a federal permit

holder is requesting zero (0) or negligible use, the request for a waiver must be accompanied by a Land Manager's Statement. ( )

(BREAK IN CONTINUITY OF SECTIONS)

030. OUTFITTER WAITING LISTS.
When there are more outfitter applications for ~~*river operations*~~ an outfitter operating area than the maximum number of licenses allowing such activity, or when an ~~*outfitter applicant*~~ individual wishes to be ~~*licensed*~~ considered in an area to which another outfitter has historically been licensed, the Board shall maintain a list of such ~~*applicants*~~ individuals for notification of an available opening. ~~*The initial application must be complete except for bond and license fee. When, or if, an available opening does occur and public announcement is made, the Board shall use the waiting list for direct notification by mail of interested parties, and shall select a qualified candidate. Any person on the list who remains interested in obtaining a license following notification of availability must re-apply during the open period as announced by the Board in order to have his application considered. If an existing operating area (hunting, boating, or other) is relinquished by the licensee, the Board (if it deems it advisable to relicense the area) shall publicize the area's availability and accept written applications for a thirty (30) day period of time from the date of public notice from those persons wishing to be licensed to the area. The Board shall then consider the qualifications of all applicants and license the area to the candidate determined to be most qualified. Criteria to be used in making this selection shall include, but shall not be limited to, the following:*~~ If there is no waiting list for an area, the Board may proceed with the license application or may employ a competitive application process. ~~*(5-1-95)*~~( )

01. ~~***Qualification****. General outfitter qualifications as outlined in the Act and Rules.*~~ **Waiting List**. The waiting list will be maintained for each individual river, lake and reservoir outlined in Section 059 and for each specific Idaho Department of Fish and Game (IDFG) unit listed in IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho". ~~*(3-1-86)*~~( )

02. ~~***Experience****. Experience in an outfitting business.*~~ **Outfitter Application or Outfitter Amendment Form**. A new outfitter application or outfitter amendment form must be completed and a partial application fee submitted for each river section, lake and reservoir and for each specific IDFG unit that the individual desires. The individual must indicate all activities for which they wish to be considered on the application form. ~~*(3-1-86)*~~( )

03. ~~***Business Experience****. Other business experience or training.*~~ **New Outfitter Waiting List Application Fee**. The Board will charge the individual wishing to be placed on a waiting list a partial application fee for each area for which they wish to be considered. ~~*(3-1-86)*~~( )

04. ~~***Financial Resources****. Financial resources available to operate the proposed business.*~~ **Length of Time Name Is on Waiting List**. A name on the waiting list shall be maintained for a period of five (5) years or until December 31 of the *fifth* year that the name is placed on the list, whichever comes first. ~~*(3-1-86)*~~( )

05. ~~***Equipment Resources***. *Equipment resources available to operate the proposed business.*~~ **When Available Outfitting Opening Occurs**. When, or if, an available opening does occur and public announcement is made, the Board shall use the waiting list for direct notification by mail of interested parties, and shall select a qualified candidate from those who apply. Any person on the list who remains interested in obtaining a license following notification of availability must re-apply by submitting all necessary forms and fees during the open period as announced by the Board in order to have his application considered. ~~*(3-1-86)*~~(____)

06. ~~***Adequacy***. *Adequacy and acceptability of the proposed operating plan for use of the requested operating area.*~~ **When an Operating Area Is Relinquished by the Licensee**. If an existing operating area (hunting, boating, or other) is relinquished by the licensee, the Board (if it deems it advisable to relicense the area) shall publicize the area's availability and accept written applications for a thirty (30) day period of time from the date of public notice from those persons wishing to be licensed to the area. The Board shall then consider the qualifications of all applicants and license the area to the candidate determined to be most qualified. Criteria to be used in making this selection shall include those criteria used to consider new outfitter applications or those criteria used to consider existing outfitters who wish to amend their licenses. ~~*(3-1-86)*~~(____)

07. **Availability**. ~~*In compliance with the above criteria, t*~~The Board shall determine the availability of operating areas for relicensing by the beginning of each license year. ~~*(3-1-86)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

034. GUIDE APPLICATION REQUIREMENTS - GENERAL.
To be complete, an application for a guide license must: (4-1-92)

01. **First Aid Card**. Be accompanied by an affidavit *signed* by the employing outfitter that the applicant will have a valid first aid card ~~*while guiding*~~ before they are employed *as a guide*. ~~*(3-10-03)*~~(____)

02. **Signatures**. Have the signature of the applicant and of the licensed outfitter(s) who wishes to employ the applicant as a guide, who shall certify that the applicant: (4-1-92)

a. Is qualified to perform the type of guiding activity(ies) for which ~~*he*~~ the applicant seeks licensing; i.e., hunting, boating, skiing, or other as may be applicable. ~~*(4-1-92)*~~(____)

b. Has extensive, first-hand knowledge of the operating area(s) and water(s) in or on which ~~*he*~~ the applicant will be guiding. ~~*(4-1-92)*~~(____)

c. If the ~~*guide*~~ applicant is land based, ~~*the guide*~~ is able to read and understand a map and compass or operate a global positioning system (GPS) or other computerized map system. ~~*(3-30-01)*~~(____)

d. Is clean and well-mannered with a desire to please those whom ~~*he*~~ the applicant is called upon to serve. ~~*(4-1-92)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

~~***044. Cross Country Ski Guide.***~~
~~*Cross-country ski guide applicants may be licensed in several ways, depending upon training, expertise, and skill levels.* *(4-1-92)*~~

~~***01. Apprentice Guide (Trainee)****. Not qualified to guide alone, but may assist in guiding day trips under the direct leadership of a guide or lead guide, or may assist on overnight trips under the direct supervision of a lead guide only. An apprentice or trainee guide must have the same general knowledge as a ski guide, but has not passed the qualifying backcountry program in order to qualify as a guide or lead guide.* *(4-1-92)*~~

~~***02. Guide (Associate Certified Backcountry - PSIA)****. Qualified only to guide day trips in non-hazardous terrain or assist in guiding day or overnight trips in hazardous terrain under the direct leadership of a lead guide. To obtain a license as a guide, the applicant shall have met all the general requirements for a guide license and must have good ability to ski, leadership qualities, knowledge of route selection, map and compass reading, emergency shelter technique and equipment including a minimum first aid kit, awareness of hypothermia and avalanche conditions, and must have passed the qualifying backcountry program to become a ski guide.* *(4-1-92)*~~

~~***03. Lead Guide (Full Certified Backcountry - PSIA)****. Fully qualified to guide day and overnight trips in any terrain.* *(4-1-92)*~~

~~***a.*** *To obtain a license as a lead cross-country ski guide, the applicant shall have passed a backcountry qualifying examination and obtained full certification from a division of the Professional Ski Instructors Association (PSIA) or from an organization with similar training and examining procedures which are acceptable to the Board, or have passed a qualified program for guiding skiing that is acceptable to the Board. The Board reserves the right to investigate the training program and examining procedures of any organization whose certification is submitted as a qualification for a license. The guide must have experience guiding in areas of equivalent terrain to the operating area(s) requested. He must have also accompanied a licensed lead ski guide on a minimum of three (3) overnight tours. A log shall be submitted giving dates, miles traveled, location of trips, and shall be signed by the lead guide. All overnight ski tours shall be under the direct leadership of a licensed lead ski guide. "Direct leadership" means the licensed lead ski guide shall accompany the group for the entire tour.* *(4-1-92)*~~

044. SKIING, NON-HAZARDOUS AND HAZARDOUS TERRAIN OUTFITTER, DESIGNATED AGENT, SKI GUIDE AND SKI GUIDE TRAINEE.

01. Applications. ( )

a. An outfitter, designated agent or guide must submit an outfitter or a guide application with current outfitter operating plan, if required, ski resume, avalanche training certificates, appropriate fees and proof of first aid training. ( )

b. The Board will then send this information to the Technical Advisory Committee (TAC) for evaluation. The TAC is a five (5) member body of qualified backcountry ski outfitters and ski guides appointed by the Executive Director and confirmed by the Board to advise the Board on non-hazardous and hazardous terrain skiing. ( )

c. The TAC will designate or determine the scope of the outfitting operation and whether guiding principally in non-hazardous or hazardous terrain. The TAC will then recommend to the Board whether or not the Board should license the outfitter or guide as either Level I Ski Operator (non-hazardous terrain, principally sub- alpine or skiing operations in forests) or a Level II Ski Operator (hazardous terrain with a high degree of avalanche exposure). Designated agents and guides are licensed to fill job duties of the respective outfitters based upon terrain and services of the guide rendered. ( )

02. Designations and Qualifications for Outfitters, Designated Agents, Guides and Trainees are as Follows: ( )

a. Level I ski guide (non-hazardous terrain). Is qualified to lead ski tours in the outfitter's operating area. One (1) year training as a ski guide assistant in a non-hazardous backcountry setting. Level I Ski Guides may work in hazardous terrain as a Level II Ski Guide Trainee under the supervision of a Level II Ski Guide. Level I Ski Guides are required to have: ( )

i. Standard First Aid training as per guide licensing in Idaho; ( )

ii. Level I field-based avalanche training consisting of a twenty-four (24) hour curriculum submitted and an instructor roster; ( )

iii. Knowledge of Outfitters Scope of Operation including logistics, services, terrain; and ( )

iv. A letter of reference from the employing outfitter. ( )

b. Level II ski guide (hazardous terrain). Has in-depth ski guiding experience on hazardous terrain and has the following qualifications: ( )

i. Two (2) winter seasons training with Licensed Level II Ski Outfitter or Guide or equivalent work experience with another Level II ski operation which conduct services principally in hazardous or avalanche terrain; ( )

ii. Advanced First Aid, WFR, or EMT of a minimum of forty-eight (48) hours;( )

iii. Level 1 and Level II field-based avalanche training consisting of at least forty-eight (48) hours curriculum with a submitted instructor roster; ( )

iv. Knowledge of the Outfitters Scope of Operation including logistics, services, terrain; and ( )

v. A letter of reference from the employing outfitter. ( )

03. **Outfitters**. Outfitters who conduct winter ski-based operations may be designated as: ( )

a. Level I: self-propelled, with snowcat, or with snowmobile assisted including day skiing, hut skiing in non-hazardous terrain; ( )

b. Level II: self-propelled including day skiing, hut skiing, multi-day expeditions, in hazardous terrain; or ( )

c. Level II skiing operations with snowcats, helicopters, or ski from out of bounds from ski areas. ( )

04. **Outfitters Plan of Operation**. A detailed Outfitters Plan of Operation is required which includes a plan for snowpack, terrain and avalanche safety assessment, additional transport utilized (i.e., snowmobiles, snowcats, helicopters) and instruction and training plans of guides working around related equipment. Additional safety and training standards for guides must be detailed in the operating plan. ( )

05. ***Field Supervisor***. The *Outfitter* must *employ at least one individual acting as a field supervisor who must be* a working Guide with the appropriate level of licensing for the operation and a minimum of five (5) years working at that level of guiding as to the scope of the operation, *if the outfitter or Designated Agent does not satisfy this experience qualification. The individual will be required to provide a cover letter for each guide application attesting to the guides qualifications*. ( )

06. **Ski Guide Trainees**. Trainees may be selected for employment by the outfitter and are not required to have a license. A trainee may only assist a licensed guide's direct supervision and trainees may not provide guided services to clients. Trainees must have thirty (30) days experience with a licensed ski guide in the outfitter's operating area and must meet all other guide requirements of Section 044 prior to submitting a guide application. ( )

045. ~~***Backcountry Alpine Ski Guide***~~ **(Reserved).**
~~*Before conducting operations, all backcountry alpine ski guides must be licensed by the Board and employed by an outfitter who has an operating plan approved by the land manager. Guides must meet the following requirements:*~~ ~~*(4-1-92)*~~

~~***01.*** ***Avalanche Training****. Have at least forty (40) hours avalanche training at a Forest Service school, an American Avalanche Institute, Sierra Avalanche seminars, or the equivalent.*~~ ~~*(4-1-92)*~~

~~***02.*** ***Radio Communications****. Have radio communication knowledge.*~~ ~~*(4-1-92)*~~

~~***03.*** ***Skier Safety Rules****. Have skier safety rules training.* *(4-1-92)*~~

~~***04.*** ***Other****. Have passed the regular backcountry qualifying examination and obtained full certification from a division of the Professional Ski Instructors Association (PSIA) or a qualified program acceptable to the Board.* *(4-1-92)*~~

(BREAK IN CONTINUITY OF SECTIONS)

054. BOAT EQUIPMENT REQUIREMENTS.
Each float or power boat must have: (4-1-92)

01. Life Jacket. A life jacket for each passenger and boatman. The life jackets must be of a type approved by the U.S. Coast Guard for use in boats carrying passengers for hire and must be maintained in good and serviceable condition. (4-1-92)

02. Fire Extinguisher. A fire extinguisher. (Does not apply to float boats without motors for steerage). (4-1-92)

03. Identification. (3-20-04)

a. Identification consisting of words, names, or letters indicating the current licensed outfitter. The identification shall be recorded with the Board on the outfitter application and shall be placed above the water line on each side of the bow or stern of the boat utilized by that outfitter in letters not less than three (3) inches in height, and be of a contrasting color. (Does not apply to single person boats or two (2) person inflatable boats). (3-20-04)

b. On Sections CL2 and CL3 of the Clearwater River, the outfitter shall have a sticker affixed to the surface of any boat used for ~~*anadramous*~~ anadromous fishing. The sticker shall not be less than eight (8) inches in height and shall be placed immediately adjacent to the identification words, names or letters on each side of the boat towards the bow, identifying the boat as operated by a licensed outfitter. The stickers shall be provided and sold annually by the Board or a vendor designated by the Board. ~~*This requirement shall not apply to single person boats or inflatable boats. The sticker requirement is null and void after July 1, 2006.*~~
~~*(3-20-04)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

059. RIVER, LAKE AND RESERVOIR POWER AND FLOAT OUTFITTER LIMITS.

01. Licensable Waters -- River Sections (BL1) Blackfoot River through (PR1) Priest River -- Table. The following rivers and streams or sections that lie totally or partially within the state of Idaho shall be open to commercial boating operations by outfitters and guides.

All other rivers and streams or sections that lie totally or partially within the state of Idaho shall be closed to commercial boating by outfitters and guides.

River/Section	Maximum No. Power	Maximum No. Float
(BL1) Blackfoot River - Morgan Bridge to Trail Creek Bridge	none	2
(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.	none	2
(BO2) Boise River - Downstream from the west side of the Garden City municipal limits to the east side of the Caldwell municipal limits. ~~(~~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.	none	2
(CF1) Clark Fork River - Montana stateline to Lake Pend Oreille (boating closing date September 30)	4 outfitters for either power or float or combination thereof	
(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~~)~~.	none	5
(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

River/Section	Maximum No. Power	Maximum No. Float
(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. *U*p to two (*4*) clients *on the river at* one time *per license*.	none	none
(CD1) Coeur d'Alene River - Devil's Elbow to South Fork confluence (boating closing date *is* June 30). 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	~~5~~1
(CD2) Coeur d'Alene River - South Fork confluence downstream to Cataldo Mission Boat Ramp. The float boat closing date is June 30. 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. *W*alk 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 stateline 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 stateline to Oregon stateline 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. Restrictions: NO FISHING ALLOWED. 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

(____)

02. Licensable Waters -- River Sections (MF1) Middle Fork Salmon River Through (SE2) Selway River -- Table. The following rivers and streams or sections that lie totally or partially within the state of Idaho shall be open to commercial boating operations by outfitters and guides. All other rivers and streams or sections that lie totally or partially within the state of Idaho shall be closed to commercial boating by outfitters and guides.

River/Section	Maximum No. Power	Maximum No. Float
*****##**(MF1) Salmon River, Middle Fork** - Boundary Creek to Indian Creek	none	27
*****## **(MF2) Salmon River, Middle Fork** - Indian Creek to Cache Bar on the Salmon River	none	27

River/Section	Maximum No. Power	Maximum No. Float
(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 part of an outfitter's operating plan.	5	11
(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 Director.	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

River/Section	Maximum No. Power	Maximum No. Float
*** (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 Director; 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 Director.	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

(____)

03. Licensable Waters -- River Sections (SH1) Henry's Fork Snake River Through (TE3) Teton River -- Table. The following rivers and streams or sections that lie totally or partially within the state of Idaho shall be open to commercial boating operations by outfitters and guides. All other rivers and streams or sections that lie totally or partially within the state of Idaho shall be closed to commercial boating by outfitters and guides.

River/Section	Maximum No. Power	Maximum No. Float
(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~~)~~.	none	7
(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 Warm River, Warm River to Ashton Dam, and Ashton 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~~)~~.	none	8
(SH3) Snake River, Henry's Fork - St. Anthony to confluence with South Fork of Snake River. ~~(~~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~~)~~.	none	4
(SS1) Snake River - South Fork - Palisades Dam to confluence with Henry's Fork. No more than four (4) boats per section/per day may be used by an outfitter at any one time on any of the following river reaches: (a) Palisades Dam to Swan Valley Bridge; (b) Swan Valley Bridge to Black Canyon (Exception: Not more than eight (8) boats will 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.); (c) Black Canyon to Poplar (Kelly Canyon); and (d) Poplar to the confluence with Henry's Fork. Restrictions: No outfitter may have more than twelve (12) boats on the SS1 in any one (1) day. Further, the lower boundary of Section (a) (Palisades Dam to Swan Valley Bridge) shall overlay Section (b) to the Conant takeout (Swan Valley Bridge to Black Canyon), and Section (b) shall overlay Section (c) to the Cottonwood access. Supply boats which do not carry clients are exempt from these restrictions.	5	6
(SN1) Snake River - Henry's Fork confluence downstream to Gem State Power Plant	3	3
(SN2) Snake River - Gem State Power Plant downstream to headwaters of American Falls Reservoir	3	3

River/Section	Maximum No. Power	Maximum No. Float
(SN3) Snake River - American Falls Dam to Massacre Rocks State Park	3	3
(SN4) Snake River - Massacre Rocks State Park to Milner Dam	3	3
*** (SN5) Snake River** - Milner Dam to Star Falls	none	3
*** (SN6) Snake River** - Star Falls to Twin Falls	none	5
(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 - Spruce Tree Campground to St Joe City Bridge. St. Joe City Bridge to Lake Coeur d'Alene	none 2	2 none

River/Section	Maximum No. Power	Maximum No. Float
(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	
(TE3) Teton River - Harrop Bridge to confluence with Snake River, ~~(~~motors not to exceed 10 hp~~)~~	none	5

* Classified rivers
Floatboat and powerboat outfitters on these sections shall be considered within their area of operations when hiking from the river or fishing in tributaries away from the river, but shall not include overnight activities. Conflicts with land-based outfitters shall be handled on a case-by-case basis. ~~(3-20-04)~~(____)

0~~2~~4. Other -- Table. The following lakes and reservoirs or portions thereof that lie totally or partially within the state of Idaho shall be 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	1	2
Henry's Lake	8	2
Island Park Reservoir	7	2
Magic Reservoir	3	2
Palisades Reservoir	10	2
Lake Pend Oreille	11	1
Priest Lake	5	1
American Falls Reservoir	3	2
C.J. Strike Reservoir	4	2
Brownlee Reservoir	5	2

Lake or Reservoir	Maximum No. of Operators	Maximum No. Boats per Operator per Lake or Reservoir
Oxbow Reservoir	3	2
Hells Canyon Reservoir	3	2

(4-1-92)

0~~3~~5. Other Lakes and Reservoirs. All other Idaho lakes and reservoirs shall be limited to two (2) outfitters with a maximum of two (2) boats (float or power) per outfitter. (4-1-92)

RESOURCES & ENVIRONMENT

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.31 - RULES GOVERNING THE ADMINISTRATION OF IDAHO DEPARTMENT OF PARKS AND RECREATION RECREATIONAL PROGRAM GRANT FUNDS

DOCKET NO. 26-0131-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5221(1), and 67-4223(a) 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.

Chapter 31 establishes rules which govern the administration of IDPR state and federal grant funds. Periodically it is necessary, and desirable, to modify and update the rules to ensure that IDPR manages its grant programs in a consistent manner. The proposed changes consist mainly of housekeeping measures to clarify existing terminologies, remove outdated definitions, and eliminate superfluous references.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 537 through 548.

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 Dean Sangrey, 208.334.4180, ext 250, dsangrey@idpr.state.id.us.

DATED this 15th day of November, 2005.

Dean Sangrey
Division Administrator, Operations
Idaho Department of Parks and Recreation

5657 Warm Springs Ave.
Boise, ID 83716
P. O. Box 83720
Boise, ID 83720-0065
Phone: 208-334-4180 Fax: 208-334-3741

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4223(a), 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 19, 2005.

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:

Chapter 31 establishes rules which govern the administration of IDPR state and federal grant funds. Periodically it is necessary, and desirable, to modify and update the rules to ensure that IDPR manages its grant programs in a consistent manner. The proposed changes consist mainly of housekeeping measures to clarify existing terminologies, remove outdated definitions, and eliminate superfluous references.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because it was determined there was insufficient time from the formal approval of the proposed rules by the Idaho Park and Recreation Board. Public meetings will be scheduled prior to the upcoming legislative session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dean Sangrey, 208.334.4180, ext 250, dsangrey@idpr.state.id.us.

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, 2005.

DATED this 6th day of September, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

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

001. TITLE AND SCOPE.

01. Title. The title of this chapter shall be cited in full as Idaho Department of Parks and Recreation Rules, IDAPA 26.01.31, "Rules Governing the Administration of the Idaho Department of Parks and Recreation ~~*Recreational Program*~~ State and Federal Grant Funds". ~~*(7-1-99)*~~(____)

02. Scope. This chapter establishes procedures for ~~*the*~~ grants administration of the Off-Road Motor Vehicle Account, the Recreational Vehicle Account, ~~*the Boat Safety Account,*~~ the Waterways Improvement Fund, ~~*the Cross-Country Skiing Recreation Account,*~~ the State Trust for Outdoor Recreation Enhancement, ~~*and*~~ the Recreational Trails ~~*Fund, including*~~ Program, the Motorbike Recreation Account, the Cutthroat License Plate Fund, and the Recreational Road and Bridge Fund. This chapter includes requirements for project application, eligibility, review, award and management. ~~*(7-1-99)*~~(____)

002. WRITTEN INTERPRETATIONS.
This agency has written interpretations of these rules, in the form of explanatory comments accompanying the notice of proposed rule-making that originally proposed the rules, or documentation of compliance with IDAPA 26.01.01, "Rules of Administrative Procedure of the Idaho Park and Recreation Board," Section 150. In addition, ~~*participation manuals*~~ Idaho Department of Parks and Recreation Grant Guidelines prepared and maintained by the Department provide additional interpretation of these rules. These documents are available for public inspection and copying in the central office of the agency. ~~*(7-1-99)*~~(____)

003. ADMINISTRATIVE APPEALS.
Any applicant who may be adversely affected by a final decision, ruling, or direction of the Department may seek relief as outlined under IDAPA 26.01.01, "Rules of Administrative Procedure of the Idaho Park and Recreation Board," Section 250. ~~*(7-1-99)*~~(____)

004. PUBLIC RECORDS.
The records relative to any ~~*recreational program*~~ grant project are public records, and are to be controlled as outlined under IDAPA 26.01.01, "Rules of Administrative Procedure of the Idaho Park and Recreation Board," Section 300. ~~*(7-1-99)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.
As used in this chapter: (7-1-99)

01. Applicant. An ~~*public*~~ IDPR approved entity, ~~*user group, organization, or individual*~~ that identifies a need for a project, supplies initial support data, and applies for ~~*a recreational*~~ program grant through the Department. ~~*(7-1-99)*~~(____)

02. Board. The Idaho Park and Recreation Board. (7-1-99)

~~***03. Boating Law Administrator**. The staff administrator of the Waterways Improvement Fund and the Boat Safety Account.* *(7-1-99)*~~

~~***04. Boat Safety Account**. Those grant funds given to the department by the U.S. Coast Guard, and which originate from the Federal Aquatic Resources Trust Fund, Boat Safety Account.* *(7-1-99)*~~

~~***05. Boat Safety Program**. The subdivision of the department responsible for administering the Boat Safety Account.* *(7-1-99)*~~

0~~*6*~~3. County Waterways Committee. Those committees created by Section 67-7012, Idaho Code, whose purpose is to advise the county on the maintenance and improvements of waterways and expenditures of moneys deposited in the county vessel account. ~~*(7-1-99)*~~(____)

04. Cutthroat License Plate Fund (CLP). That portion of the Park and Recreation fund created in Section 67-4225, Idaho Code, received from the sale of cutthroat wildlife license plates. (____)

~~***07. Cross-Country Skiing Recreation Account**. That account established by Section 67-7117, Idaho Code.* *(7-1-99)*~~

~~***08. Cross-Country Skiing Recreation Program**. The subdivision of the department responsible for administering the Cross-Country Skiing Recreation Account.* *(7-1-99)*~~

0~~*9*~~5. Department. The Idaho Department of Parks and Recreation. (7-1-99)

~~*1*~~06. Director. The chief administrator of the Department, or the designee of the Director. (7-1-99)

~~*11*~~07. Grant. A grant from ~~*the Off-Road Motor Vehicle Account, Recreation Vehicle Account, Waterways Improvement Fund, Boat Safety Account, Recreational Trails Fund, Cross-Country Skiing Recreation Account, or State Trust for Outdoor Recreation Enhancement*~~ programs or funds as described in Section 001.02 of this chapter. ~~*(7-1-99)*~~(____)

08. **Grantee**. An applicant who receives a grant from the Department for the programs or funds as described in Section 001.02. ( )

09. **IDPR Grant Guidelines**. A compilation of state procedures, rules, and instructions assembled in manual form for dissemination to the potential applicant and public entities that may wish to apply for grants. ( )

1~~2~~0. **Management**. The actions taken in exercising control over, regulating the use, operation, and maintenance of facilities or programs. (7-1-99)

1~~3~~1. **Motorbike Recreation (MBR) ~~Fund~~ Account**. This ~~fund~~ account, created by Section 67-712~~2~~6, Idaho Code, may be used for all of the purposes outlined in Subsection 010.1~~4~~1 of this chapter and rider education programs. When reference is made to the ORMV Account in this chapter, it is intended to include the MBR Fund the same as if it was specifically denoted as such except enforcement of laws and rules governing the use of off-road motor vehicles in Idaho. ~~(7-1-99)~~( )

1~~4~~2. **Off-Road Motor Vehicle (ORMV) Account**. That account created by Section 57-1901, Idaho Code. These moneys may be used to acquire, purchase, improve, repair, maintain, furnish and equip off-road motor vehicle facilities and sites or areas used by off-road vehicles on public or private land, and to assist with enforcement of laws and regulations governing the use of off-road vehicles in the state of Idaho. (7-1-99)

1~~5~~3. **Off-Road Motor Vehicle (ORMV) Account Advisory Committee**. A nine (9) member committee appointed by the Board to advise the Department on matters involving ORMV Fund grants. (7-1-99)

~~***16.*** ***Off-Road Motor Vehicle (ORMV) Program****. The subdivision of the department responsible for administering the ORMV Account.* ***(7-1-99)***~~

~~***17.*** ***Participation Manual****. A compilation of state procedures, rules, and instructions assembled in manual form for dissemination to the potential applicant and public entities that may wish to participate in recreational program grants.* ***(7-1-99)***~~

1~~8~~4. **Project**. An effort to comply with Idaho statutes and rules for which ~~*recreational program*~~ grant funds shall be used to assist the ~~*applicant*~~ grantee in achieving the objectives of the ~~*recreational*~~ grant programs. ~~(7-1-99)~~( )

1~~9~~5. **Project Manager**. Any individual who has the principle responsibility for the ongoing management of projects. (7-1-99)

~~20~~16. **Public Entity**. The state, federal or local government or a subdivision thereof, or an Indian tribe. (7-1-99)

~~***21.*** ***Recreational Program****. The Off-Road Motor Vehicle Program, Recreational Vehicle Program, Waterways Improvement Fund Program, Boat Safety Program, Cross-Country Skiing Recreation Program, Snowmobile Program, Recreational Trails Program, State Trust for Outdoor Recreation Enhancement Program, and the Land & Water Conservation Fund Program*~~

~~*administered by the department.*~~ ~~*(7-1-99)*~~

~~***22.*** ***Recreational Program Managers****. The Trails Program Supervisor, Recreational Vehicle Program Coordinator and Boating Law Administrator.*~~ ~~*(7-1-99)*~~

17. **Recreational Road and Bridge Fund (RRBF)**. That portion of the park and recreation capital improvement account designated for grants to improve roads, bridges, and parking lots in or leading to park and recreation areas of the state. (____)

~~***23***~~**18. Recreational Trails** ~~***Fund (Recreational Trails***~~ **Program**~~***)***~~ **(RT**~~***F***~~**P)**. The account created by the Transportation Equity Act for the 21st Century (Section 1112). This fund may be used for maintenance and restoration of existing recreational trails, development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails, purchase and lease of recreational trail construction equipment, construction of new recreational trails, acquisition of easements and fee simple title to property for recreational trails or recreational trail corridors, and the operation of education programs to promote safety and environmental protection as those objectives relate to the use of recreational trails. ~~*(7-1-99)*~~(____)

~~***24***~~**19. Recreational Trails** ~~***Fund***~~ **Program (RT**~~***F***~~**P) Advisory Committee**. A ten (10) member advisory committee appointed by the Board to advise the Department on matters related to the Recreational Trails ~~*Fund*~~ Program. ~~*(7-1-99)*~~(____)

2~~*5*~~**0. Recreational Vehicle (RV) Account**. That account created by Section 49-448, Idaho Code. The moneys may be used for the acquisition, lease, development, improvement, and maintenance of facilities designed to promote the health, safety, and enjoyment of recreational vehicle users. (7-1-99)

2~~*6*~~**1. Recreational Vehicle (RV) Advisory Committee**. A six (6) member committee appointed by the Board to advise the Board and Department on matters involving the RV Account. (7-1-99)

~~***27.*** ***Recreational Vehicle (RV) Coordinator****. The staff administrator of the Recreational Vehicle Program.*~~ ~~*(7-1-99)*~~

~~***28.*** ***Recreational Vehicle (RV) Program****. The subdivision of the department responsible for administering the RV Account.*~~ ~~*(7-1-99)*~~

2~~*9*~~**2. Staff**. Any individual employed by the Department. (7-1-99)

23. State and Federal Grant Manager. The Department administrator in charge of State and Federal grant programs. (____)

24. State and Federal Grant Program. That section of the Department responsible for the administration of state and federal grant programs. (____)

~~***30***~~**25. State Trust for Outdoor Recreation Enhancement (STORE)**. The recreation account created by Section 67-4247, Idaho Code. (7-1-99)

~~***31.*** ***Trails Program****. The subdivision of the Department responsible for administering the ORMV Program, Motorbike Program, Recreational Trails Program, Snowmobile Program, Non-Motorized Trails Program, and the Cross-Country Skiing Recreation Program.* *(7-1-99)*~~

~~***32.*** ***Trails Program Supervisor****. The staff administrator of the Trails Program.* *(7-1-99)*~~

~~***33***~~**26. Waterways Improvement Fund (WIF)**. That fund created by Section 57-1501, Idaho Code. These moneys may be used for the protection and promotion of safety, waterways improvements, creation and improvement of parking areas for boating purposes, making and improving boat ramps and moorings, marking of waterways, search and rescue, and all things incident to such purposes including the purchase of real and personal property. No such improvements shall be constructed in any county of the state without the approval of the county waterways committee of the plan for such improvements. ~~*(7-1-99)*~~( )

~~***34***~~**27. Waterways Improvement Fund Grant Advisory Committee**. A six (6) member committee appointed by the Board to advise the Department on matters relating to Waterways Improvement Fund grants. (7-1-99)

011. -- 049. (RESERVED).

050. GENERAL PROVISIONS OF THE ~~*Recreational*~~ STATE AND FEDERAL GRANT PROGRAM~~*s*~~.
It is the intent of the Department, through the ~~*recreational*~~ State and Federal Grant program~~*s*~~, to provide funds and planning assistance to entities for the acquisition, lease, development, improvement and maintenance of facilities and equipment to promote the health, safety, enjoyment and general welfare of recreational users in the state of Idaho. ~~*(7-1-99)*~~( )

051. -- 074. (RESERVED).

075. ELIGIBLE APPLICANTS.
~~*Applicants eligible for recreational program fund grants are as follows:*~~ Public entities as defined in Subsection 010.16, *and sponsors as defined by Federal Highway Administration Recreation Trail Program Interim Guidance*, are eligible to apply *for* and receive grants as described on Subsection 001.02 of this chapter. ~~*(7-1-99)*~~( )

~~***01.*** ***Boat Safety Account****. Public entities as defined in Section 010 of this chapter, and recognized national or statewide boating safety organizations that can demonstrate evidence of responsibility in providing public boating safety services. Federal funds shall not be used as match for Boat Safety Account grants.* *(7-1-99)*~~

~~***02.*** ***Cross-Country Skiing Recreation Account****. Public entities as defined in Section 010 of this chapter and nonprofit entities.* *(7-1-99)*~~

~~***03.*** ***Off-Road Motor Vehicle Account****. Public entities as defined in Section 010 of this chapter, and private groups, organizations or individuals which provide evidence of its ability to implement or operate and maintain the project following the completion of the project.* *(7-1-99)*~~

~~***04.*** ***Recreational Trails Fund****. Public entities as defined in Section 010 of this chapter, and private groups, organizations or individuals which provide evidence of its ability to implement or operate and maintain the project following the completion of the project. Federal funds shall not be used as match for RTF grants except when specifically allowed by federal law.*~~
~~*(7-1-99)*~~

~~***05.*** ***Recreational Vehicle Account****. Public entities as defined in Section 010 of this chapter.*~~ ~~*(7-1-99)*~~

~~***06.*** ***State Trust for Outdoor Recreation Enhancement Fund****. The state of Idaho and any of its subdivisions legally authorized to provide public recreation facilities.*~~ ~~*(7-1-99)*~~

~~***07.*** ***Waterways Improvement Fund****. Public entities as defined in Section 010 of this chapter. All applications for projects involving the construction or improvements of physical facilities shall be approved by the county waterways committee or the county commissioners.*~~
~~*(7-1-99)*~~

076. -- 099. (RESERVED).

100. APPLICATION PROCEDURE.
All forms and documents required by these rules and the Department shall be completed and submitted according to these rules in order for a grant application to be considered for approval.
(7-1-99)

01. Forms. To be considered for a grant, an applicant must file with the Department a completed grant application form and other documentation specified in the ~~*participation manual*~~ IDPR Grant Guidelines, all of which shall have original signatures. ~~*Except for Boat Safety Account block grants, a*~~An applicant must file with the Department a completed grant agreement form, with original signatures, within ~~*thirty*~~ sixty (~~*3*~~60) calendar days of written notification of grant approval. ~~*An applicant for a Boat Safety Account block grant shall sign a Memorandum of Understanding with the director at least thirty (30) days prior to the beginning of the block grant award period.*~~ The application~~,~~ and grant agreement ~~*or Memorandum of Understanding*~~ forms shall be provided to the applicant by the Department. ~~*(7-1-99)*~~(____)

02. Review. The applicant or applicant's representative may review the project and all associated documentation with the Department prior to submitting the application to ensure the project and documentation meet the criteria of the ~~*recreational program*~~ State and Federal grant program. When possible, Department staff may perform an on-site visit to the project site for preliminary fact finding and to evaluate the viability and eligibility of the project. ~~*(7-1-99)*~~(____)

03. Public Comment. The applicant shall submit to the Department proof of public comment regarding the project. Proof of public comment ~~*shall*~~ may include the results of public meetings, scoping of National Environmental Policy Act (NEPA) processes, individual contacts with recreationists and others that may be affected by the project, newspaper articles and/or other media releases which describe the project and request public input. ~~*(7-1-99)*~~(____)

04. Deadline. The deadline for grant applications ~~*to recreational program grants*~~ shall be established by the Department. The Department shall announce the availability of funds at

least sixty (60) days prior to the deadline date for receipt of applications. ~~*(7-1-99)*~~(____)

101. -- 149. (RESERVED).

150. ELIGIBILITY AND PRIORITY RATING OF PROJECTS.
Eligibility of all projects or applicants shall be determined by the ~~*appropriate recreational program manager*~~ State and Federal Grant Manager who shall consider relevant rules, ~~*and*~~ statutes and past performance of the applicant. ~~*(7-1-99)*~~(____)

01. Pre-Application Activities. Projects, or any part thereof, either paid for by the ~~*applicant*~~ grantee or completed prior to the grant application deadline date established by the Department, shall be ineligible for ~~*Recreational Vehicle Account and Waterways Improvement Fund*~~ grant funding or to be considered as match. However, costs for design and engineering incurred within one (1) year prior to the ~~*date awarded*~~ application deadline date may be considered as match, provided they are listed as a scope element on the application. Recreational Trail Program projects, or any part thereof, completed prior to the execution of the project agreement shall be ineligible for grant funding or to be considered as match. ~~*(7-1-99)*~~(____)

02. Priority Rating Criteria. The Department and/or appropriate advisory committee shall establish project ~~*priorities*~~ rankings by rating each eligible project using criteria established by the ~~*department*~~ Board. ~~*All eligible projects shall be rated by the committee.*~~ Specific evaluation criteria ~~*for each recreational program*~~ shall be listed in ~~*their associated participation manual and may include:*~~ the IDPR Grant Guidelines. ~~*(7-1-99)*~~(____)

~~***a.*** *Conformance with legal requirements;* *(7-1-99)*~~

~~***b.*** *Compliance with program objectives;* *(7-1-99)*~~

~~***c.*** *Accuracy of estimated costs of the project;* *(7-1-99)*~~

~~***d.*** *Potential of the project to enhance the health, safety, enjoyment and general welfare of recreational users in Idaho;* *(7-1-99)*~~

~~***e.*** *History of prior recreational program grant management by the applicant;* *(7-1-99)*~~

~~***f.*** *Adequacy of project design or construction, if applicable;* *(7-1-99)*~~

~~***g.*** *The applicant's level of matching share provided for the project;* *(7-1-99)*~~

~~***h.*** *Suitability of the project for the proposed site, use and location; and* *(7-1-99)*~~

~~***i.*** *Grant amount requested compared to the amount of funds available.* *(7-1-99)*~~

151. -- 174. (RESERVED).

175. PROJECT TIME PERIOD.

01. Grant Cycle. Applications for ORMV Fund, RV Account, WIF, *Motorbike Recreation Account (*MRB*), Cutthroat License Plate Fund, (*CLP*), Recreational Road and Bridge Fund (*RRBF*),* or STORE ~~*projects*~~ shall be considered at least once each state fiscal year (July 1 through June 30) dependant upon adequate funding availability. Applications for RT~~*F*~~P ~~*or Boat Safety Account*~~ projects shall be considered at least once each federal fiscal year (October 1 through September 30) dependent upon adequate funding availability. ~~*(7-1-99)*~~(____)

02. Expenditure of Grant Funds. Except as herein provided, the ~~*applicant*~~ grantee shall have only the designated state or federal fiscal year or years to expend ~~*recreational program*~~ grant funds. If the ~~*recreational program*~~ grant funds are not expended within the designated fiscal year or years, the grant shall be revoked unless the applicant requests and receives an extension of time from the Department. ~~*(7-1-99)*~~(____)

03. Requests for Extension. A written request for an extension of the project period shall be received by the Department prior to the end of the project period. The ~~*appropriate recreational program*~~ State and Federal Grant Manager shall make the final determination of extensions. No project extension shall be granted for more than one (1) year, however, project extensions may be granted in consecutive years. ~~*(7-1-99)*~~(____)

176. -- 199. (RESERVED).

200. AUTHORITY FOR FUNDING APPROVAL.
Projects ~~*of less than*~~ up to and including twenty thousand dollars ($20,000) may be approved by the Director. Projects ~~*of*~~ over twenty thousand dollars ($20,000) ~~*or more*~~ shall be presented to the Board for approval. ~~*(7-1-99)*~~(____)

01. Minor Cost Increases. Cost increases of fifteen percent (15%) or less of the original grant amount may be approved by the Director~~*, except such increases that bring the initial project cost from less than twenty thousand dollars ($20,000) to twenty thousand dollars ($20,000) or more shall be presented to the board for approval*~~. ~~*(7-1-99)*~~(____)

02. Major Cost Increases. Cost increases of more than fifteen percent (15%) of the original grant amount shall require the project be presented as a totally new proposal and compete through the general application process described herein. Should the revised project not receive approval for cost increase grant funding, the ~~*applicant*~~ grantee shall be required to complete the scope of the project as originally proposed at its expense or return any project grant funds paid to it so that the project may be canceled and the grant funds reallocated. ~~*(7-1-99)*~~(____)

03. Waterways Improvement Fund Grant Limit. The total sum of ~~*Waterways Improvement Fund*~~ WIF grant funds approved to be used in any one (1) county may not exceed thirty percent (30%) of the total WIF grant funds approved to be used statewide in any state fiscal year. ~~*(7-1-99)*~~(____)

201. -- 249. (RESERVED).

250. DISBURSEMENT OF FUNDS.

01. Allowable Costs. Applicable Office of Management and Budget (OMB) cost

principles, program regulations, and the terms of grant agreements shall be followed in determining the reasonableness and allowability of costs. (7-1-99)

02. Documentation and System of Internal Controls. The ~~*applicant*~~ grantee shall maintain a system of internal controls in order to identify the source and disbursement of funds provided for all project costs and match by grant or project. Accounting records shall be supported by source documentation such as vouchers, canceled checks, invoices, payroll, time and attendance records, contract and sub-grant award documents, and other required billing forms. ~~*(7-1-99)*~~(____)

03. ~~***Documentation for***~~ **Match**. Match is the donation of cash, product or service used to complete the grant project as approved. The following types of match may be used: ~~*(7-1-99)*~~(____)

a. Force account labor and equipment, i.e., the use of the grantee's staff (labor) and equipment costs. Documentation of force account shall include: the name of each worker, dates worked, hourly rate of pay, number of hours worked, and the total cost by each person. Documentation of equipment costs shall include the type of equipment used, dates used, hourly rate value, number of hours used, how the hourly rate was determined, and total cost. (7-1-99)

b. Donated material that is used as match shall be reasonable and cannot exceed the costs of the materials to the donor or the market price at the time they are charged to the project, whichever is less. A detailed invoice marked "donation" or a letter from the donor shall be used as documentation of donated material. (7-1-99)

c. Donated Contract Labor. When an employer, other than the grantee, furnishes the services of an employee, these services are valued at the employee's regular rate of pay (not including fringe benefits and overhead costs). These services shall be for the same skill for which the employees is normally paid. Documentation shall include the employee's name, dates worked, hourly rate, number of hours worked, and total cost. (7-1-99)

d. Rates for Volunteers. Skilled and unskilled shall be consistent with the rate regularly paid by the grantee for similar work or shall be consistent with those paid for similar work in the grantee's labor market. If the volunteer is professionally skilled and employed in the work he is performing on the project, the grantee may use the individual's normal wage rate. If the volunteer is unskilled and not professionally employed in the work he is performing the grantee shall value the donated labor at the national minimum wage rate. Documentation shall include the volunteer's name, date worked, hourly rate, number of hours worked, and total cost. (7-1-99)

04. Disbursement of Funds. Except as provided in Subsection 250.05 herein, the Department shall authorize disbursement of funds allocated to a project on a reimbursement basis. This means that the ~~*applicant*~~ grantee shall initially pay all project costs and then seek reimbursement through the Department. ~~*(7-1-99)*~~(____)

a. General. Grantees shall use only the forms specified in this section, and such supplementary or other forms as may from time to time be authorized by the Department. (7-1-99)

b. Request for Reimbursement. The grantee shall ~~C~~complete an Idaho Department of Parks & Recreation (IDPR), Request for Reimbursement/Close-out Report form~~. *Sign*~~ certifying that the data is correct and submit the form to the ~~*applicable recreation program manager*~~ State and Federal grant program with an original signature. ~~*(7-1-99)*~~(____)

~~**c.** *Request for Advance. Complete and sign the IDPR Request for Advance form and submit with written justification identifying the need for an advance to the applicable recreation program manager.* *(7-1-99)*~~

~~**d**~~**c**. Extend the Due Date. The Department may extend the due date of any financial report upon receiving a justified request from a grantee. (7-1-99)

~~**e**~~**d**. Accounting Basis. Each grantee shall report program outlays and program income on a cash or accrual basis pursuant to Generally Accepted Accounting Principles. (7-1-99)

05. Cash Advances. When approved for an advance grantees ~~*and subgrantees*~~ shall be paid in advance *no sooner than thirty (30) days* prior to project start, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of funds and their disbursement by the grantee~~ *or subgrantee*.*(7-1-99)*~~(____)

a. Requesting an Advance. A disbursement of funds may be made on an advance basis by submitting an IDPR Request for Advancement form provided by ~~*IDPR*~~ the Department. Written Justification for an advance is required unless there is a Memorandum of Understanding or Collection Agreement on file. ~~*(7-1-99)*~~(____)

b. Interest Earned on Advances. Grantees and subgrantees shall promptly, at grant close-out, remit interest earned on advances to the Department. (7-1-99)

06. ~~***Block Grants***~~ **Reporting**. Each ~~*applicant*~~ grantee receiving ~~*Recreational Program block*~~ grant funds that require reporting shall remit a complete activities report to the ~~*boating law administrator*~~ Department no later than January 31 of each year which shall cover the preceding calendar year and shall be on forms provided by the Department. Failure to report or poor performance indicated by the report may disqualify grantee from future grant application. ~~*(7-1-99)*~~(____)

07. Grant Closeouts. Within forty-five (45) days after the completion of the ~~*grant*~~ project, the grantee shall submit an IDPR Request for Reimbursement/Close-out form ~~*and other required documentation*~~ and immediately refund to the Department any balance of unobligated cash advanced and interest earned~~ *that is not authorized to be retained for use on other grants*~~. ~~*(7-1-99)*~~(____)

08. Record Retention. The ~~*applicant*~~ grantee shall retain all financial information referenced in these rules regarding a project for a time period of three (3) years from the date of the final grant payment, unless any litigation or audit concerning the project has been started or announced. ~~*(7-1-99)*~~(____)

09. Audit Authority. The Department shall have the right of access to any pertinent books, documents, papers, or other records of grantees which are pertinent to the grant, in order to

make audits, examinations, excerpts, and transcripts. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due the Department. (7-1-99)

10. Contingency Fund. The Department may retain grant funds from each recreational program grant account for the exclusive purpose of providing facilities or services. (7-1-99)

251. -- 299. (RESERVED).

300. ~~*Applicant*~~ Grantee OBLIGATIONS.

01. Project Completion. Except as herein proved, upon approval of a grant application ~~*or Memorandum of Understanding,*~~ the ~~*applicant*~~ grantee shall be obligated to complete all elements of a project as described on the approved ~~*recreational program*~~ grant application, grant agreement, or approved amendment~~, *or Memorandum of Understanding*~~. ~~*(7-1-99)*~~(____)

02. Project Management. Except as herein provided, upon approval of a grant application ~~*or Memorandum of Understanding,*~~ the ~~*applicant*~~ grantee shall ensure adequate management of the project as specified in the approved ~~*recreational program*~~ grant application~~,~~ or grant agreement~~ *or Memorandum of Understanding*~~. ~~*(7-1-99)*~~(____)

03. Grant Modification. Only for good cause, and upon the submission of detailed justification shown in writing and approval by the ~~*appropriate recreational program*~~ State and Federal Grant Manager may the terms ~~*of the*~~ and obligations of the ~~*recreational program*~~ grant application~~,~~ or grant agreement ~~*or Memorandum of Understanding*~~ be modified. ~~*(7-1-99)*~~(____)

04. Maintenance and Operation. Real property, physical facilities and equipment funded by a ~~*recreational program*~~ grant ~~*fund*~~ shall be maintained and operated in the condition or state equivalent to that existing when such facility was completed or property or equipment purchased, normal wear and tear excepted. ~~*(7-1-99)*~~(____)

05. Public Use/Nondiscrimination. Physical facilities and real property purchased in whole or in part with ~~*recreational program*~~ grant moneys shall be available for public use regardless of race, color, religion, national origin, gender, age, or disability. Facilities constructed with ~~*recreational program*~~ grant moneys shall meet the requirements as set by the Americans with Disabilities Act Guidelines. ~~*(7-1-99)*~~(____)

06. Fees And Donations. Except as herein provided, fees may be charged or donations subscribed for the use of or access to facilities or real property developed or purchased with ~~*recreational program*~~ grant funds at a level commensurate with the costs of maintenance and upkeep of the facility or real property with the approval of the Board. Fees may be charged or donations subscribed for special events of limited duration at the facility when approved by the ~~*appropriate recreational program manager*~~ Department. ~~*(7-1-99)*~~(____)

07. Acknowledgment of Funding Assistance. ~~*Applicants*~~ Grantee shall post and maintain appropriate permanent signs or decals upon project sites or equipment acknowledging

funding assistance from the appropriate ~~*recreational program*~~ grant fund and the Department ~~*immediately*~~ upon ~~*completion*~~ start of the project or purchase of equipment. ~~*(7-1-99)*~~(____)

08. Notice Of Registration Requirements. Off-Road Motor Vehicle Account project applicants and sponsors shall be responsible for posting a written notice of the requirement of applicable registration requirements and enforcing such requirements for special events as well as general use. (7-1-99)

09. Project Liability. ~~*Applicants*~~ Grantees, through a signed agreement, shall assume all project liability and hold the Department harmless. ~~*(7-1-99)*~~(____)

10. Purchase and Bidding Requirements. The ~~*applicant*~~ grantee shall follow all local, state and federal laws pertaining to the expenditure of ~~*recreational program grant*~~ public funds. ~~*(7-1-99)*~~(____)

11. Permits. The ~~*applicant*~~ grantee shall legally acquire all required local, state and federal permits for the construction or development of the project before r~~*ecreational program*~~ grant funds shall be expended. Construction shall comply with the then current codes and standards as set by the Uniform Building Code, Uniform Plumbing Code, and the National Electrical Code. ~~*(7-1-99)*~~(____)

12. Failure to Comply. Failure by the ~~*applicant or department*~~ grantee to comply with such terms and obligations as set forth in the approved ~~*recreation program*~~ grant application~~,~~ or grant agreement ~~*or Memorandum of Understanding*~~ shall result in the immediate revocation of an approved grant or shall constitute a conversion pursuant to Section 350 of this chapter, as applicable. ~~*(7-1-99)*~~(____)

301. -- 349. (RESERVED).

350. PROJECT CONVERSIONS.
No ~~*project funded by recreational program*~~ grant ~~*funds*~~ funded project shall, without the prior written approval of the ~~*director*~~ Board, be converted to uses other than for the authorized purposes specified in the original ~~*recreational program*~~ grant application~~,~~ or grant agreement~~, or Memorandum of Understanding~~. ~~*(7-1-99)*~~(____)

01. Approval of a Conversion. The ~~*department*~~ Board shall approve a conversion only when the ~~*recreational program*~~ grant moneys spent on the project can be returned to the appropriate ~~*recreational program account*~~ grant fund or the ~~*applicant*~~ grantee can provide an immediate substitution of other projects of at least equal current fair market value and of reasonably equivalent recreational usefulness and location. ~~*The director has authority to disapprove a conversion request or to reject proposed project substitutions.*~~ ~~*(7-1-99)*~~(____)

02. Resolving a Conversion. If there is a project conversion, the ~~*applicant*~~ grantee is responsible for repaying the appropriate ~~*recreational program*~~ grant fund ~~*account*~~ an amount determined by investment amortization through use, project life expectancy, and depreciation or appreciation of the facilities or equipment. ~~*(7-1-99)*~~(____)

03. Conversion Requests. Project conversion requests shall be in writing by the

~~*applicant*~~ grantee prior to any conversion attempts. (7-1-99)

351. -- 399. (RESERVED).

400. RESPONSIBILITY FOR EQUIPMENT.
Motorized equipment purchased with grant funds shall become property of the grantee. Such units of motorized equipment shall be subject to Subsection 250.06 and Section 350 of this chapter. ( )

~~***01. Totally Grant Funded****. Single units of equipment with a current fair market value of one thousand dollars ($1,000) or more as determined by the department, which are purchased wholly with recreational program grant funds, shall remain the property of the department to be leased to the applicant through a lease contract. If the equipment is being underutilized, misused, or used for purposes other than the original grant purposes it may be reclaimed by the department at the expiration or cancellation of the lease or with thirty (30) days written notice. (7-1-99)~~

~~***a.*** *Equipment which is the property of the department shall be leased to the project applicant for the length of time determined by the appropriate recreational program manager as necessary to accomplish the project under the parameters of project viability, equipment usability and user needs. Either party may cancel the lease by providing the other party with at least thirty (30) days written notice. (7-1-99)~~

~~***b.*** *Equipment lease price or consideration shall be negotiated and determined prior to project approval and shall be commensurate with the cost/benefit ratio of services provided the recreational program user group which it serves. (7-1-99)~~

~~***c.*** *A project applicant shall bear the full responsibility for damage to or destruction of project facilities and equipment through its own means or applicable insurance. (7-1-99)~~

~~***02. Partially Grant Funded****. Single units of equipment with a current fair market value of one thousand dollars ($1,000) or more as determined by the department, which are purchased only partially (less than one hundred percent (100%)) with recreational program grant funds, shall become the property of the applicant. Such units of equipment shall be subject to Section 350 of this chapter. (7-1-99)~~

~~***03. Minor Purchases****. Single units of equipment with a current fair market value of less than one thousand dollars ($1,000) as determined by the department, which are purchased wholly or in part with recreational program grant funds shall become the property of the applicant. Such units or equipment shall be subject to Section 350 of this chapter. (7-1-99)~~

401. -- 449. (RESERVED).

450. REAL PROPERTY.

01. Appraisals. A real estate appraisal is required for all real property to be acquired with ~~*recreational program*~~ grant funds. All appraisals shall be prepared according to Department procedures. The appraisal shall be paid for by the ~~*applicant*~~ grantee, but may be included as part

of eligible project costs. The selection of the appraiser shall be approved by the Department. ~~*(7-1-99)*~~(____)

02. Appraisal Review. The Department shall review appraisals as necessary. Any appraisal report which does not meet content requirements or use correct analysis procedures shall be corrected to the satisfaction of the Department. All costs shall be covered by the ~~*applicant*~~ grantee. ~~*(7-1-99)*~~(____)

03. Negotiated Price. An approved appraisal is an acceptable estimate of property value. The negotiation between a willing seller and a willing buyer may set a price which is higher than the appraisal, and this value can be considered along with the appraised value in establishing the reasonable limits of assistance. If the ~~*applicant*~~ grantee believes the ~~*negotiating*~~ negotiated price is a better indication of market value, yet is higher that the appraised value, a detailed statement of this difference shall be submitted to the Department. ~~*(7-1-99)*~~(____)

04. Adequate Title and Public Access. The ~~*applicant*~~ grantee shall have clear title to, or adequate control and tenure of, the real property (land, land improvement, structures, and appurtenances) to be developed. The term "adequate control and tenure" of real property means a lease or an easement that provides the ~~*applicant*~~ grantee sufficient control over the real property to permit the proposed development and use for a period of at least twenty-five (25) years from the date of application, unless specifically approved in writing by the ~~*appropriate recreational program manager*~~ *Department for* a shorter term. The ~~*applicant*~~ grantee shall list all outstanding rights or interests held by others in the real property to be developed. If access to the real property to be developed is over private property, then the ~~*applicant*~~ grantee shall describe the provisions made to ensure adequate public access. In the event the real property becomes unusable for its intended purposes or if such use ceases, the ~~*applicant*~~ grantee shall be responsible for conversion of the project as described in Section 350 of this chapter. ~~*(7-1-99)*~~(____)

05. Limitations on Use. Property rights obtained with ~~*recreational program*~~ grant funds shall be free of all reservations or encumbrances which would limit the use of the site disproportionate to the public benefit. ~~*(7-1-99)*~~(____)

RESOURCES & ENVIRONMENT

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.37 - RULES GOVERNING TEST PROCEDURES AND INSTRUMENTS FOR NOISE ABATEMENT OF OFF HIGHWAY VEHICLES

DOCKET NO. 26-0137-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5221(1), and 67-4223(a) 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. Chapter 37 addresses rules governing test procedures and instruments for noise abatement of off highway vehicles. The Chapter also includes an outdated definition for all terrain vehicle (ATV). This amendment will provide consistency with current Idaho Code and other IDAPA reference.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 549 and 550.

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 Dean Sangrey, 208.334.4180, ext 250, dsangrey@idpr.state.id.us.

DATED this 15th day of November, 2005.

Dean Sangrey
Division Administrator, Operations
Idaho Department of Parks and Recreation
5657 Warm Springs Ave.
Boise, ID 83716
P. O. Box 83720
Boise, ID 83720-0065
Phone: 208-334-4180 Fax: 208-334-3741

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4223(a), 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 19, 2005.

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:

Chapter 37 addresses rules governing test procedures and instruments for noise abatement of off highway vehicles. The Chapter also includes an outdated definition for all terrain vehicle (ATV). This amendment will provide consistency with current Idaho Code and other IDAPA references.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because it was determined there was insufficient time from the formal approval of the proposed rules by the Idaho Park and Recreation Board. Public meetings will be scheduled prior to the upcoming legislative session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dean Sangrey, 208.334.4180, ext 250, dsangrey@idpr.state.id.us.

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, 2005.

DATED this 20th day of September, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. DEFINITIONS.
As used in this chapter: (7-1-94)

01. All Terrain Vehicle (ATV). Any recreation vehicle with ~~*two*~~ three (~~*2*~~3) or more tires, under ~~*six*~~ eight hundred fifty (~~*6*~~850) pounds and less than forty-eight (48) inches in width, having a wheelbase of sixty-one (61) inches or less, traveling on low pressure tires, less than ~~*five*~~ ten (~~*5*~~10) pounds per square inch (psi)~~*, and designed to be ridden by one (1) person*~~.
~~*(7-1-94)*~~(____)

02. A-Weighting Scale. A sound filtering system contained in a sound meter which adjusts (weights) the incoming sound energy to approximate human hearing. (7-1-94)

03. Calibrator. A device used to standardize the reading of a sound level meter. (7-1-94)

04. CC. The displacement (size) of an engine in cubic centimeters. The kc's of an engine refers to the piston displacement or engine size. (7-1-94)

05. Db Or Decibel. A unit used to measure the amplitude of sounds. As a sound measured in decibels increases, so does its loudness. (7-1-94)

06. Off Highway Vehicle (OHV). Any ATV or motorbike as defined in Section 67-7101, Idaho Code, used off public highways but excluding those vehicles used exclusively on private land for agricultural use or used exclusively for snow removal purposes. These vehicles, together with others not covered by these rules, are sometimes commonly known as off-road vehicles or ORMV's. (7-1-94)

07. Operator. Any person who is in physical control of an OHV. (7-1-94)

08. Red-Line Speed. The lowest numerical engine speed included in the red zone on the OHV tachometer or prescribed by the manufacturer as compiled in the "Off-Highway Motorcycle and ATV Stationary Sound Test Manual" published by the Motorcycle Industry Council, Inc. (7-1-94)

09. Revolutions Per Minute (RPM). The number of times the crankshaft of an engine revolves in one (1) minute. (7-1-94)

10. Sound Level Meter. An instrument used for measuring sound levels, which includes a microphone, an amplifier, and meter with frequency weighing networks, such as the A-weighting scale. (7-1-94)

11. Tachometer. A device used to measure ~~*revolutions per minute (*~~RPM~~*)*~~ of an engine. Tachometers used to obtain sound level measurements may be permanently affixed to the OHV or may be portable units such as hand-held electric, vibrating reed, or inductive tachometers. ~~*(7-1-94)*~~(____)

RESOURCES & ENVIRONMENT

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, July 6, 2005 Vol. 05-7, pages 78 through 81. The agency received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov or by contacting the undersigned.

The pending rule has been corrected at Subsection 003.55, definition of Intermittent Waters. The phrase "cubic feet per second" has been added before "cfs" for clarification purposes.

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 July 6, 2005, Idaho Administrative Bulletin, Vol. 05-7, pages 78 through 81.

IDAHO CODE SECTION 39-107D STATEMENT: The changes in definitions and use designations are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

IDAHO CODE SECTION 67-5224(2)(f) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

DATED this 2nd day of November, 2005.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418
Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., 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 Wednesday, July 22, 2005.

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: In this rulemaking, the Department of Environmental Quality (DEQ) proposes to remove the NONE designation for aquatic life for water body units B-23, B-24, and B-25 (Subsection 160.02), parts of Soda Creek tributary to the Bear River. This will leave these water bodies as undesignated and protected for a default use of cold water aquatic life. This action is taken to be consistent with the discovery of aquatic life in Soda Creek which resulted in the withdrawal of a Use Attainability Analysis (UAA) on which the designation of NONE was based. In addition, DEQ proposes the following revisions to Section 003 (Definitions):

1) Add a definition for Zone of Initial Dilution for use in mixing zone analysis; and
2) Revise the definitions of Ephemeral Waters and Intermittent Waters to clarify that natural stream flows are the basis for such classifications.

Those with NPDES permits, particularly dischargers of wastewater to Soda Creek, or members of the public using Soda Creek for fishing, and those concerned with the use of small streams may be interested in participating in this rulemaking by commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the

Board of Environmental Quality in October 2005 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2006 legislative session if approved by the Legislature.

IDAHO CODE SECTION 39-107D STATEMENT: The proposed changes in definitions and use designations are not broader scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, April 6, 2005, Vol. 05-4, page 19.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Don Essig at (208) 373-0119 or dessig@deq.idaho.gov.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 5, 2005.

Dated this 3rd day of June, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

003. DEFINITIONS.
For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," the following definitions apply: (4-5-00)

No changes are being made to Subsections 003.01 through 003.37.

38. Ephemeral Waters. A stream, reach, or water body that flows naturally only in direct response to precipitation in the immediate watershed and whose channel is at all times above the water table. ~~*(4-5-00)*~~(____)

No changes are being made to Subsections 003.39 through 003.54.

55. Intermittent Waters. A stream, reach, or water body which naturally has a period

of zero (0) flow for at least one (1) week during most years. Where flow records are available, a stream with a 7Q2 hydrologically-based unregulated flow of less than one-tenth (0.1) *cubic feet per second* (cfs) is considered intermittent. Streams with natural perennial pools containing significant aquatic life uses are not intermittent. ~~(4-5-00)~~(____)

No changes are being made to Subsections 003.56 through 003.137.

138. Zone of Initial Dilution (ZID). An area within a Department authorized mixing zone where acute criteria may be exceeded. This area should be as small as practicable and assure that drifting organisms are not exposed to acute concentrations for more than one (1) hour more than once in three (3) years. The actual size of the ZID will be determined by the Department for a discharge on a case-by-case basis, taking into consideration mixing zone modeling and associated size recommendations and any other pertinent chemical, physical, and biological data available. (____)

(BREAK IN CONTINUITY OF SECTIONS)

160. BEAR RIVER BASIN.
Surface waters found within the Bear River basin total six (6) subbasins and are designated as follows: (4-5-00)

No changes are being made to Subsection 160.01.

02. Bear Lake Subbasin. The Bear Lake Subbasin, HUC 16010201, is comprised of twenty-five (25) water body units.

Unit	Waters	Aquatic Life	Recreation	Other
B-1	Alexander Reservoir (Bear River)	COLD SS	PCR	
B-2	Bear River -railroad bridge (T14N, R45E, Sec. 21) to Alexander Reservoir	COLD SS	PCR	
B-3	Bailey Creek - source to mouth	COLD SS	SCR	
B-4	Eightmile Creek - source to mouth	COLD SS	SCR	
B-5	Pearl Creek - source to mouth	COLD SS	SCR	
B-6	Stauffer Creek - source to mouth	COLD SS	SCR	

Unit	Waters	Aquatic Life	Recreation	Other
B-7	Skinner Creek - source to mouth	COLD SS	SCR	
B-8	Co-op Creek - source to mouth	COLD SS	SCR	
B-9	Ovid Creek - confluence of North and Mill Creek to mouth			
B-10	North Creek - source to mouth	COLD SS	PCR	
B-11	Mill Creek - source to mouth	COLD SS	PCR	
B-12	Bear Lake Outlet - Lifton Station to Bear River	COLD SS	PCR	DWS SRW
B-13	Paris Creek - source to mouth	COLD SS	PCR	
B-14	Bloomington Creek - source to mouth	COLD SS	PCR	DWS SRW
B-15	Spring Creek - source to mouth			
B-16	Little and St. Charles Creeks - source to Bear Lake	COLD SS	PCR	SRW
B-17	Dry Canyon Creek - source to mouth			
B-18	Bear Lake	COLD SS	PCR	DWS SRW
B-19	Fish Haven Creek - source to Bear Lake	COLD SS	PCR	SRW
B-20	Montpelier Creek - source to mouth			
B-21	Snowslide Creek - source to mouth	COLD SS	SCR	
B-22	Georgetown Creek - source to mouth	COLD SS	PCR	DWS SRW
B-23	Soda Creek - Soda Creek Reservoir Dam to Alexander Reservoir	~~NONE~~	SCR	
B-24	Soda Creek Reservoir	~~NONE~~	SCR	
B-25	Soda Creek - source to Soda Creek Reservoir	~~NONE~~	SCR	

~~(5-3-03)~~(_____)

No changes are being made to Subsections 160.03 through 160.06.

RESOURCES & ENVIRONMENT

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0502

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, July 6, 2005 Vol. 05-7, pages 82 through 92. The agency received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov or by contacting the undersigned.

IDAHO CODE SECTION 39-107D STATEMENT: The changes in bacteria criteria and treatment requirements are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

IDAHO CODE SECTION 67-5224(2)(f) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this pending rule, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

DATED this 2nd day of November, 2005.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
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The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., 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 Wednesday, July 22, 2005.

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: In this rulemaking, the Department of Environmental Quality (DEQ) proposes to clarify and consolidate language in Sections 080 and 251 regarding E. coli criteria designed to protect recreational use of Idaho waters. To maintain internal consistency, DEQ is also revising language in Section 420 to be consistent with the changes in Section 251. The changes make it clear that five (5) samples of E. coli are needed to judge compliance with the surface water quality standards, and allow greater flexibility in obtaining the requisite five (5) samples in thirty (30) days. These changes are being made to clarify Idaho's intentions with regard to use of data from a single water sample measured for E. coli, as allowed by EPA guidance on bacteria criteria, and provide more flexibility in monitoring frequency. This change is necessary to avoid possible misinterpretation of rules regarding application of ambient bacteria criteria and wastewater disinfection requirements that could result in unnecessarily stringent effluent limits and bacteria load reductions. In this rulemaking, DEQ also proposes to add the standard rule sections, and delete unnecessary rule sections, for conformance with IDAPA 44.01.01, "Rules of the Administrative Rules Coordinator," and for consistency with other DEQ administrative rules.

Publicly owned treatment works (POTWs) and recreational users of Idaho's surface waters may be interested in participating in this rulemaking by commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2005 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2006 legislative session if approved by the Legislature.

IDAHO CODE SECTION 39-107D STATEMENT: The proposed changes in bacteria criteria and treatment requirements are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, April 6, 2005, Vol. 05-4, page 20.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Don Essig at (208) 373-0119 or dessig@deq.idaho.gov.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 5, 2005.

Dated this 3rd day of June, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULEs

~~000. (RESERVED).~~

~~001~~**000.LEGAL AUTHORITY.**
Pursuant to Sections 39-105 and 39-3601 et seq., Idaho Code, the Director is directed to formulate and recommend to the Board, such rules and regulations and standards as may be necessary to deal with the problems related to personal health and water pollution. The Director is further charged with the supervision and administration of a system to safeguard the quality of the waters of the state including the enforcement of standards relating to the discharge of effluent into the waters of the state. Authority to adopt rules, regulations and standards as are necessary and feasible to protect the environment and health of the citizens of the state is vested in the Board pursuant to Section 39-107, Idaho Code. (3-20-97)

~~002~~**001.TITLE AND SCOPE.**

01. Title. These rules shall be cited as Rules of the Department of Environmental Quality, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements". (4-5-00)

02. Scope. These rules designate uses which are to be protected in and of the waters of the state and establish standards of water quality protective of those uses. Restrictions are placed on the discharge of wastewaters and on human activities which may adversely affect public health

and water quality in the waters of the state. In addition, unique and outstanding waters of the state are recognized. These rules do not provide any legal basis for an additional permit system, nor can they be construed as granting to the Department any authority not identified in the Idaho Code. (4-2-03)

002. WRITTEN INTERPRETATIONS.
As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. ( )

~~996~~003.ADMINISTRATIVE PROVISIONS.
Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

~~995~~004.INCORPORATION BY REFERENCE.
Codes, standards and regulations may be incorporated by reference in these rules pursuant to Section 67-5229, Idaho Code. Such incorporation by reference shall constitute full adoption by reference, including any notes or appendices therein, unless expressly provided otherwise in these rules. Copies of the codes, standards or regulations adopted by reference throughout these rules are available in the following locations: (8-24-94)

01. Department. Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255; (4-5-00)

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

03. Federal Documents. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. http://www.gpoaccess.gov/index.html. ~~(8-24-94)~~( )

005. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8 a.m. to 5 p.m. Monday through Friday. ( )

~~997~~006.CONFIDENTIALITY OF RECORDS.
Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 9-342A, Idaho Code, and the Rules of the Department of Environmental Quality, IDAPA 58.01.21, "Use and Disclosure of Records in the Possession of the Department of Environmental Quality". (4-5-00)

007. -- 009. (RESERVED).

~~003~~010.DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," the following definitions apply: (4-5-00)

No changes are being made to Subsections 010.01 through 010.90.

91. **Public Swimming Beaches**. Areas indicated by features such as signs, swimming docks, diving boards, slides, or the like, boater exclusion zones, map legends, collection of a fee for beach use, or any other unambiguous invitation to public swimming. Privately owned swimming docks or the like which are not open to the general public are not included in this definition. ( )

9~~1~~2. **Public Wastewater System or Wastewater System**. For purposes of Sections 403 through 405, a public wastewater system means those systems, including collection systems and treatment systems, that are owned by a city, county, state or federal unit of government, a non profit corporation, district, association, political subdivision or other public entity, or that generate or collect two thousand five hundred (2,500) or more gallons a day; or that have been constructed in whole or in part with public funds. This does not include any wastewater treatment system operated and maintained exclusively by a single family residence or any wastewater system consisting solely of a gravity flow, non-mechanical septic tank and subsurface treatment and distribution system, any animal waste system used for agricultural purposes that have been constructed in part or whole by public funds, or industrial wastewater systems under private ownership. (4-6-05)

9~~2~~3. **Receiving Waters**. Those waters which receive pollutants from point or nonpoint sources. (7-1-93)

9~~3~~4. **Recharge**. The process of adding water to the zone of saturation. (7-1-93)

9~~4~~5. **Recharge Water**. Water that is specifically utilized for the purpose of adding water to the zone of saturation. (7-1-93)

9~~5~~6. **Reference Stream or Condition**. A water body which represents the minimum conditions necessary to fully support the applicable designated beneficial uses as further specified in these rules, or natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin. In highly mineralized areas or in the absence of such reference streams or water bodies, the Director, in consultation with the basin advisory group and the technical advisors to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported. (3-20-97)

9~~6~~7. **Release**. Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (8-24-94)

9~~7~~8. **Resident Species**. Those species that commonly occur in a site including those that occur only seasonally or intermittently. This includes the species, genera, families, orders, classes, and phyla that: (8-24-94)

a. Are usually present at the site; (8-24-94)

b. Are present only seasonally due to migration; (8-24-94)

c. Are present intermittently because they periodically return or extend their ranges into the site; (8-24-94)

d. Were present at the site in the past but are not currently due to degraded conditions, and are expected to be present at the site when conditions improve; and (8-24-94)

e. Are present in nearby bodies of water but are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve. (8-24-94)

9~~8~~9. Responsible Charge (RC). For purposes of Sections 403 through 413, responsible charge means, active, daily on-site and/or on-call responsibility for the performance of operations or active, on-going, on-site and/or on-call direction of employees and assistants. (4-2-03)

~~99~~100. Responsible Charge Operator. For purposes of Sections 403 through 405, a responsible charge operator is an operator licensed at a class equal to or greater than the classification of the system and who has been designated by the system owner to have direct supervision of and responsibility for the performance of operations of a specified wastewater treatment system(s) or wastewater collection system(s) and the direction of personnel employed or retained at the same system. The responsible charge operator has an active daily on-site and/or on-call presence at the specified facility. (4-6-05)

10~~0~~1. Responsible Persons in Charge. Any person who: (8-24-94)

a. By any acts or omissions, caused, contributed to or exacerbated an unauthorized release of hazardous materials; (8-24-94)

b. Owns or owned the facility from which the unauthorized release occurred and the current owner of the property where the facility is or was located; or (8-24-94)

c. Presently or who was at any time during an unauthorized release in control of, or had responsibility for, the daily operation of the facility from which an unauthorized release occurred. (8-24-94)

10~~1~~2. Saturated Zone. Zone or layer beneath the earth's surface in which all of the pore spaces of rock or soil are filled with water. (7-1-93)

10~~2~~3. Secondary Treatment. Processes or methods for the supplemental treatment of wastewater, usually following primary treatment, to affect additional improvement in the quality of the treated wastes by biological means of various types which are designed to remove or modify organic matter. (7-1-93)

10~~3~~4. Seven Day Mean. The average of the daily mean values calculated over a period of seven (7) consecutive days. (3-20-97)

10~~4~~5. Sewage. The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (8-24-94)

10~~5~~6. Short-Term or Temporary Activity. An activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the Director. Short-term or temporary activities include, but are not limited to, those activities described in Subsection 080.02. (3-20-97)

10~~6~~7. Silviculture. Those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber. (3-20-97)

10~~7~~8. Sludge. The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. (7-1-93)

10~~8~~9. Special Resource Water. Those specific segments or bodies of water which are recognized as needing intensive protection: (7-1-93)

a. To preserve outstanding or unique characteristics; or (7-1-93)

b. To maintain current beneficial use. (7-1-93)

1~~09~~10. Specialized Best Management Practices. Those practices designed with consideration of geology, land type, soil type, erosion hazard, climate and cumulative effects in order to fully protect the beneficial uses of water, and to prevent or reduce the pollution generated by nonpoint sources. (3-3-87)

11~~0~~1. State. The state of Idaho. (7-1-93)

11~~1~~2. State Water Quality Management Plan. The state management plan developed and updated by the Department in accordance with Sections 205, 208, and 303 of the Clean Water Act. (3-20-97)

11~~2~~3. Steady-State Model. A fate and transport model that uses constant values of input variables to predict constant values of receiving water quality concentrations. (8-24-94)

11~~3~~4. Substitute Responsible Charge Operator. A public wastewater operator holding a valid license at a class equal to or greater than the public wastewater system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. (4-6-05)

11~~4~~5. Subsurface Disposal. Disposal of effluent below ground surface, including, but not limited to, drainfields or sewage beds. (7-1-93)

11~~5~~6. Suspended Sediment. Organic and inorganic particulate matter which has been removed from its site of origin and measured while suspended in surface water. (7-1-93)

11~~6~~7. Technology-Based Effluent Limitation. Treatment requirements under Section 301(b) of the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under Section 402 of the Clean Water Act. (8-24-94)

11~~7~~8. Total Maximum Daily Load (TMDL). The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, and natural background. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. (8-24-94)

11~~8~~9. Toxicity Test. A procedure used to determine the toxicity of a chemical or an effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent. (8-24-94)

1~~19~~20. Toxic Substance. Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the State and upon exposure, ingestion, inhalation or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic substances include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA pursuant to Section 307(a) of the federal Clean Water Act. (8-24-94)

12~~0~~1. Treatment. A process or activity conducted for the purpose of removing pollutants from wastewater. (7-1-93)

12~~1~~2. Treatment System. Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishing thereof and their appurtenances. A treatment system may also be known as a treatment facility. This definition does not apply to Sections 403 through 413. (4-2-03)

12~~2~~3. Trihalomethane (THM). THM means one of the family of organic compounds named as derivatives of methane, wherein three (3) of the four (4) hydrogen atoms in the molecular structure of methane are substituted by one (1) of the chemical elements chlorine, bromine or iodine. (7-1-93)

12~~3~~4. Twenty-Four Hour Average. The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of twenty-four (24) consecutive hours. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the twenty-four (24)-hour period may be needed to obtain a more representative mean.

(3-20-97)

12~~4~~5. Unique Ecological Significance. The attribute of any stream or water body which is inhabited or supports an endangered or threatened species of plant or animal or a species of special concern identified by the Idaho Department of Fish and Game, which provides anadromous fish passage, or which provides spawning or rearing habitat for anadromous or desirable species of lake dwelling fishes. (8-24-94)

12~~5~~6. User. Any person served by a public wastewater system. (4-2-03)

12~~6~~7. Wasteload Allocation (WLA). The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. (8-24-94)

12~~7~~8. Wastewater. Unless otherwise specified, sewage, industrial waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present. (7-1-93)

12~~8~~9. Wastewater Collection System Operator. The person who is employed, retained, or appointed to conduct the tasks associated with routine day to day operation and maintenance of a public wastewater collection system in order to safeguard the public health and environment. (4-2-03)

1~~29~~30. Wastewater Treatment Operator. The person who is employed, retained, or appointed to conduct the tasks associated with routine day to day operation and maintenance of a public wastewater treatment system in order to safeguard the public health and environment. (4-2-03)

13~~0~~1. Water Body Unit. Includes all named and unnamed tributaries within a drainage and is considered a single unit unless designated otherwise. (4-5-00)

13~~1~~2. Water Pollution. Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. (8-24-94)

13~~2~~3. Water Quality-Based Effluent Limitation. An effluent limitation that refers to specific levels of water quality that are expected to render a body of water suitable for its designated or existing beneficial uses. (8-24-94)

13~~3~~4. Water Quality Limited Water Body. After monitoring, evaluation of required pollution controls, and consultation with the appropriate basin and watershed advisory groups, a water body identified by the Department, which does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards after the application of required pollution controls. A water body identified as water quality limited shall require the development of a TMDL or other equivalent process in accordance with Section 303 of the Clean Water Act and Sections 39-3601 et seq., Idaho Code. (3-20-97)

13~~4~~5. Waters And Waters Of The State. All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (7-1-93)

13~~5~~6. Watershed. The land area from which water flows into a stream or other body of water which drains the area. (3-20-97)

13~~6~~7. Watershed Advisory Group. An advisory group appointed by the Director, with the advice of the appropriate Basin Advisory Group, which will recommend to the Department those specific actions needed to control point and nonpoint sources of pollution affecting water quality limited water bodies within the watershed. Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed, along with representatives of local government and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it. (3-20-97)

13~~7~~8. Whole-Effluent Toxicity. The aggregate toxic effect of an effluent measured directly with a toxicity test. (8-24-94)

~~004~~011. -- 049.(RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

080. VIOLATION OF WATER QUALITY STANDARDS.

01. Discharges Which Result in Water Quality Standards Violation. No pollutant shall be discharged from a single source or in combination with pollutants discharged from other sources in concentrations or in a manner that: (7-1-93)

a. Will or can be expected to result in violation of the water quality standards applicable to the receiving water body or downstream waters; or (7-1-93)

b. Will injure designated or existing beneficial uses; or (8-24-94)

c. Is not authorized by the appropriate authorizing agency for those discharges that require authorization. (8-24-94)

02. Short Term Activity Exemption. The Department or the Board can authorize, with whatever conditions deemed necessary, short term activities even though such activities can result in a violation of these rules; (8-24-94)

a. No activity can be authorized by the provisions of Subsection 080.02 unless: (7-1-93)

i. The activity is essential to the protection or promotion of public interest; (7-1-93)

ii. No permanent or long term injury of beneficial uses is likely as a result of the activity. (7-1-93)

b. Activities eligible for authorization by Subsection 080.02 include, but are not limited to: (7-1-93)

i. Wastewater treatment facility maintenance; (7-1-93)

ii. Fish eradication projects; (7-1-93)

iii. Mosquito abatement projects; (7-1-93)

iv. Algae and weed control projects; (7-1-93)

v. Dredge and fill activities; (3-20-97)

vi. Maintenance of existing structures; (3-20-97)

vii. Limited road and trail reconstruction; (3-20-97)

viii. Soil stabilization measures; (3-20-97)

ix. Habitat enhancement structures; and (3-20-97)

x. Activities which result in overall enhancement or maintenance of beneficial uses. (7-1-93)

~~***03.*** ***E. coli Standard Violation****. A single water sample exceeding an E.coli standard does not in itself constitute a violation of water quality standards, however, additional samples shall be taken for the purpose of comparing the results to the geometric mean criteria in Section 251 as follows:* *(4-5-00)***~~

~~***a.*** *Any discharger responsible for providing samples for E.coli shall take five (5) additional samples in accordance with Section 251.* *(4-5-00)***~~

~~***b.*** *The Department shall take five (5) additional samples in accordance with Section 251 for ambient E.coli samples unrelated to dischargers' monitoring responsibilities.* *(4-5-00)***~~

0~~4~~3. **Temperature Exemption**. Exceeding the temperature criteria in Section 250 will not be considered a water quality standard violation when the air temperature of a given day exceeds the ninetieth percentile of a yearly series of the maximum weekly maximum air temperature (MWMT) calculated over the historic record measured at the nearest weather reporting station. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

251. SURFACE WATER QUALITY CRITERIA FOR RECREATION USE DESIGNATIONS.

01. ~~***Primary Contact Recreation***~~ **E. Coli Bacteria**. Waters designated for ~~*primary contact*~~ recreation are not to contain E.coli bacteria, ~~*significant to the public health*~~ used as indicators of human pathogens, in concentrations exceeding: ~~*(4-5-00)*~~( )

a. ~~*For areas within waters designated for primary contact recreation that are additionally specified as public swimming beaches, a single sample of two hundred thirty-five (235) E. coli organisms per one hundred (100) ml. For the purpose of this subsection, "specified public swimming beaches" are considered to be indicated by features such as signs, swimming docks, diving boards, slides, or the like, boater exclusion zones, map legends, collection of a fee for beach use, or any other unambiguous invitation to public swimming. Privately owned swimming docks or the like which are not open to the general public are not included in this definition.*~~ Geometric Mean Criterion. Waters designated for primary or secondary contact recreation are not to contain E. coli bacteria in concentrations exceeding a geometric mean of one hundred twenty-six (126) E. coli organisms per one hundred (100) ml based on a minimum of five (5) samples taken every three (3) to seven (7) days over a thirty (30) day period. ~~*(3-15-02)*~~( )

b. ~~*For all other waters designated for primary contact recreation, a single sample of four hundred six (406) E.coli organisms per one hundred (100) ml; or*~~ Use of Single Sample Values. A water sample exceeding the E. coli single sample maximums below indicates likely exceedance of the geometric mean criterion, but is not alone a violation of water quality standards. If a single sample exceeds the maximums set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., then additional samples must be taken as specified in Subsection 251.01.c.: ~~*(3-15-02)*~~( )

i. For waters designated as secondary contact recreation, a single sample maximum of five hundred seventy-six (576) E. coli organisms per one hundred (100) ml; or ( )

ii. For waters designated as primary contact recreation, a single sample maximum of four hundred six (406) E. coli organisms per one hundred (100) ml; or ( )

iii. For areas within waters designated for primary contact recreation that are additionally specified as public swimming beaches, a single sample maximum of two hundred thirty-five (235) E. coli organisms per one hundred (100) ml. Single sample counts above this value should be used in considering beach closures. ( )

c. ~~*A geometric mean of one hundred twenty-six (126) E.coli organisms per one hundred (100) ml based on a minimum of five (5) samples taken every three (3) to five (5) days over a thirty (30) day period.*~~ Additional Sampling. When a single sample maximum, as set forth in Subsections 251.01.b.i., 251.01.b.ii., and 251.01.b.iii., is exceeded, additional samples should be taken to assess compliance with the geometric mean E. coli criteria in Subsection 251.01.a. Sufficient additional samples should be taken by the Department to calculate a geometric mean in

accordance with Subsection 251.01.a. This provision does not require additional ambient monitoring responsibilites for dischargers. ~~*(4-5-00)*~~( )

~~***02. Secondary Contact Recreation****. Waters designated for secondary contact recreation are not to contain E.coli bacteria significant to the public health in concentrations exceeding:* *(4-5-00)*~~

~~***a.*** *A single sample of five hundred seventy-six (576) E.coli organisms per one hundred (100) ml; or* *(4-5-00)*~~

~~***b.*** *A geometric mean of one hundred twenty-six (126) E.coli organisms per one hundred (100) ml based on a minimum of five (5) samples taken every three (3) to five (5) days over a thirty (30) day period.* *(4-5-00)*~~

(BREAK IN CONTINUITY OF SECTIONS)

420. POINT SOURCE SEWAGE WASTEWATER DISCHARGE RESTRICTIONS. All provisions and requirements of Sections 400, 401, and 402 are applicable to sewage wastewater treatment facilities and their discharges. (8-24-94)

01. General Treatment Requirements. Except as provided in Subsections 420.02 and 420.03, sewage wastewater discharges, except those from lagoon or trickling filter facilities, into surface waters of the state must have the following characteristics: (7-1-93)

a. BOD - the equivalent of eighty-five percent (85%) removal of the biochemical oxygen demand, but not more than a thirty (30) day average concentration of thirty (30) mg/l; and (7-1-93)

b. Suspended Solids - the equivalent of eighty-five percent (85%) removal of the suspended solids, but not more than a thirty (30) day average concentration of thirty (30) mg/l. (7-1-93)

02. Alternative Treatment Requirements. The following alternative treatment requirements are established to apply to facilities which provide at least sixty-five percent (65%) BOD removal using a trickling filter or lagoon as the principal treatment process, and which the Department determines cannot consistently achieve requirements of Subsections 420.01.a. and 420.01.b. (7-1-93)

a. Sewage wastewater discharges from facilities using trickling filters as the principal treatment process must have the following characteristics: (7-1-93)

i. BOD - not to exceed a thirty (30) day average concentration of forty-five (45) mg/l; and (7-1-93)

ii. Suspended Solids - at least sixty-five percent (65%) removal and not to exceed a

thirty (30) day average concentration of forty-five (45) mg/l. (7-1-93)

b. Sewage wastewater discharges from facilities using lagoons as the principal treatment process must have the following characteristics: (7-1-93)

i. BOD - not to exceed a thirty (30) day average concentration of forty-five (45) mg/l; and (7-1-93)

ii. Suspended Solids - not to exceed a thirty (30) day average concentration of seventy (70) mg/l. (7-1-93)

03. Adjusted Treatment Requirements for Industrial Loading. The Department may proportionally adjust, on a case-by-case basis, the treatment requirements of Subsection 401.03 or 401.05 where industrial waste loadings contribute greater than ten percent (10%) of the design flow or loading into a publicly owned sewage treatment facility. (7-1-93)

04. Determining the Necessity for Disinfection of Sewage Wastewater Treatment Plant Effluent. (8-24-94)

a. Disinfection of sewage treatment plant effluent shall be required when discharged to a water body under the following conditions: (8-24-94)

i. The water body receiving the effluent flows through a significantly populated area or has a designated or existing beneficial use of primary contact recreation. (8-24-94)

ii. The water body receiving the effluent is a direct tributary to a water body that flows through a significantly populated area or has a designated or existing beneficial use of primary contact recreation and disinfection is necessary to protect public health. (8-24-94)

iii. Site-specific conditions warrant disinfection for the protection of public health. (8-24-94)

b. The need for disinfection of sewage wastewater treatment plant effluent where treatment consists of lagoons with at least thirty (30) day retention time shall be evaluated on a case-by-case basis. (8-24-94)

05. Disinfection Requirements for Sewage Wastewater Treatment Plant Effluent. When disinfection is determined to be required under Subsection 420.04, sewage wastewater treatment plant effluent must receive adequate disinfection by any disinfection process which satisfies the following applicable criteria, prior to discharge to any receiving water. (8-24-94)

a. E. coli concentrations in secondary treated effluent must not exceed a geometric mean of one hundred and twenty-six (126) colonies per one hundred (100) milliliters based on a minimum of five (5) samples taken every three (3) to ~~*five*~~ seven (~~*5*~~7) days over a thirty-day (30) period. ~~*A single sample must not exceed four hundred and six colonies per one hundred milliliters (406 colonies per 100 ml).*~~ ~~*(3-15-02)*~~(____)

i. The samples must be representative of all samples collected during the month; and

(3-15-02)

ii. Geometric mean computations must be calculated and recorded monthly.(3-15-02)

b. On an interim basis, pending the addition of secondary treatment, E. coli concentrations in primary effluent must not exceed a geometric mean of two hundred and fifty-two (252) colonies per one hundred (100) milliliters based on a minimum of five (5) samples taken every three (3) to ~~*five*~~ seven (~~5~~7) days over a thirty-day (30) period. ~~*A single sample must not exceed eight hundred and twelve colonies per one hundred milliliters (812 colonies per 100 ml).*~~ ~~*(3-15-02)*~~(____)

i. The samples must be representative of all samples collected during the month; (3-15-02)

ii. Geometric mean computations must be calculated and recorded monthly; and (3-15-02)

iii. This discharge bacteria level will not be permitted even on an interim basis where the bacteria receiving water quality standard is not being met. (3-15-02)

06. Chlorine Contact Tank Requirements. Chlorine contact tanks providing disinfection must be designed and operated so that: (7-1-93)

a. Short circulating is minimized with thorough mixing of chlorine and waste flow; (7-1-93)

b. Floatable and settleable solids are removed without discharging unchlorinated effluent; and (7-1-93)

c. Unit drains are not discharged into the treated wastewater outfall. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

853. -- ~~994~~999.(RESERVED).

~~***995.***~~ ***Section 995 has been moved and renumbered to Section 004.***

~~***996.***~~ ***Section 996 has been moved and renumbered to Section 003.***

~~***997.***~~ ***Section 997 has been moved and renumbered to Section 006.***

~~***998. INCLUSIVE GENDER AND NUMBER.***~~
~~*For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate.* *(7-1-93)*~~

~~***999. SEVERABILITY.***~~

~~*Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standard and Wastewater Treatment Requirements" are severable. If any rules, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter.* *(7-1-93)*~~

RESOURCES & ENVIRONMENT

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0503

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 7, 2005, Vol. 05-9, pages 327 through 337. Public comments were received. The proposed rule has not been revised in response to comments. However, in Subsection 210.02, the factors for calculating hardness for cadmium have been revised to reflect the most recent information. Also, the acute conversion factor, which was inadvertently struck out in the proposed rule, has been retained. The remaining subsections have been adopted as proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov or by contacting the undersigned.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 327 through 337.

lDAHO CODE SECTION 39-107D STATEMENT: The revisions included in this rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

IDAHO CODE SECTION 67-5224(2)(f) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this pending rule, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

Dated this 16th day of November, 2005.

DEPARTMENT OF ENVIRONMENTAL QUALITY ***Docket No. 58-0102-0503***
Water Quality Standards and Wastewater Treatment RequirementsPENDING RULE

Paula J. Wilson
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The Following Notice Was Published With The Proposed Rule

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

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 23, 2005. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to bring Idaho's toxics criteria up to date with current science and recommendations of the U.S. Environmental Protection Agency (EPA). The Department of Environmental Quality (DEQ) proposes to revise the human health criteria (columns C1 & C2) in Section 210 to account for revised fish consumption rates and newer information in the Integrated Risk Information System (IRIS) database on health effects, and to adopt an Idaho specific cadmium aquatic life criterion based on recalculation using additional, more recent toxicity data that has become available since EPA's 2001 cadmium criteria recommendation. Development of the proposed cadmium criteria is discussed in a draft technical support document, "Cadmium Risks to Freshwater Life: Predicted low-effect values in ambient waters based upon laboratory and field studies," which is available at www.deq.idaho.gov/rules/water/58_0102_0503_proposed.cfm or by contacting Don Essig at (208)373-0119.

Everyone in Idaho who either discharges toxics listed in Section 210 to surface waters of Idaho, or those who recreate in or obtain their drinking water from surface waters of Idaho, may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2005 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2006 legislative session if approved by the Legislature.

IDAHO CODE SECTION 39-107D STATEMENT: The revisions included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, April 6, 2005, Vol. 05-4, page 21.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this proposed rule, contact Don Essig at (208) 373-0119, Don.Essig@deq.idaho.gov.

Anyone may submit written comments on the proposed rulemaking by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before October 7, 2005.

Dated this 3rd day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

210. Numeric Criteria For Toxic Substances For Waters Designated For Aquatic Life, Recreation, Or Domestic Water Supply Use.

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

a. Columns B1, B2, and C2 of the following table apply to waters designated for aquatic life use. (5-3-03)

b. Column C2 of the following table applies to waters designated for recreation use. (5-3-03)

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

A			B Aquatic life				Human health for consumption of:			
(Number)	Compound	[a] CAS Number	[b] CMC (µg/L) B1		[b] CCC (µg/L) B2		Water & organisms (µg/L) C1		Organisms only (µg/L) C2	
1	Antimony	7440360					5.6	~~l~~c	640	~~l~~c
2	Arsenic	7440382	340	e	150	e	50	d	50	d
3	Beryllium	7440417						h		h
4	Cadmium	7440439	~~2~~ 1.3	i	~~1.~~0.6	i		h		h
5a	Chromium III	16065831	570	i	74	i		h		h
5b	Chromium VI	18540299	16	e	11	e		h		h
6	Copper	7440508	17	i	11	i				
7	Lead	7439921	65	i	2.5	i		h		h
8a	Mercury	7439976		g		g				
8b	Methylmercury	22967926							0.3 mg/kg	p
9	Nickel	7440020	470	i	52	i	610	c	4600	c
10	Selenium	7782492	20	f	5	f	170	~~h~~	4200	~~h~~
11	Silver	7440224	3.4	i						
12	Thallium	7440280					~~1.7~~0.24	c	~~6.3~~0.47	c
13	Zinc	7440666	120	i	120	i	7400		26000	
14	Cyanide	57125	22	j	5.2	j	~~700~~140	c	~~220000~~140	c
15	Asbestos	1332214					7,000,000 fibers/L	k		
16	2, 3, 7, 8-TCDD Dioxin	1746016					0.0000000~~13~~05	l	0.0000000~~14~~051	l
17	Acrolein	107028					~~320~~190		~~780~~290	
18	Acrylonitrile	107131					0.05~~9~~1	cl	0.~~66~~25	cl
19	Benzene	71432					~~1~~2.2	cl	~~7~~51	cl
20	Bromoform	75252					4.3	cl	~~360~~140	cl
21	Carbon Tetrachloride	56235					0.2~~5~~3	cl	~~4.4~~1.6	cl
22	Chlorobenzene	108907					~~680~~130	c	~~210~~1600	c
23	Chlorodibromomethane	124481					0.4~~1~~0	cl	~~34~~13	cl
24	Chloroethane	75003								
25	2-Chloroethylvinyl Ether	110758								
26	Chloroform	67663					5.7	~~c~~l	470	~~c~~l

A			B Aquatic life		Human health for consumption of:			
(Number)	Compound	[a] CAS Number	[b] CMC (µg/L) B1	[b] CCC (µg/L) B2	Water & organisms (µg/L) C1		Organisms only (µg/L) C2	
27	Dichlorobromomethane	75274			0.~~27~~55	cl	~~22~~17	cl
28	1,1-Dichloroethane	75343						
29	1,2-Dichloroethane	107062			0.38	cl	~~99~~37	cl
30	1,1-Dichloroethylene	75354			~~0.057~~330	~~c~~l	~~3.2~~7100	~~c~~l
31	1,2-Dichloropropane	78875			0.50	cl	15	cl
32	1,3-Dichloroprop~~yl~~ene	542756			~~1~~0.34	~~c~~	~~1700~~21	~~c~~
33	Ethylbenzene	100414			~~3100~~530	c	~~29000~~2100	c
34	Methyl Bromide	74839			4~~8~~7	c	~~4000~~1500	c
35	Methyl Chloride	74873				h		h
36	Methylene Chloride	75092			4.~~7~~6	cl	~~1600~~590	cl
37	1,1,2,2-Tetrachloroethane	79345			0.17	cl	~~11~~4.0	cl
38	Tetrachloroethylene	127184			0.~~8~~69	l	~~8.85~~3.3	l
39	Toluene	108883			~~6800~~1300	c	~~20000~~15000	c
40	1,2-Trans-Dichloroethylene	156605			140	c	10000	c
41	1,1,1-Trichloroethane	71556				h		h
42	1,1,2-Trichloroethane	79005			0.~~6~~59	cl	~~42~~16	cl
43	Trichloroethylene	79016			2.~~7~~5	l	~~81~~30	l
44	Vinyl Chloride	75014			~~2~~0.025	l	~~525~~2.4	l
45	2-Chlorophenol	95578			81	c	150	c
46	2,4-Dichlorophenol	120832			~~93~~77	c	~~7~~290	c
47	2,4-Dimethylphenol	105679			380	c	850	c
48	2-Methyl-4,6-Dinitrophenol	534521			13~~.4~~		~~765~~280	
49	2,4-Dinitrophenol	51285			~~70~~69	c	~~140~~5300	c
50	2-Nitrophenol	88755						
51	4-Nitrophenol	100027						
52	3-Methyl-4-Chlorophenol	59507						
53	Pentachlorophenol	87865	20 m	13 m	0.2~~8~~7	cl	~~8.2~~3.0	cl

A			B Aquatic life		Human health for consumption of:			
(Number)	Compound	[a] CAS Number	[b] CMC (µg/L) B1	[b] CCC (µg/L) B2	Water & organisms (µg/L) C1		Organisms only (µg/L) C2	
54	Phenol	108952			21000	c	~~46~~1700000	c
55	2,4,6-Trichlorophenol	88062			~~2.~~1.4	cl	~~6.5~~2.4	cl
56	Acenaphthene	83329			670	c	990	c
57	Acenaphthylene	208968						
58	Anthracene	120127			~~96~~8300	c	~~11~~40000	c
59	Benzidine	92875			0.000~~12~~086	cl	0.000~~54~~20	cl
60	Benzo(a)Anthracene	56553			0.00~~2~~38	cl	0.0~~3~~18	cl
61	Benzo(a)Pyrene	50328			0.00~~2~~38	cl	0.0~~3~~18	cl
62	Benzo(b)Fluoranthene	205992			0.00~~2~~38	cl	0.0~~3~~18	cl
63	Benzo(ghi)Perylene	191242						
64	Benzo(k)Fluoranthene	207089			0.00~~2~~38	cl	0.0~~3~~18	cl
65	Bis(2-Chloroethoxy) Methane	111911						
66	Bis(2-Chloroethyl)Ether	111444			0.03~~1~~0	cl	~~1.4~~0.53	cl
67	Bis(2-Chloroisopropyl) Ether	108601			1400	c	~~170~~65000	c
68	Bis(2-Ethylhexyl) Phthalate	117817			1.~~8~~2	cl	~~5.9~~2.2	cl
69	4-Bromophenyl Phenyl Ether	101553						
70	Butylbenzyl Phthalate	85687			1500	c	1900	c
71	2-Chloronaphthalene	91587			1000	c	1600	c
72	4-Chlorophenyl Phenyl Ether	7005723						
73	Chrysene	218019			0.00~~2~~38	cl	0.0~~3~~18	cl
74	Dibenzo (a,h) Anthracene	53703			0.00~~2~~38	cl	0.0~~3~~18	cl
75	1,2-Dichlorobenzene	95501			~~2700~~420	c	1~~70~~300	c
76	1,3-Dichlorobenzene	541731			~~400~~320		~~2600~~960	
77	1,4-Dichlorobenzene	106467			~~400~~63		~~2600~~190	
78	3,3'-Dichlorobenzidine	91941			0.0~~4~~21	cl	0.0~~77~~28	cl
79	Diethyl Phthalate	84662			~~23~~17000	c	~~120~~44000	c
80	Dimethyl Phthalate	131113			~~313~~270000		~~29~~1100000	

A			B Aquatic life		Human health for consumption of:			
(Number)	Compound	[a] CAS Number	[b] CMC (µg/L) B1	[b] CCC (µg/L) B2	Water & organisms (µg/L) C1		Organisms only (µg/L) C2	
81	Di-n-Butyl Phthalate	84742			2~~7~~000	c	~~12000~~4500	c
82	2,4-Dinitrotoluene	121142			0.11	l	~~9.1~~3.4	l
83	2,6-Dinitrotoluene	606202						
84	Di-n-Octyl Phthalate	117840						
85	1,2-Diphenylhydrazine	122667			0.0~~40~~36	cl	0.~~54~~20	cl
86	Fluoranthene	206440			~~300~~130	c	~~370~~140	c
87	Fluorene	86737			1~~3~~100	c	~~140~~5300	c
88	Hexachlorobenzene	118741			0.000~~75~~28	cl	0.000~~77~~29	cl
89	Hexachlorobutadiene	87683			0.44	cl	~~50~~18	cl
90	Hexachloro-cyclopentadiene	77474			~~2~~40	~~c~~	~~170~~1100	~~c~~
91	Hexachloroethane	67721			1.~~9~~4	cl	~~8.9~~3.3	cl
92	Ideno (1,2,3-cd) Pyrene	193395			0.00~~2~~38	cl	0.0~~3~~18	cl
93	Isophorone	78591			~~8.4~~35	cl	~~600~~960	cl
94	Naphthalene	91203						
95	Nitrobenzene	98953			17	c	~~1900~~690	c
96	N-Nitrosodimethylamine	62759			0.00069	cl	~~8.1~~3.0	cl
97	N-Nitrosodi-n-Propylamine	621647			0.0050	cl	0.51	cl
98	N-Nitrosodiphenylamine	86306			~~5.0~~3.3	cl	~~1~~6.0	cl
99	Phenanthrene	85018						
100	Pyrene	129000			~~960~~830	c	~~11~~4000	c
101	1,2,4-Trichlorobenzene	120821			35		70	
102	Aldrin	309002	3		0.000~~13~~049	cl	0.000~~14~~050	cl
103	alpha-BHC	319846			0.00~~39~~26	cl	0.0~~13~~049	cl
104	beta-BHC	319857			0.0~~14~~091	cl	0.0~~46~~17	cl
105	gamma-BHC (Lindane)	58899	2	0.08	0.~~01~~98	l	~~0.063~~1.8	l
106	delta-BHC	319868						
107	Chlordane	57749	2.4	0.0043	0.000~~57~~80	cl	0.000~~59~~81	cl

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	[a] CAS Number	[b] CMC (µg/L) B1	[b] CCC (µg/L) B2	Water & organisms (µg/L) C1	Organisms only (µg/L) C2
108 4,4'-DDT	50293	1.1	0.001	0.000~~59~~22 cl	0.000~~59~~22 cl
109 4,4'-DDE	72559			0.000~~59~~22 cl	0.000~~59~~22 cl
110 4,4'-DDD	72548			0.000~~83~~31 cl	0.000~~84~~31 cl
111 Dieldrin	60571	2.5	0.0019	0.000~~14~~052 cl	0.000~~14~~054 cl
112 alpha-Endosulfan	959988	0.22	0.056	~~0.93~~62 c	~~2.0~~89 c
113 beta-Endosulfan	33213659	0.22	0.056	~~0.93~~62 c	~~2.0~~89 c
114 Endosulfan Sulfate	1031078			~~0.93~~62 c	~~2.0~~89 c
115 Endrin	72208	0.18	0.0023	0.~~76~~059 c	0.~~81~~060 c
116 Endrin Aldehyde	7421934			0.~~76~~29 c	0.~~81~~30 c
117 Heptachlor	76448	0.52	0.0038	0.000~~21~~079 cl	0.000~~21~~079 cl
118 Heptachlor Epoxide	1024573	0.52	0.0038	0.000~~1~~039 cl	0.000~~11~~039 cl
119 Polychlorinated Biphenyls PCBs:	n		0.014 n	0.000~~17~~064 clo	0.000~~17~~064 clo
120 Toxaphene	8001352	0.73	0.0002	0.000~~73~~28 cl	0.000~~75~~28 cl
121 Chlorine		19 k	11 k		

~~***Note to table****: Table values are from 57 FR 60910, December 22, 1992 (National Toxics Rule) except as noted.*~~

Table Footnotes

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

b. See Definitions, Section ~~003~~010 of these rules.

c. This criterion has been revised to reflect The Environmental Protection Agency's q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of ~~*December 22, 1992*~~ May 17, 2002. The fish tissue bioconcentration factor (BCF) from the 1980 Ambient Water Quality Criteria document was retained in each case.

d. Inorganic form only. ~~*The criterion for arsenic is the MCL in effect as of April 5, 2000.*~~

e. Criteria for these metals are expressed as a function of the water effect ratio, WER, as defined in Subsection 210.03.c.iii. CMC = column B1 value X WER. CCC = column B2 value X WER.

f. Criterion expressed as total recoverable (unfiltered) concentrations.

g. No aquatic life criterion is adopted for inorganic mercury. However, the narrative criteria for toxics in Section 200 of these rules applies. The Department believes application of the human health criterion for methylmercury will be protective of aquatic life in most situations.

A		B Aquatic life		Human health for consumption of:	
(Number) Compound	**[a] CAS Number**	**[b] CMC (µg/L) B1**	**[b] CCC (µg/L) B2**	**Water & organisms (µg/L) C1**	**Organisms only (µg/L) C2**
h. No numeric human health criteria has been established for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the narrative criteria for toxics from Section 200 of these rules.					
i. Aquatic life criteria for these metals are expressed as a function of total hardness (mg/L as calcium carbonate), the pollutant's water effect ratio (WER) as defined in Subsection 210.03.c.iii and multiplied by an appropriate dissolved conversion factor as defined in Subsection 210.02. For comparative purposes only, the values displayed in this table are shown as dissolved metal and correspond to a total hardness of one hundred (100) mg/L and a water effect ratio of one (1.0).					
j. Criteria are expressed as weak acid dissociable (WAD) cyanide.					
k. Total chlorine residual concentrations.					
l. EPA guidance allows states to choose a risk factor of 10^{-4} to 10^{-6}. Idaho has chosen to base ~~T~~this criterion ~~*is based*~~ on carcinogenicity of 10^{-6} risk.					
m. Aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows. Values displayed above in the table correspond to a pH of seven and eight tenths (7.8). CMC = exp(1.005(pH)-4.830) CCC = exp(1.005(pH)-5.290)					
n. PCBs are a class of chemicals which include Aroclors, 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825 and 12674112 respectively. The aquatic life criteria apply to this set of PCBs.					
o. This criterion applies to total PCBs, (e.g. the sum of all congener, isomer, or Aroclor analyses).					
p. This fish tissue residue criterion (TRC) for methylmercury is based on a human health reference dose (RfD) of 0.0001 mg/kg body weight-day; a relative source contribution (RSC) estimated to be 27% of the RfD; a human body weight (BW) of 70 kg (for adults); and a total fish consumption rate of 0.0175 kg/day for the general population, summed from trophic level (TL) breakdown of TL2 = 0.0038 kg fish/day + TL3 = 0.0080 kg fish/day + TL4 = 0.0057 kg fish/day. This is a criterion that is protective of the general population. A site-specific criterion or a criterion for a particular subpopulation may be calculated by using local or regional data, rather than the above default values, in the formula: TRC = [BW x {RfD – (RSCxRfD)}] /Σ TL. In waters inhabited by species listed as threatened or endangered under the Endangered Species Act or designated as their critical habitat, the Department will apply the human health fish tissue residue criterion for methylmercury to the highest trophic level available for sampling and analysis.					

~~*(4-6-05)*~~(_____)

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

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

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

Metal	m_A	b_A	m_C	b_C	[a]Acute Converson Factor	[a]Chronic Conversion Factor
Arsenic	b	b	b	b	1.0	1.0
Cadmium	~~*1.0166*~~ 0.8367	~~*-3.924*~~ -3.560	~~*0.7852*~~ 0.6247	~~*-3.490*~~ -3.344	0.944 see footnote a	0.909
Chromium (III)	0.819	3.7256	0.8190	0.6848	0.316	0.860
Chromium (VI)	b	b	b	b	0.982	0.962
Copper	0.9422	-1.464	0.8545	-1.465	0.960	0.960
Lead	1.273	-1.460	1.273	-4.705	0.791	0.791
Mercury	b	b	b	b	0.85	0.85
Nickel	0.846	2.255	0.8460	0.0584	0.998	0.997
Silver	1.72	-6.52	c	c	0.85	c
Zinc	0.8473	0.884	0.8473	0.884	0.978	0.986

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

Footnotes to table:

a. Conversion factors (CF) are from "Stephan, C. E. 1995. Derivation of conversion factors for the calculation of dissolved freshwater aquatic life criteria for metals. U.S. Environmental Protection Agency, Environmental Research Laboratory – Duluth." The conversion factors for cadmium and lead are hardness-dependent and can be calculated for any hardness (see limitations in Subsection 210.03.b.i) using the following equations. For comparative purposes, the conversion factors for a total hardness of one hundred (100) mg/L are shown in the table.

Cadmium

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

Chronic: CF=1.101672–[(ln hardness)(0.041838)]

Lead (Acute and Chronic): CF=1.46203–[(ln hardness)(0.145712)

b. Not applicable

c. No chronic criteria are available for silver.

~~*(4-6-05)*~~(_____)

03. Applicability. The criteria established in Section 210 are subject to the general rules of applicability in the same way and to the same extent as are the other numeric chemical criteria when applied to the same use classifications including mixing zones, and low flow design discharge conditions below which numeric standards can be exceeded in flowing waters. (5-3-03)

a. For all waters for which the Department has determined mixing zones to be applicable, the criteria apply at the appropriate locations specified within or at the boundary of the mixing zone(s) ~~*of the mixing zones*~~; otherwise the criteria apply through the waterbody including at the end of any discharge pipe, canal or other discharge point. ~~*(5-3-03)*~~(_____)

b. Low flow design discharge conditions. Numeric chemical standards can only be exceeded in perennial streams ~~*due to*~~ permitted discharges outside any applicable mixing zone

when flows are less than the following values:

Aquatic Life		Human Health	
CMC ("acute" criteria)	1Q10 or 1B3	Non-carcinogens	30Q5
CCC ("chronic" criteria)	7Q10 or 4B3	Carcinogens	Harmonic mean flow

~~*(5-3-03)*~~(____)

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

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

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

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

v. Where "30Q5" is the lowest average thirty (30) consecutive day low flow with an average recurrence frequency of once in five (5) years determined hydrologically; and (5-3-03)

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

c. Application of metals criteria. (5-3-03)

i. For purposes of calculating aquatic life criteria for metals from the equations in Subsection 210.02, the minimum hardness allowed for use in those equations shall not be less than twenty-five (25) mg/l, as calcium carbonate, even if the actual ambient hardness is less than twenty-five (25) mg/l as calcium carbonate. The maximum hardness allowed for use in those equations shall not be greater than four hundred (400) mg/l, as calcium carbonate, except as specified in Subsections 210.03.c.ii. and 210.03.c.iii., even if the actual ambient hardness is greater than four hundred (400) mg/l as calcium carbonate. (4-6-05)

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

iii. Except as otherwise noted, the aquatic life criteria for metals (compounds #1 through #13 in the criteria table of Subsection 210.02) are expressed as dissolved metal concentrations. Unless otherwise specified by the Department, dissolved concentrations are considered to be concentrations recovered from a sample which has passed through a forty-five

hundredths (0.45) micron filter. For the purposes of calculating aquatic life criteria for metals from the equations in footnotes e. and i. in the criteria table in Subsection 210.01, the water effect ratio is computed as a specific pollutant's acute or chronic toxicity values measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. The water-effect ratio shall be assigned a value of one (1.0), except where the Department assigns a different value that protects the designated uses of the water body from the toxic effects of the pollutant, and is derived from suitable tests on sampled water representative of conditions in the affected water body, consistent with the design discharge conditions established in Subsection 210.03.b. For purposes of calculating water effects ratios, the term acute toxicity value is the toxicity test results, such as the concentration lethal one-half (1/2) of the test organisms (i.e., LC5O) after ninety-six (96) hours of exposure (e.g., fish toxicity tests) or the effect concentration to one-half of the test organisms, (i.e., EC5O) after forty-eight (48) hours of exposure (e.g., daphnia toxicity tests). For purposes of calculating water effects ratios, the term chronic value is the result from appropriate hypothesis testing or regression analysis of measurements of growth, reproduction, or survival from life cycle, partial life cycle, or early life stage tests. The determination of acute and chronic values shall be according to current standard protocols (e.g., those published by the American Society for Testing and Materials (ASTM)) or other comparable methods. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in Subsection 210.02 shall be as required in Subsection 210.03.c.ii. Water hardness shall be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium shall be approximately the same in laboratory toxicity testing water as in the site water, or be similar to average ratios of laboratory waters used to derive the criteria. (4-6-05)

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

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

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

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

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

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

a. "Guidance Document on Dissolved Criteria -- Expression of Aquatic Life Criteria," EPA, October 1993. (4-5-00)

b. "Guidance Document on Dynamic Modeling and Translators," EPA, August 1993. (4-5-00)

c. "Guidance Document on Clean Analytical Techniques and Monitoring," EPA, October 1993. (4-5-00)

d. "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals," EPA, February 1994. (4-5-00)

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

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

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

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

iii. The most recent recommended criteria defined in EPA's Aquatic Toxicity Information Retrieval (ACQUIRE) database. When using EPA recommended criteria to derive water quality criteria to protect aquatic life uses, the lowest observed effect concentrations (LOECs) shall be considered; or (4-5-00)

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

b. Human Health Criteria. (4-5-00)

i. When numeric criteria for the protection of human health are not identified in these rules for toxic substances, quantifiable criteria may be derived by the Department from the most recent recommended criteria defined in EPA's Integrated Risk Information System (IRIS). When using EPA recommended criteria to derive water quality criteria to protect human health, a fish consumption rate of ~~*six*~~ seventeen point five (~~*6*~~17.5) grams/day, a water ingestion rate of two (2) liters/day and a cancer risk level of 10^{-6} shall be utilized. ~~*(4-5-00)*~~(____)

RESOURCES & ENVIRONMENT

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.02 - WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS

DOCKET NO. 58-0102-0504

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 7, 2005, Vol. 05-9, pages 338 through 358. One public comment letter was received. The proposed rule has not been revised in response to the comments. However, changes have been made to Sections 070, 400 and 401 for the purpose of deleting or revising references to rule sections affected by this rulemaking. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov or by contacting the undersigned.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 338 through 358.

IDAHO CODE SECTION 39-107D STATEMENT: The revisions included in this rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

IDAHO CODE SECTION 67-5224(2)(f) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this pending rule, contact Don Essig at don.essig@deq.idaho.gov, (208)373-0119.

Dated this 16th day of November, 2005.

Paula J. Wilson

DEPARTMENT OF ENVIRONMENTAL QUALITY ***Docket No. 58-0102-0504***
Water Quality Standards and Wastewater Treatment RequirementsPENDING RULE

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Boise, Idaho 83706-1255
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The Following Notice Was Published With The Proposed Rule

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

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 21, 2005. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: Under proposed rule Docket No. 58-0116-0501, certain wastewater rule sections and definitions have been copied from IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," revised as necessary, and inserted into a new proposed rule chapter, IDAPA 58.01.16, "Wastewater Rules". This proposed rule docket (58-0102-0504) has been initiated for the purpose of deleting those sections and definitions that are either unnecessary to remain in rule or have been copied and moved to the proposed rule chapter (IDAPA 58.01.16). This rulemaking is necessary to prevent inconsistency and/or redundancy between DEQ rule chapters. As a result of these changes, DEQ proposes to change the Title of this rule chapter to "Water Quality Standards".

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2005 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2006 legislative session if approved by the Legislature.

IDAHO CODE SECTION 39-107D STATEMENT: The revisions included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this proposed rule, contact Don Essig at (208) 373-0119 or Don.Essig@deq.idaho.gov.

Anyone may submit written comments on the proposed rulemaking by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before October 5, 2005.

Dated this 3rd day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

002. TITLE AND SCOPE.

01. Title. These rules shall be cited as Rules of the Department of Environmental Quality, IDAPA 58.01.02, "Water Quality Standards~~ *and Wastewater Treatment Requirements*~~". ~~*(4-5-00)*~~(____)

02. Scope. These rules designate uses which are to be protected in and of the waters of the state and establish standards of water quality protective of those uses. Restrictions are placed on the discharge of wastewaters and on human activities which may adversely affect public health and water quality in the waters of the state. In addition, unique and outstanding waters of the state are recognized. These rules do not provide any legal basis for an additional permit system, nor can they be construed as granting to the Department any authority not identified in the Idaho Code. (4-2-03)

003. DEFINITIONS.
For the purpose of the rules contained in IDAPA 58.01.02, "Water Quality Standards~~ *and Wastewater Treatment Requirements*~~," the following definitions apply: ~~*(4-5-00)*~~(____)

01. Acute. Involving a stimulus severe enough to rapidly induce a response; in aquatic toxicity tests, a response measuring lethality observed in ninety-six (96) hours or less is typically considered acute. When referring to human health, an acute effect is not always measured in terms of lethality. (3-20-97)

02. Acute Criteria. Unless otherwise specified in these rules, the maximum instantaneous or one (1) hour average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from acute toxicity resulting from

exposure to the toxic substance or effluent. Acute criteria will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms "acute criteria" and "criterion maximum concentration" (CMC) are equivalent. (3-15-02)

03. Acute Toxicity. The existence of mortality or injury to aquatic organisms resulting from a single or short-term (i.e., ninety-six (96) hours or less) exposure to a substance. As applied to toxicity tests, acute toxicity refers to the response of aquatic test organisms to a concentration of a toxic substance or effluent which results in a LC-50. (3-20-97)

04. Aquatic Species. Any plant or animal that lives at least part of its life in the water column or benthic portion of waters of the state. (8-24-94)

~~***05. Available***. *Based on public wastewater system size, complexity, and variation in raw waste, a licensed wastewater operator must be on site, on call, or able to be contacted as needed to initiate the appropriate action for normal or emergency conditions in a timely manner.* *(4-6-05)*~~

0~~6~~5. Background. The biological, chemical or physical condition of waters measured at a point immediately upstream (up-gradient) of the influence of an individual point or nonpoint source discharge. If several discharges to the water exist or if an adequate upstream point of measurement is absent, the department will determine where background conditions should be measured. (8-24-94)

0~~7~~6. Basin Advisory Group. No less than one advisory group named by the Director, in consultation with the designated agencies, for each of the state's six (6) major river basins which shall generally advise the Director on water quality objectives for each basin, work in a cooperative manner with the Director to achieve these objectives, and provide general coordination of the water quality programs of all public agencies pertinent to each basin. Each basin advisory group named by the Director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include representatives from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. (3-20-97)

0~~8~~7. Beneficial Use. Any of the various uses which may be made of the water of Idaho, including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use is dependent upon actual use, the ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. (8-24-94)

0~~9~~8. Best Management Practice. A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals. (3-20-97)

~~1~~09. Bioaccumulation. The process by which a compound is taken up by, and accumulated in the tissues of an aquatic organism from the environment, both from water and through food. (8-24-94)

~~***11. Biochemical Oxygen Demand (BOD)***. *The measure of the amount of oxygen necessary to satisfy the biochemical oxidation requirements of organic materials at the time the sample is collected; unless otherwise specified, this term will mean the five (5) day BOD incubated at twenty (20) degrees C.* *(8-24-94)*~~

1~~2~~0. Biological Monitoring or Biomonitoring. The use of a biological entity as a detector and its response as a measure to determine environmental conditions. Toxicity tests and biological surveys, including habitat monitoring, are common biomonitoring methods. (8-24-94)

1~~3~~1. Board. The Idaho Board of Environmental Quality. (7-1-93)

1~~4~~2. Chronic. Involving a stimulus that lingers or continues for a relatively long period of time, often one-tenth (.01) of the life span or more. Chronic should be considered a relative term depending on the life span of an organism. The measurement of a chronic effect can be reduced growth, reduced reproduction, etc., in addition to lethality. (8-24-94)

1~~5~~3. Chronic Criteria. Unless otherwise specified in these rules, the four (4) day average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from chronic toxicity resulting from exposure to the toxic substance or effluent. Chronic criteria will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms “chronic criteria” and “criterion continuous concentration” (CCC) are equivalent. (3-15-02)

1~~6~~4. Chronic Toxicity. The existence of mortality, injury, reduced growth, impaired reproduction, or any other adverse effect on aquatic organisms resulting from a long-term (i.e., one-tenth (0.1) or more of the organism's life span) exposure to a substance. As applied to toxicity tests, chronic toxicity refers to the response of aquatic organisms to a concentration of a toxic substance or effluent which results in an IC-25. (8-24-94)

~~***17. Collection System***. *That portion of the wastewater system in which wastewater is received from the premises of the discharger and conveyed to the point of treatment through a series of lines, pipes, manholes, pumps/lift stations and other appurtences.* *(4-6-05)*~~

1~~8~~5. Compliance Schedule Or Schedule Of Compliance. A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard. (8-24-94)

1~~9~~6. Criterion Continuous Concentration (CCC). Unless otherwise specified in these rules, the four (4) day average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from chronic toxicity resulting from exposure to the toxic substance or effluent. The CCC will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms “criterion continuous concentration” and “chronic criteria” are equivalent. (3-15-02)

~~20~~17. Criterion Maximum Concentration (CMC). Unless otherwise specified in these rules, the maximum instantaneous or one (1) hour average concentration of a toxic substance or effluent which ensures adequate protection of sensitive species of aquatic organisms from acute toxicity resulting from exposure to the toxic substance or effluent. The CMC will adequately protect the designated aquatic life use if not exceeded more than once every three (3) years. The terms "criterion maximum concentration" and "acute criteria" are equivalent. (3-15-02)

~~2~~18. Daily Mean. The average of at least two (2) appropriately spaced measurements, acceptable to the department, calculated over a period of one (1) day: (3-20-97)

a. Confidence bounds around the point estimate of the mean may be required to determine the sample size necessary to calculate a daily mean; (8-24-94)

b. If any measurement is greater or less than five-tenths (0.5) times the average, additional measurements over the one-day period may be needed to obtain a more representative average; (3-20-97)

c. In calculating the daily mean for dissolved oxygen, values used in the calculation shall not exceed the dissolved oxygen saturation value. If a measured value exceeds the dissolved oxygen saturation value, then the dissolved oxygen saturation value will be used in calculating the daily mean. (8-24-94)

~~22~~19. Deleterious Material. Any nontoxic substance which may cause the tainting of edible species of fish, taste and odors in drinking water supplies, or the reduction of the usability of water without causing physical injury to water users or aquatic and terrestrial organisms. (8-24-94)

2~~3~~0. Department. The Idaho Department of Environmental Quality. (7-1-93)

2~~4~~1. Design Flow. The critical flow used for steady-state wasteload allocation modeling. (8-24-94)

2~~5~~2. Designated Agency. The department of lands for timber harvest activities, oil and gas exploration and development, and mining activities; the soil conservation commission for grazing and agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the Department's division of environmental quality for all other activities. (3-20-97)

2~~6~~3. Designated Beneficial Use or Designated Use. Those beneficial uses assigned to identified waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," Sections 110 through 160, whether or not the uses are being attained. (4-5-00)

2~~7~~4. Desirable Species. Species indigenous to the area or those introduced species identified as desirable by the Idaho Department of Fish and Game. (3-15-02)

2~~8~~5. Director. The Director of the Idaho Department of Environmental Quality or his authorized agent. (7-1-93)

2~~9~~6. Discharge. When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. (8-24-94)

~~***30. Disinfection**. A method of reducing the pathogenic or objectionable organisms by means of chemicals or other acceptable means. (7-1-93)***~~

~~31~~27. Dissolved Oxygen (DO). The measure of the amount of oxygen dissolved in the water, usually expressed in mg/1. (7-1-93)

~~3~~28. Dissolved Product. Petroleum product constituents found in solution with water. (8-24-94)

~~33~~29. Dynamic Model. A computer simulation model that uses real or derived time series data to predict a time series of observed or derived receiving water concentrations. Dynamic modeling methods include continuous simulation, Monte Carlo simulations, lognormal probability modeling, or other similar statistical or deterministic techniques. (8-24-94)

3~~4~~0. E. coli (Escherichia coli). A common fecal and intestinal organism of the coliform group of bacteria found in warm-blooded animals. (4-5-00)

3~~5~~1. Effluent. Any wastewater discharged from a treatment facility. (7-1-93)

3~~6~~2. Effluent Biomonitoring. The measurement of the biological effects of effluents (e.g., toxicity, biostimulation, bioaccumulation, etc.). (8-24-94)

3~~7~~3. EPA. The United States Environmental Protection Agency. (7-1-93)

3~~8~~4. Ephemeral Waters. A stream, reach, or water body that flows only in direct response to precipitation in the immediate watershed and whose channel is at all times above the water table. (4-5-00)

3~~9~~5. Existing Beneficial Use Or Existing Use. Those beneficial uses actually attained in waters on or after November 28, 1975, whether or not they are designated for those waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards ~~*and Wastewater Treatment Requirements*~~". ~~*(8-24-94)*~~(____)

~~40~~36. Facility. As used in Section 850 only, any building, structure, installation, equipment, pipe or pipeline, well pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft, area, place or property from which an unauthorized release of hazardous materials has occurred. (8-24-94)

~~***41. Fecal Coliform**. The portion of the coliform group of bacteria present in the gut and feces of warm-blooded animals, usually expressed as number of organisms/one hundred (100) ml of sample. (7-1-93)***~~

~~42~~37. Four Day Average. The mean of the twenty-four (24) hour average values calculated over a period of ninety-six (96) consecutive hours. (3-20-97)

~~*4*~~**38.** **Free Product**. A petroleum product that is present as a nonaqueous phase liquid. Free product includes the presence of petroleum greater than one-tenth (0.1) inch as measured on the water surface for surface water or the water table for ground water. (7-1-93)

~~*44*~~**39.** **Full Protection, Full Support, or Full Maintenance of Designated Beneficial Uses of Water**. Compliance with those levels of water quality criteria listed in Sections 200, 210, 250, 251, 252, 253, and 275 (if applicable) or where no major biological group such as fish, macroinvertebrates, or algae has been modified by human activities significantly beyond the natural range of the reference streams or conditions approved by the Director in consultation with the appropriate basin advisory group. (3-15-02)

~~*45*~~**0.** **Geometric Mean**. The geometric mean of "n" quantities is the "nth" root of the product of the quantities. (7-1-93)

~~*46*~~**1.** **Ground Water**. Subsurface water comprising the zone of saturation. (8-24-94)

~~*47*~~**2.** **Harmonic Mean Flow**. The number of daily flow measurements divided by the sum of the reciprocals of the flows (i.e., the reciprocal of the mean of reciprocals). (8-24-94)

~~*48*~~**3.** **Hazardous Material**. A material or combination of materials which, when discharged in any quantity into state waters, presents a substantial present or potential hazard to human health, the public health, or the environment. Unless otherwise specified, published guides such as Quality Criteria for Water (1976) by EPA, Water Quality Criteria (Second Edition, 1963) by the state of California Water Quality Control Board, their subsequent revisions, and more recent research papers, regulations and guidelines will be used in identifying individual and specific materials and in evaluating the tolerances of the identified materials for the beneficial uses indicated. (7-1-93)

~~*49*~~**4.** **Hydrologic Unit Code (HUC)**. A unique eight (8) digit number identifying a subbasin. A subbasin is a United States Geological Survey cataloging unit comprised of water body units. (4-5-00)

~~*50*~~**45.** **Hydrologically-Based Design Flow**. A statistically derived receiving water design flow based on the selection and identification of an extreme value (e.g., 1Q10, 7Q10). The underlying assumption is that the design flow will occur X number of times in Y years, and limits the number of years in which one or more excursions below the design flow can occur. (8-24-94)

~~*51*~~**46.** **Hypolimnion**. The deepest zone in a thermally-stratified body of water. It is fairly uniform in temperature and lies beneath a zone of water which exhibits a rapid temperature drop with depth of at least one (1) degree C per meter. (3-20-97)

~~*52.* ***Inhibition Concentration 25 (IC 25)****. A point estimate of the toxicant concentration that would cause a twenty-five percent (25%) reduction in a non-lethal biological measurement of the test organisms, such as reproduction or growth. Determined using curve fitting with an assumption of a continuous dose-response relationship. An IC-25 is approximately the analogue of NOEC.* *(8-24-94)*~~

~~***53.*** ***Instantaneous Concentration****. A concentration of a substance measured at any moment (instant) in time.* *(8-24-94)*~~

~~***5***~~**4<u>7</u>. Inter-Departmental Coordination**. Consultation with those agencies responsible for enforcing or administering the practices listed as approved best management practices in Subsection 350.03. (7-1-93)

~~***55***~~**<u>48</u>. Intermittent Waters**. A stream, reach, or water body which has a period of zero (0) flow for at least one (1) week during most years. Where flow records are available, a stream with a 7Q2 hydrologically-based flow of less than one-tenth (0.1) cfs is considered intermittent. Streams with natural perennial pools containing significant aquatic life uses are not intermittent. (4-5-00)

~~***56.*** ***Land Application****. A process or activity involving application of wastewater, surface water, or semi-liquid material to the land surface for the purpose of disposal, pollutant removal, or ground water recharge.* *(8-24-94)*~~

~~***57***~~**<u>49</u>. LC-50**. The toxicant concentration killing fifty percent (50%) of exposed organisms at a specific time of observation (e.g., ninety-six (96) hours). (3-20-97)

~~***58.*** ***License****. A physical document issued by the Idaho Bureau of Occupational Licenses certifying that an individual has met the appropriate qualifications and has been granted the authority to practice in Idaho under the provisions of Chapter 24, Title 54, Idaho Code.* *(4-6-05)*~~

5~~*9*~~<u>0</u>. Load Allocation (LA). The portion of a receiving water's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources. (8-24-94)

~~***60***~~**<u>51</u>. Loading Capacity**. The greatest amount of pollutant loading that a water can receive without violating water quality standards. (8-24-94)

~~***61***~~**<u>52</u>. Lower Water Quality**. A measurable adverse change in a chemical, physical, or biological parameter of water relevant to a beneficial use, and which can be expressed numerically. Measurable change is determined by a statistically significant difference between sample means using standard methods for analysis and statistical interpretation appropriate to the parameter. Statistical significance is defined as the ninety-five percent (95%) confidence limit when significance is not otherwise defined for the parameter in standard methods or practices. (3-20-97)

~~***62***~~**<u>53</u>. Lowest Observed Effect Concentration (LOEC)**. The lowest concentration of a toxicant or an effluent that results in observable adverse effects in the aquatic test population. (8-24-94)

~~***63***~~**<u>54</u>. Man-Made Waterways**. Canals, flumes, ditches, and similar features, constructed for the purpose of water conveyance. (7-1-93)

~~***64***~~**<u>55</u>. Maximum Weekly Maximum Temperature (MWMT)**. The weekly maximum

temperature (WMT) is the mean of daily maximum temperatures measured over a consecutive seven (7) day period. The MWMT is the single highest WMT that occurs during a given year. (3-15-02)

~~6~~56. Milligrams Per Liter (mg/l). Milligrams of solute per liter of solution, equivalent to parts per million, assuming unit density. (7-1-93)

~~66~~57. Mixing Zone. A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. (7-1-93)

~~67~~58. National Pollutant Discharge Elimination System (NPDES). Point source permitting program established pursuant to Section 402 of the federal Clean Water Act. (8-24-94)

~~68~~59. Natural Background Conditions. No measurable change in the physical, chemical, biological, or radiological conditions existing in a water body without human sources of pollution within the watershed. (3-15-02)

6~~9~~0. Nephelometric Turbidity Units (NTU). A measure of turbidity based on a comparison of the intensity of the light scattered by the sample under defined conditions with the intensity of the light scattered by a standard reference suspension under the same conditions. (8-24-94)

~~70~~61. Nonpoint Source Activities. Activities on a geographical area on which pollutants are deposited or dissolved or suspended in water applied to or incident on that area, the resultant mixture being discharged into the waters of the state. Nonpoint source activities on ORWs do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments. Nonpoint sources activities include, but are not limited to: (3-20-97)

a. Irrigated and nonirrigated lands used for: (7-1-93)

i. Grazing; (7-1-93)

ii. Crop production; (7-1-93)

iii. Silviculture; (7-1-93)

b. Log storage or rafting; (7-1-93)

c. Construction sites; (7-1-93)

d. Recreation sites; (3-20-97)

e. Septic tank disposal fields. (8-24-94)

f. Mining; (3-20-97)

g. Runoff from storms or other weather related events; and (3-20-97)

h. Other activities not subject to regulation under the federal national pollutant discharge elimination system. (3-20-97)

~~***71. No-Observed-Adverse-Effect-Level (NOAEL)****. A threshold dose of a toxic substance or an effluent below which no adverse biological effects are observed, as identified from chronic or subchronic human epidemiology studies or animal exposure studies.* ***(8-24-94)***~~

~~***72. No-Observed-Effect-Concentration (NOEC)****. The highest concentration of a toxic substance or an effluent at which no adverse effects are observed on the aquatic test organisms. Determined using hypothesis testing with the assumption of a noncontinuous threshold model of the dose-response relationship.*** ***(8-24-94)***~~

~~***73***~~**62. Nuisance**. Anything which is injurious to the public health or an obstruction to the free use, in the customary manner, of any waters of the state. (7-1-93)

~~***74***~~**63. Nutrients**. The major substances necessary for the growth and reproduction of aquatic plant life, consisting of nitrogen, phosphorus, and carbon compounds. (7-1-93)

~~***75***~~**64. One Day Minimum**. The lowest daily instantaneous value measured. (3-20-97)

~~***7***~~**65. One Hour Average**. The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of one (1) hour. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the one-hour period may be needed to obtain a more representative mean. (3-20-97)

~~***77. Operating-Personnel****. Any person who is employed, retained, or appointed to make system control or system integrity decisions about water quantity or water quality that may affect public health as part of the tasks conducted with the day-to-day operation and maintenance of a public wastewater system.*** ***(4-6-05)***~~

~~***78***~~**66. Operator**. For purposes of Sections 851 and 852, any person presently or who was at any time during a release in control of, or having responsibility for, the daily operation of the petroleum storage tank (PST) system. (4-2-03)

~~***79***~~**67. Outstanding Resource Water (ORW)**. A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been designated by the legislature and subsequently listed in this chapter. ORW constitutes an outstanding national or state resource that requires protection from point and nonpoint source activities that may lower water quality. (3-20-97)

~~***80***~~**68. Outstanding Resource Water Mixing Zone**. An area or volume of an ORW where pollutants are allowed to mix with the ORW receiving water at a location distinct from the sampling point where compliance with ORW quality standards is measured. An ORW mixing zone will be downstream from the discharge of a tributary or a segment immediately upstream

which contains man caused pollutants as a result of nonpoint source activities occurring on that tributary or segment. As a result of the discharge, the mixing zone may not meet all water quality standards applicable to the ORW, but shall still be protected for existing beneficial uses. The Department, after consideration of input from interested parties, will determine the size, configuration and location of mixing zones which are necessary to meet the requirements of this chapter. (7-1-93)

***~~81~~*69. Owner**. For purposes of Sections 851 and 852, any person who owns or owned a petroleum storage tank (PST) system any time during a release and the current owner of the property where the PST system is or was located. (4-2-03)

~~***82. Owner of Public Wastewater System**. For purposes of Sections 403 through 405, the person, company, corporation, district, association or other organizational entity which holds legal title to the public wastewater system, and who provides, or intends to provide wastewater service to system users and is ultimately responsible for the public wastewater system operation. (4-6-05)***~~

***~~83~~*70. Person**. An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, which is recognized by law as the subject of rights and duties. (3-20-97)

***~~84~~*71. Petroleum Products**. Products derived from petroleum through various refining processes. (7-1-93)

***~~85~~*72. Petroleum Storage Tank (PST) System**. Any one (1) or combination of storage tanks or other containers, including pipes connected thereto, dispensing equipment, and other connected ancillary equipment, and stationary or mobile equipment, that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. (7-1-93)

***~~86~~*73. Point Source**. Any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (7-1-93)

***~~8~~*74. Pollutant**. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged to water in excessive quantities, cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities. (3-20-97)

~~***88. Potable Water**. A water which is free from impurities in such amounts that it is safe for human consumption without treatment. (7-1-93)***~~

~~***89.*** ***Primary Treatment****. Processes or methods that serve as the first stage treatment of wastewater, intended for removal of suspended and settleable solids by gravity sedimentation; provides no changes in dissolved and colloidal matter in the sewage or wastes flow.*~~ ~~*(7-1-93)*~~

~~***90***~~**75.** **Project Plans**. Documents which describe actions to be taken under a proposed activity. These documents include environmental impact statements, environmental assessments, and other land use or resource management plans. (7-1-93)

~~***91.*** ***Public Wastewater System or Wastewater System****. For purposes of Sections 403 through 405, a public wastewater system means those systems, including collection systems and treatment systems, that are owned by a city, county, state or federal unit of government, a non profit corporation, district, association, political subdivision or other public entity, or that generate or collect two thousand five hundred (2,500) or more gallons a day; or that have been constructed in whole or in part with public funds. This does not include any wastewater treatment system operated and maintained exclusively by a single family residence or any wastewater system consisting solely of a gravity flow, non-mechanical septic tank and subsurface treatment and distribution system, any animal waste system used for agricultural purposes that have been constructed in part or whole by public funds, or industrial wastewater systems under private ownership.*~~ ~~*(4-6-05)*~~

~~***92***~~**76.** **Receiving Waters**. Those waters which receive pollutants from point or nonpoint sources. (7-1-93)

~~***93.*** ***Recharge****. The process of adding water to the zone of saturation.*~~ ~~*(7-1-93)*~~

~~***94.*** ***Recharge Water****. Water that is specifically utilized for the purpose of adding water to the zone of saturation.*~~ ~~*(7-1-93)*~~

~~***95***~~**77.** **Reference Stream or Condition**. A water body which represents the minimum conditions necessary to fully support the applicable designated beneficial uses as further specified in these rules, or natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin. In highly mineralized areas or in the absence of such reference streams or water bodies, the Director, in consultation with the basin advisory group and the technical advisors to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported. (3-20-97)

~~***96***~~**78.** **Release**. Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. (8-24-94)

~~***97***~~**9.** **Resident Species**. Those species that commonly occur in a site including those that occur only seasonally or intermittently. This includes the species, genera, families, orders, classes, and phyla that: (8-24-94)

a. Are usually present at the site; (8-24-94)

b. Are present only seasonally due to migration; (8-24-94)

c. Are present intermittently because they periodically return or extend their ranges into the site; (8-24-94)

d. Were present at the site in the past but are not currently due to degraded conditions, and are expected to be present at the site when conditions improve; and (8-24-94)

e. Are present in nearby bodies of water but are not currently present at the site due to degraded conditions, and are expected to be present at the site when conditions improve. (8-24-94)

~~***98.*** ***Responsible Charge (RC)****. For purposes of Sections 403 through 413, responsible charge means, active, daily on-site and/or on-call responsibility for the performance of operations or active, on-going, on-site and/or on-call direction of employees and assistants.* *(4-2-03)*~~

~~***99.*** ***Responsible Charge Operator****. For purposes of Sections 403 through 405, a responsible charge operator is an operator licensed at a class equal to or greater than the classification of the system and who has been designated by the system owner to have direct supervision of and responsibility for the performance of operations of a specified wastewater treatment system(s) or wastewater collection system(s) and the direction of personnel employed or retained at the same system. The responsible charge operator has an active daily on-site and/or on-call presence at the specified facility.* *(4-6-05)*~~

~~***10***~~**80. Responsible Persons in Charge**. Any person who: (8-24-94)

a. By any acts or omissions, caused, contributed to or exacerbated an unauthorized release of hazardous materials; (8-24-94)

b. Owns or owned the facility from which the unauthorized release occurred and the current owner of the property where the facility is or was located; or (8-24-94)

c. Presently or who was at any time during an unauthorized release in control of, or had responsibility for, the daily operation of the facility from which an unauthorized release occurred. (8-24-94)

~~***101.*** ***Saturated Zone****. Zone or layer beneath the earth's surface in which all of the pore spaces of rock or soil are filled with water.* *(7-1-93)*~~

~~***102.*** ***Secondary Treatment****. Processes or methods for the supplemental treatment of wastewater, usually following primary treatment, to affect additional improvement in the quality of the treated wastes by biological means of various types which are designed to remove or modify organic matter.* *(7-1-93)*~~

~~***103***~~**81. Seven Day Mean**. The average of the daily mean values calculated over a period of seven (7) consecutive days. (3-20-97)

~~***104***~~**82. Sewage**. The water-carried human or animal waste from residences, buildings,

industrial establishments or other places, together with such ground water infiltration and surface water as may be present. (8-24-94)

~~*105*~~**83. Short-Term or Temporary Activity**. An activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the Director. Short-term or temporary activities include, but are not limited to, those activities described in Subsection 080.02. (3-20-97)

~~*106*~~**84. Silviculture**. Those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber. (3-20-97)

~~*107*~~**85. Sludge**. The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. (7-1-93)

~~*10*~~**86. Special Resource Water**. Those specific segments or bodies of water which are recognized as needing intensive protection: (7-1-93)

a. To preserve outstanding or unique characteristics; or (7-1-93)

b. To maintain current beneficial use. (7-1-93)

~~*109*~~**87. Specialized Best Management Practices**. Those practices designed with consideration of geology, land type, soil type, erosion hazard, climate and cumulative effects in order to fully protect the beneficial uses of water, and to prevent or reduce the pollution generated by nonpoint sources. (3-3-87)

~~*110*~~**88. State**. The state of Idaho. (7-1-93)

~~*111*~~**89. State Water Quality Management Plan**. The state management plan developed and updated by the Department in accordance with Sections 205, 208, and 303 of the Clean Water Act. (3-20-97)

~~***112.*** ***Steady-State Model****. A fate and transport model that uses constant values of input variables to predict constant values of receiving water quality concentrations. (8-24-94)*~~

~~***113.*** ***Substitute Responsible Charge Operator****. A public wastewater operator holding a valid license at a class equal to or greater than the public wastewater system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. (4-6-05)*~~

~~***114.*** ***Subsurface Disposal****. Disposal of effluent below ground surface, including, but not limited to, drainfields or sewage beds. (7-1-93)*~~

~~115~~**90. Suspended Sediment**. Organic and inorganic particulate matter which has been removed from its site of origin and measured while suspended in surface water. (7-1-93)

~~116~~**91. Technology-Based Effluent Limitation**. Treatment requirements under Section 301(b) of the Clean Water Act that represent the minimum level of control that must be imposed in a permit issued under Section 402 of the Clean Water Act. (8-24-94)

~~117~~**92. Total Maximum Daily Load (TMDL)**. The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, and natural background. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. (8-24-94)

~~118~~**93. Toxicity Test**. A procedure used to determine the toxicity of a chemical or an effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent. (8-24-94)

~~11~~**94. Toxic Substance**. Any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the State and upon exposure, ingestion, inhalation or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic substances include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by EPA pursuant to Section 307(a) of the federal Clean Water Act. (8-24-94)

~~120~~**95. Treatment**. A process or activity conducted for the purpose of removing pollutants from wastewater. (7-1-93)

~~121~~**96. Treatment System**. Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishing thereof and their appurtenances. A treatment system may also be known as a treatment facility. ~~*This definition does not apply to Sections 403 through 413.*~~ ~~*(4-2-03)*~~(____)

~~***122. Trihalomethane (THM)****. THM means one of the family of organic compounds named as derivatives of methane, wherein three (3) of the four (4) hydrogen atoms in the molecular structure of methane are substituted by one (1) of the chemical elements chlorine, bromine or iodine.*~~ ~~*(7-1-93)*~~

~~123~~**97. Twenty-Four Hour Average**. The mean of at least two (2) appropriately spaced measurements, as determined by the Department, calculated over a period of twenty-four (24) consecutive hours. When three (3) or more measurements have been taken, and if any measurement is greater or less than five-tenths (0.5) times the mean, additional measurements over the twenty-four (24)-hour period may be needed to obtain a more representative mean. (3-20-97)

~~*124*~~**98. Unique Ecological Significance**. The attribute of any stream or water body which is inhabited or supports an endangered or threatened species of plant or animal or a species of special concern identified by the Idaho Department of Fish and Game, which provides anadromous fish passage, or which provides spawning or rearing habitat for anadromous or desirable species of lake dwelling fishes. (8-24-94)

~~*125.* ***User****. Any person served by a public wastewater system.* *(4-2-03)*~~

~~*126*~~**99. Wasteload Allocation (WLA)**. The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. (8-24-94)

1~~*27*~~00. Wastewater. Unless otherwise specified, sewage, industrial waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present. (7-1-93)

~~*128.* ***Wastewater Collection System Operator****. The person who is employed, retained, or appointed to conduct the tasks associated with routine day to day operation and maintenance of a public wastewater collection system in order to safeguard the public health and environment.* *(4-2-03)*~~

~~*129.* ***Wastewater Treatment Operator****. The person who is employed, retained, or appointed to conduct the tasks associated with routine day to day operation and maintenance of a public wastewater treatment system in order to safeguard the public health and environment.* *(4-2-03)*~~

1~~*3*~~01. Water Body Unit. Includes all named and unnamed tributaries within a drainage and is considered a single unit unless designated otherwise. (4-5-00)

1~~*31*~~02. Water Pollution. Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. (8-24-94)

1~~*32*~~03. Water Quality-Based Effluent Limitation. An effluent limitation that refers to specific levels of water quality that are expected to render a body of water suitable for its designated or existing beneficial uses. (8-24-94)

1~~*33*~~04. Water Quality Limited Water Body. After monitoring, evaluation of required pollution controls, and consultation with the appropriate basin and watershed advisory groups, a water body identified by the Department, which does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards after the application of required pollution controls. A water body identified as water quality limited shall require the development of a TMDL or other equivalent process in accordance with Section 303 of the Clean Water Act and Sections 39-3601 et seq., Idaho Code. (3-20-97)

1~~*34*~~05. Waters And Waters Of The State. All the accumulations of water, surface and

underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (7-1-93)

1~~35~~06. Watershed. The land area from which water flows into a stream or other body of water which drains the area. (3-20-97)

1~~36~~07. Watershed Advisory Group. An advisory group appointed by the Director, with the advice of the appropriate Basin Advisory Group, which will recommend to the Department those specific actions needed to control point and nonpoint sources of pollution affecting water quality limited water bodies within the watershed. Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed, along with representatives of local government and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it. (3-20-97)

1~~37~~08. Whole-Effluent Toxicity. The aggregate toxic effect of an effluent measured directly with a toxicity test. (8-24-94)

(BREAK IN CONTINUITY OF SECTIONS)

070. APPLICATION OF STANDARDS.

01. Multiple Criteria. In the application of the use designation, the most stringent criterion of a multiple criteria applies. (4-5-00)

02. Application of Standards to Nonpoint Source Activities. The application of water quality standards to nonpoint source activities shall be in accordance with Section 350. (7-1-93)

03. Application of Standards to Point Source Discharges. The application of water quality standards to point source discharges shall be in accordance with Sections 400 ~~*through 402, 420 and 440*~~ and 401. ~~*(7-1-93)*~~( )

04. Applicability of Gas Supersaturation Standard. The application of gas supersaturation standard shall be in accordance with Section 300. (4-5-00)

05. Mixing Zones. The application of water quality standards to mixing zones shall be in accordance with Section 060. (7-1-93)

06. Application of Standards to Intermittent Waters. Numeric water quality standards only apply to intermittent waters during optimum flow periods sufficient to support the uses for which the water body is designated. For recreation, optimum flow is equal to or greater than five (5) cubic feet per second (cfs). For aquatic life uses, optimum flow is equal to or greater than one (1) cfs. (3-30-01)

07. Temperature Criteria. In the application of temperature criteria, the Director may, at his discretion, waive or raise the temperature criteria as they pertain to a specific water body. Any such determination shall be made consistent with 40 CFR 131.11 and shall be based on a finding that the designated aquatic life use is not an existing use in such water body or would be fully supported at a higher temperature criteria. For any determination, the Director shall, prior to making a determination, provide for public notice and comment on the proposed determination. For any such proposed determination, the Director shall prepare and make available to the public a technical support document addressing the proposed modification. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

400. RULES GOVERNING POINT SOURCE DISCHARGES.

01. Implementation Policy. (7-1-93)

a. As provided for in Subsection 080.01, and Sections 200, 210, 250, 251, 252, 253, 275, and 400 for point source discharges, failure to meet general or specific water quality criteria is a violation of the water quality standards. (4-5-00)

b. Except as noted in Section 400, no new point source can discharge pollutants, and no existing point source can increase its discharge of pollutants above the design capacity of its existing wastewater treatment facility, to any water designated as a special resource water or to a tributary of, or to the upstream segment of a special resource water: if pollutants significant to the designated beneficial uses can or will result in a reduction of the ambient water quality of the receiving special resource water as measured immediately below the applicable mixing zone. (8-24-94)

c. ~~*For those point sources that normally require authorization, n*~~No unauthorized discharge from a point source shall occur to waters of the state. ~~*(8-24-94)*~~(____)

02. Limitations to Point Source Restrictions. (7-1-93)

a. So long as a point source discharge or wastewater treatment facility is regulated by the terms and conditions of an authorization pursuant to Subsection 080.02, a Board order, decree or compliance schedule, *or* a valid NPDES permit issued by the EPA, ~~*or is subject to the provisions of Subsection 401.05,*~~ the discharge or facility will not be subject to additional restrictions or conditions based on Subsections 080.01, or 400.01.b. and Sections 200, 210, 250, 251, 252, and 253. ~~*(4-5-00)*~~(____)

b. The restrictions set forth in Subsection 400.01.b. are modified as follows: New point sources can discharge, and existing point sources can increase its discharge above the design capacity of its existing wastewater treatment facility, resulting in increases in water temperatures and fluoride concentrations up to levels needed to protect designated beneficial uses in the Boise River between the bridge at Broadway Avenue and River Mile 50 (through Veteran's State Park). (4-5-00)

03. Compliance Schedules for Water Quality-Based Effluent Limitations. Discharge permits for point sources may incorporate compliance schedules which allow a discharger to phase in, over time, compliance with water quality-based effluent limitations when new limitations are in the permit for the first time. (3-15-02)

04. Wetlands Used for Wastewater Treatment. (8-24-94)

a. Waters contained within wetlands intentionally created from non-wetland sites for the purpose of wastewater or stormwater treatment, and operated in compliance with NPDES permit conditions, shall not be subject to the application of general water quality-based or site-specific criteria and standards. (8-24-94)

b. Waters contained within wetlands intentionally created from non-wetland sites for the purpose of treatment of nonpoint sources of pollution, and operated in compliance with best management practices, shall not be subject to the application of general water quality-based or site specific criteria and standards. (8-24-94)

c. Discharges from treatment systems described in Sections 400.04.a. and 400.04.b. to waters of the state are subject to all applicable rules and requirements governing such discharges. (8-24-94)

05. Flow Tiered NPDES Permit Limitations. Discharge permits for point sources discharging to waters exhibiting unidirectional flow may incorporate tiered limitations for conventional and toxic constituents at the discretion of the department. (8-24-94)

401. POINT SOURCE WASTEWATER TREATMENT REQUIREMENTS.

~~***01. Appropriate Control Measures****. The Department, through approval or disapproval of plans for wastewater treatment and disposal facilities, the issuance of wastewater discharge permits, orders, compliance schedules, directives or any of the mechanisms at its disposal, will require persons to apply appropriate control measures necessary to achieve and maintain the water quality standards contained herein. (7-1-93)***~~

~~***02. Degree of Treatment****. The degree of wastewater treatment required to restore and maintain the standards of quality will be determined in each instance by the Department, based upon the following: (7-1-93)***~~

~~***a.*** *The uses which are made or desired of the receiving water; (7-1-93)***~~

~~***b.*** *The volume and nature of flow of the receiving water; (7-1-93)***~~

~~***c.*** *The quantity and quality of the wastewater to be treated; and (7-1-93)***~~

~~***d.*** *The presence or absence of other sources of water pollution on the same watershed, stream segment or aquifer. (7-1-93)***~~

~~***03. Treatment Requirements****.*~~ Unless more stringent limitations are necessary to meet

the applicable requirements of Sections 200 through 300, or unless specific exemptions are made pursuant to Subsection 080.02 ~~*or 401.05*~~, wastewaters discharged into surface waters of the state must have the following characteristics: ~~*(7-1-93)*~~(____)

~~*a*~~**01.** **Temperature**. The wastewater must not affect the receiving water outside the mixing zone so that:

(7-1-93)

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

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

~~*iii*~~**c.** If the water is designated for warm water aquatic life, the induced variation is more than plus two (+2) degrees C. (3-15-02)

~~*iv*~~**d.** If the water is designated for cold water aquatic life, seasonal cold water aquatic life, or salmonid spawning, the induced variation is more than plus one (+1) degree C. (3-15-02)

~~*v*~~**e.** If temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge due to natural background conditions, then Subsections ~~*401.03.a.iii.*~~ *401.01.c.* and ~~*401.03.a.iv.*~~ *401.01.d.* do not apply and instead wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C.

~~*(3-15-02)*~~(____)

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

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

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

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

~~***04. Limitations on Increased Treatment Requirements****. In spite of any other provision and future amendment of these regulations, any point source treatment facility whose construction began after June 28, 1973, which was designed to meet federal and state requirements and which was constructed to the full satisfaction of the Department, will not be subject to any more stringent requirements or limitations as can be imposed by the Department during a ten (10) year period beginning on the date of completion of such construction except:*~~

~~*(7-1-93)*~~

~~***a.*** *In conformance with contractual agreements made with the Department, in which*~~

~~*case the date of completion of those agreements would establish the beginning of the ten (10) year period;* *(7-1-93)*~~

~~***b.*** *When facility expansion, production increase, or process modification would alter the composition of the discharge or exceed the design capacity of the treatment facility; or* *(7-1-93)*~~

~~***c.*** *When a component or a concentration of a component in the discharge is later found to be causing or to be capable of causing significant injury to a designated beneficial use.* *(8-24-94)*~~

~~***05.*** ***Exceptions to Treatment Requirements****. Exceptions to treatment requirements can be granted on a case-by-case basis when it can be demonstrated by the person requesting the exceptions:* *(7-1-93)*~~

~~***a.*** *That such exceptions will not seriously affect existing water quality and uses are adequately protected;* *(7-1-93)*~~

~~***b.*** *That the treatment requirement is:* *(7-1-93)*~~

~~*i.* *Unreasonable with current applicable technology; or* *(7-1-93)*~~

~~*ii.* *Economically prohibitive; or* *(7-1-93)*~~

~~***c.*** *That treatment to a lesser degree would result in a net improvement in the water quality of the receiving water.* *(7-1-93)*~~

~~***06.*** ***Operation****. Any person who owns or operates any sewage or other wastewater treatment facility must at all times:* *(7-1-93)*~~

~~***a.*** *Insure that such facility is operated under competent supervision and with the highest efficiency that can reasonably be expected; and* *(7-1-93)*~~

~~***b.*** *Maintain such facility in good repair.* *(7-1-93)*~~

~~***07.*** ***Treatment Records****. Any person who owns or operates any facility or carries out any operation which results in the discharge of wastewater must furnish to the Department such information concerning quality and quantity of discharged wastewaters and maintain such treatment records as the Department requires to evaluate the effects of any receiving waters. Required information can include, but is not limited to:* *(7-1-93)*~~

~~***a.*** *Treated wastewater discharge volumes; and* *(7-1-93)*~~

~~***b.*** *Treated wastewater discharge BOD; and* *(7-1-93)*~~

~~***c.*** *Treated wastewater discharge suspended solid concentration; and* *(7-1-93)*~~

~~***d.*** *Discharge pH; and* *(7-1-93)*~~

~~***c.*** *Discharge temperatures.* *(7-1-93)*~~

~~***08.*** ***Falsification of Records****. It is a violation of these regulations for any person to falsify or knowingly render inaccurate any treatment record which can be required as provided in these regulations.* *(7-1-93)*~~

~~***402.*** ***REVIEW OF PLANS FOR WASTE TREATMENT FACILITIES.***~~
~~*"Recommended Standards for Sewage Works" by the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers, and all applicable laws, rules, regulations and standards will be used as guides in the review of plans and specifications for waste treatment facilities.* *(7-1-93)*~~

~~***01.*** ***Plan and Specification Approval Required****. The construction, alteration or expansion of any sewage treatment system or other wastewater treatment or disposal facility must not begin before plans and specifications for the proposed facility have been submitted to and approved by the Department, except as provided in Subsection 402.03.* *(7-1-93)*~~

~~***02.*** ***Professional Engineer****. Plans and specifications for construction, alteration or expansion of any publicly owned sewage wastewater treatment facility shall be prepared by or under the supervision of a registered professional engineer and shall bear the imprint of the engineer's seal. Construction shall be inspected by a registered professional engineer or a person under the supervision of a registered professional engineer.* *(7-1-93)*~~

~~***03.*** ***Deviations From Approved Plans****. No deviations are to be made from the approved plans and specifications without prior approval of the Department.* *(7-1-93)*~~

~~***04.*** ***As Constructed Plans and Specifications****. If actual construction deviates from the approved plans and specifications, complete and accurate plans and specifications depicting the actual construction, alteration, or modification performed, shall be submitted to the Department for review and approval within thirty (30) days of completion of construction.* *(7-1-93)*~~

~~***05.*** ***Waiver of Approval Requirement****. The Department can waive the plan and specification approval required in Subsection 402.01 for any particular facility or category of facilities which will have no significant impact on the environment or on the public health.* *(7-1-93)*~~

~~***403.*** ***CLASSIFICATION OF WASTEWATER SYSTEMS.***~~

~~***01.*** ***Classification Requirement****. All public wastewater systems shall be classified based on indicators of potential health risks.* *(4-6-05)*~~

~~***a.*** *Classification rating forms developed in accordance with the criteria in Subsection 403.02 must be completed by the public wastewater system owner or designee for every public wastewater treatment system and wastewater collection system no later than July 1, 2008. Public wastewater treatment and wastewater collection system owners or designee shall submit additional classification rating forms at five (5) year intervals detailing existing conditions.* *(4-6-05)*~~

~~***b.*** *The Department shall review system classification rating forms submitted by the public wastewater treatment and wastewater collection system owners at five (5) year intervals and classify the systems to reflect the condition at the time of the initial classification, or changed conditions, if any, on subsequent submittals.* *(4-6-05)*~~

~~***02.*** ***Classification Criteria****. Public wastewater treatment systems and wastewater collection systems shall be classified under a system that uses the following criteria:* *(4-2-03)*~~

~~***a.*** *Complexity, size, volume and variability in raw waste for treatment systems using guidelines established by the Department.* *(4-2-03)*~~

~~***b.*** *Complexity or size of collection systems.* *(4-2-03)*~~

~~***c.*** *Other criteria deemed necessary to completely classify systems.* *(4-2-03)*~~

~~***404. WASTEWATER SYSTEM OPERATOR LICENSURE REQUIREMENTS.***~~

~~***01.*** ***System Operator Licensure Requirement****. Owners of all public wastewater systems must place the direct supervision of their wastewater system(s), including each treatment system and each collection system, under the responsible charge of an operator who holds a valid license equal to or greater than the classification of the wastewater treatment system and collection system. An operator in responsible charge of both a wastewater treatment system and a collection system shall hold two (2) licenses, one (1) for wastewater treatment and one (1) for collection. Owners shall notify the Department in writing of any change of responsible charge or substitute responsible charge operator within ten (10) days of such change.* *(4-6-05)*~~

~~***02.*** ***Responsible Charge Operator License Requirement****. An operator in responsible charge of a public wastewater system in Idaho must hold a valid license equal to or greater than the classification of the wastewater system(s), including each treatment system, where present, and each collection system as determined by the Department.* *(4-6-05)*~~

~~***03.*** ***Substitute Responsible Charge Operator****. At such times as the responsible charge operator is not available, a substitute responsible charge operator shall be designated to replace the responsible charge operator.* *(4-2-03)*~~

~~***04.*** ***Wastewater Operator Licensure****. All other operating personnel at public wastewater systems including each treatment system and collection system must hold a valid license.* *(4-6-05)*~~

~~***05.*** ***Compliance Deadline****. All public wastewater systems addressed in these rules shall be in compliance with these rules by April 15, 2006.* *(4-2-03)*~~

~~***06.*** ***Qualifications For Operator Licensure****. All wastewater operating personnel, including responsible charge and substitute responsible charge operators, must qualify for and hold a valid license issued by the Idaho Bureau of Occupational Licenses.* *(4-6-05)*~~

~~***405. CONTRACTING FOR SERVICES.***~~
~~*Public wastewater systems may contract with a licensed public wastewater system operator or*~~

~~*with a public wastewater system having licensed operators to provide supervision. The contracted public wastewater system operator or contracted entity shall employ an operator licensed at the grade equal to or greater than the classification of the system.* *(4-6-05)*~~

~~***406. – 419. (RESERVED).***~~

~~***420. POINT SOURCE SEWAGE WASTEWATER DISCHARGE RESTRICTIONS.***~~
~~*All provisions and requirements of Sections 400, 401, and 402 are applicable to sewage wastewater treatment facilities and their discharges.* *(8-24-94)*~~

~~***01. General Treatment Requirements****. Except as provided in Subsections 420.02 and 420.03, sewage wastewater discharges, except those from lagoon or trickling filter facilities, into surface waters of the state must have the following characteristics:* *(7-1-93)*~~

~~***a.*** *BOD – the equivalent of eighty-five percent (85%) removal of the biochemical oxygen demand, but not more than a thirty (30) day average concentration of thirty (30) mg/l; and* *(7-1-93)*~~

~~***b.*** *Suspended Solids – the equivalent of eighty-five percent (85%) removal of the suspended solids, but not more than a thirty (30) day average concentration of thirty (30) mg/l.* *(7-1-93)*~~

~~***02. Alternative Treatment Requirements****. The following alternative treatment requirements are established to apply to facilities which provide at least sixty-five percent (65%) BOD removal using a trickling filter or lagoon as the principal treatment process, and which the Department determines cannot consistently achieve requirements of Subsections 420.01.a. and 420.01.b.* *(7-1-93)*~~

~~***a.*** *Sewage wastewater discharges from facilities using trickling filters as the principal treatment process must have the following characteristics:* *(7-1-93)*~~

~~*i. BOD – not to exceed a thirty (30) day average concentration of forty-five (45) mg/l; and* *(7-1-93)*~~

~~*ii. Suspended Solids – at least sixty-five percent (65%) removal and not to exceed a thirty (30) day average concentration of forty-five (45) mg/l.* *(7-1-93)*~~

~~***b.*** *Sewage wastewater discharges from facilities using lagoons as the principal treatment process must have the following characteristics:* *(7-1-93)*~~

~~*i. BOD – not to exceed a thirty (30) day average concentration of forty-five (45) mg/l; and* *(7-1-93)*~~

~~*ii. Suspended Solids – not to exceed a thirty (30) day average concentration of seventy (70) mg/l.* *(7-1-93)*~~

~~***03. Adjusted Treatment Requirements for Industrial Loading****. The Department may proportionally adjust, on a case-by-case basis, the treatment requirements of Subsection 401.03*~~

~~*or 401.05 where industrial waste loadings contribute greater than ten percent (10%) of the design flow or loading into a publicly owned sewage treatment facility.* *(7-1-93)*~~

~~***04. Determining the Necessity for Disinfection of Sewage Wastewater Treatment Plant Effluent***. *(8-24-94)*~~

~~***a.*** *Disinfection of sewage treatment plant effluent shall be required when discharged to a water body under the following conditions:* *(8-24-94)*~~

~~*i.* *The water body receiving the effluent flows through a significantly populated area or has a designated or existing beneficial use of primary contact recreation.* *(8-24-94)*~~

~~*ii.* *The water body receiving the effluent is a direct tributary to a water body that flows through a significantly populated area or has a designated or existing beneficial use of primary contact recreation and disinfection is necessary to protect public health.* *(8-24-94)*~~

~~*iii.* *Site-specific conditions warrant disinfection for the protection of public health.* *(8-24-94)*~~

~~***b.*** *The need for disinfection of sewage wastewater treatment plant effluent where treatment consists of lagoons with at least thirty (30) day retention time shall be evaluated on a case-by-case basis.* *(8-24-94)*~~

~~***05. Disinfection Requirements for Sewage Wastewater Treatment Plant Effluent***. *When disinfection is determined to be required under Subsection 420.04, sewage wastewater treatment plant effluent must receive adequate disinfection by any disinfection process which satisfies the following applicable criteria, prior to discharge to any receiving water.* *(8-24-94)*~~

~~***a.*** *E. coli concentrations in secondary treated effluent must not exceed a geometric mean of one hundred and twenty-six (126) colonies per one hundred (100) milliliters based on a minimum of five (5) samples taken every three (3) to five (5) days over a thirty-day (30) period. A single sample must not exceed four hundred and six colonies per one hundred milliliters (406 colonies per 100 ml).* *(3-15-02)*~~

~~*i.* *The samples must be representative of all samples collected during the month; and* *(3-15-02)*~~

~~*ii.* *Geometric mean computations must be calculated and recorded monthly.* *(3-15-02)*~~

~~***b.*** *On an interim basis, pending the addition of secondary treatment, E. coli concentrations in primary effluent must not exceed a geometric mean of two hundred and fifty-two (252) colonies per one hundred (100) milliliters based on a minimum of five (5) samples taken every three (3) to five (5) days over a thirty-day (30) period. A single sample must not exceed eight hundred and twelve colonies per one hundred milliliters (812 colonies per 100 ml).* *(3-15-02)*~~

~~*i.* *The samples must be representative of all samples collected during the month;*~~

~~*(3-15-02)*~~

~~*ii. Geometric mean computations must be calculated and recorded monthly; and (3-15-02)*~~

~~*iii. This discharge bacteria level will not be permitted even on an interim basis where the bacteria receiving water quality standard is not being met. (3-15-02)*~~

~~***06. Chlorine Contact Tank Requirements****. Chlorine contact tanks providing disinfection must be designed and operated so that: (7-1-93)*~~

~~***a.*** *Short circulating is minimized with thorough mixing of chlorine and waste flow; (7-1-93)*~~

~~***b.*** *Floatable and settleable solids are removed without discharging unchlorinated effluent; and\ (7-1-93)*~~

~~***c.*** *Unit drains are not discharged into the treated wastewater outfall. (7-1-93)*~~

~~***421. 439. (RESERVED).***~~

~~***440. POINT SOURCE NON-SEWAGE WASTEWATER DISCHARGE RESTRICTIONS.***~~
~~*All provisions and requirements of Section 440 are applicable to non-sewage wastewater treatment facilities and their discharges. (7-1-93)*~~

~~***01. Treatment Requirements****. Non-sewage wastewaters discharged into surface waters of the state shall, prior to discharge, be treated to the extent necessary to be consistent with applicable limitations and guidelines published by the Administrator of the EPA in compliance with the Clean Water Act of 1977, as amended (33 USC 1251, et seq.). (7-1-93)*~~

~~***02. Disinfection of Non-Sewage Wastewaters****. Non-sewage wastewaters discharged into waters of the state, prior to discharge, will be disinfected if they contain or if they might contain pathogenic organisms in concentrations capable of threatening actual or designated uses. (7-1-93)*~~

~~***441. 459. (RESERVED).***~~

~~***460. SUBSURFACE SEWAGE OR WASTE DISPOSAL.***~~
~~*Subsurface sewage or wastewater disposal facilities must be designed and located so that pollutants cannot be reasonably expected to enter water of the state in concentrations resulting in injury to beneficial uses. (8-24-94)*~~

~~***461. 479. (RESERVED).***~~

~~***480. WASTE DISPOSAL AND INJECTION WELLS.***~~
~~*The construction and operation of wastewater injection wells within the state are regulated by the Idaho Department of Water Resources. (7-1-93)*~~

~~***481. – 599. (RESERVED).***~~

~~***600. LAND APPLICATION OF WASTEWATER(S) OR RECHARGE WATERS.***~~
~~*Land application of wastewater or recharge waters is subject to the following requirements:* *(11-20-87)*~~

~~***01. Land Application Permit****. Idaho Department of Environmental Quality Rules, Title 01, Chapter 17, "Land Application Permit Rules," require a permit prior to land application of certain types of wastewater.* *(11-20-87)*~~

~~***02. Applied Waters Restricted to Premises****. Wastewater(s) or recharge waters applied to the land surface must be restricted to the premises of the application site unless permission has been obtained from the Department authorizing a discharge into the waters of the state.* *(7-1-93)*~~

~~***03. Hazard or Nuisance Prohibited****. Wastewaters must not create a public health hazard or a nuisance condition.* *(7-1-93)*~~

~~***04. Monitoring****. Provision must be made for monitoring the quality of the ground water in proximity of the application site. The ground water monitoring program is subject to approval by the Department. All data and reports resulting from the ground water monitoring program must be submitted to the Department upon request. The minimum frequency of monitoring and data submittal will be determined by the Department and in general will be dependent upon:* *(8-24-94)*~~

~~***a.*** *The nature and volume of wastewater material or recharge water;* *(7-1-93)*~~

~~***b.*** *The frequency and duration of application; and* *(7-1-93)*~~

~~***c.*** *The characteristics of the soil mantle on and lithology underlying the application site.* *(7-1-93)*~~

~~***05. Basis for Evaluation****. The evaluation for an approval to irrigate, either by sprinkling or flooding or surface spreading of wastewater material or by burying wastewater material or recharge water in the upper soil horizon as a method of treatment, must include, but will not necessarily be limited to, consideration of the following items:* *(7-1-93)*~~

~~***a.*** *The type and quantity of wastewater(s) proposed for land application. In general, the wastewater(s) organic constituents are to be biologically degradable and inorganic constituents must be utilized by vegetation or those organisms normally present in the soil. Other wastewater(s) or recharge waters will be considered provided it can be shown that land application will not adversely affect beneficial uses of waters of the state.* *(7-1-93)*~~

~~***b.*** *The nature of the soils and geologic formations underlying the application site. The entity proposing the activity must provide reasonable assurance that the soils and site geology will provide the required level of treatment and will not allow movement of pollutants into the underlying ground water.* *(8-24-94)*~~

~~***c.*** *The ability of the soil and vegetative cover on the application site to remove the*~~

~~*pollutants contained in the applied waters through the combined processes of consumptive use and biological and chemical inactivation.* *(7-1-93)*~~

~~***601. -- 649. (RESERVED).***~~

~~***650. SLUDGE USAGE.***~~

~~***01. Disposal Plans Required****. Sludge can be utilized as soil augmentation only in conformance with:* *(7-1-93)*~~

~~***a.*** *A Department approved sludge disposal plan; or* *(7-1-93)*~~

~~***b.*** *Procedures and in a manner approved by the Department on a site-by-site basis.* *(7-1-93)*~~

~~***02. Basis for Evaluation****. Sludge disposal plans and sludge utilization proposals will be evaluated by the Department in regard to their protection of water quality and public health.* *(7-1-93)*~~

~~***03. Elements of Plans and Proposals****. Plans and proposals must at a minimum provide:* *(7-1-93)*~~

~~***a.*** *That only stabilized sludge will be used.* *(7-1-93)*~~

~~***b.*** *The criteria utilized for site selection, including:* *(7-1-93)*~~

~~*i.* *Soil description;* *(7-1-93)*~~

~~*ii.* *Geological features;* *(7-1-93)*~~

~~*iii.* *Groundwater characteristics;* *(7-1-93)*~~

~~*iv.* *Surrounding land use;* *(7-1-93)*~~

~~*v.* *Topography; and* *(7-1-93)*~~

~~*vi.* *Climate.* *(7-1-93)*~~

~~***c.*** *A description of the application process.* *(7-1-93)*~~

~~***d.*** *A statement detailing procedures to prevent application which could result in a reduction of soil productivity or in the percolation of excess nutrients.* *(7-1-93)*~~

~~***e.*** *Identification of potential adverse health effects in regard to the sludge and its proposed use.* *(7-1-93)*~~

~~***f.*** *Delineation of methods or procedures to be used to alleviate or eliminate adverse health effects.* *(7-1-93)*~~

~~651~~402. -- 799.(RESERVED).

RESOURCES & ENVIRONMENT

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.13 - RULES FOR ORE PROCESSING BY CYANIDATION

DOCKET NO. 58-0113-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapter 1, Title 39, Idaho Code. In addition, the Idaho Legislature directed DEQ to promulgate rules to implement the provisions of Senate Bill 1169 (codified at Section 39-118A, Idaho Code).

DESCRIPTIVE SUMMARY: Under Senate Bill 1169, the 2005 Idaho Legislature amended Section 39-118A, Idaho Code, and the Surface Mining Act, Chapter 15, Title 47, Idaho Code, with respect to bonding, closure plans, and time frames for rejecting or approving permits for ore processing facilities using cyanide. Senate Bill 1169 directed DEQ and the Idaho Department of Lands (IDL) to promulgate rules implementing the provisions of the legislation by August 1, 2005. This rule is the result of a series of negotiated rulemaking meetings conducted with members of the regulated community, other interested parties, and IDL. The Board of Environmental Quality adopted the temporary rule on June 23, 2005 with an effective date of July 13, 2005.

In addition, under Docket No. 58-0113-0502, DEQ initiated rulemaking for the purpose of making revisions to the Rules for Ore Processing by Cyanidation in response to the Idaho Conservation League's Petition for Initiation of Rulemaking filed with the Board of Environmental Quality in February 2005. Docket No. 58-0113-0502 also addresses an increase in fees associated with the permitting process as well as any other changes deemed necessary to assure consistency with state and federal law and the efficient operation of a system for permitting ore processing by cyanidation within the state of Idaho.

The two public comments received are in support of this rule. However, issues were raised that are outside the scope of Senate Bill 1169 and this rulemaking. Those concerns will be addressed by DEQ in Docket No. 58-0113-0502. The rule has been adopted as initially proposed in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05-8, pages 369 through 388. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov or by contacting the undersigned.

IDAHO CODE SECTION 39-107D STATEMENT: This rule makes revisions to a current existing rule that regulates an activity not regulated by the federal government. The Idaho Legislature directed DEQ to promulgate temporary rules to implement the provisions of Senate Bill 1169 by August 1, 2005. DEQ initiated this rulemaking to meet that statutory directive.

IDAHO CODE SECTION 67-5224(2)(f) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this pending rule, contact Bruce Schuld at bruce.schuld@deq.idaho.gov, (208)373-0554.

Dated this 16th day of November, 2005.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
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The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The temporary rule was effective July 13, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that the Board of Environmental Quality has adopted a temporary rule and the Department of Environmental Quality (DEQ) is commencing proposed rulemaking. This action is authorized by Chapter 1, Title 39, Idaho Code. In addition, the Idaho Legislature directed DEQ to promulgate rules to implement the provisions of Senate Bill 1169 (codified at Section 39-118A, Idaho Code).

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 17, 2005. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: Under Senate Bill 1169, the 2005 Idaho Legislature amended Section 39-118A, Idaho Code, and the Surface Mining Act, Chapter 15, Title 47, Idaho Code, with respect to bonding, closure plans, and time frames for rejecting or approving permits for ore processing facilities using cyanide. Senate Bill 1169 directed DEQ and the Idaho Department of Lands (IDL) to promulgate temporary rules implementing the provisions of the legislation by August 1, 2005. This temporary/proposed rule is the result of a series of negotiated rulemaking meetings conducted with members of the regulated

community, other interested parties, and IDL. The Board of Environmental Quality adopted the temporary rule on June 23, 2005.

The Idaho Mining Association, Independent Miners Association, Idaho Conservation League, Idaho Rivers United, U.S. EPA, mining companies, associated grass roots environmental and multiple use organizations, and the public at large may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality for adoption of a pending rule in November 2005. The pending rule will become final upon the conclusion of the 2006 session of the Idaho Legislature if approved by the Legislature.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is necessary to meet the deadline for rule adoption set out in Senate Bill 1169.

IDAHO CODE SECTION 39-107D STATEMENT: This temporary/proposed rule makes revisions to a current existing rule that regulates an activity not regulated by the federal government. The Idaho Legislature directed DEQ to promulgate temporary rules to implement the provisions of Senate Bill 1169 by August 1, 2005. DEQ initiated this rulemaking to meet that statutory directive.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, April 6, 2005, Vol. 05-4, page 23.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact John Lawson at john.lawson@deq.idaho.gov, (208)373-0141.

Anyone may submit written comments regarding this proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 31, 2005.

DATED this 1st day of July, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.
Title 39, Chapter 1, Idaho Code, grants the authority to the Board of Environmental Quality to adopt rules, regulations and standards to protect the environment and the health of the State; grants authority to the Director to issue permits as prescribed by law and by the rules of the Board; and requires Department of Environmental Quality review and approval of plans and specifications for all new facilities, or for modifications or expansions to existing facilities, that process ore by cyanidation; and authorizes the Director to require a reasonable fee for processing permit applications ~~*and to require financial assurance for permanent closure*~~. ~~*(1-1-88)*~~(7-13-05)T

001. TITLE, SCOPE AND INTENT.

01. Title. These rules shall be known as Idaho Department of Environmental Quality Rules, IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation". (1-1-88)

02. Scope and Intent. These rules establish the procedures and requirements for the issuance and maintenance of a permit to construct, operate and close that portion of ~~*an ore processing*~~ a cyanidation facility ~~*which utilizes cyanidation and*~~ that is intended to contain, treat or dispose of process water or process-contaminated water containing cyanide. The provisions of these rules also establish requirements for water quality protection which address performance, construction, operation and closure of that portion of any ~~*ore processing*~~ cyanidation facility that is intended to contain, treat, or dispose of process water ~~*or process-contaminated wat1er containing cyanide*~~. These rules are intended to ensure that process water and process-contaminated water generated in ore processing operations that utilize cyanide as a primary leaching agent and pollutants associated with the cyanidation process are safely contained, controlled, and treated so that they do not interfere with the beneficial uses of the waters of the state and do not endanger public safety or the environment. ~~*(12-31-91)*~~(7-13-05)T

002. DEFINITIONS.

01. Beneficial Use. Any of the various uses which may be made of the surface and/or ground water of the state including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. Beneficial uses for specific stream segments are established in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements". (1-25-95)

02. Best Management Practices (BMPs). Practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan, as described in IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals. (7-13-05)T

0~~2~~3. Cyanidation. ~~*A*~~ The method of extracting target precious metals from ores by treatment with a cyanide solution, which is the primary leaching agent for extraction.

~~*(1-1-88)*~~(7-13-05)T

04. **Cyanidation Facility**. That portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility, that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide containing materials including spent ore, tailings and process water. (7-13-05)T

0~~3~~5. **Department**. The Idaho Department of Environmental Quality. (1-1-88)

0~~4~~6. **Director**. The Director of the Department of Environmental Quality or his designee. (12-31-91)

0~~5~~7. **Discharge**. When used without qualification, ~~*the release of process water, process-contaminated water, chemicals, or other potential*~~ any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant~~s~~ into the ~~*surface waters and/or ground*~~ waters of the ~~S~~state. ~~*(1-1-88)*~~(7-13-05)T

~~***06. Existing Facility**: Any facility engaged in commercial cyanidation within one (1) year prior to the original effective date of these rules; any portion of a facility under construction prior to the original effective date of these rules; or, any portion of a facility under construction within three (3) months after the effective date of these rules, and in accordance with Department approved engineering plans and specifications.* *(7-1-97)*~~

~~***07. Facility**: For the purpose of these rules, a facility means that portion of an ore processing operation which utilizes cyanidation and which is intended to contain, treat, or dispose process water or process-contaminated water containing cyanide.* *(7-1-97)*~~

08. **Free Cyanide**. The sum of cyanide present as undissociated molecular hydrogen cyanide (HCN) and the cyanide ion (CN-), expressed as cyanide (CN). (1-1-88)

09. **Groundwater**. ~~*Subsurface water comprising the zone of saturation including perched groundwater.*~~ Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. ~~*(1-1-88)*~~(7-13-05)T

10. **Impoundment**. For the purpose of these rules an impoundment means a structure such as a pond, reservoir, tank, or vat that collects and confines liquids or slurries. (7-1-97)

11. **Land Application**. A process or activity involving application of process water, process-contaminated water, wastewater, surface water, or semi-liquid material to the land for the purpose of disposal, pollutant removal, or groundwater recharge. (1-1-88)

12. **Liner**. A continuous layer of natural or man-made materials beneath and, if applicable, on the sides of a surface impoundment or leach pad which restricts the downward and lateral escape of liquids. (1-1-88)

13. **Material Modification or Material Expansion**. (7-13-05)T

a. The addition of a new beneficiation process which includes, but is not limited to,

heap leaching and process components for milling, which was not identified in the original application that significantly increases the potential to degrade the waters of the state; or (7-13-05)T

b. A significant change in the location of a proposed process component or site condition which was not adequately described in the original application; or (7-13-05)T

c. A change in the beneficiation process that alters the characteristics of the waste stream in a way that significantly increases the potential to degrade the waters of the state. (7-13-05)T

d. Reclamation or closure related activities at a facility with an existing cyanidation permit that did not actively add cyanide after January 1, 2005 shall not be considered to be material modifications or material expansions of the cyanidation facility. (7-13-05)T

14. **Material Stabilization**. Managing or treating spent ore, tailings or other solids and/or sludges resulting from the cyanidation process to minimize waters or all other applied solutions from migrating through the material and transporting contaminants associated with the cyanidation facility to ensure that all discharges comply with all applicable standards and criteria. (7-13-05)T

15. **Neutralization**. Treatment of process waters such that discharge or final disposal of those waters does not, or shall not, violate any applicable standards and criteria. (7-13-05)T

1~~3~~6. **Permanent Closure**. ~~*Final cessation of operations.*~~ Those activities which result in neutralization, material stabilization and decontamination of cyanidation facilities and/or their final reclamation. ~~*(1-1-88)*~~(7-13-05)T

17. **Permanent Closure Plan**. A description of the procedures, methods, and schedule that will be implemented to meet the intent and purpose of Section 39-118A, Idaho Code, and Chapter 15, Title 47, Idaho Code, in treating and disposing of cyanide-containing materials including spent ore, tailings, and process water and in controlling and monitoring discharges and potential discharges for a reasonable period of time based on site-specific conditions. (7-13-05)T

1~~4~~8. **Permit**. When used without qualification, any written authorization by the Director, issued pursuant to the application, public participation and appeal procedures in these rules, governing location, operation and maintenance, monitoring, seasonal and permanent closure, discharge response, and design and construction of a new cyanidation facility or a material expansion or material modification to a cyanidation facility. ~~*(7-1-97)*~~(7-13-05)T

1~~5~~9. **Permittee**. The person in whose name a permit is issued and who is to be the principal party responsible for compliance with these rules and the conditions of a permit. (7-1-97)

~~16~~20. **Person**. An individual, corporation, partnership, association, state, municipality, commission, federal agency, special district or interstate body. (1-1-88)

~~17~~21. **Pilot Facility**. (7-1-97)

a. A testing cyanidation facility that is constructed primarily to obtain data on the effectiveness of the benefaction process to determine: ~~*(7-1-97)*~~(7-13-05)T

i. The feasibility of metals recovery from an ore; or (7-1-97)

ii. The optimum operating conditions for a predetermined process to extract values from an ore. (7-1-97)

b. A pilot or testing facility operates for one (1) year for a single test or two (2) years for multiple tests, during which time no more than ten thousand (10,000) tons of ore are evaluated for the testing process(es), unless the applicant can demonstrate that a greater amount is necessary for a specific purpose in the testing process. (7-1-97)

~~*18*~~**22.** **Pollutant**. Chemicals, chemical waste, process water, process-contaminated water, biological materials, radioactive materials, or other materials which, when discharged cause or contribute adverse effects to any beneficial use. (1-1-88)

23. **Post-Closure**. The period of time after completion of permanent closure when the operator is monitoring the effectiveness of the closure plan. Post closure shall last a minimum of twelve (12) months but may extend until the cyanidation facility is shown to be in compliance with the stated permanent closure objectives and requirements of Chapter 15, Title 47, Idaho Code, and these rules. (7-13-05)T

24. **Process Waters**. Any liquids which are intentionally or unintentionally introduced into any portion of the cyanidation process. These liquids may contain cyanide or other minerals, meteoric water, ground or surface water, elements and compounds added to the process solutions for leaching or the general beneficiation of ore, or hazardous materials that result from the combination of these materials. (7-13-05)T

~~*19*~~**25.** **Seasonal Closure**. Annual cessation of operations that is due to weather. (1-1-88)

2~~*0*~~6. **Small ~~*Mineral*~~ Cyanidation Processing Facility**. A cyanidation facility which chemically processes less than thirty-six thousand five hundred (36,500) tons of ore per year and no more than one hundred twenty thousand (120,000) tons of ore for the life of the project at any one (1) permitted ~~*site*~~ cyanidation facility. No person or applicant may concurrently hold more than one (1) small ~~*mineral*~~ cyanidation processing facility permit, if located within ten (10) miles of each other. ~~*(7-1-97)*~~(7-13-05)T

2~~*1*~~7. **Special Resource Water**. Those waters of the state which are recognized as needing intensive protection: (1-1-88)

a. To preserve outstanding or unique characteristics; or (1-1-88)

b. To maintain current beneficial use (refer to Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," for a complete description; special resource waters for specific stream segments are established in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water

Quality Standards and Wastewater Treatment Requirements"). (1-25-95)

2~~2~~8. **State**. The state of Idaho. (12-31-91)

2~~3~~9. **Temporary Closure**. Any cessation of operations exceeding thirty (30) days, other than seasonal or permanent. (1-1-88)

~~24~~30. **Treatment**. Any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a waste for the purpose of disposal. (1-1-88)

31. **Water Balance**. An inventory and accounting process, capable of being reconciled, that integrates all potential sources of water that are entrained in the cyanidation facility or may enter into or exit from the cyanidation facility. The inventory must include the water holding capacity of specific structures within the facility that contain process water. The water balance is used to ensure that all process water can be contained as engineered and designed within a factor of safety as determined in the permanent closure plan. (7-13-05)T

32. **Water Management Plan**. A document that describes the results of the water balance and the methods that will be used to ensure that pollutants are not discharged from a cyanidation facility into waters of the state unless permitted or otherwise approved by the Department. (7-13-05)T

~~25~~33. **Waters of the State**. All the accumulations of water, surface and underground, natural and artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. These waters shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state. ~~*(12-31-91)*~~(7-13-05)T

~~26~~34. **Weak Acid Dissociable (WAD) Cyanide**. ~~*The sum of free cyanide and all but the most refractory metal-cyanide complexes, such as the iron, gold, cobalt, and platinum cyanides.*~~ The cyanide concentration as determined by Method C, Weak Acid Dissociable Cyanide, D2036 of American Society of Testing Materials Book of Standards, "Standard Methods for the Examination of Water and Wastewater," Method 4500-CN- I, or other methods accepted by the scientific community and deemed appropriate by the Department. ~~*(1-1-88)*~~(7-13-05)T

003. -- 009. (RESERVED).

010. APPLICABILITY TO ~~*EXISTING*~~ FACILITIES WITH EXISTING PERMITS. A cyanidation facility with an existing permit approved by the Department prior to July 1, 2005 shall be subject to the applicable laws and rules for ore processing by cyanidation in effect on June 30, 2005. Material modifications or material expansions of such facilities are subject to Section 39-118A, Idaho Code. The rules for ore processing by cyanidation in effect on June 30, 2005 can be obtained by contacting the Department of Environmental Quality, Hearing Coordinator, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502, www.deq.idaho.gov. (7-13-05)T

~~***01.***~~ ~~***Registration Requirement***~~. ~~*Except as expressly provided in these rules, an existing*~~

~~*facility shall not be subject to these rules if the owner or operator of such a facility registers with the Department within three (3) months after the original effective date of these rules. Nothing in this section shall be construed to deny the owner or operator of an existing facility the opportunity to apply for, and receive, a permit under these rules.* (1-1-88)~~

~~***02. Registration Form****. Registration of an existing facility shall include the following, and items in Subsections 010.02.k., 010.02.n., 010.02.p., and 010.02.q. shall be in sufficient detail for the Director to determine, in the future, if a registered existing facility has been materially modified or materially expanded without a valid permit under these rules:* (12-31-91)~~

~~***a.*** *Name, location and mailing address of the facility;* (1-1-88)~~

~~***b.*** *Name, phone number and mailing address of the facility owner or operator, and the registered agent;* (1-1-88)~~

~~***c.*** *Land ownership status of the facility (federal, state, private or public entity);* (1-1-88)~~

~~***d.*** *Legal structure of the owner or operator (corporation, partnership, etc.);* (1-1-88)~~

~~***e.*** *Facility layout, topographic map with plan view of the facility;* (1-1-88)~~

~~***f.*** *Wells, irrigation ditches and drainages within one (1) mile radius of the facility (shown on topographic map);* (1-1-88)~~

~~***g.*** *Existing water quality monitoring and leak detection, including number, monitoring frequency and location of wastewater surface water and groundwater monitoring sites (shown on topographic map);* (1-1-88)~~

~~***h.*** *Project access;* (1-1-88)~~

~~***i.*** *Estimated facility life;* (1-1-88)~~

~~***j.*** *Operating season;* (1-1-88)~~

~~***k.*** *Ore processing rate (tons/day);* (1-1-88)~~

~~***l.*** *Process solution flow rate (gal./day);* (1-1-88)~~

~~***m.*** *Water supply source, location and peak demand;* (1-1-88)~~

~~***n.*** *General description of steps involving cyanidation including:* (1-1-88)~~

~~*i.* *Leaching cycle (time); and* (1-1-88)~~

~~*ii.* *Process waste (spent ore and/or excess process water) treatment and disposal method, location, volume and area;* (1-1-88)~~

~~***o.*** *Water management system(s), including determination of overall water balance;* *(1-1-88)*~~

~~***p.*** *Storage capacity of all process impoundments and emergency impoundments, and the total free-board storage in excess of total operating requirements;* *(1-1-88)*~~

~~***q.*** *Total pad, pond and lined areas including basic design and materials to be used.* *(1-1-88)*~~

~~***03.*** ***Verification of Registration****. Registration under this section shall be subject to on-site verification by the Director, and shall be based upon the truth and accuracy of the information provided on the registration form.* *(1-1-88)*~~

~~***04.*** ***Public Notice****. No public notice of registration is required.* *(1-1-88)*~~

~~***05.*** ***False Information****. Submission of false information or the material omission of information without reasonable investigation for purposes of registration under this section shall be cause for the Director to require an existing facility to apply for, and obtain, a permit under these rules.* *(1-1-88)*~~

011. -- 049. (RESERVED).

050. CONCEPTUAL DESIGN APPROVAL.

01. Information Required for Conceptual Design Approval. Submittal of a Conceptual Design Report is not mandatory. The Director may, if requested, give initial approval of the basic operation, design concepts, and environmental safeguards proposed based on the information included in a Conceptual Design Report. Approval of the Conceptual Design Report shall not authorize the construction, modification or operation of the cyanidation facility. The Conceptual Design Report shall consist of the following: ~~*(1-1-88)*~~(7-13-05)T

a. Requirements for a permit application as listed in Subsections 100.03.a. through 100.03.f. (12-31-91)

b. A general description of the operating plan, ~~*processing*~~ cyanidation facility and conceptual designs. ~~*(1-1-88)*~~(7-13-05)T

02. Notice of Conceptual Design Approval or Disapproval. The Director shall notify the applicant in writing of the decision for conceptual approval or disapproval within a period of thirty (30) days from receiving all information as required under Subsection 050.01. The time required to review and approve, if appropriate, a conceptual design shall be considered separate from and shall not be included as part of the one hundred eighty (180) day time period for processing the formal application and issuance of a Director's determination pursuant to these rules. ~~*(12-31-91)*~~(7-13-05)T

03. Preapplication Conference. Prospective applicants are encouraged to meet with agents of the Department well in advance to discuss siting and operating plans, anticipated application requirements, application procedures, and to arrange for ~~*a site*~~ cyanidation facility

visits. ~~*(1-1-88)*~~(7-13-05)T

051. -- 099. (RESERVED).

100. PERMIT AND PERMIT APPLICATION.

01. Permit Required. No person shall construct a new cyanidation facility prior to obtaining a permit from the Director. No person shall materially expand or materially modify a ~~*new or existing*~~ cyanidation facility prior to obtaining a permit for such expansion or modification. ~~*(1-1-88)*~~(7-13-05)T

02. Permit Application. The owner or operator of a proposed cyanidation facility or the owner's or operator's authorized representative shall: (7-13-05)T

a. ~~*m*~~Make application to the Director in writing and in a manner or form prescribed herein~~.~~; and ~~*(1-1-88)*~~(7-13-05)T

b. Provide five (5) paper copies of the application to the Director, unless otherwise agreed to by the Department and the applicant. (7-13-05)T

03. Contents of Application. A permit application will be used to determine if the location, construction, operation, and closure of a proposed cyanidation facility will be in conformance with these and other applicable rules including, but not limited to Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," and Idaho Department of Environmental Quality Rules, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems". Information required shall include the following, in sufficient detail to allow the Director to make necessary application review decisions concerning design concept, environmental protection and public health:
~~*(7-1-97)*~~(7-13-05)T

a. Name, location, and mailing address of the cyanidation facility.
~~*(1-1-88)*~~(7-13-05)T

b. Name, mailing address, and phone number of the applicant, and a registered agent. (1-1-88)

c. Land ownership status of the cyanidation facility (federal, state, private or public). ~~*(1-1-88)*~~(7-13-05)T

d. The legal structure (corporation, partnership, etc.) and residence of the applicant. (1-1-88)

e. A surface and subsurface description, except as provided in Subsection 100.04 of these rules, of ~~*the proposed facility site to characterize*~~ the local hydrogeologic regime.
~~*(7-1-97)*~~(7-13-05)T

f. A topographic site map and or aerial photos, except as provided in Subsection 100.04 of these rules, extending at least one (1) mile beyond the outer limits of the cyanidation

facility ~~*site*~~, identifying and showing the location and extent of the following features: ~~*(7-1-97)*~~(7-13-05)T

i. All wells, springs, wetlands, surface waters and irrigation ditches within one (1) mile of the ~~*site boundary*~~ cyanidation facility; ~~*(1-1-88)*~~(7-13-05)T

ii. All process water supply source(s); (1-1-88)

iii. All public and private drinking water supply source(s) within at least one (1) mile of the ~~*site boundary*~~ cyanidation facility; ~~*(1-1-88)*~~(7-13-05)T

iv. All USGS identified floodplain areas (as shown on USGS sectional Quadrangle maps); (1-1-88)

v. All service roads and public roads; (1-1-88)

vi. All buildings and structures within a half (1/2) mile of the ~~*site boundary*~~ cyanidation facility; ~~*(1-1-88)*~~(7-13-05)T

vii. All special resource waters within one (1) mile of the ~~*site boundary*~~ cyanidation facility; ~~(1-1-88)~~(7-13-05)T

g. Topographic maps and/or aerial photos and an engineering report with drawings, except as provided in Subsection 100.04 of these rules, showing locations and design of those portions of the cyanidation facility intended to contain, treat, or dispose process water or process-contaminated water containing cyanide. This information shall be of sufficient detail to allow the Director to make necessary factual determinations concerning design competence and environmental protection and include: a drawing which shows surface gradients and flow of process solutions, predicted flow of runoff and run-on; design criteria and process schematic; leach pad and pond cross sections; typical details of liner systems for pads, ponds and process-related impoundments; treatment process schematics; and leak detection/monitoring system details. The cyanidation facility design shall be certified by a registered professional engineer. Any material modifications to the engineering drawings shall require prior approval by the Department and submittal of as built drawings by the applicant which are certified by a registered professional engineer. These rules recognize the need for practicable design flexibility in order to meet site specific operating and environmental protection criteria. Construction and material specifications that meet design criteria shall be submitted with the permit application. These shall address major construction requirements related to materials of construction identified in the engineering report, inspection and testing requirements (including liners), and necessary manufacturer certifications. Construction specifications shall include a quality assurance procedure for liner installations and a procedure for leak testing of impoundments. ~~*(7-1-97)*~~(7-13-05)T

h. An operating plan, except as provided in Subsection 100.04 of these rules, that includes: (7-1-97)

i. The general ore processing overview; (1-1-88)

ii. The process containment, treatment and disposal methods to be used; (1-1-88)

iii. A water management ~~*strategy*~~ plan that describes the process water balance and the methods to manage all process water, process-contaminated water, and runoff or run-on water, emergency releases, and excess water due to flood, rain, snowmelt, or other similar events. The ~~*strategy*~~ plan shall include the basis for impoundment volumes and all estimations. Nothing in these rules shall be construed to deny the owner or operator of a cyanidation facility the opportunity to apply for and receive a federal discharge permit or an Idaho Department of Water Resources injection well permit as part of the water management ~~*strategy*~~ plan. In addition the ~~*strategy*~~ plan may include a request for approval of a land application proposal or a proposal for economic reuse. ~~*(7-1-97)*~~(7-13-05)T

iv. A monitoring strategy that describes the existing water quality (baseline), proposed monitoring of surface and ground waters that may receive drainage or seepage from the operation (operational), and proposed monitoring for detection and location of leaks or discharges from the operation. (1-1-88)

v. A discharge response strategy that describes procedures and methods to be implemented for the abatement, and clean up of any pollutant that may escape proper containment at the cyanidation facility. ~~*(1-1-88)*~~(7-13-05)T

vi. A seasonal closure strategy, if applicable, that describes the procedures, methods, and schedule to be implemented for the treatment and disposal of process water, the control of drainage from the cyanidation facility during the period of closure, the control of drainage from the surrounding area, and the secure storage of chemicals. ~~*(1-1-88)*~~(7-13-05)T

i. ~~*A*~~ Permanent Closure Plan ~~*that describes the procedures, methods, and schedule to be implemented at the facility for the treatment and disposal of process water and process-contaminated water and the control and monitoring of discharges and potential discharges for a reasonable period of time based on site-specific conditions*~~. The permanent closure plan may be the same as the plan submitted to the Idaho Department of Lands pursuant to the Idaho Surface Mining Act, Chapter 15, Title 47, Idaho Code. The permanent closure plan shall: ~~*(1-1-88)*~~(7-13-05)T

i. Provide a definition of the current ownership of the cyanidation facility and the party responsible for the permanent closure and the long-term care and maintenance of the cyanidation facility. (7-13-05)T

ii. Include a timeline showing the schedule to complete permanent closure activities, including neutralization of process waters and material stabilization, and the time period for which the operator shall be responsible for post-closure activities. (7-13-05)T

iii. Provide the objectives, methods and procedures, that will achieve neutralization of process waters and material stabilization during the closure period and through post-closure. (7-13-05)T

iv. Provide a water management plan from the time the cyanidation facility is in permanent closure through the defined post-closure period. (7-13-05)T

v. Include the schematic drawings for all BMPs that will be used during the closure period, through the defined post-closure period, a description of how the BMPs support the water management plan, and an explanation of the water conveyance systems that are planned for the cyanidation facility. (7-13-05)T

vi. Provide proposed post-construction topographic maps and scaled cross-sections showing the configuration of the final heap or tailing facility, including final cap and cover designs and the plan for long-term operation and maintenance of the cap. Caps and covers used as source control measures for cyanidation facilities must be designed to minimize the interaction of meteoric waters, surface waters, and ground waters with wastes containing contaminants that are likely to be mobilized and discharged to waters of the state. Engineering designs and specifications for caps and covers must be signed and stamped by a professional engineer registered in the state of Idaho. (7-13-05)T

vii. Include monitoring plans for surface and ground water during closure and post-closure periods adequate to demonstrate water quality trends and to ensure compliance with the stated permanent closure objectives and requirements of these rules. (7-13-05)T

viii. Provide an assessment of the potential impacts to soils and vegetation for all areas to be used for land application and provide a mitigation plan as appropriate. (7-13-05)T

ix. Provide information on how the operator will comply with the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 et seq.; the Idaho Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code; the Idaho Solid Waste Management Act, Chapter 74, Title 39, Idaho Code; and appropriate state rules, during operation and permanent closure. (7-13-05)T

x. All components of the permanent closure plan shall be prepared in sufficient detail to allow the operator to prepare an estimate of the reasonable cost for a third party to implement the closure plan. (7-13-05)T

j. The application shall be accompanied by a fee of one hundred dollars ($100). (1-1-88)

04. Application for a Small ~~*Mineral*~~ Cyanidation Processing Facility and Pilot Facility. The owner or operator of a proposed small cyanidation processing facility or the owner's or operator's authorized representative shall make application to the Director in writing of the intent to operate a small ~~*mineral*~~ cyanidation processing facility or a pilot facility. The application shall include an explanation as to why the proposed small cyanidation processing facility qualifies as a small ~~*mineral*~~ cyanidation processing facility or a pilot facility. The application must further meet the requirements of Subsection 100.03 in the following manner: ~~*(7-1-97)*~~(7-13-05)T

a. The application must contain plans and specifications certified by a registered professional engineer in accordance with Section 39-118A, Idaho Code; and (7-1-97)

b. The application must contain the information and fee required by Subsections 100.03.a., 100.03.b., 100.03.c., 100.03.d., 100.03.i., and 100.03.j.; and (7-1-97)

c. The Director may provide an exemption to any other requirement of Subsection 100.03 not set forth in Subsections 100.04.a. and 100.04.b., if by so doing, the Director has sufficient information to determine potential impacts to the environment, public health or current or future beneficial uses of the waters of the state. (7-1-97)

101. -- 199. (RESERVED).

200. REQUIREMENTS FOR WATER QUALITY PROTECTION.
The following minimum design and performance standards are intended as a baseline for protection of public health and for the waters of the state. These standards shall apply to all facilities unless the Director approves, based on an applicant's site specific information that compliance with a specific standard is not required to protect water quality and the public health. (1-1-88)

01. Containment Design Criteria. A cyanidation facility shall be designed to contain the maximum expected normal operating water balance and the one hundred (100) year, twenty-four (24) hour storm event. Snowmelt events shall be considered in determining the containment capacity. Contingency plans for managing excesses of process water or process-contaminated water shall be described in the water management strategy. ~~*(1-1-88)*~~(7-13-05)T

02. Impoundment Design. Impoundments, other than for emergency runoff, containing or designed to contain process water shall be designed for efficient leak detection and provide for adequate leak recovery. This requirement does not apply to tailing structures more than thirty (30) feet in height which are regulated by the Idaho Department of Water Resources under Chapter 17, Title 42, Idaho Code. (1-1-88)

03. Liner Criteria. A hydraulic liner is required for leach pads and impoundments and shall: (1-1-88)

a. Be designed for a maximum coefficient of permeability of 10 power -7, cm/sec; a clay liner shall also have a minimum thickness of twelve (12) inches; (1-1-88)

b. Have a competent foundation designed to withstand the projected static and dynamic loading and projected differential settlement; (1-1-88)

c. Be structurally competent at all times until permanent closure; (1-1-88)

d. Be chemically compatible with materials contacting the liner; (1-1-88)

e. Be designed to prevent damage during loading and unloading; (1-1-88)

f. Where appropriate, ensure minimal hydraulic head above the liner. (1-1-88)

04. Water Quality Monitoring. A ground water and/or surface water monitoring program shall be required for a cyanidation facility. The monitoring program shall be dependent on location, design and operation of the cyanidation facility, and shall be capable of indicating the cyanidation facility's effect on the surface and/or ground water most likely to be affected by the

operation. The monitoring program shall be designed to give the earliest possible detection of an unauthorized discharge. ~~*(1-1-88)*~~(7-13-05)T

05. Disposal or Abandonment of Leached Ore. Disposal or abandonment of the leached ore shall ensure that: (1-1-88)

a. The concentration of weak acid dissociable cyanide or free cyanide and other pollutants associated with cyanidation in process-contaminated water draining from the leached ore is reduced to a level that is based on the disposal method, location and the potential for ground water and surface water contamination, or the pH of process-contaminated water draining from the leached ore is stabilized to a pH between six point five (6.5) and nine (9.0), prior to disposal or abandonment. Mine tailing impoundments that require recycling of process water to prevent a point source discharge may be exempt from this requirement by the director; (1-1-88)

b. Structural stability of the spent-ore pile is maintained; (1-1-88)

c. Monitoring of the surface and ground water is conducted to verify that beneficial uses are maintained. (1-1-88)

06. Seasonal Closure. Prior to seasonal closure, the freeboard in process water impoundments shall be increased to a level sufficiently below normal operating volume to ensure containment design criteria. The concentration of weak acid dissociable cyanide or free cyanide and other pollutants associated with cyanidation in process or process-contaminated water shall be reduced to a level that is based on the disposal method, location and the potential for ground water and surface water contamination; or prior to disposal, process water shall be treated to a pH between six point five (6.5) and nine (9.0). (1-1-88)

07. Storage Requirements. Cyanide compounds in storage shall be physically separated and protected from other substances, such as acids and strong oxidants, that are not chemically compatible. (1-1-88)

08. Employee Education Program. The permittee shall demonstrate that a program of new employee orientation and continuing employee education is being implemented and maintained. The program shall be designed to ensure awareness and implementation of the discharge response strategy. (1-1-88)

201. -- 299. (RESERVED).

300. APPLICATION PROCESSING PROCEDURE.

01. Substantially Incomplete Applications. An application which does not, on its face, include all the requirements of Subsection 100.03, except as provided in Subsection 100.04 of these rules, will be returned to the applicant with a written list of the missing items. (7-1-97)

02. Decision. (12-31-91)

a. Except as provided in Subsection 300.01, within sixty (60) days of receipt of an application for a new permit or to modify an existing permit, the Director shall issue to the

applicant and to the Idaho Department of Lands a notice of intent to deny a permit or notice that the Director has determined that an application is complete and the Director intends to draft a permit. Except as provided in Subsection 300.01, within thirty (30) days of receipt of an application for a small ~~*mineral*~~ cyanidation processing facility or a pilot facility, the Director shall issue to the applicant a notice of intent to deny or draft a permit. ~~*(7-1-97)*~~(7-13-05)T

b. The Director may suspend the running of the sixty (60) or thirty (30) day period for no more than thirty (30) days by requesting more detailed information necessary to ensure completeness and accuracy of an application, or the applicant may suspend the running of the sixty (60) or thirty (30) day period by written request to the Director. Upon receipt of the required information by the Director, the sixty (60) or thirty (30) day period will resume. (7-1-97)

c. A notice of intent to deny the permit application shall follow the same procedures as a draft permit issued under this section. (12-31-91)

03. Basis for Permit Denial. The Director shall deny a draft or final permit if: (1-1-88)

a. The application is inaccurate or incomplete; (1-1-88)

b. The cyanidation facility as proposed cannot be conditioned for construction, operation, and closure to protect beneficial uses of the waters of the state. ~~*(1-1-88)*~~(7-13-05)T

04. Fact Sheet. The Director shall prepare a fact sheet, for each denial or draft permit, which briefly states the principal facts and the significant legal and policy questions considered in the Director's decision. The fact sheet shall include, when applicable: (1-1-88)

a. A brief description of the proposed cyanidation facility and the operating plan. ~~*(1-1-88)*~~(7-13-05)T

b. A brief summary of the basis for the decision, including references to applicable requirements and supporting materials. (1-1-88)

c. Reasons why any requested conditions or alternatives to required standards do or do not appear justified. (1-1-88)

d. A description of the procedures for reaching a final decision, including: (1-1-88)

i. The beginning and ending dates of the public comment period; (1-1-88)

ii. The address where comments will be received during the comment period; (1-1-88)

iii. Any other procedures by which the public may participate in the final decision; (1-1-88)

e. The name and phone number of the agency representative to contact for additional information. (1-1-88)

301. -- 399. (RESERVED).

400. PUBLIC INVOLVEMENT IN PERMIT PROCEDURES.

01. Public Notice of Permit Actions. No public notice is required when a request for a permit modification or revocation is denied. The Director shall give public notice of: (1-1-88)

a. Receipt of an application for a permit; (1-1-88)

b. Any public meeting schedule; (1-1-88)

c. Issuance of a draft permit or a decision to deny the application for a permit; (1-1-88)

d. An appeal that has been granted. (1-1-88)

02. Public Notice Information. All public notices shall contain the name and address of the Department's office processing the permit action, where the application and draft permit will be available for public review, and a brief description of the public involvement procedures. (1-1-88)

03. Serving the Public Notice. Public notice of permit actions shall be given by the following methods: (1-1-88)

a. By mail to: (1-1-88)

i. The applicant; (1-1-88)

ii. Persons on a mailing list who request to be notified; (1-1-88)

iii. Other appropriate government authorities; (1-1-88)

b. Publication in a daily or weekly major newspaper of general circulation in the area of the proposed cyanidation facility; ~~*(1-1-88)*~~(7-13-05)T

c. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected. (1-1-88)

04. Public Comment and Public Meetings. (7-1-93)

a. Oral or written comments may be submitted by any person at a public meeting. Such meeting may be held prior to a draft permit or notice of intent to deny a permit, if the Director finds twenty-five (25) individuals, or one (1) organization representing twenty-five (25) or more members, who request a public meeting based on a water quality issue and related to the technical merits of the application. The request shall be made in writing within ten (10) days following public notice of a receipt of an application for a permit. The meeting may be presided by agency personnel appointed by the Director. Any person wishing to submit oral comments

must sign up prior to the meeting. Oral commentaries will receive equal time to submit oral comments. To be considered in the final decision, oral comments must be submitted in writing within five (5) days following the public meeting. (1-1-88)

b. Within thirty (30) days of public notice of a draft permit or decision to deny an application for a permit, any person may submit written comments to the Department on issues raised in the notice, draft permit or decision to deny a permit. Pursuant to Section 39-106, Idaho Code, the Director has inherent authority to take oral comment on a draft permit at his discretion. (1-1-88)

c. All written comments shall be considered by the Director in making the final decision. (1-1-88)

401. -- 449. (RESERVED).

450. FINAL PERMIT DECISION.

01. Issuing the Decision. Within thirty (30) days after the close of the written public comment period on a draft permit, the Director shall issue a final permit decision. The Director shall notify the applicant and each person who requested notice of the final permit decision. This notice shall include reference to the procedures for administrative appeal under Section 996. For the purpose of this section, a final permit decision means a final decision to issue, deny, modify, or revoke a permit. (1-25-95)

02. Response to Public Comments. All written comments and information received during the comment period, together with the Department's final permit and the response to relevant written comments shall be made available to the public. This response shall: (1-1-88)

a. Specify any differences between the final permit and the draft permit and state the reasons for those differences; (1-1-88)

b. Briefly describe and respond to all relevant written comments on the draft permit or denial. (1-1-88)

03. Immediate Effect of the Permit. A valid permit authorizes the construction and operation of a cyanidation facility. (1-1-88)

04. Duration of Permit. A permit shall remain valid until the Director determines permanent closure is completed, or until such time as the permit is revoked or modified. (1-1-88)

05. Duration of a Small ~~*Mineral*~~ Cyanidation Processing Facility Permit. A permit for a small ~~*mineral*~~ cyanidation processing facility shall remain valid only until the Director determines: ~~*(7-1-97)*~~(7-13-05)T

a. Permanent closure is completed; or (7-1-97)

b. The lifetime allotment of one hundred twenty thousand (120,000) tons of processed ore is reached; or (7-1-97)

c. The cyanidation facility no longer qualifies as a small ~~*mineral*~~ cyanidation processing facility; or ~~*(7-1-97)*~~(7-13-05)T

d. One (1) person or applicant concurrently holds more than one (1) permit for a small ~~*mineral*~~ cyanidation processing facility where the facilities are located within ten (10) miles of each other; or ~~*(7-1-97)*~~(7-13-05)T

e. Operations must cease, temporarily or permanently, due to a violation of the Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," or adverse impacts to the beneficial uses of the water of the state; or (7-1-97)

f. To revoke or modify the existing permit. (7-1-97)

06. Duration of the Pilot Facility Permit. The permit to operate a pilot facility is valid: (7-1-97)

a. For one (1) year from date of issuance for a facility conducting a single test; or (7-1-97)

b. For two (2) years from date of issuance for a facility conducting multiple tests; or (7-1-97)

c. Until revoked or modified by the Department; or (7-1-97)

d. Until the facility no longer qualifies as a pilot facility. (7-1-97)

451. -- 499. (RESERVED).

500. PERMIT ISSUANCE AND CONDITIONS.
~~*The following conditions shall apply to and be specified in all permits:*~~ ~~*(1-1-88)*~~

01. Issuance. Within sixty (60) days of the Director's final determination to issue a permit, the Department shall write and issue the permit subject to considerations of the contents of the application, public comments, and responses to those public comments. (7-13-05)T

02. Conditions. The following conditions shall apply to and be specified in all permits: (7-13-05)T

~~**01**~~**a.** Compliance Required. The permittee shall comply with all conditions of the permit. However, the permit shall not relieve the permittee of the responsibility to comply with all other applicable local, state, and federal laws. (1-1-88)

~~**02**~~**b. Construction and Operation of Cyanidation Facility**. The permittee shall ensure that construction, operation and maintenance of the cyanidation facility proceed according to the approved design plans and specifications and the approved operating and closure plans. ~~*(1-1-88)*~~(7-13-05)T

~~03~~**c.** As-Built Plans and Specifications. Complete and accurate record drawings and specifications, signed by a registered, professional engineer depicting actual construction shall be submitted by the permittee to the Director within thirty (30) days after the completion of the construction. Alternatively, if the construction proceeded in substantial compliance with the approved plans and specifications, a statement to the effect may be submitted by the registered, professional engineer. (1-1-88)

~~04~~**d.** Provide Information. The permittee shall furnish to the Director within a reasonable time, any information including copies of records required by the permit or other applicable rules, which the Director may reasonably require to determine whether cause exists for modifying or revoking the permit or to determine compliance with the permit or other applicable rules. (1-1-88)

~~05~~**e.** Notifications. After construction, seasonal and temporary closure, the permittee shall within seven (7) days provide written notice to the Director of operation start-ups. The permittee shall provide written notice sufficient to allow the Director to inspect all seasonal, temporary and permanent closures. (1-1-88)

~~06~~**f.** Entry and Access. The permittee shall allow the Director, or a designee obligated by agreement with the Director to comply with the confidentiality provisions of Section 39-111, Idaho Code, to: (1-1-88)

~~a~~i. Enter at reasonable times upon the premises of a permitted cyanidation facility or where records required by a permit are kept; ~~*(1-1-88)*~~(7-13-05)T

~~b~~ii. Have access to and copy at reasonable times any records that must be kept under the conditions of the permit; (1-1-88)

~~c~~iii. Inspect at reasonable times any cyanidation facility, equipment, practice, or operation permitted or required by the permit; ~~*(1-1-88)*~~(7-13-05)T

~~d~~iv. Sample or monitor at reasonable times, substance(s) or parameter(s) directly related to permit or regulation compliance. (1-1-88)

~~07~~**g.** Reporting. It shall be the permittee's responsibility to report to the Director: (1-1-88)

~~a~~i. Orally, as soon as possible but no later than twenty-four (24) hours from the time the permittee knows or should reasonably know of any noncompliance which may endanger the public health or the environment. (1-1-88)

~~b~~ii. In writing, within five (5) working days from the time a permittee knows or should reasonably know of any event which may be or which may result in a violation of these rules, or Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, ~~*Sections 000, et seq.,*~~ "Water Quality Standards and Wastewater Treatment Requirements". This report shall contain: ~~*(12-31-91)*~~(7-13-05)T

~~*i.*~~(1) A description of the event and its cause; if the cause is not known, steps taken to investigate and determine the cause; (1-1-88)

~~*ii.*~~(2) The period of the event including, to the extent possible, times and dates; (1-1-88)

~~*iii.*~~(3) Measures taken to mitigate or eliminate the event and protect the public health; (1-1-88)

~~*iv.*~~(4) Steps taken to prevent recurrence of the event; (1-1-88)

~~*c*~~iii. In writing, confirmation of any conditions which may result in violation of any permit condition; (1-1-88)

~~*d*~~iv. In writing, when the permittee knows or should reasonably know of material relevant facts not submitted or incorrect information submitted in a permit application or any report or notice to the Director or the Department. Those facts or the correct information shall be included as a part of this report. (1-1-88)

~~*08*~~**h.** Discharge Response. If an unauthorized discharge occurs the permittee shall: (1-1-88)

~~*a*~~i. Report the event(s) pursuant to the reporting requirements under Subsection 500.0~~*7*~~2.g. of ~~*this section*~~ these rules; ~~*(1-1-88)*~~(7-13-05)T

~~*b*~~ii. Implement the approved discharge response strategy. (1-1-88)

~~*09*~~**i.** Temporary Closure Plan. In the event of temporary closure, the permittee shall submit a temporary closure plan to the Director for approval. The plan shall describe the procedures, methods, and schedule to be implemented for the treatment and disposal of process water, the control of drainage from the cyanidation facility, the control of drainage from the surrounding area, and the secure storage of chemicals during the period of closure. Within thirty (30) days of receiving the plan, the Director shall approve and/or suggest modifications necessary to protect the waters of the State. The permittee shall ensure that closure complies with an approved plan. In no case shall the permittee complete temporary closure prior to implementation of the approved plan. ~~*(1-1-88)*~~(7-13-05)T

~~*10*~~**j.** Begin Construction. If the permittee fails to begin construction of a cyanidation facility within two (2) years of the effective date of the permit, the Director may void the permit and require a new application. ~~*(1-1-88)*~~(7-13-05)T

k. Permanent Closure. The permanent closure plan, as approved by the Idaho Department of Environmental Quality in coordination with the Idaho Department of Lands, shall be incorporated by reference into the Department-issued permit as a permit condition and shall be enforceable as such. The Department may evaluate permanent closure based on different performance standards than those used by Idaho Department of Lands. (7-13-05)T

501. COMPLETION OF PERMANENT CLOSURE.

01. **Implementation of a Permanent Closure Plan**. Unless otherwise specified in the approved permanent closure plan, an operator must begin implementation of the approved permanent closure plan: (7-13-05)T

a. Within one (1) year of the final addition of cyanide to the ore processing circuit for pilot or small cyanidation processing facilities; or (7-13-05)T

b. Within two (2) years of the final addition of cyanide to the ore processing circuit for all other cyanidation facilities; or (7-13-05)T

c. If the product recovery phase of the cyanidation facility has been suspended for a period of more than two (2) years. (7-13-05)T

02. **Submittal of a Permanent Closure Report**. The operator shall submit a permanent closure report to the Department for review and approval. A permanent closure report shall be of sufficient detail for the directors of the Idaho Department of Environmental Quality and the Idaho Department of Lands to issue a determination that permanent closure, as defined in Section 002 of these rules, has been achieved. The permanent closure report shall address: (7-13-05)T

a. The effectiveness of material stabilization. (7-13-05)T

b. The effectiveness of the water management plan and adequacy of the monitoring plan. (7-13-05)T

c. The final configuration of the cyanidation facility and its operational/closure status. (7-13-05)T

d. The post-closure operation, maintenance, and monitoring requirements, and the estimated reasonable cost to complete those activities. (7-13-05)T

e. The operational/closure status of any land application site of the cyanidation facility. (7-13-05)T

f. Source control systems that have been constructed or implemented to eliminate, mitigate, or contain short and long term discharge of pollutants from the cyanidation facility, unless otherwise permitted. (7-13-05)T

g. The short and long term water quality trends in surface and ground water through the statistical analyses of the existing monitoring data collected pursuant to the ore processing by cyanidation permit. (7-13-05)T

h. Ownership and responsibility for the cyanidation facility during the defined post-closure period. (7-13-05)T

i. The future beneficial uses of the land, surface and ground waters in and adjacent to the closed facilities. (7-13-05)T

j. How the permanent closure of the cyanidation facility complies with the Resource Conservation and Recovery Act, Hazardous Waste Management Act, Solid Waste Management Act, and appropriate rules. (7-13-05)T

502. DECISION TO APPROVE OR DISAPPROVE OF A PERMANENT CLOSURE REPORT.

01. Issuance of Director's Determination. Within sixty (60) days of receipt of a permanent closure report, the Director shall issue to the permittee a Director's determination of approval or disapproval of the permanent closure report. (7-13-05)T

02. Director's Determination to Disapprove a Permanent Closure Report. A Director's determination to disapprove a permanent closure report shall specifically identify and discuss those reasons for disapproval, any administrative actions being considered by the Director, and the permittee's options and procedures for administrative appeal. The Director's determination to disapprove a permanent closure report must include: (7-13-05)T

a. Identification of errors or inaccuracies in the permanent closure report. (7-13-05)T

b. Issues or details which require additional clarification. (7-13-05)T

c. Failures to fully implement the approved permanent closure plans. (7-13-05)T

d. Outstanding violations or other noncompliance issues. (7-13-05)T

e. Other issues supporting the Department's disagreement with the contents, final conclusions or recommendations of the permanent closure report. (7-13-05)T

50~~1~~3. -- 649. (RESERVED).

650. FINANCIAL ASSURANCE.

01. Financial Assurance Required. ~~*Prior to commencing cyanidation operations an applicant shall establish financial assurance for permanent closure of the facility meeting the requirements of these rules.*~~ The permittee is required to provide financial assurance pursuant to the Idaho Surface Mining Act, Chapter 15, Title 47, Idaho Code, and the rules promulgated thereunder. The Department shall not issue a permit under these rules to a cyanidation facility unless the cyanidation facility has satisfied such financial assurance requirements. ~~*(1-1-88)*~~(7-13-05)T

~~***02. Amount****. The amount of financial assurance shall be determined by multiplying five cents ($.05) by the number of tons of untreated processed ore and the projected number of tons to be leached with cyanide within the next calendar year, unless the permittee requests an amount based on a projection for more than one (1) year; however, the minimum amount of financial assurance shall be the sum of twenty-five thousand dollars ($25,000) and the maximum amount shall be the sum of one hundred thousand dollars ($100,000).*~~ ~~*(1-1-88)*~~

~~***a.*** *The amount of financial assurance shall be reviewed on an annual basis. The*~~

~~*permittee shall submit in writing on or before December 1 each year the number of tons of untreated processed ore and the projected number of tons to be leached with cyanide for the succeeding calendar year.* *(1-1-88)*~~

~~***b.*** *In the event there is a material change in the tons of ore leached with cyanide over the tons of ore projected under Subsection 650.02.a., the permittee shall submit written notification to the Department of the change and an adjustment will be made accordingly.* *(12-31-91)*~~

~~***03.*** ***Form****. An applicant may comply with the financial assurance requirements of these rules through one (1) or more of the following options:* *(1-1-88)*~~

~~***a.*** *A corporate surety bond evidenced by an indemnity agreement, executed by or for the applicant and a corporate surety, and payable to the Department. Corporate surety bonds shall be subject to the following conditions:* *(1-1-88)*~~

~~*i.* *The Department shall obtain possession of the bond.* *(1-1-88)*~~

~~*ii.* *The bond shall be conditioned upon the applicant's adequate performance of permanent closure under an approved closure plan.* *(1-1-88)*~~

~~*iii.* *The bond shall be on a form supplied by the Department.* *(1-1-88)*~~

~~*iv.* *The corporate surety shall be licensed to do business in the United States.* *(1-1-88)*~~

~~***b.*** *A collateral bond evidenced by an indemnity agreement, executed by or for the applicant and payable to the Department, pledging cash deposits, negotiable bonds of the United States, this State or political subdivisions of this State, or negotiable certificates of deposit of any bank doing business in the United States. Collateral bonds shall be subject to the following conditions:* *(1-1-88)*~~

~~*i.* *The Department shall obtain possession, and upon receipt of such collateral bonds, deposit them with the State Treasurer to hold in trust for the purpose of bonding permanent closure.* *(1-1-88)*~~

~~*ii.* *The Department shall value collateral at current market value, not face value.* *(1-1-88)*~~

~~*iii.* *Certificates of deposit shall be issued in the name of "principal or Idaho Department of Environmental Quality" in writing and upon the records of the bank issuing such certificates. Interest may be allowed to accrue and received upon release of the bond, or be paid to the principal no more than semiannually.* *(1-1-88)*~~

~~*iv.* *Banks issuing certificates of deposit shall waive all rights of set-off, or liens which it has or might have against such certificates.* *(1-1-88)*~~

~~*v.* *All certificates of deposit shall be automatically renewable.* *(1-1-88)*~~

~~*vi. All certificates of deposit shall be of sufficient amount to ensure that the Department may liquidate such certificates, upon forfeiture, for the amount of the required bonding, including penalty for early withdrawal.* (1-1-88)~~

~~***c.*** *A corporate surety or collateral bond payable to another state agency and the Department, or the federal government, and meeting the applicable bonding requirements of these rules.* (1-1-88)~~

~~***d.*** *One (1) or more insurance policies issued under the following conditions:* (1-1-88)~~

~~*i. The applicant shall submit a certificate of insurance to the Department.* (1-1-88)~~

~~*ii. The policy shall be issued by a company licensed to do business in the United States.* (1-1-88)~~

~~*iii. The policy shall guarantee the amount determined under Subsection 650.02 to the Department for the performance of permanent closure if the applicant fails to perform permanent closure under an approved plan.* (12-31-91)~~

~~*iv. Termination, cancellation or nonrenewal of the policy may occur only if the Department receives ninety (90) days notice from the insurance company, and the Department consents or the policy premium is not paid by the permittee. Nonpayment of the premium constitutes a violation of the provisions of this section by the permittee. The Department shall consent to termination, cancellation or nonrenewal if the permittee substitutes alternative financial surety under this section, or completes permanent closure guaranteed by the policy under an approved plan.* (1-1-88)~~

~~***e.*** *A closure trust fund which conforms to the following conditions:* (1-1-88)~~

~~*i. The applicant shall submit a certificate of trustees acknowledgment and a signed duplicate trust agreement to the Department.* (1-1-88)~~

~~*ii. The trust agreement shall be substantially in the form appended to these rules as Appendix A, and shall guarantee payments by the trustee at the direction of the Department to implement an approved permanent closure plan if the permittee fails to adequately perform permanent closure under such a plan.* (1-1-88)~~

~~*iii. The trustee shall have authority to act as such and be regulated by a state or federal agency.* (1-1-88)~~

~~*iv. The applicant shall deposit cash in the full amount determined under Subsection 650.02 prior to commencing cyanidation operations.* (12-31-91)~~

~~*v. The trust agreement shall terminate if the permittee substitutes alternative financial surety under these rules, or the permittee completes permanent closure guaranteed by the trust fund under an approved plan.* (1-1-88)~~

~~***04. Cancellation and Replacement of Bonds.*** (1-1-88)~~

~~***a.*** *Any surety cancelling a bond shall give the Department and the bonded principal at least ninety (90) days notice prior to cancellation of an agreement. The Department shall not release a surety from liability under existing bonds until the permittee has submitted to the Department an acceptable replacement bond or other form of financial assurance under these rules.* *(1-1-88)*~~

~~***b.*** *If a surety cancels a bond or fails to maintain a valid license to do business in the United States, the permittee shall, within forty-five (45) days of notice from the Department, substitute a sufficient surety. A replacement bond or other financial assurance under these rules shall cover any liability accrued against the bonded principal at the facility in addition to the amount determined under Subsection 650.02. If the permittee fails to secure a replacement bond or other alternative financial assurance under these rules, the permittee shall cease operations at the facility covered by the bond until sufficient financial assurance is filed with the Department.* *(12-31-91)*~~

~~***05.*** ***Release of Financial Assurance****. Financial assurance, or a portion thereof, required under these rules may be released as follows:* *(1-1-88)*~~

~~***a.*** *If at any time the value of a bond, insurance or trust is greater than the total amount of financial assurance required under Subsection 650.02, the permittee may submit a written request to the Department for release of the amount in excess of the amount required under Subsection 650.02.* *(12-31-91)*~~

~~***b.*** *If the permittee substitutes alternative financial assurance under these rules for all or part of a bond, insurance or trust, the permittee may submit a written request to the Department for release of the amount in excess of the financial assurance required under Subsection 650.02.* *(1-1-88)*~~

~~***c.*** *Upon completion of permanent closure in accordance with an approved plan, the permittee may request release from financial assurance by the Department. If the Department determines that permanent closure is in accordance with an approved plan financial assurance shall be released. If the Department determines that a portion of permanent closure has been satisfactorily completed the Department may proportionately reduce the amount of financial assurance required and release the balance.* *(1-1-88)*~~

~~***d.*** *Within thirty (30) days after receiving a request from a permittee for release of a bond, insurance or trust, or any portion thereof, the Department shall either order release or provide the permittee with a detailed written statement of reasons why financial assurance will not be released.* *(1-1-88)*~~

0~~6~~2. Insufficiency. In the event the ~~*amount of financial surety is insufficient to implement an approved permanent closure plan*~~ financial assurance is forfeited as described in the Idaho Surface Mining Act, Chapter 15, Title 47, Idaho Code, the Department may ~~*commence legal action against the permittee*~~ seek to recover the amount necessary to implement permanent closure under ~~*an approved plan*~~ the Department-issued permit and these rules as provided by law. ~~*(1-1-88)*~~(7-13-05)T

651. -- 749. (RESERVED).

750. PERMIT MODIFICATION.

01. Cause for Permit Modification. Causes for permit modification are: (1-1-88)

a. A material ~~*change*~~ modification or material expansion in the cyanidation facility operation, design or closure plan. ~~*(1-1-88)*~~(7-13-05)T

b. Natural phenomena substantially different from those anticipated in the original permit. (1-1-88)

02. Modification at Request of Permittee. Requests for modification from the permittee shall include: (1-1-88)

a. A written description of the modification(s); (1-1-88)

b. Data supporting the modification request; (1-1-88)

c. Causes and anticipated effects of the modification. (1-1-88)

03. Modification at Request of Director. Pursuant to Subsection 750.01, if the Director determines that cause exists for permit modification, the Director shall notify the permittee in writing and request information necessary for the Director to modify the permit. (12-31-91)

04. Modification Procedure. Permit modifications shall follow the application processing, public involvement, and administrative appeal procedures of these rules. (1-1-88)

RESOURCES & ENVIRONMENT

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.16 - WASTEWATER RULES

DOCKET NO. 58-0116-0501 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for commencing the rulemaking is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 7, 2005, Vol. 05-9, pages 420 through 436. After consideration of public comments, the proposed rule has been revised at Sections 004, 007, 008, 010, 201, 202, 203, 260, 400, 401, 410, 420, 430, 493, and 600. The remaining sections have been adopted as initially proposed. The proposed rule was revised for consistency with Senate Bill 1220, to clarify the applicability of these rules with respect to municipal and nonmunicipal wastewater treatment or disposal facilities, to incorporate by reference sections of the Idaho Standards for Public Works Construction, and to improve the clarity of the rules. The remaining sections have been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov or by contacting the undersigned.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 420 through 436.

IDAHO CODE SECTION 39-107D STATEMENT: Section 39-107D, Idaho Code, provides that DEQ must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations, or which propose to regulate an activity not regulated by the federal government. Part of this rulemaking involves copying certain provisions that were in IDAPA 58.01.02, “Water Quality Standards and Wastewater Treatment Requirements” (WQS), and moving them to the “Wastewater Rules”. To the extent DEQ is simply moving and not changing existing standards, Section 39-107D, Idaho Code, does not apply. In addition, there is no federal law or regulation that is comparable to plan and specification review and facility standard provisions set forth in the Wastewater Rules. Therefore, the changes to the rules are not broader in scope or more stringent than federal law or regulations.

Section 39-107D, Idaho Code, also applies to a rule which "proposes to regulate an activity not regulated by the federal government." The Wastewater Rules address the review and approval of

plans and specifications for sewage treatment plants and other waste treatment and disposal facilities and the standard by which the agency does the review and approval. This is not an activity regulated by the federal government. Therefore, Section 39-107D, Idaho Code, applies.

Section 39-107D(3), Idaho Code, provides that any rule subject to 39-107D that proposes a standard necessary to protect human health and the environment must also include in the rulemaking record and in the notice of rulemaking additional information. This additional information includes any estimates of risk accomplished, identification of populations or receptors addressed by any estimates, and other information related to an estimation of risk. The Wastewater Rules include facility standards which are intended to protect human health and the environment. The standards, however, are for the design and construction of wastewater pipelines. For example, the rules require that joints on wastewater pipes be watertight and be designed to prevent the entrance of roots. The rules are not based upon any express estimate or analysis of risk to public health or the environment. Instead, the facility standards are based upon guidelines set forth in documents, such as the "Recommended Standards for Wastewater Facilities"-2004 edition, that are generally accepted and used throughout the United States by engineers and state regulators.

IDAHO CODE SECTION 67-5224(2)(f) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact Mark Mason at mark.mason@deq.idaho.gov, (208)373-0266.

Dated this 17th day of November, 2005.

Paula J. Wilson
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The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 21, 2005. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The 2005 Legislature enacted Senate Bill 1220 requiring the Department of Environmental Quality (DEQ) to establish facility and design standards. DEQ has initiated this rulemaking to create a new rule chapter in response to that legislation. In addition, DEQ proposes to address other wastewater issues for adoption in the new rule chapter. This rulemaking includes the following:

1) Certain wastewater treatment requirements and definitions have been copied from IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," revised as necessary, and inserted into this new proposed rule chapter. A separate proposed rule docket (58-0102-0504) has been initiated for the purpose of deleting from IDAPA 58.01.02 those sections and definitions that are either unnecessary to remain in rule or have been copied and moved to the proposed rule chapter (IDAPA 58.01.16).

2) Create standards for design of wastewater collection system line extensions.

3) Extend wastewater land application operator compliance deadline by 12 months or until April 15, 2007 to allow sufficient time for land application operators to become licensed.

4) Clarify operator licensure requirements for large soil absorption systems with multiple owners.

5) Clarify operator licensure requirements for Class A effluent distribution systems.

6) Add necessary definitions.

7) Add the standard rule sections necessary for conformance with IDAPA 44.01.01, "Rules of the Administrative Rules Coordinator".

Wastewater system owners and operators, developers, consultants, engineers, cities, counties, industry, wastewater professional organizations, and the public at large may be interested commenting on this proposed rule.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2005 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2006 legislative session if approved by the Legislature.

SECTION 39-107D IDAHO CODE STATEMENT: Section 39-107D, Idaho Code, provides that DEQ must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations, or which propose to

regulate an activity not regulated by the federal government. Part of this rulemaking involves copying certain provisions that were in IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements" (WQS), and moving them to the proposed "Wastewater Rules." To the extent DEQ is simply moving and not changing existing standards, Section 39-107D, Idaho Code, does not apply. In addition, there is no federal law or regulation that is comparable to plan and specification review and facility standard provisions set forth in the proposed Wastewater Rules. Therefore, the proposed changes to the rules are not broader in scope or more stringent than federal law or regulations.

Section 39-107D, Idaho Code, also applies to a rule which "proposes to regulate an activity not regulated by the federal government". The proposed Wastewater Rules address the review and approval of plans and specifications for sewage treatment plants and other waste treatment and disposal facilities and the standard by which the agency does the review and approval. This is not an activity regulated by the federal government. This is an activity, however, that DEQ has regulated for years pursuant to Section 39-118, Idaho Code, and DEQ's WQS. To the extent DEQ is not proposing any new regulation of activities, Section 39-107D, Idaho Code, is most likely not applicable.

During the 2005 legislative session, the Idaho Legislature passed SB 1220. Among other things, this legislation amended Section 39-118, Idaho Code, so that it requires that all plans and specifications reviewed by DEQ, or by others as allowed under the new law, comply with "facility and design standards". The legislation then directs DEQ to work with professional engineers to establish such standards. In the past, DEQ reviewed the plans and specifications according to the WQS. The WQS referenced the "Recommended Standards for Sewage Works" as the principle tool DEQ would use in its review process. The proposed Wastewater Rules also reference an updated version of the "Recommended Standards for Sewage Works" as a tool to guide agency review. The proposed rules, however, also add explicit facility standards that must be met in the review and approval process. In this way, the proposed rules appear to modify the existing DEQ regulatory program. Under these circumstances, it is unclear whether the proposed rules are subject to the provisions of Section 39-107D, Idaho Code.

Assuming Section 39-107D, Idaho Code, is applicable, 39-107D(3) provides that any rule subject to 39-107D that proposes a standard necessary to protect human health and the environment must also include in the rulemaking record and in the notice of rulemaking additional information. This additional information includes any estimates of risk accomplished, identification of populations or receptors addressed by any estimates, and other information related to an estimation of risk. The proposed Wastewater Rules include facility standards which are intended to protect human health and the environment. The standards, however, are for the design and construction of waste treatment and disposal facilities. For example, the rules require that joints on wastewater pipes be watertight and be designed to prevent the entrance of roots. The rules are not based upon any express estimate or analysis of risk to public health or the environment. Instead, the facility standards are based upon guidelines set forth in documents, such as the "Recommended Standards for Wastewater Facilities" - 2004 edition, that are generally accepted and used throughout the United States by engineers and state regulators.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative

impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, June 1, 2005, Vol. 05-6, page 47.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Mark Mason at (208) 373-0266 or Mark.Mason@deq.idaho.gov.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before October 5, 2005.

Dated this 3rd day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 58
TITLE 01
CHAPTER 16

58.01.16 - WASTEWATER RULES

000. LEGAL AUTHORITY.
Under Chapters 1 and 36, Title 39, Idaho Code, the Idaho Legislature has granted the Board of Environmental Quality the authority to promulgate these rules. ( )

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 58.01.16, "Wastewater Rules". ( )

02. Scope. These rules establish the procedures and requirements for the planning, design and operation of wastewater facilities and the discharge of wastewaters and human activities which may adversely affect public health and water quality in the waters of the state. ( )

002. WRITTEN INTERPRETATIONS.
As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If

available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. ( )

003. ADMINISTRATIVE PROVISIONS.
Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". ( )

004. INCORPORATION BY REFERENCE.
Sections 401 and 501.3.4 of "Idaho Standards for Public Works Construction," 2005 Edition, are incorporated by reference into these rules. These documents are available at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502 or, for a fee, from the Local Highway Technical Assistance Council (LHTAC) at LHTAC, 3330 Grace Street, Boise, ID, 83703, (208) 344-0565. ( )

005. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8 a.m. to 5 p.m. Monday through Friday. ( )

006. CONFIDENTIALITY OF RECORDS.
Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality". ( )

007. REFERENCED MATERIAL.

0*1*. "Recommended Standards for Wastewater Facilities." 2004 Edition, *A Report of the Wastewater Committee of* the Great Lakes-Upper Mississippi River Board of State *and Provincial Public Health and Environmental Managers* (except Chapters 10, 20, and 30). This document, and subsequent revisions of this document, provides assistance in applying and interpreting these rules. This document is available through Health Education Services at http://www.hes.org. ( )

0*2*. Memorandum of Understanding. The Memorandum of Understanding between the Idaho Department of Environmental Quality and the Idaho Division of Building Safety Plumbing Bureau signed and dated April 4, 2003 provides assistance in determining juridiction over water and sewer service lines. Copies of the document are available at the Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, www.deq.idaho.gov. ( )

0*3*. "Idaho Standards for Public Works Construction." 2005 Edition. This document, and subsequent revisions of this document, provides assistance in applying and interpreting these rules. This document is available for a fee through the Local Highway Technical Assistance Council (LHTAC) at LHTAC, 3330 Grace Street, Boise, ID, 83703, (208) 344-0565. ( )

008. USE OF GUIDANCE IN DESIGN AND REVIEW.

Guidance documents are to be used to assist both designers and reviewers in determining a reasonable way to achieve compliance with the rules. Nothing in these rules makes the use of a particular guidance or guidance document mandatory. If the plans and specifications comply with applicable facility standards and design standards as set out in these rules, Section 39-118, Idaho Code, requires that the reviewing authority not substitute his or her judgment for that of the design engineer concerning the manner of compliance. If the design engineer needs assistance as to how to comply with a particular rule, the design engineer may use the referenced guidance documents for that assistance. However, the design engineer may also use other guidance or provide documentation to substantiate his or her own professional judgment. ( )

009. (RESERVED).

010. DEFINITIONS.
For the purpose of the rules contained in IDAPA 58.01.16, "Wastewater Rules," the following definitions apply: ( )

01. Available. Based on public wastewater system size, complexity, and variation in raw waste, a licensed wastewater operator must be on site, on call, or able to be contacted as needed to initiate the appropriate action for normal or emergency conditions in a timely manner. ( )

02. Beneficial Use. Any of the various uses which may be made of the water of Idaho, including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, navigation, recreation in and on the water, wildlife habitat, and aesthetics. The beneficial use is dependent upon actual use, the ability of the water to support a non-existing use either now or in the future, and its likelihood of being used in a given manner. The use of water for the purpose of wastewater dilution or as a receiving water for a waste treatment facility effluent is not a beneficial use. ( )

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

04. Board. The Idaho Board of Environmental Quality. ( )

05. Class A Effluent. Class A effluent is treated municipal reclaimed wastewater that must be oxidized, coagulated, clarified, and filtered, or treated by an equivalent process and adequately disinfected. For comprehensive Class A Effluent criteria and permitting requirements refer to IDAPA 58.01.17, "Wastewater Land Application Permit Rules". ( )

06. Class A Effluent Distribution System. The delivery system for Class A effluent. The distribution system does not include any of the collection or treatment portions of the wastewater facility and is not subject to operator licensing requirements in Section 203 of these rules. ( )

07. Collection System. That portion of the wastewater system in which wastewater is received from the premises of the discharger and conveyed to the point of treatment through a

series of lines, pipes, manholes, pumps/lift stations and other appurtenances. ( )

0*8*. **Compliance Schedule or Schedule of Compliance**. A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard. ( )

0*9*. **Department**. The Idaho Department of Environmental Quality. ( )

***10*.** **Design Flow**. The critical flow used for steady-state wasteload allocation modeling. ( )

1*1*. **Designated Beneficial Use or Designated Use**. Those beneficial uses assigned to identify waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards," Sections 110 through 160, whether or not the uses are being attained. ( )

1*2*. **Director**. The Director of the Idaho Department of Environmental Quality or his authorized agent. ( )

1*3*. **Discharge**. When used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. ( )

1*4*. **Disinfection**. A method of reducing the pathogenic or objectionable organisms by means of chemicals or other acceptable means. ( )

15. **Disposal Facility**. Any facility used for disposal of any wastewater. ( )

1*6*. **Effluent**. Any wastewater discharged from a treatment facility. ( )

1*7*. **EPA**. The United States Environmental Protection Agency. ( )

1*8*. **Facility Standards and Design Standards**. Facility standards and design standards are described in Sections 400, 410, 420, and 430 of these rules. Facility and design standards found in Sections 410, 420, and 430 of these rules must be followed in the planning, design, construction, and review of *municipal* wastewater facilities. ( )

1*9*. **Geometric Mean**. The geometric mean of "n" quantities is the "nth" root of the product of the quantities. ( )

***20*.** **Ground Water**. Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. ( )

21. **Industrial Wastewater**. Any waste, together with such water as is present, that is the by-product of industrial processes including, but not limited to, food processing or food washing wastewater. ( )

***22*.** **Land Application**. A process or activity involving application of wastewater, surface water, or semi-liquid material to the land surface for the purpose of disposal, pollutant removal, or ground water recharge. ( )

2*3*. **License**. A physical document issued by the Idaho Bureau of Occupational Licenses certifying that an individual has met the appropriate qualifications and has been granted the authority to practice in Idaho under the provisions of Chapter 24, Title 54, Idaho Code. ( )

2*4*. **Material Deviation**. A change from the design plans that significantly alters the type or location of facilities, requires engineering judgment to design, or impacts the public safety or welfare. ( )

2*5*. **Material Modification**. Material modifications are those that are intended to increase system capacity or to alter the methods or processes employed. ( )

2*6*. **Mixing Zone**. A defined area or volume of the receiving water surrounding or adjacent to a wastewater discharge where the receiving water, as a result of the discharge, may not meet all applicable water quality criteria or standards. It is considered a place where wastewater mixes with receiving water and not as a place where effluents are treated. ( )

27. **Municipal Wastewater**. Unless otherwise specified, sewage and associated solids, whether treated or untreated, together with such water that is present. Also called domestic wastewater. Industrial wastewater may also be present, but is not considered part of the definition. ( )

2*8*. **National Pollutant Discharge Elimination System (NPDES)**. Point source permitting program established pursuant to Section 402 of the federal Clean Water Act. ( )

2*9*. **Natural Background Conditions**. No measurable change in the physical, chemical, biological, or radiological conditions existing in a water body without human sources of pollution within the watershed. ( )

***30*.** **Nephelometric Turbidity Units (NTU)**. A measure of turbidity based on a comparison of the intensity of the light scattered by the sample under defined conditions with the intensity of the light scattered by a standard reference suspension under the same conditions. ( )

***31*.** **Nuisance**. Anything which is injurious to the public health or an obstruction to the free use, in the customary manner, of any waters of the state. ( )

***32*.** **Nutrients**. The major substances necessary for the growth and reproduction of aquatic plant life, consisting of nitrogen, phosphorus, and carbon compounds. ( )

***33*.** **Non-Potable Mains**. The pipelines that collect and convey non-potable discharges from or to multiple service connections. ( )

3*4*. **Non-Potable Services**. The pipelines that convey non-potable discharges from individual facilities to a connection with the non-potable main. This term also refers to pipelines that convey non-potable water from a pressurized irrigation system, reclaimed wastewater system, and other non-potable systems to individual consumers. ( )

3*5*. **Operating Personnel**. Any person who is employed, retained, or appointed to *conduct the tasks associated with the day-to-day operation and maintenance of a public wastewater system. Operating personnel shall include every person making* system control or system integrity decisions about water quantity or water quality that may affect public health. ( )

3*6*. **Owner**. For purposes of Sections 202 through 204, the person, company, corporation, district, association or other organizational entity that owns the public wastewater system, and who provides, or intends to provide wastewater service to system users and is ultimately responsible for the public wastewater system operation. ( )

3*7*. **Person**. An individual, public or private corporation, partnership, association, firm, joint stock company, joint venture, trust, estate, state, municipality, commission, political subdivision of the state, state or federal agency, department or instrumentality, special district, interstate body or any legal entity, which is recognized by law as the subject of rights and duties. ( )

3*8*. **Point Source**. Any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged to surface waters of the state. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. ( )

3*9*. **Pollutant**. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged to water in excessive quantities, cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities. ( )

***40*.** **Potable Water**. A water which is free from impurities in such amounts that it is safe for human consumption without treatment. ( )

***41*.** **Potable Water Mains**. Pipelines that deliver potable water to multiple service connections. ( )

***42*.** **Potable Water Service**. Pipelines that convey potable water from a connection to the potable water main across private property to individual consumers. ( )

***43*.** **Primary Treatment**. Processes or methods that serve as the first stage treatment of wastewater, intended for removal of suspended and settleable solids by gravity sedimentation; provides no changes in dissolved and colloidal matter in the sewage or wastes flow. ( )

***44*.** **Public Wastewater System or Wastewater System**. For purposes of Sections 202 through 204, a public wastewater system or wastewater system is any publicly or privately owned collection system or treatment system that generates, collects, or treats two thousand five

hundred (2,500) or more gallons of wastewater per day. This does not include any wastewater treatment system operated and maintained exclusively by a single family residence or any wastewater system consisting solely of a gravity flow, non-mechanical septic tank and subsurface treatment and distribution system, any wastewater system with individual septic tanks and individual pump stations that discharge to a common gravity flow subsurface treatment and distribution system when ownership of each septic tank and pumping station is by individual property owner and ownership of the common system is by a public or private entity; any animal waste system used for agricultural purposes that have been constructed in part or whole by public funds, or industrial wastewater systems under private ownership. ( )

45. **Quasi-Municipal Corporation**. A public entity, other than community government, created or authorized by the legislature to aid the state in, or to take charge of, some public or state work for the general welfare. For the purpose of these rules, this term refers to wastewater or sewer districts. ( )

46. **Receiving Waters**. Those waters which receive pollutants from point or nonpoint sources. ( )

47. **Recharge**. The process of adding water to the zone of saturation. ( )

48. **Recharge Water**. Water that is specifically utilized for the purpose of adding water to the zone of saturation. ( )

49. **Responsible Charge (RC)**. For purposes of Sections 202 through 204, responsible charge means, active, daily on-site and/or on-call responsibility for the performance of operations or active, on-going, on-site and/or on-call direction of employees and assistants. ( )

50. **Responsible Charge Operator**. For purposes of Sections 202 through 204, a responsible charge operator is an operator licensed at a class equal to or greater than the classification of the system and who has been designated by the system owner to have direct supervision of and responsibility for the performance of operations of a specified wastewater treatment system(s) or wastewater collection system(s) and the direction of personnel employed or retained at the same system. The responsible charge operator has an active daily on-site and/or on-call presence at the specified facility. ( )

51. **Reviewing Authority**. For those projects requiring preconstruction approval by the Department, the Department is the reviewing authority. For those projects allowing for preconstruction approval by others, pursuant to Subsection 400.01.b. of these rules, the qualified licensed professional engineer is also the reviewing authority. ( )

52. **Sanitary Sewer Extension**. As used in Section 400, an extension of an existing wastewater collection system that does not require a lift station or force main and is intended to increase the service area of the wastewater collection system. ( )

53. **Secondary Treatment**. Processes or methods for the supplemental treatment of wastewater, usually following primary treatment, to affect additional improvement in the quality of the treated wastes by biological means of various types which are designed to remove or modify organic matter. ( )

54. **Sewage**. The water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. ( )

55. **Sludge**. The semi-liquid mass produced by partial dewatering of potable or spent process waters or wastewater. ( )

56. **Special Resource Water**. Those specific segments or bodies of water which are recognized as needing intensive protection: ( )

a. To preserve outstanding or unique characteristics; or ( )

b. To maintain current beneficial use. ( )

5*7*. **State**. The state of Idaho. ( )

5*8*. **Substitute Responsible Charge Operator**. A public wastewater operator holding a valid license at a class equal to or greater than the public wastewater system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. ( )

5*9*. **Surface Water Body**. All surface accumulations of water, natural or artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. This includes, but is not limited to, rivers, streams, canals, ditches, lakes, and ponds. It does not include private waters as defined in Section 42-212, Idaho Code. ( )

6*0*. **Treatment**. A process or activity conducted for the purpose of removing pollutants from wastewater. ( )

61. **Treatment *Facility***. Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishing thereof and their appurtenances. A treatment *facility* may also be known as a treatment *system*, waste treatment system, waste treatment facility, or waste treatment plant. ( )

62. **User**. Any person served by a public wastewater system. ( )

6*3*. **Wastewater**. Unless otherwise specified, sewage, industrial waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present. ( )

64. **Wastewater Lagoon**. Manmade impoundments for the purpose of storing or treating wastewater. ( )

6*5*. **Wastewater Pipelines**. The pipelines that collect and convey non-potable discharges from or to multiple service connections. ( )

6*6*. **Wastewater System**. Wastewater system includes any *collection system*, treatment system, or disposal facility. ( )

6*7*. **Wastewater System Operator**. The person who is employed, retained, or appointed to conduct the tasks associated with routine day to day operation and maintenance of a public wastewater treatment or collection system in order to safeguard the public health and environment. ( )

6*8*. **Water Main Extension**. An extension of the distribution system of an existing public water system that does not require a booster pumping station and is intended to increase the service area of the water system. ( )

6*9*. **Water Pollution**. Any alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters of the state, or the discharge of any pollutant into the waters of the state, which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to fish and wildlife, or to domestic, commercial, industrial, recreational, aesthetic, or other beneficial uses. ( )

***70*.** **Waters and Waters of the State**. All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. ( )

***71*.** **Watershed**. The land area from which water flows into a stream or other body of water which drains the area. ( )

011. -- 200. (RESERVED).

201. POINT SOURCE WASTEWATER TREATMENT REQUIREMENTS.

01. Appropriate Control Measures. The Department, through approval or disapproval of plans for wastewater treatment and disposal facilities, the issuance of wastewater discharge permits, orders, compliance schedules, directives or any of the mechanisms at its disposal, will require persons to apply appropriate control measures necessary to achieve and maintain the water quality standards contained in IDAPA 58.01.02, "Water Quality Standards". ( )

02. Degree of Treatment. The degree of wastewater treatment required to restore and maintain the standards of quality will be determined in each instance by the Department, based upon the following: ( )

a. The uses which are made or desired of the receiving water; ( )

b. The volume and nature of flow of the receiving water; ( )

c. The quantity and quality of the wastewater to be treated; and ( )

d. The presence or absence of other sources of water pollution on the same

watershed, stream segment or aquifer. ( )

03. Operation. Any person who owns or operates any sewage or other wastewater treatment facility must at all times: ( )

a. Insure that such facility is operated under competent supervision and with the highest efficiency that can reasonably be expected; and ( )

b. Maintain such facility in good repair. ( )

04. Treatment Records. Any person who owns or operates any facility or carries out any operation which results in the discharge of wastewater must furnish to the Department such information concerning quality and quantity of discharged wastewaters and maintain such treatment records as the Department requires to evaluate the effects of any receiving waters. Required information can include, but is not limited to: ( )

a. Treated wastewater discharge volumes; and ( )

b. Treated wastewater discharge *biochemical oxygen demand (*BOD*)*; and ( )

c. Treated wastewater discharge suspended solid concentration; and ( )

d. Discharge pH; and ( )

e. Discharge temperatures. ( )

05. Falsification of Records. It is a violation of these rules for any person to falsify or knowingly render inaccurate any treatment record which can be required as provided in these regulations. ( )

202. CLASSIFICATION OF *PUBLIC* WASTEWATER SYSTEMS.

01. Classification Requirement. All public wastewater systems shall be classified based on indicators of potential health risks. ( )

a. Classification rating forms developed in accordance with the criteria in Subsection 202.02 must be completed by the public wastewater system owner or designee for every public wastewater treatment system and wastewater collection system no later than July 1, 2008. Public wastewater treatment and wastewater collection system owners or designee shall submit additional classification rating forms at five (5) year intervals detailing existing conditions.( )

b. The Department shall review system classification rating forms submitted by the public wastewater treatment and wastewater collection system owners at five (5) year intervals and classify the systems to reflect the condition at the time of the initial classification, or changed conditions, if any, on subsequent submittals. ( )

02. Classification Criteria. Public wastewater treatment systems and wastewater collection systems shall be classified under a system that uses the following criteria: ( )

a. Complexity, size, volume and variability in raw waste for treatment systems using guidelines established by the Department. ( )

b. Complexity or size of collection systems. ( )

c. Other criteria deemed necessary to completely classify systems. ( )

203. *PUBLIC* WASTEWATER SYSTEM OPERATOR LICENSURE REQUIREMENTS.

01. System Operator Licensure Requirement. Owners of all public wastewater systems must place the direct supervision of their wastewater system(s), including each treatment system and each collection system, under the responsible charge of an operator who holds a valid license equal to or greater than the classification of the wastewater treatment system and collection system. An operator in responsible charge of both a wastewater treatment system and a collection system shall hold two (2) licenses, one (1) for wastewater treatment and one (1) for collection. Owners shall notify the Department in writing of any change of responsible charge or substitute responsible charge operator within ten (10) days of such change. ( )

02. Responsible Charge Operator License Requirement. An operator in responsible charge of a public wastewater system in Idaho must hold a valid license equal to or greater than the classification of the wastewater system(s), including each treatment system, where present, and each collection system as determined by the Department. ( )

03. Substitute Responsible Charge Operator. At such times as the responsible charge operator is not available, a substitute responsible charge operator shall be designated to replace the responsible charge operator. ( )

04. Wastewater System Operator Licensure. All other operating personnel at public wastewater systems including each treatment system and collection system must hold a valid license. ( )

05. Class A Reclaimed Wastewater System Operator License Exception. Any public wastewater system operating personnel that exclusively operate a Class A Effluent Distribution System of a Class A Municipal Reclaimed Wastewater System permitted in accordance with IDAPA 58.01.17, "Wastewater Land Application Permit Rules," is not subject to operator licensing requirements. ( )

06. General Compliance Deadline. All public wastewater systems addressed in Sections 202 and 203 shall be in compliance with these rules by April 15, 2006. ( )

07. Land Application Operator Compliance Deadline. Each *public* wastewater land application system addressed in these rules shall employ, retain or contract with licensed land application operating personnel by April 15, 2007. ( )

08. Qualifications for Operator Licensure. All *public* wastewater system operating personnel, including responsible charge and substitute responsible charge operators, must qualify

for and hold a valid license issued by the Idaho Bureau of Occupational Licenses. ( )

204. CONTRACTING FOR SERVICES.
Public wastewater systems may contract with a licensed public wastewater system operator or with a public wastewater system having licensed operators to provide supervision. The contracted public wastewater system operator or contracted entity shall employ and assign to that system an operator licensed at the grade equal to or greater than the classification of the system. ( )

205. -- 259. (RESERVED).

260. SUBSURFACE SEWAGE OR WASTE DISPOSAL.
Subsurface sewage or wastewater disposal facilities must be designed and located so that pollutants cannot be reasonably expected to enter water of the state in concentrations resulting in injury to beneficial uses. *See also IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules".* ( )

261. -- 399. (RESERVED).

400. REVIEW OF PLANS FOR *MUNICIPAL* WASTE*WATER* TREATMENT OR DISPOSAL FACILITIES.
All applicable laws, rules and standards shall be used in the review of plans and specifications for *municipal* waste*water* treatment or disposal facilities. "Recommended Standards for Wastewater Facilities," - 2004 edition, *A Report of the Wastewater Committee of* the Great Lakes-Upper Mississippi River Board of State *and Provincial Public Health and Environmental Managers* (except Chapters 10, 20, and 30) shall be used as guidance in the review of plans and specifications for *municipal* waste*water* treatment or disposal facilities. ( )

01. Plan and Specification Review. ( )

a. Except as provided in Subsection 400.01.b., all plans and specifications for the construction of new sewage systems, sewage treatment plants or systems, other *municipal* waste*water* treatment or disposal facilities, or for material modifications to existing sewage treatment plants or systems, *municipal* waste*water* treatment or disposal facilities shall be submitted to the Department for review and approval before construction may begin and all construction shall be in substantial compliance therewith. The Department shall review plans and specifications and endeavor to resolve design issues within forty-two (42) calendar days of submittal such that approval can be granted. If the Department and applicant have not resolved design issues within forty-two (42) calendar days or at any time thereafter, the applicant may file a written demand to the Department for a decision. Upon receipt of such written demand, the Department shall deliver a written decision to the applicant within no more than seven (7) calendar days explaining any reasons for disapproval. The Department shall maintain records of all written demands for decision made pursuant to Subsection 400.01.a. with such records including the final decision rendered and the timeliness thereof. No material deviation shall be made to the approved plans and specifications without the prior approval of the Department. ( )

b. Plans developed for sanitary sewer extensions, when such facilities will be owned and operated by a city, county, quasi-municipal corporation or regulated public utility, shall not

require preconstruction approval by the Department, provided that such plans and specifications are reviewed and approved by *another* qualified Idaho licensed professional engineer to verify compliance with the requirements of these rules prior to initiation of construction. Any plans approved pursuant to Subsection 400.01.b. shall be transmitted to the Department at the time construction is authorized along with a statement that the plans comply with the requirements of these rules and that construction has been authorized by the city, county, quasi-municipal corporation or regulated public utility that will own and operate the system. At the discretion of the city, county, quasi-municipal corporation or regulated public utility, the plans addressed by this subsection may be referred to the Department for review and approval prior to initiation of construction. ( )

02. Professional Engineer. Plans and specifications for construction, alteration or expansion of any sewage system, sewage treatment plant or system, or other *municipal* waste*water* treatment or disposal facility shall be prepared by or under the supervision of an Idaho registered professional engineer and shall bear the imprint of the engineer's seal. Construction shall be observed by a registered professional engineer or a person under the supervision of a registered professional engineer. ( )

03. Record Plans and Specification. Within thirty (30) calendar days of the completion of construction of facilities covered by Subsection 400.01, record plans and specifications based on information provided by the construction contractor and field observations made by the engineer or the engineer's designee depicting the actual construction of facilities performed, must be submitted to the Director by the engineer representing the city, county, quasi-municipal corporation or regulated public utility that owns the project, or by the design engineer or owner-designated substitute engineer if the constructed facilities will not be owned and operated by a city, county, quasi-municipal corporation or regulated public utility. Such submittal by the professional engineer must confirm material compliance with the approved plans and specifications or disclose material deviations therefrom. If the construction does not materially deviate from the approved plans and specifications, the owner may have a statement to that affect prepared by a qualified Idaho licensed professional engineer and filed with the Department in lieu of submitting a complete and accurate set of record drawings. ( )

04. Compliance With Applicable Standards and Rules. All plans and specifications submitted to satisfy the requirements of Section 400 or approved in compliance with Section 400, shall be in compliance with the requirements of these rules and shall conform in style and quality to regularly accepted engineering standards. The Department shall review plans and specifications to determine compliance with these rules and engineering standards of care. If the plans and specifications comply with these rules and engineering standards of care, the Department shall not substitute its judgment for that of the owner's design engineer concerning the manner of compliance with these rules. ( )

05. Waiver of Approval Requirement. The Department may waive the plan and specification approval for any particular facility or category of facilities which will have no significant impact on the environment or on the public health. ( )

401. REVIEW OF PLANS FOR NONMUNICIPAL WASTEWATER TREATMENT OR DISPOSAL FACILITIES.

01. Plan and Specification Approval Required. The construction, alteration or expansion of any nonmunicipal wastewater treatment or disposal facility must not begin before plans and specifications for the proposed facility have been submitted to and approved by the Department. Deviations may be allowed as provided in Subsection 401.02. The Department does not require review of industrial in-plant processes. ( )

02. Deviations From Approved Plans. No deviations are to be made from the approved plans and specifications without prior approval of the Department. ( )

03. Record Plans and Specifications. If actual construction deviates from the approved plans and specifications, complete and accurate plans and specifications depicting the actual construction, alteration, or modification performed, shall be submitted to the Department for review and approval within thirty (30) days of completion of construction. ( )

04. Waiver of Approval Requirement. The Department can waive the plan and specification approval required in Subsection 401.01 for any particular facility or category of facilities which will have no significant impact on the environment or on the public health.( )

40*2*. -- 409. (RESERVED).

410. FACILITY AND DESIGN STANDARDS FOR *MUNICIPAL* WASTEWATER *TREATMENT OR DISPOSAL FACILITIES* - ENGINEERING REPORTS AND FACILITY PLANS.

01. Engineering Reports and Facility Plans Required. Engineering Reports and current Facility Plans are required for *municipal wastewater treatment or disposal facilities* and shall address hydraulic capacity, treatment capacity, project financing, and operation and maintenance considerations sufficiently to determine the effects of the project on the overall wastewater infrastructure. Engineering Reports must be completed for minor collection system, pump station, and interceptor projects. *Comprehensive Facility Plans are not required for minor or routine collection systems.* Comprehensive Facility Plans must be completed or have been completed for projects involving new, expanded, upgraded, or rehabilitated *municipal* wastewater treatment *or disposal* facilities and major collection, interceptor sewer, and pump station projects and address the entire potential service area of the project. The determination of classification as major or minor collection interceptor sewer and pump station projects will be made by the reviewing authority based on review of recommended classification by the owner. ( )

02. Submittal to Reviewing Authority. Documents referenced in Subsection 410.01 must be submitted to the reviewing authority for review and approval, unless the reviewing authority already has the reports and plans in its possession. ( )

03. Engineering Report or Facility Plan Contents. The Engineering Report or Facility Plan must include sufficient detail to demonstrate that the proposed project meets applicable criteria. The Engineering Report or Facility Plan typically identifies and evaluates wastewater related problems; assembles basic information; presents criteria and assumptions; examines alternate projects, with preliminary layouts and cost estimates; describes financing methods, sets forth anticipated charges for users; reviews organizational and staffing requirements; offers a conclusion with a proposed project for client consideration; and outlines

official actions and procedures to implement the project. ( )

411. -- 419. (RESERVED).

420. FACILITY AND DESIGN STANDARDS FOR *MUNICIPAL* WASTEWATER *TREATMENT OR DISPOSAL FACILITIES* - SUBMISSION OF PLANS AND SUPPORT DOCUMENTS.
Submissions to the reviewing authority for construction of *municipal* wastewater *treatment or disposal facilities* shall include sealed plans and specifications, design criteria, the appropriate construction permit applications, review forms, and permit fee if required. The plans and specifications shall contain sufficient detail to allow for the contracting and construction of the wastewater systems. ( )

421. -- 429. (RESERVED).

430. FACILITY AND DESIGN STANDARDS FOR *MUNICIPAL* WASTEWATER *TREATMENT OR DISPOSAL FACILITIES* - DESIGN AND CONSTRUCTION OF WASTEWATER PIPELINES.

01. Design Capacity and Design Flow. In general, sewer capacities shall be designed for the estimated ultimate tributary population, except in considering parts of the systems that can be readily increased in capacity. ( )

02. Details of Design and Construction. ( )

a. Minimum Pipe Size. Minimum pipe size shall be based on cleaning capability and hydraulic capacity, and shall conform with the required planning documents. ( )

b. Depth. Wastewater pipelines shall be installed sufficiently deep or specifically designed to prevent freezing and to protect the facilities from surface loading. ( )

c. Buoyancy. Buoyancy of wastewater pipelines shall be considered and flotation of the pipe shall be prevented with appropriate construction where high groundwater conditions are anticipated. ( )

d. Slope. Wastewater pipelines shall be designed to have sufficient slope and velocity to “self clean” or transport constituent solids to the treatment facility or the owner shall periodically service wastewater pipelines to flush, transport, or remove solids from wastewater pipelines with minimal velocities. ( )

e. Materials. ( )

i. Any generally accepted material for wastewater pipelines will be given consideration. The material selected should be adapted to local conditions, such as: character of industrial wastes, possibility of septicity, soil characteristics, exceptionally heavy external loadings, abrasion, corrosion, and similar problems. ( )

ii. Couplings complying with applicable standard specifications shall be used for

joining dissimilar materials. ( )

iii. For new pipe materials for which standards have not been established, the design engineer shall provide complete pipe specifications and installation specifications developed on the basis of criteria adequately documented and certified in writing by the pipe manufacturer to be satisfactory for the specific application. ( )

f. Installation. Installation specifications shall contain appropriate requirements based on the criteria, standards, and requirements established by industry in its technical publications. Reference Idaho Standards for Public Works Construction, 2005 Edition, and subsequent revisions, for assistance in designing such specifications. ( )

g. Joints and Infiltration. ( )

i. The installation of joints and the materials used shall be included in the specifications. Wastewater pipeline joints shall be designed to minimize infiltration and to prevent the entrance of roots throughout the life of the system. Reference Idaho Standards for Public Works Construction, 2005 Edition, and subsequent revisions, for assistance in designing such specifications. ( )

ii. Service connections to the wastewater pipeline main shall be water tight and not protrude into the wastewater pipelines. If a saddle type connection is used, it shall be a device designed to join with the types of pipe which are to be connected. All materials used to make service connections shall be compatible with each other and with the pipe materials to be joined and shall be corrosion proof. ( )

h. Manholes. Manholes shall be installed at the end of each line; at all changes in grade, size, or alignment; at all intersections. Cleanouts may be used only for special conditions and shall not be substituted for manholes nor installed at the end of laterals greater than one hundred fifty (150) feet in length. ( )

i. Testing. Testing shall conform with Section 500.3.4 of the “Idaho Standards for Public Works Construction”. ( )

j. Inverted Siphons. Inverted siphons shall have not less than two (2) barrels. They shall be provided with necessary appurtenances for maintenance, convenient flushing, and cleaning equipment. Design shall provide sufficient head and appropriate pipe sizes to secure sufficient velocities for design average flows. ( )

k. Wastewater Pipelines in Relation to Surface Water Bodies. The top of all wastewater pipelines entering or crossing surface water bodies shall be at a sufficient depth below the natural bottom of the bed or otherwise designed to protect the wastewater pipeline. ( )

i. Wastewater pipelines located along surface water bodies shall be located outside of the bed and sufficiently removed therefrom to provide for future possible stream widening and to prevent pollution by siltation during construction. ( )

ii. Structures. Wastewater pipeline outfalls, headwalls, manholes, gate boxes, or other

structures shall be designed to address anticipated flood flows of the surface water bodies. ( )

iii. Alignment. Wastewater pipelines crossing surface water bodies should be designed to cross the surface water body as nearly perpendicular to the surface water body flow as possible and shall be free from change in grade. ( )

iv. Materials. Wastewater pipelines entering or crossing surface water bodies shall be constructed of *water transmission pressure rated pipe with restrained joints conforming to Section 401 of the 'Idaho Standards for Public Works Contruction'* or other suitable pipe with restrained joints *capable of being installed to* remain watertight and free from changes in alignment or grade. Material used to back-fill the trench shall be *concrete slurry,* stone, coarse aggregate, washed gravel, or other materials which will not readily erode, cause siltation, damage pipe during placement, or corrode the pipe. ( )

v. Siltation and Erosion. Construction methods that will minimize siltation and erosion shall be employed. ( )

l. Aerial Crossings. Support shall be provided for all joints in pipes utilized for aerial crossings. Restrained joints or structural casings are required. ( )

m. Cross Connections Prohibited. There shall be no physical connections between a public or private potable water supply system and a wastewater pipeline, or appurtenance thereto, which would permit the passage of any wastewater or polluted water into the potable supply. No water pipe shall pass through or come into contact with any part of a wastewater pipeline manhole. ( )

n. Protection of Water Sources, Supplies. When wastewater pipelines are proposed in the vicinity of any drinking water sources or supplies or other drinking water facilities, requirements of IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” shall be used to confirm acceptable isolation distances. ( )

o. Relation to Potable Water Mains. ( )

i. Non-potable mains in relation to potable water mains. ( )

(1) Parallel installation requirements. ( )

(a) Greater than ten (10) feet separation: no conditions. ( )

(b) Ten (10) feet to six (6) feet separation: separate trenches, with potable main above non-potable main, and non-potable main constructed with potable-water class pipe. ( )

(c) Less than six (6) feet separation: engineer to submit data to the Department for review and approval that this installation will protect public health and environment and non-potable main constructed with potable-water class pipe. ( )

(d) Never in same trench. ( )

(2) Non-potable mains crossing potable water mains requirements. ( )

(a) Eighteen (18) inches or more vertical separation with potable water main above non-potable main: non-potable main joint as far as possible from potable water main. ( )

(b) Less than eighteen (18) inches vertical separation: non-potable main constructed with potable water class pipe and non-potable main joint as far as possible from potable water main; or sleeve non-potable pipe with potable water class pipe for ten (10) feet either side of crossing. ( )

ii. Non-potable services in relation to potable water services and non-potable services in relation to potable water mains. The Department will use the Memorandum of Understanding with the Plumbing Bureau as guidance in determining the relative responsibilities for reviewing service lines. ( )

(1) Parallel installation requirements. ( )

(a) Greater than six (6) feet separation: no conditions. ( )

(b) Less than six (6) feet separation: engineer to submit data that this installation will protect public health and environment and non-potable service constructed with potable water class pipe. ( )

(c) Never in same trench. ( )

(2) Non-potable services crossing potable water services or potable water mains requirements. ( )

(a) Eighteen (18) inches or more separation with potable water service or main above non-potable service: non-potable main joint as far as possible from potable water main. ( )

(b) Less than eighteen (18) inches separation or potable water service or main below non-potable service: non-potable service or main constructed with potable water class pipe and non-potable main joint as far as possible from potable water main; or sleeve non-potable pipe with potable water class pipe for ten (10) feet either side of crossing. ( )

431. -- *599*. (RESERVED).

600. LAND APPLICATION OF WASTEWATER(S) OR RECHARGE WATERS.
Land application of wastewater or recharge waters is subject to the following requirements: ( )

01. Land Application Permit. Idaho Department of Environmental Quality Rules, IDAPA 58.01.17, "Wastewater Land Application Permit Rules," require a permit prior to land application of certain types of wastewater. ( )

02. Applied Waters Restricted to Premises. Wastewater(s) or recharge waters applied to the land surface must be restricted to the premises of the application *site. Wastewater*

discharges to surface water that require a permit under the Clean Water Act must be authorized by the U.S. Environmental Protection Agency. ( )

03. Hazard or Nuisance Prohibited. Wastewaters must not create a public health hazard or a nuisance condition. ( )

04. Monitoring. Provision must be made for monitoring the quality of the ground water in proximity of the application site. The ground water monitoring program is subject to approval by the Department. All data and reports resulting from the ground water monitoring program must be submitted to the Department upon request. The minimum frequency of monitoring and data submittal will be determined by the Department and in general will be dependent upon: ( )

a. The nature and volume of wastewater material or recharge water; ( )

b. The frequency and duration of application; and ( )

c. The characteristics of the soil mantle on and lithology underlying the application site. ( )

05. Basis for Evaluation. The evaluation for an approval to irrigate, either by sprinkling or flooding or surface spreading of wastewater material or by burying wastewater material or recharge water in the upper soil horizon as a method of treatment, must include, but will not necessarily be limited to, consideration of the following items: ( )

a. The type and quantity of wastewater(s) proposed for land application. In general, the wastewater(s) organic constituents are to be biologically degradable and inorganic constituents must be utilized by vegetation or those organisms normally present in the soil. Other wastewater(s) or recharge waters will be considered provided it can be shown that land application will not adversely affect beneficial uses of waters of the state. ( )

b. The nature of the soils and geologic formations underlying the application site. The entity proposing the activity must provide reasonable assurance that the soils and site geology will provide the required level of treatment and will not allow movement of pollutants into the underlying ground water. ( )

c. The ability of the soil and vegetative cover on the application site to remove the pollutants contained in the applied waters through the combined processes of consumptive use and biological and chemical inactivation. ( )

601. -- 649. (RESERVED).

650. SLUDGE USAGE.

01. Disposal Plans Required. Sludge can be utilized as soil augmentation only in conformance with: ( )

a. A Department approved sludge disposal plan; or ( )

b. Procedures and in a manner approved by the Department on a site-by-site basis. ( )

02. Basis for Evaluation. Sludge disposal plans and sludge utilization proposals will be evaluated by the Department in regard to their protection of water quality and public health. ( )

03. Elements of Plans and Proposals. Plans and proposals must at a minimum provide: ( )

a. That only stabilized sludge will be used. ( )

b. The criteria utilized for site selection, including: ( )

i. Soil description; ( )

ii. Geological features; ( )

iii. Groundwater characteristics; ( )

iv. Surrounding land use; ( )

v. Topography; and ( )

vi. Climate. ( )

c. A description of the application process. ( )

d. A statement detailing procedures to prevent application which could result in a reduction of soil productivity or in the percolation of excess nutrients. ( )

e. Identification of potential adverse health effects in regard to the sludge and its proposed use. ( )

f. Delineation of methods or procedures to be used to alleviate or eliminate adverse health effects. ( )

651. -- 999. (RESERVED).

RESOURCES & ENVIRONMENT

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.17 - WASTEWATER-LAND APPLICATION PERMIT RULES

DOCKET NO. 58-0117-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The temporary rule is effective December 7, 2005. This pending rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that the Board has adopted a pending and is also adopting a temporary rule. This action is authorized by Chapter 1, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for commencing the rulemaking is set forth in the initial proposed rule published in the Idaho Administrative Bulletin, August 3, 2005, Volume 05-8, pages 389 through 410. After consideration of public comments, the proposed rule has been revised at Sections 100, 200, 300, 401, 600, and 601. The remaining sections have been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov or by contacting the undersigned.

In accordance with Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin following this notice and includes changes made to the pending rule. The text of the pending has been modified in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Vol. 05-8, pages 389 through 410.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is necessary because it will allow municipalities to qualify for funding for upgrades and improvements in wastewater treatment facilities.

IDAHO CODE SECTION 39-107D STATEMENT: This rule regulates an activity not regulated by the federal government. The following is a summary of additional information required by Sections 39-107D(3) and (4), Idaho Code, supporting modifications to these rules. The requirements set forth in this rule are based upon studies and analysis conducted by other states, the U.S. Environmental Protection Agency (EPA), and national water reuse organizations that indicate the requirements are protective of human health and the environment and do not pose an unreasonable risk to the public potentially exposed. The referenced studies and analysis will be included in the rulemaking record and can be reviewed during the public comment period for further detailed information regarding risk.

Section 39-107D(3)(a), Idaho Code. Identification of each population or receptor addressed by an estimate of public health effects or environmental effects.

The limits placed on wastewater treatment in the stated modifications are proposed for both public health and environmental effects. The population affected by these limits includes the residents and users of facilities being irrigated by this wastewater effluent and the potential users of down-gradient beneficial uses of groundwater being recharged by this wastewater effluent.

Section 39-107D(3)(b) and (c), Idaho Code. Identification of the expected risk or central estimate of risk for the specific population or receptor and identification of each appropriate upper bound or lower bound estimate of risk. The expected risk of exposure to this quality of wastewater effluent for each of these populations is as follows.

The expected risk for nitrate contamination on groundwater is low. For nitrate from the wastewater effluent entering the groundwater and affecting down-gradient beneficial users for drinking water (either directly or indirectly), the limits are based on the Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08, and Idaho's Ground Water Quality Rule, IDAPA 58.01.11. These standards are based on past studies by EPA determining the adverse health effects on infants from nitrate in drinking water.

The expected risk for pathogen contamination for affected populations is low. For pathogens in the wastewater effluent, the coliform limits are based on Idaho's existing Wastewater-Land Application Permit Rules. Associated additional requirements regarding treatment, buffer zones, reliability and redundancy are included to give additional assurance that the limits are attained consistently.

The expected risk of cross-connections from the wastewater effluent distribution system to the drinking water distribution system is low. There are multiple requirements put on the distribution system of the wastewater effluent. These requirements provide the affected populations with safeguards against contamination of their drinking water system from parallel or crossing main lines. These requirements also protect against contamination of their wastewater effluent system by raw sewage in parallel or crossing main lines.

The requirements set forth in this rule are based upon studies and analysis conducted by other states, EPA, and national water reuse organizations that indicate the requirements are protective of human health and the environment and do not pose an unreasonable risk to the public potentially exposed. The referenced studies and analysis will be included in the rulemaking record and can be reviewed during the public comment period for further detailed information regarding risk.

Section 39-107D(3)(d), Idaho Code. Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty.
The limits placed on wastewater treatment in the stated modifications are proposed for both public health and environmental effects. The limits in these rule modifications are based on limits and standards used by other states and as promoted by national water reuse organizations. Although Idaho's wastewater land application permit program has been in affect for many years utilizing treated effluent for agricultural and municipal beneficial irrigation, the use of highly treated wastewater for higher beneficial uses is an evolving industry throughout the U.S. and the

world. These higher uses, involving almost unrestricted use and unrestricted access by the general public, call for higher treatment and monitoring requirements to protect the affected populations. The uncertainty in assessing the health and environmental effects is believed to be minimal, but not zero.

Section 39-107D(3)(e), Idaho Code. Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.
The use of the 10 mg/l for nitrate is based on the existing Ground Water Quality Rule and the existing Idaho Rules for Public Drinking Water Systems. The use of the 2.2 total coliform limit is currently in the Wastewater-Land Application Permit Rules.

The requirements set forth in this rule are based upon studies and analysis conducted by other states, EPA, and national water reuse organizations that indicate the requirements are protective of human health and the environment and do not pose an unreasonable risk to the public potentially exposed. The referenced studies and analysis will be included in the rulemaking record and can be reviewed during the public comment period for further detailed information regarding risk.

IDAHO CODE SECTION 67-5224(2)(f) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this pending rule, contact Mark Mason at mark.mason@deq.idaho.gov, (208) 373-0266.

Dated this 2nd day of November, 2005.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
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The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapter 1, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25)

persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 17, 2005. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) has initiated this rulemaking to modify and clarify existing water quality limits and other requirements for the various classes of municipal reclaimed wastewater, to add and clarify various definitions, to change the name of the rules from "Wastewater Land Application Rules" to "Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater," and to make various changes in the rules associated with this name change. This rulemaking is necessary because DEQ has determined that the existing water quality limits and other requirements for Class A and Class B reclaimed wastewater may be too strict. The name change reflects the desire of DEQ and stakeholders to go beyond just land application of wastewater in the field of reuse. In this context, land application is a subset of the broader scope of reclaimed wastewater reuse. In this rulemaking, DEQ also proposes to renumber the standard rule sections, and delete unnecessary rule sections, in conformance with IDAPA 44.01.01, "Rules of the Administrative Rules Coordinator," and for consistency with other DEQ administrative rules. Section 950, Public and Confidential Information, has been deleted because it is outdated and obsolete due to the adoption of Section 997, Confidentiality of Records, in 2002.

Idaho Association of Commerce and Industry, Idaho Association of Cities, consulting engineers, existing and potential permittees, and the development community may be interested commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2005 for adoption of a pending and temporary rule. If adopted by the Board, the temporary rule would become effective on December 7, 2005. The pending rule is expected to be final upon the adjournment of the 2006 legislative session if approved by the Legislature.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule regulates an activity not regulated by the federal government. The following is a summary of additional information required by Sections 39-107D(3) and (4), Idaho Code, supporting modifications to these rules. The requirements set forth in this proposed rule are based upon studies and analysis conducted by other states, the U.S. Environmental Protection Agency (EPA), and national water reuse organizations that indicate the requirements are protective of human health and the environment and do not pose an unreasonable risk to the public potentially exposed. The referenced studies and analysis will be included in the rulemaking record and can be reviewed during the public comment period for further detailed information regarding risk.

Section 39-107D(3)(a), Idaho Code. Identification of each population or receptor addressed by an estimate of public health effects or environmental effects. The limits placed on

wastewater treatment in the stated modifications are proposed for both public health and environmental effects. The population affected by these limits includes the residents and users of facilities being irrigated by this wastewater effluent and the potential users of down-gradient beneficial uses of groundwater being recharged by this wastewater effluent.

Section 39-107D(3)(b) and (c), Idaho Code. Identification of the expected risk or central estimate of risk for the specific population or receptor and identification of each appropriate upper bound or lower bound estimate of risk. The expected risk of exposure to this quality of wastewater effluent for each of these populations is as follows.

The expected risk for nitrate contamination on groundwater is low. For nitrate from the wastewater effluent entering the groundwater and affecting down-gradient beneficial users for drinking water (either directly or indirectly), the proposed limits are based on the Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08, and Idaho's Ground Water Quality Rule, IDAPA 58.01.11. These standards are based on past studies by EPA determining the adverse health effects on infants from nitrate in drinking water.

The expected risk for pathogen contamination for affected populations is low. For pathogens in the wastewater effluent, the proposed coliform limits are based on Idaho's existing Wastewater-Land Application Permit Rules. Associated additional requirements regarding treatment, buffer zones, reliability and redundancy are included to give additional assurance that the limits are attained consistently.

There are multiple requirements put on the distribution system of the wastewater effluent. These requirements provide the affected populations with safeguards against contamination of their drinking water system from parallel or crossing main lines. These requirements also protect against contamination of their wastewater effluent system by raw sewage in parallel or crossing main lines. The expected risk of this type of contamination is low.

The requirements set forth in this proposed rule are based upon studies and analysis conducted by other states, EPA, and national water reuse organizations that indicate the requirements are protective of human health and the environment and do not pose an unreasonable risk to the public potentially exposed. The referenced studies and analysis will be included in the rulemaking record and can be reviewed during the public comment period for further detailed information regarding risk.

Section 39-107D(3)(d), Idaho Code. Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty. The limits placed on wastewater treatment in the stated modifications are proposed for both public health and environmental effects. The limits in these proposed rule modifications are based on limits and standards used by other states and as promoted by national water reuse organizations. Although Idaho's wastewater land application permit program has been in affect for many years utilizing treated effluent for agricultural and municipal beneficial irrigation, the use of highly treated wastewater for higher beneficial uses is an evolving industry throughout the U.S. and the world. These higher uses, involving almost unrestricted use and unrestricted access by the general public, call for higher treatment and monitoring requirements to protect the affected populations. The uncertainty in assessing the health

and environmental effects is believed to be minimal, but not zero.

Section 39-107D(3)(e), Idaho Code. Identification of studies known to the department that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data. The use of the proposed 10 mg/l for nitrate is based on the existing Ground Water Quality Rule and the existing Idaho Rules for Public Drinking Water Systems. The use of the proposed 2.2 total coliform limit is currently in the Wastewater-Land Application Permit Rules.

The requirements set forth in this proposed rule are based upon studies and analysis conducted by other states, EPA, and national water reuse organizations that indicate the requirements are protective of human health and the environment and do not pose an unreasonable risk to the public potentially exposed. The referenced studies and analysis will be included in the rulemaking record and can be reviewed during the public comment period for further detailed information regarding risk.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, April 6, 2005, Vol. 05-4, page 24.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this proposed rule, contact Mark Mason at (208) 373-0266 or mark.mason@deq.idaho.gov.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 31, 2005.

Dated this 1st day of July, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

58.01.17 - ~~*WASTEWATER-LAND APPLICATION PERMIT*~~ RULES
FOR THE RECLAMATION AND REUSE OF MUNICIPAL
AND INDUSTRIAL WASTEWATER

001. TITLE AND SCOPE.

01. Title. These rules are to be known and cited as Idaho Department of Environmental Quality Rules, IDAPA 58.01.17, "~~*Wastewater-Land Application Permit*~~ Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater". ~~*(4-1-88)*~~(12-7-05)T

02. Scope. These rules establish the procedures and requirements for the issuance and maintenance of pollution source permits for ~~*the treatment of municipal and industrial wastewaters by application to land, and*~~ reclamation and reuse facilities, including permits for the treatment of municipal wastewaters for other reuse purposes as defined in Subsection 600.07, Direct Use of Municipal Reclaimed Wastewater. ~~*(4-6-05)*~~(12-7-05)T

(BREAK IN CONTINUITY OF SECTIONS)

003. INCORPORATION BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 003.02 shall constitute the full adoption by reference. (4-6-05)

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (4-6-05)

a. IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 550.06, as codified in the 200~~*4*~~5 Idaho Administrative Code. ~~*(4-6-05)*~~(12-7-05)T

b. IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 550.07, as codified in the 200~~*4*~~5 Idaho Administrative Code. ~~*(4-6-05)*~~(12-7-05)T

03. Availability of Documents Incorporated by Reference. Copies of the documents incorporated by reference are available at the following locations. (4-6-05)

a. Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, www.deq.idaho.gov. ~~*(4-6-05)*~~(12-7-05)T

b. Idaho Administrative Rules website, http://www.state.id.us/adm/adminrules/agyindex.htm. (4-6-05)

~~*996*~~004.ADMINISTRATIVE PROVISIONS.
Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

~~*997*~~005.CONFIDENTIALITY OF RECORDS.
Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of

Environmental Quality". (3-15-02)

006. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. (12-7-05)T

00~~4~~7. -- 099. (RESERVED).

100. APPLICABILITY.

01. ~~*Existing Land Application*~~ Applicability to Reclamation and Reuse Facilities. ~~*Those land application facilities which are in operation on the effective date of these rules are deemed to be validly permitted for up to one (1) year. Permit conditions for the first permit issued to any existing facility under these rules shall substantially conform to the existing practices of such facility unless those existing practices cause or create conditions hazardous to the public health or to the environment, or violate other laws or regulations.~~* All reclamation and reuse facilities are subject to the permit requirements of these rules. ~~*(4-1-88)*~~(12-7-05)T

02. Excluded Facilities. Land application of wastewater from livestock truck washing facilities, feedlots, dairies and mining are excluded from permit requirements under these rules but are subject to Idaho Department of Environmental Quality Rules, IDAPA 58.01.~~*02*~~16, "~~*Water Quality Standards and*~~ Wastewater ~~*Treatment Requirements*~~ Rules". The Director may exclude other facilities if covered adequately by other law. ~~*(4-6-05)*~~(12-7-05)T

03. Reuse Policy. *It is the policy of the Department to promote the practice of reuse of both municipal and industrial reclaimed wastewater through the continued creation and implementation of rules and guidance that give permittees various opportunities for new forms of reuse.* *(12-7-05)T*

101. -- 199. (RESERVED).

200. DEFINITIONS.
For the purpose of these rules the following definitions apply unless another meaning is clearly indicated by context: (4-1-88)

01. Applicant. The person applying for a ~~*wastewater land application*~~ reclamation and reuse permit. ~~*(4-6-05)*~~(12-7-05)T

02. Applicable Requirements. Any state, local or federal statutes, regulations or ordinances to which the facility is subject. (4-1-88)

03. Board. The Idaho State Board of Environmental Quality. (12-31-91)

04. Buffer Distances. (12-7-05)T

a. The distances between the actual ~~*land application*~~ point of reuse of reclaimed wastewater and other uses such as wells, adjoining property, inhabited dwellings, and other features. ~~*These distances are further defined in The Idaho Guidance for Land Application of Municipal and Industrial Wastewater.*~~ Buffer distances are set to: ~~*(4-6-05)*~~(12-7-05)T

i. Protect public health by limiting exposure to wastewater and conditions associated with reuse facilities; (12-7-05)T

ii. Protect waters of the state, including surface water, ground water and drinking water supplies; and (12-7-05)T

iii. Help ensure that wastewater is restricted to the reuse facilities. (12-7-05)T

b. In determining buffer distances, the Department will consider, as applicable, the degree of treatment or pretreatment of wastewater; the method of irrigation; physical or vegetative barriers; studies of the content of the wastewater, such as pathogen studies; best management practices; environmental conditions, such as wind speed and direction; and other information relevant to protecting public health and the environment. Further information regarding buffer distances is set forth in The Idaho Guidance for The Reclamation and Reuse of Municipal and Industrial Wastewater. (12-7-05)T

05. Class A Capacity. The capabilities required of a Class A effluent treatment and distribution system in order to achieve and maintain compliance with these rules. (4-6-05)

06. Class A Effluent Distribution System. The distribution system for Class A effluent as described in these rules. The distribution system does not include any of the collection or treatment portions of the wastewater facility and is not subject to operator licensing requirements of IDAPA 58.01.~~*02*~~16, "~~*Water Quality Standards and*~~ Wastewater ~~*Treatment Requirements,*~~ Rules"~~ *Section 404*~~. ~~*(4-6-05)*~~(12-7-05)T

07. Department. The Idaho Department of Environmental Quality. (4-1-88)

08. Director. The Director of the Department of Environmental Quality or the Director's designee.

(4-1-88)

09. Idaho Guidance for ~~*Land Application*~~ the Reclamation and Reuse of Municipal and Industrial Wastewater. This document, and subsequent revisions of this document, provides assistance in applying and interpreting these rules relating to for permitting and operating ~~*land application*~~ reclamation and reuse facilities. Copies of the document are available at the Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255 and www.deq.idaho.gov. ~~*(4-6-05)*~~(12-7-05)T

10. ~~***Land Application Facility or Facility***~~. ~~*Any structure or system designed or used to treat wastewater through application to the land surface.*~~ **Industrial Wastewater**. Wastewater that is the by-product of any industrial processes including, but not limited to, food processing or food washing wastewater. ~~*(4-1-88)*~~(12-7-05)T

11. **Land Application**. The application of municipal or industrial wastewater to land for the purpose of land treatment. (12-7-05)T

12. **Land Treatment**. The use of land, soil, and crops for treatment of municipal or industrial wastewater. (12-7-05)T

1~~1~~3. **Municipal Wastewater**. Waste water that contains sewage. (4-1-88)

1~~2~~4. **New Activity**. Any significant change in operation or construction of the wastewater treatment system which may impact the waters of the state. (4-1-88)

1~~3~~5. **Non-Contact Cooling Water**. Water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product (other than heat) or finished product. (4-1-88)

1~~4~~6. **NTU**. Nephelometric Turbidity Unit - a unit of measurement of the level of turbidity. (4-6-05)

1~~5~~7. **Permit**. Written authorization by the Director to ~~*land apply*~~ modify, operate, construct or discharge ~~*wastewater, other than to surface waters of the state, as identified in the plan of operation*~~ to a reclamation and reuse facility. ~~*(4-1-88)*~~(12-7-05)T

1~~6~~8. **Permittee**. The person to whom the ~~*wastewater land application*~~ reclamation and reuse permit is issued. ~~*(4-6-05)*~~(12-7-05)T

1~~7~~9. **Person**. An individual, corporation, partnership, association, state, municipality, commission, political subdivision of the state, state agency, federal agency, special district, or interstate body. (4-1-88)

~~18~~20. **Point of Compliance**. That point in the reclamation and reuse facility where the ~~*treated effluent*~~ reclaimed wastewater must meet the ~~*different limit*~~ requirements of the permit. There may be more than one (1) point of compliance within the facility depending on the constituents to be monitored. ~~*(4-6-05)*~~(12-7-05)T

~~19~~21. **Primary Effluent**. Raw wastewater that has been mechanically treated by screening, degritting, sedimentation and/or skimming processes to remove substantially all floatable and settleable solids. (4-1-88)

2~~0~~2. **Processed Food Crop**. Any crop intended for human consumption that has been changed from its original form and further disinfection occurs. (4-1-88)

2~~1~~3. **Rapid Infiltration System**. A wastewater treatment method by which wastewater is applied to land in an amount of twenty (20) to six hundred (600) feet per year for percolation through the soil. Vegetation is not generally utilized by this method. (4-1-88)

2~~2~~4. **Raw Food Crop**. Any crop intended for human consumption which is to be used in its original form. (4-1-88)

2~~3~~5. Reclaimed Wastewater. For the purpose of these rules, the term reclaimed wastewater ~~*or reuse*~~ shall mean ~~*municipal*~~ wastewater that is used in accordance with these rules. ~~*(4-6-05)*~~(12-7-05)T

2~~4~~6. Restricted Public Access. Preventing public entry within ~~*one thousand (1,000) feet of the border*~~ the area or point of reuse of a facility and the buffer distance around the area by site location or physical structures such as fencing. A lesser buffer ~~*strip less than one thousand (1,000) feet*~~ distance may be accepted if aerosol drift is reduced. ~~*(4-1-88)*~~(12-7-05)T

~~***25. Reclaimed Wastewater Facility****. Any municipal structure or system designed or used to treat municipal wastewater for the purpose of reusing the effluent including, but not limited to, municipal wastewater treatment facilities, pumping and storage facilities, pipeline and distribution facilities, and the property to which the reclaimed wastewater is applied.* *(4-6-05)*~~

27. Reclamation. The treatment of municipal or industrial wastewater that allows it to be reused for beneficial uses. Reclamation also includes land treatment for wastewater that utilizes soil *or* crops for partial treatment. (12-7-05)T

28. Reuse. The use of reclaimed wastewater for beneficial uses including, but not limited to, land treatment, irrigation, aquifer recharge, use in surface water features, toilet flushing in commercial buildings, dust control, and other uses. (12-7-05)T

29. Reclamation and Reuse Facility or Facility. Any structure or system designed or used for reclamation or reuse of municipal or industrial wastewater including, but not limited to, *industrial and* municipal wastewater treatment facilities, pumping and storage facilities, pipeline and distribution facilities, and the property to which the reclaimed wastewater is applied. *This does not include industrial in-plant processes and reuse of process waters within the plant.* (12-7-05)T

~~*26*~~30. Sewage. The water-carried human wastes from residences, buildings, industrial establishments and other places. (4-1-88)

~~*27*~~31. Sludge. The semi-liquid mass produced by treatment of water or wastewater. (4-1-88)

~~*28*~~32. Time Distribution of Flows. A measurement of the volume of wastewater distributed over a specified area during a specified time period. Typical unit of measure is inches per acre per week. (4-1-88)

~~*29*~~33. Wastewater. Unless otherwise specified, industrial waste, municipal waste, agricultural waste, and associated solids or combinations of these, whether treated or untreated, together with such water as is present but not including sludge, or non-contact cooling water. (4-1-88)

~~***30. Wastewater Treatment System****. All phases of wastewater treatment including any pretreatment equipment and the land treatment facility on which the wastewater is applied.* *(4-6-05)*~~

3~~*1*~~4. Waters and Waters of the State. All the accumulations of water, surface and

underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. (4-1-88)

201. -- 299. (RESERVED).

300. PERMIT REQUIREMENTS AND APPLICATION.

01. Permit Required. No person shall construct, modify, operate, or continue to operate a ~~*land application*~~ reclamation and reuse facility ~~*or other reclaimed wastewater facility*~~ without a valid permit issued by the Director as provided in these rules. ~~*(4-6-05)*~~(12-7-05)T

02. Dischargers. No person shall discharge to a ~~*land application or other reclaimed wastewater*~~ reclamation and reuse facility without a valid permit issued by the Director as provided in these rules. ~~*(4-6-05)*~~(12-7-05)T

03. Pre-Application Conference. Prospective applicants are encouraged to meet with the Department to discuss application procedure and anticipated application requirements. (4-1-88)

04. Application Required. Every person requiring a permit under these rules shall submit a permit application to the Department: (4-1-88)

a. At least one hundred eighty (180) days prior to the day on which a new activity is to begin; or ~~*(4-1-88)*~~(12-7-05)T

b. At least one hundred eighty (180) days prior to the expiration of any permit issued pursuant to these rules~~;~~. ~~*(4-1-88)*~~(12-7-05)T

~~**c.** *Within one hundred eighty (180) days after the effective date of these rules for any existing land application facility deemed to be permitted under these rules.* *(4-1-88)*~~

05. Application Contents. Application shall be made on a form prescribed by the Director and available from the Department and shall include, but not be limited to, the following information: (4-1-88)

a. Name, location, and mailing address of the facility; (4-1-88)

b. Name, mailing address, and phone number of the facility owner and signature of the owner or authorized agent; (4-1-88)

c. The nature of the entity owning the facility (federal, state, private, or public entity); (4-1-88)

d. A list of local, state, and federal permits, licenses and approvals related to the activity which have been applied for and which have been received and the dates of application or approval; (4-1-88)

e. A topographic map of the facility site identifying and showing the location and

extent of: (4-1-88)

i. Wastewater inlets, outlets, and storage structures and facilities; (4-1-88)

ii. Wells, springs, wetlands, and surface waters; (4-1-88)

iii. Twenty-five (25), fifty (50), and one hundred (100) year flood plains, as available through the Federal Insurance Administration of the Federal Emergency Management Agency; (4-1-88)

iv. Service roads; (4-1-88)

v. Natural or man-made features necessary for treatment; (4-1-88)

vi. Buildings and structures; and (4-1-88)

vii. Process chemicals and residue storage facilities. (4-1-88)

f. A topographic map which may be separate from or combined with the facility site map, extending one quarter (1/4) mile beyond the outer limits of the facility site. The map shall identify and show the location and extent of the following: (4-1-88)

i. Wells, springs, wetlands, and surface waters; (4-6-05)

ii. Public and private drinking water supply sources and source water assessment areas (public water system protection area information); (4-6-05)

iii. Public roads; and (4-1-88)

iv. Dwellings and private and public gathering places. (4-1-88)

g. If the facility site or any portion thereof is leased or rented, a copy of that lease or rental agreement; (4-1-88)

h. The volume of wastewaters to be treated and the time distribution of flows; (4-1-88)

i. The physical, chemical, and biological characteristics of the wastewater; (4-1-88)

j. The climatic, hydrogeologic, and soil characteristics of the facility site. (4-1-88)

k. Other information may also be required. The Idaho Guidance for ~~*Land Application*~~ Reclamation and Reuse of Municipal and Industrial Wastewater is intended to provide assistance to permit applicants in obtaining a ~~*wastewater land application*~~ reclamation and reuse permit and may be considered in determining the need for other information. ~~*(4-6-05)*~~(12-7-05)T

06. Existing ~~*Land Application*~~ Reclamation and Reuse Facility Plan of Operation.

Any existing ~~*land application*~~ reclamation and reuse facility ~~*or other reclaimed wastewater facility*~~ shall be required to have a plan of operation which describes in detail the operation, maintenance, and management of the wastewater treatment system. ~~*(4-6-05)*~~(12-7-05)T

07. New ~~*Land Application*~~ Reclamation and Reuse Facility Plan of Operation. Any new proposed ~~*land application*~~ reclamation and reuse facility ~~*or other reclaimed wastewater facility*~~ shall be required to have a detailed plan of operation at the fifty percent (50%) completion point of construction. In addition, after one (1) year of operation the plan must be updated to reflect actual operating procedures. A general outline of the plan of operation must be provided with the permit application which will satisfy the intent of these rules. ~~*(4-6-05)*~~(12-7-05)T

(BREAK IN CONTINUITY OF SECTIONS)

401. PLAN AND SPECIFICATION REVIEW.
The current edition of the "Recommended Standards for Wastewater Facilities - Great Lakes-Upper Mississippi River Board of State Sanitary Engineers," "Idaho Standards for Public Works Construction," and other Department guidance shall be used as guides for the development of plans and specifications for all waste treatment facilities ~~*in accordance with IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," Section 402*~~. The Department may review the project plans and specifications and the permit application materials concurrently. Plans and specifications may require modification prior to a final permit being issued. *The Department does not require review of industrial in-plant processes, only those processes that treat or distribute wastewater.* ~~*(4-6-05)*~~(12-7-05)T

01. Requirement for Single Point of Contact Responsible for Entire Wastewater Project. The Applicant (Permittee) shall designate a single point of contact who is responsible for all submissions to the Department related to the ~~*wastewater*~~ reclamation and reuse facilities ~~*construction project*~~. This single point of contact shall be identified in the permit application. ~~*(4-6-05)*~~(12-7-05)T

02. Requirement for Preparation of Plans and Specifications. All plans and specifications for the construction of new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities or modification or expansion to same shall be submitted to and approved by the Director before construction can begin in accordance with Chapter 1, Title 39, Idaho Code, and IDAPA 58.01.~~*02*~~16, "~~*Water Quality Standards and*~~ Wastewater ~~*Treatment Requirements,*~~ Rules" ~~*Section 402*~~. ~~*(4-6-05)*~~(12-7-05)T

03. Requirement for Professional Engineer's Seal. All plans and specifications for the construction of new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities or modification or expansion to same, wherein the public welfare or the safeguarding of life, health, or property is involved, shall bear the seal, signature and date of a registered professional engineer licensed in the state of Idaho in accordance Chapter 12, Title 54, Idaho Code. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

600. SPECIFIC PERMIT CONDITIONS.

01. Basis for Specific Permit Conditions. Conditions necessary for the protection of the environment and the public health may differ from facility to facility because of varying environmental conditions and wastewater compositions. The Director may establish, on a case-by-case basis, specific permit conditions. Specific conditions shall be established in consideration of characteristics specific to a facility and inherent hazards of those characteristics. Such characteristics include, but are not limited to: (4-1-88)

a. Chemical, biological, physical, and volumetric characteristics of the wastewater; (4-1-88)

b. Geological and climatic nature of the facility site; (4-1-88)

c. Size of the site and its proximity to population centers and to ground and surface water; (4-1-88)

d. Legal considerations relative to land use and water rights; (4-1-88)

e. Techniques used in wastewater distribution and the disposition of that vegetation exposed to wastewaters; (4-1-88)

f. Abilities of the soils and vegetative covers to treat the wastewater without undue hazard to the environment or to the public health; and (4-1-88)

g. The need for monitoring and record keeping to determine if the facility is being operated in conformance with its design and if its design is adequate to protect the environment and the public health. (4-1-88)

02. Duration of Permit. The permit shall be effective for a fixed term of not more than five (5) years. (4-1-88)

03. Limitations to Operation. Conditions of the permit may specify or limit: (4-1-88)

a. Wastewater composition; (4-1-88)

b. Method, manner, and frequency of wastewater treatment; (4-1-88)

c. Wastewater pretreatment requirements; (4-1-88)

d. Physical, chemical, and biological characteristics of a land ~~*application*~~ treatment facility; and ~~*(4-1-88)*~~(12-7-05)T

e. Any other condition the Director finds necessary to protect public health or environment. (4-1-88)

04. Compliance Schedules. The Director may establish a compliance schedule for existing facilities as part of the permit conditions including: (4-1-88)

a. Specific steps or actions to be taken by the permittee to achieve compliance with applicable requirements or final permit conditions; (4-1-88)

b. Dates by which those steps or actions are to be taken; and (4-1-88)

c. In any case where the period of time for compliance exceeds one (1) year the schedule may also establish interim requirements and the dates for their achievements. (4-1-88)

05. Monitoring Requirements. Any facility may be subject to monitoring requirements including, but not limited to: (4-1-88)

a. The installation, use, and maintenance of monitoring equipment; (4-1-88)

b. Monitoring or sampling methodology, frequency, and locations; (4-1-88)

c. Monitored substances or parameters; (4-1-88)

d. Testing and analytical procedures; and (4-1-88)

e. Reporting requirements including both frequency and form. (4-1-88)

06. Rapid Infiltration Systems. The following minimum treatment requirements are established for land application of wastewater using rapid infiltration methods and systems. ~~*(4-1-88)*~~(12-7-05)T

a. Suspended solids content of wastewater which includes organic and inorganic particulate matter shall not exceed a thirty (30) day average concentration of one hundred (100) mg/l. (4-1-88)

b. Nitrogen (total as N) content of wastewater shall not exceed a thirty (30) day average concentration of twenty (20) mg/l. (4-1-88)

07. Direct Use of Municipal Reclaimed Wastewater. Treatment requirements applicable to direct use of municipal reclaimed wastewater include, but are not limited to, the following. The applicable treatment requirements, buffer zones, access restrictions, disinfection requirements, uses, and other requirements are further described in the Classification Table in Subsection 600.08. (4-6-05)

a. Class A effluent is municipal reclaimed wastewater that may be used under particular circumstances for irrigation, including residential irrigation at individual homes ~~*(controlled only by the system operator)*~~, ground water recharge~~,~~ using surface spreading, seepage ponds, or other unlined surface water features, and other ~~*appropriate*~~ uses acceptable to the Department. Class A effluent shall be oxidized, coagulated, clarified, and filtered, or treated by an equivalent process and adequately disinfected. ~~*Enhanced f*~~Filtration approval requirements,

nutrient removal requirements, turbidity limits requirements, monitoring requirements, reliability and redundancy requirements, and distribution system requirements also apply. Class A treatment systems are required to be pilot tested ~~*at full scale prior to sewer hookups, lifting of sanitary restrictions, and start-up*~~ or otherwise approved by the Department per Subsection 601.04 of these rules. Class A effluent shall be considered adequately disinfected if, at the point of compliance, the median number of total coliform organisms does not exceed two and two-tenths (2.2) per one hundred (100) milliliters, and does not exceed twenty-three (23) per one hundred (100) milliliters in any confirmed sample, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. For ground water recharge~~,~~ *using* surface spreading, seepage ponds, and other unlined *surface* water features, IDAPA 58.01.11, "Ground Water Quality Rule," requirements apply. For Class A effluent, analysis shall be based on daily sampling during periods of use. The point of compliance for Class A effluent for total coliform shall be ~~*in the distribution*~~ at any point in the system following final treatment~~*, final storage*~~ and disinfection contact time. It is recommended but not required that the effluent also be disinfected following storage. Class A effluent for residential irrigation ~~*should*~~ shall be applied only during periods of non-use. ~~*(4-6-05)*~~(12-7-05)T

b. Class B effluent is municipal reclaimed wastewater that may contact any edible portion of raw food crops or is used to irrigate golf courses, parks, playgrounds, schoolyards and other areas where children are more likely to have access or exposure. Class B effluent shall be oxidized, coagulated, clarified, and filtered, or treated by an equivalent process and adequately disinfected. New Class B treatment systems are required to be pilot tested ~~*at full scale*~~ and approved by the Department prior to ~~*sewer hookups, lifting of sanitary restrictions, and*~~ start-up. Class B effluent shall meet the following turbidity limits. The daily arithmetic mean of all daily measurements of turbidity shall not exceed two (2) NTU, and turbidity shall not exceed five (5) NTU at any time. Turbidity shall be measured continuously. The turbidity standard shall be met prior to disinfection. For those systems that have in-line turbidimeters that are operating full-time, no additional monitoring for total suspended solids (TSS) is required. Class B effluent shall be considered adequately disinfected if, at the point of compliance, the median number of total coliform organisms does not exceed two and two-tenths (2.2) per one hundred (100) milliliters, and does not exceed twenty-three (23) per one hundred (100) milliliters in any confirmed sample, as determined from the bacteriological results of the last seven (7) days for which analyses have been completed. For Class B effluent, analysis shall be based on daily sampling during periods of application. The point of compliance for Class B effluent for total coliform shall be ~~*in the distribution*~~ at any point in the system following final treatment~~*, final storage*~~ and disinfection contact time. It is recommended but not required that the effluent also be disinfected following storage. Residual chlorine at the point of compliance shall be not less than one (1) mg/L free chlorine after a contact time of thirty (30) minutes at peak flow. If an alternative disinfection process is used, it must be demonstrated to the satisfaction of the Department that the alternative process is comparable to that achieved by chlorination with one (1) mg/L free chlorine after thirty (30) minutes contact time. Class B effluent shall be applied only during periods of non-use by the public. ~~*(4-6-05)*~~(12-7-05)T

c. Class C effluent is municipal reclaimed wastewater that will only contact the ~~*unedible*~~ inedible portion of raw food crops, or is used to irrigate orchards and vineyards during the fruiting season, if no fruit harvested for raw use comes in contact with the irrigation water or ground or will only contact the ~~*unedible*~~ inedible portion of raw food crops, or is used to irrigate cemeteries, ~~*roadside*~~ vegetation on sides and medians of highways, and other areas where

individuals have access or exposure. Class C effluent shall be oxidized and adequately disinfected. Class C effluent shall be considered adequately disinfected if, at the point of compliance, the median number of total coliform organisms does not exceed twenty-three (23) per one hundred (100) milliliters, and does not exceed two hundred thirty (230) per one hundred (100) milliliters in any confirmed sample as determined from the bacteriological results of the last five (5) days for which analyses have been completed. For Class C effluent, analysis shall be based on weekly sampling during periods of application. The point of compliance for Class C effluent for total coliform shall be at ~~*the entrance to the distribution*~~ any point in the system following final treatment and disinfection contact time~~*, but before storage*~~. Class C effluent shall be applied only during periods of non-use by the public. ~~*(4-6-05)*~~(12-7-05)T

d. Class D effluent is municipal reclaimed wastewater that is used to irrigate fodder, seed, or processed food crops and is oxidized and adequately disinfected. Class D effluent shall be considered adequately disinfected if, at some location in the treatment process, the median number of total coliform organisms does not exceed two hundred thirty (230) per one hundred (100) milliliters, not to exceed two thousand three hundred (2300) per one hundred (100) milliliters in any confirmed sample, as determined from the bacteriological results of the last three (3) days for which analyses have been completed. For Class D effluent, analysis shall be based on monthly sampling during periods of application. The point of compliance for Class D effluent for total coliform shall be at any point in the system following final treatment and disinfection contact time. Animals shall not be grazed on land where Class D municipal wastewater is applied, and animals shall not be fed harvested vegetation irrigated in this manner within two (2) weeks of application. ~~*(4-6-05)*~~(12-7-05)T

e. Class E effluent is municipal reclaimed wastewater that is used to irrigate ~~*fodder, seed, or processed food crops or*~~ forested sites where public access is restricted and the municipal wastewater shall be of at least primary effluent quality. Animals shall not be grazed on land where Class E municipal wastewater is applied, and animals shall not be fed harvested vegetation irrigated in this manner within four (4) weeks of application. ~~*(4-6-05)*~~(12-7-05)T

08. Direct Use of Municipal Reclaimed Wastewater - Classification Table. The following table further describes the requirements for direct use of municipal reclaimed wastewater outlined in Subsection 600.07.

Classification Table					
Classification	**Class A**	**Class B**	**Class C**	**Class D**	**Class E**
Treatment	This is a partial list - see Section 601 for more detail: Oxidized, clarified, and coagulated, ~~clarified,~~ with ~~enhanced~~ filtration approval requirements or treated by an equivalent process, plus nutrient removal requirements, turbidity limits requirements, adequately disinfected and ~~pilot~~ tested.	Oxidized, coagulated, clarified, and filtered, or treated by an equivalent process, *turbidity limits requirements*, and adequately disinfected and ~~pilot~~ tested.	Oxidized and adequately disinfected	Oxidized and adequately disinfected	At least primary effluent quality
Disinfection	Total coliform organisms does not exceed two and two-tenths (2.2) per one hundred (100) milliliters	Total coliform organisms does not exceed two and two-tenths (2.2) per one hundred (100) milliliters	Total coliform organisms does not exceed twenty three (23) per one hundred (100) milliliters	Total coliform organisms does not exceed two hundred thirty (230) per one hundred (100) milliliters	Total coliform organisms up to “too numerous to count”
Uses	Residential irrigation at individual homes, ground water recharge~~,~~ using surface spreading, seepage ponds, other unlined surface water features, or Class B, C, D, or E uses. Other requirements apply for groundwater uses.	May contact any edible portion of raw food crops, or is used to irrigate golf courses, parks, playgrounds, schoolyards or Class C, D, or E uses.	Used to irrigate orchards and vineyards during the fruiting season, if no fruit harvested for raw use comes in contact with the irrigation water or ground, or will only contact the unedible portion of raw food crops, or is used to irrigate cemeteries, roadside vegetation or Class D or E uses.	Used to irrigate fodder, seed, or processed food crops or Class E uses.	Used to irrigate ~~fodder, seed, processed food crops, or~~ forested sites.
Access Restriction	Irrigated during periods of non-use.	Irrigated during periods of non-use by the public.	Irrigated during periods of non-use by the public.	Public access restricted.	Public access restricted.

Classification Table					
Classification	**Class A**	**Class B**	**Class C**	**Class D**	**Class E**
Signing and Posting	See Subsection 601.02	Site specific - See Idaho Guidance for ~~*Land Application*~~ The Reclamation and Reuse of Municipal and Industrial Wastewater	Site specific - See Idaho Guidance for ~~*Land Application*~~ The Reclamation and Reuse of Municipal and Industrial Wastewater	Site specific - See Idaho Guidance for ~~*Land Application*~~ The Reclamation and Reuse of Municipal and Industrial Wastewater	Site specific - See Idaho Guidance for ~~*Land Application*~~ The Reclamation and Reuse of Municipal and Industrial Wastewater
Buffer ~~*Zones*~~ Distances	No effluent is allowed to be applied ~~*into or over natural waterways, or other conveyances that drain into natural waterways without*~~ *to surface waters in those circumstances when* an NPDES Permit *is required*.	Site specific - See Idaho Guidance for ~~*Land Application*~~ The Reclamation and Reuse of Municipal and Industrial Wastewater. No effluent is allowed to be applied *to surface waters in those circumstances when* an NPDES Permit *is required.*	Site specific - See Idaho Guidance for ~~*Land Application*~~ The Reclamation and Reuse of Municipal and Industrial Wastewater. No effluent is allowed to be applied *to surface waters in those circumstances when* an NPDES Permit *is required.*	Site specific - See Idaho Guidance for ~~*Land Application*~~ The Reclamation and Reuse of Municipal and Industrial Wastewater. No effluent is allowed to be applied *to surface waters in those circumstances when* an NPDES Permit *is required.*	1000 ft. to inhabited dwellings and areas accessible to the public. No effluent is allowed to be applied *to surface waters in those circumstances when* an NPDES Permit *is required.*
Grazing	Grazing allowed only with approved grazing management plan.	Grazing allowed only with approved grazing management plan.	Grazing allowed only with approved grazing management plan.	Grazing not allowed.	Grazing not allowed.

~~*(4-6-05)*~~(12-7-05)T

601. CLASS A EFFLUENT MUNICIPAL RECLAIMED WASTEWATER - ADDITIONAL REQUIREMENTS.

01. Engineering Report. Engineering reports and application materials for new Class A effluent municipal reclaimed wastewater systems or major upgrades to Class A effluent municipal reclaimed wastewater systems shall be submitted to the Department with the application and must be approved by the Department prior to permit issuance. The engineering

report shall include, but not be limited to, the following items as applicable: purpose; approach; development of alternatives; technical, financial, managerial, and legal issues; emergency response and security; operation and maintenance; pilot testing; client use issues; potential markets for reclaimed wastewater; potential sources of wastewater; public involvement and perception; targeted markets for reclaimed wastewater; allocation of reclaimed wastewater; preliminary investigations; staff development; treatment system upgrades to meet Class A requirements; distribution system development and schedule; new development infrastructure; reservoir or booster capacity; water balance calculations; costs; applicable regulations; and potential funding sources. This engineering report shall be stamped, dated and signed in accordance with Idaho Board of Registration of Professional Engineers and Professional Land Surveyors, IDAPA 10.01.02, "Rules of Professional Responsibility". ~~*(4-6-05)*~~(12-7-05)T

02. Distribution System Requirements. Class A distribution systems and the continued distribution systems of all of its customers shall have specific requirements including, but not limited to: (4-6-05)

a. Any person or agency that is planning to construct all or part of the distribution system must obtain a plan and specification approval from the Department prior to beginning construction. Where Class A effluent is to be provided by pressure pipeline, the following applicable standards shall be used as guidance: the current edition of "Recommended Standards for Wastewater Facilities - Great Lakes-Upper Mississippi River Board of State Sanitary Engineers," the "AWWA Manual M24" Chapter 4 for dual water systems, and the current edition of "Idaho Standards for Public Works Construction". The above guidance documents shall be used for all new systems constructed after April 1, 2005. Requirements for irrigation systems proposed for conversion from use of non-Class A effluent water to use with Class A effluent will be considered on a case-by-case basis considering protection of public health and the environment. (4-6-05)

b. Distribution Lines. (4-6-05)

i. Minimum Separation. (4-6-05)

(1) Horizontal Separation. Class A effluent distribution mains parallel to potable (culinary) water mains shall be installed in accordance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 550.06. Class A effluent distribution mains parallel to sanitary sewer mains shall be installed at least five (5) feet horizontally from the sanitary sewer main if the sanitary sewer main is located above the Class A effluent main, and three (3) feet horizontally from the sanitary sewer main if the sanitary sewer main is located below the Class A effluent main. (4-6-05)

(2) Vertical Separation. At crossings of Class A effluent distribution mains with potable water mains and sanitary sewer mains, the order of the mains from lowest in elevation to highest should be: sanitary sewer main, Class A effluent main, and potable water main. A minimum of eighteen (18) inches vertical separation between each of these utilities shall be provided as measured from outside of pipe to outside of pipe. The crossings shall be arranged so that the Class A effluent main joints will be equidistant and as far as possible from the water main joints and the sewer main joints. If the Class A effluent water main must cross above the potable water main, the vertical separation shall be a minimum eighteen (18) inches, the Class A effluent

main shall be supported to prevent settling, and the Class A effluent main shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to ten (10) feet. If the Class A effluent main must cross below the sanitary sewer main, the vertical separation shall be a minimum eighteen (18) inches and the Class A effluent main shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to ten (10) feet. (4-6-05)

(3) Special Provisions. Where the horizontal and/or vertical separation as required above cannot be maintained, special construction requirements shall be provided in accordance with requirements in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 550.06, for protection of potable water mains. (4-6-05)

ii. Class A Effluent Pipe Identification. (4-6-05)

(1) General. All new buried pipe, including service lines, valves, and other appurtenances, shall be colored purple, Pantone 512 or equivalent. If fading or discoloration of the purple pipe is experienced during construction, identification tape or locating wire along the pipe is required. Label piping every ten (10) feet "Caution: Reclaimed Water - Do Not Drink". (4-6-05)

(2) Identification Tape. If identification tape is installed along with the purple pipe, it shall be prepared with white or black printing on a purple field, color Pantone 512 or equivalent, having the words, "Caution: Reclaimed Water - Do Not Drink". The overall width of the tape shall be at least three (3) inches. Identification tape shall be installed eighteen (18) inches above the transmission pipe longitudinally, shall be centered over the pipe, and shall run continuously along the length of the pipe. (4-6-05)

iii. Conversion of Existing Drinking Water or Irrigation Water Lines. Existing water lines that are being converted to use with Class A effluent shall first be accurately located and comply with leak test standards in accordance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 550.06, and in coordination with the Department. The pipeline must be physically disconnected from any potable water lines and brought into compliance with current state cross connection rules and requirements (IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 550.07), and must meet minimum separation requirements in Subsection 601.02.b. of these rules. If the existing lines meet approval of the water supplier and the Department based upon the requirements set forth in Subsection 601.02.b.iii. of these rules, the lines shall be approved for Class A effluent distribution. If regulatory compliance of the system (accurate location and verification of no cross connections) cannot be verified with record drawings, televising, or otherwise, the lines shall be uncovered, inspected, and identified prior to use. All accessible portions of the system must be retrofitted to meet the requirements of these rules. After conversion of the water or irrigation line to a wastewater effluent line, the lines shall be marked as stated in Subsection 601.02.b.ii.(2) of these rules. (4-6-05)

iv. Valve Boxes and Other Surface Identification. All valves ~~*covers*~~ shall ~~*be of*~~ have locking valve covers that are non-interchangeable ~~*shape*~~ with ~~*locking*~~ potable water valve covers, and shall have an inscription cast on the top surface stating "Reclaimed Water". Valve boxes shall meet the requirements of IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 550.06. All above ground pipes and pumps shall be consistently color coded (purple,

Pantone 512) and marked to differentiate Class A effluent facilities from potable water facilities. ~~*(4-6-05)*~~(12-7-05)T

v. Blow-off Assemblies. If either an in-line type or end-of-line type blow-off or drain assembly is installed in the system, a plan for proposed discharge or runoff locations shall be submitted to the Department for review and approval. (4-6-05)

c. Storage. If storage or impoundment of Class A effluent is provided, the following requirements apply: (4-6-05)

i. Fencing. No fencing is required by these rules, but may be required by local laws or ordinances. (4-6-05)

ii. Identification. All storage facilities shall be identified by signs prepared according to the requirements of Subsection 601.02.e.v. of these rules. Signs shall be posted on the surrounding fence at minimum five hundred (500) foot intervals and at the entrance of each facility. If there is no fence, signs shall be located at a minimum on each side of the facility or at minimum two hundred fifty (250) foot intervals or at all accessible points. (4-6-05)

iii. For systems supplying irrigation water for residential lawn irrigation, minimum storage requirements shall include sufficient volume for daily use patterns, precipitation events, etc., and an alternate disposal point during non-irrigation season. (4-6-05)

d. Pumping Facilities. (4-6-05)

i. Marking. All exposed and above ground piping, risers, fittings, pumps, valves, etc., shall be painted purple, Pantone 512. In addition, all piping shall be identified using an accepted means of labeling reading “Warning: Reclaimed Water - Do Not Drink”. In a fenced pump station area, signs shall be posted on the fence on all sides. (4-6-05)

ii. Seal Water. Any potable water used as seal water for reclaimed water pump seals shall be protected from backflow with a Department approved backflow prevention device or air gap. (4-6-05)

e. Other Requirements. (4-6-05)

i. Backflow Protection. In no case shall a direct connection be made between the potable and Class A effluent system. If it is necessary to put potable water into the Class A effluent distribution system, a Department approved reduced pressure principal device or air gap must be provided to protect the potable water system. (4-6-05)

ii. Drinking fountains, picnic tables, food establishments, and other public eating facilities shall be placed out of any spray irrigation area in which Class A effluent is used, or shall be otherwise protected from contact with the Class A effluent. Exterior drinking fountains, picnic tables, food establishments, and other public eating facilities shall be shown and called out on the construction plans. If no exterior drinking fountains, picnic tables, food establishments, or other public eating facilities are present in the design area, then it shall be specifically stated on the plans that none are to exist. (4-6-05)

iii. Equipment and Facilities. Any equipment or facilities such as tanks, temporary piping or valves, and portable pumps that have been or may be used with Class A effluent shall not be used with potable water or sewage. Any equipment or facilities such as tanks, temporary piping or valves, and portable pumps that have been or may be used with sewage shall not be used with Class A effluent or potable water. (4-6-05)

iv. Warning Labels. Warning labels shall be installed on designated facilities such as, but not limited to, controller panels and washdown or blow-off hydrants on water trucks, hose bibs, and temporary construction services. The labels shall read, "Warning: Reclaimed Wastewater - Do Not Drink". (4-6-05)

v. Warning signs. Where reclaimed water is stored or impounded, or used for irrigation in public areas, warning signs shall be installed and contain, at a minimum, one (1) inch purple letters (Pantone 512 or equivalent) on a white or other high contrast background notifying the public that the water is unsafe to drink. Signs may also have a purple background with white or other high contrast lettering. Warning signs and labels shall read, "Warning: Reclaimed Wastewater - Do Not Drink". The signs shall include the international symbol for Do Not Drink. (4-6-05)

03. Other Permits Addressed as Necessary. The following other permits may be necessary for a particular facility but are not regulated under these rules: (4-6-05)

a. NPDES permits from the Environmental Protection Agency for surface water discharge. (4-6-05)

b. Injection well permits from Idaho Department of Water Resources. (4-6-05)

04. Filtration Technology Approval Requirements. All Class A effluent projects in Idaho must have written approval from the Department for their proposed filtration technology prior to submitting plans and specifications for approval. The following approaches are methods by which this written approval may be obtained from the Department. (4-6-05)

a. Department approval based on previous similar projects in Idaho. (4-6-05)

b. National approval by National Reuse Association, Water Environment Federation Research Foundation, NSF International, or other organization approved by the Department. (4-6-05)

c. The State of California Department of Health Services Treatment Technology Report for Recycled Water. (4-6-05)

d. Other methods approved by the Department, including pilot testing. ~~*(4-6-05)*~~(12-7-05)T

05. Nutrient Removal Requirements. Total nitrogen at the point of compliance shall not exceed ten (10) mg/L for ground water recharge systems, and thirty (30) mg/L for residential irrigation and other non-recharge systems, based on a monthly arithmetic mean as determined

from ~~*daily*~~ weekly composite sampling. ~~*This value*~~ These limits may be much lower depending on the results of any applicable nutrient-pathogen studies that may be required. ~~*(4-6-05)*~~(12-7-05)T

06. Turbidity Limits and Monitoring Requirements. (4-6-05)

a. One (1) in-line, continuously monitoring, recording turbidimeter is required for each treatment train. (4-6-05)

b. Class A effluent shall meet the following turbidity limits. The daily arithmetic mean of all daily measurements of turbidity shall not exceed two (2) NTU, and turbidity shall not exceed five (5) NTU at any time. Turbidity shall be measured continuously. The turbidity standard shall be met prior to disinfection. (4-6-05)

07. Reliability and Redundancy Requirements. (4-6-05)

a. Class A treatment systems shall have redundant treatment capabilities able to treat peak flow and provide for ~~A~~an alternative disposal option or diversion to adequate lined storage capable of storing seven (7) days of effluent or equivalent back-up system must be automatically activated if turbidity exceeds or chlorine residual drops below the instantaneous required value for more than ~~*two*~~ five (~~2~~5) minutes. Peak flow is defined for the purpose of this rule to mean the peak flow of the plant anticipated for the season in which Class A effluent is being produced. The maximum number of times a facility could exceed on this basis is twice in one (1) week, both of which times are required to be immediately reported. Failure to report or exceeding more than twice in one (1) week are sufficient grounds for the Department to require the system to be shut down for inspection and repair. ~~*(4-6-05)*~~(12-7-05)T

b. Redundant facilities, including, but not limited to, monitoring equipment and treatment trains shall be required. (4-6-05)

c. Standby Power sufficient to maintain all treatment and distribution works shall be required for the Class A effluent use. An alternative to this is to provide standby power sufficient for basic treatment and for automatic by-pass of filtration directly to an alternative disposal option or diversion to lined storage. (4-6-05)

d. Standby treatment filter units in fully operable condition capable of treating peak flow shall be plumbed and wired in place for immediate use. Peak flow is defined for the purpose of this rule to mean the peak flow of the plant anticipated for the season in which Class A effluent is being produced. An alternative to this is automatic by-pass of filtration directly to an alternative disposal option or diversion to lined storage. ~~*(4-6-05)*~~(12-7-05)T

08. Other Class A Effluent Requirements. (4-6-05)

a. Minimum treatment system size shall be ten thousand (10,000) gallons per day of wastewater flow being treated. (12-7-05)T

~~a~~b. Five (5) Day Biochemical Oxygen Demand (BOD5) shall not exceed five (5) mg/L ~~*and Total Organic Carbon (TOC)*~~ shall not exceed five (5) mg/L for ground water recharge systems, and ten (10) mg/L each for residential irrigation and other non-recharge systems, based

on a monthly arithmethic mean as determined from ~~*daily*~~ weekly composite sampling. ~~*Composite samples shall be comprised of at least six (6) flow proportionate samples taken over a one (1) day period at the point of compliance.*~~ ~~*(4-6-05)*~~(12-7-05)T

~~**b.** *Total Suspended Solids (TSS) prior to disinfection shall not exceed five (5) mg/L based on a monthly arithmethic mean as determined from daily composite sampling. Composite samples shall be comprised of at least six (6) flow proportionate samples taken over a one (1) day period at the point of compliance.* *(4-6-05)*~~

c. The pH as determined by daily grab samples or continuous monitoring shall be between six point zero (6.0) and nine point zero (9.0) inclusive. ~~*(4-6-05)*~~(12-7-05)T

d. Residual Chlorine at the point of compliance shall be not less than one (1) mg/L free chlorine after a contact time of thirty (30) minutes at peak flow. If an alternate disinfection process is used, it must be demonstrated to the satisfaction of the Department that the alternative process is comparable to that achieved by chlorination with a one (1) mg/L free chlorine residual after thirty (30) minutes contact time. (4-6-05)

e. For any type of ground water recharge system, the Class A effluent must also meet ground water quality standards per IDAPA 58.01.11, "Ground Water Quality Rule," at the point of compliance, and comply with the remaining sections of the "Ground Water Quality Rule". For these types of ground water recharge systems utilizing Class A effluent municipal reclaimed wastewater, the applicant shall propose to the Department for review and approval, the applicable testing requirements for the effluent as it relates to the primary and secondary ground water standards, as well as background ground water quality. Ground water recharge site locations shall be a minimum of ~~*two*~~ one thousand (~~2~~1000) feet from any down gradient drinking water extraction well and shall also provide for a minimum of ~~*one (1) year of storage*~~ six (6) months time of travel in the aquifer prior to withdrawal. The minimum requirements for site location and aquifer storage time may also be greater depending on any source water assessment zone studies for public drinking water wells in the area. The owners of these systems must control the ownership of this down gradient area to prohibit future wells from being drilled in the impact zone of the ground water recharge system. The Idaho Department of Water Resources requires additional permits for ground water injection wells. ~~*(4-6-05)*~~(12-7-05)T

f. A filter to waste operational criteria is required for all Class A effluent filtration facilities for each time a filter starts up. The filter will automatically filter to waste until the effluent meets the required turbidity standard. (4-6-05)

g. Additional information in the form of reports by qualified soil scientists, professional geologists, professional engineers, or other qualified individuals relating to environmental assessments, nutrient management plans, or water rights issues shall be submitted to the Department at the pre-application conference or with the application and must be approved by the Department prior to permit issuance. (4-6-05)

h. Requirements for Class A effluent distribution system operators. All operators of Class A effluent distribution systems, including operators of the distribution system from the wastewater treatment plant to the point of compliance or point of use or point of sale, as applicable, and those operators that are employed by buyers of the Class A effluent for subsequent

use, including home *occupants*, shall ~~*have the following qualifications. Operators shall have a high school diploma or GED or equivalent. Operators shall be trained, by a qualified manufacturer's representative, in the use and repair of the particular distribution system to be operated. Operators shall be trained in the concepts and safety issues of wastewater reuse, including viral infection issues, by the licensed operator of the particular wastewater treatment plant providing the Class A effluent to the particular system in use*~~ be required to sign a utility user agreement provided by the utility providing the Class A effluent that states that the user acknowledges that the user understands the origin of the effluent and the concept of agronomic rate for applying the Class A effluent. Contracts for sale of Class A effluent for subsequent use shall also ~~*require these standards*~~ include these requirements. Individual homeowners ~~*shall not*~~ are allowed to operate or maintain Class A effluent distribution systems. Providers of the Class A effluent shall undertake a public education program within its service area to teach potential customers the benefits and responsibilities of using Class A effluent ~~*(4-6-05)*~~(12-7-05)T

602. DEMONSTRATION OF TECHNICAL, FINANCIAL, AND MANAGERIAL CAPACITY OF CLASS A EFFLUENT RECLAIMED WASTEWATER SYSTEMS.
No person shall proceed, or cause to proceed, with construction of a new class A effluent reclaimed wastewater system until it has been demonstrated to the Department that the new Class A effluent reclaimed wastewater system will have adequate technical, financial, and managerial capacity. Demonstration of capacity shall be submitted to the Department prior to or concurrent with the submittal of plans and specifications, as required in Section 39-118, Idaho Code, and Subsection 601.02.a. of these rules. The Applicant must obtain Department approval of the new system capacity demonstration prior to permit issuance and construction. (4-6-05)

01. Technical Capacity. In order to meet this requirement, the Class A effluent reclaimed wastewater system shall submit documentation to demonstrate the following: (4-6-05)

a. The system meets the relevant design, construction, operating and maintenance requirements of these rules; (4-6-05)

b. The system has an adequate and consistent source of wastewater; (4-6-05)

c. A security plan is in place to protect the wastewater source and deal with emergencies; (4-6-05)

d. The system has trained personnel with an understanding of the technical and operational characteristics of the system; (4-6-05)

e. A plan for cross-connection control; (4-6-05)

f. Procedures for emergency response; and (4-6-05)

g. Quality assurance and quality control plans. (4-6-05)

02. Financial Capacity. A demonstration of financial capacity must include, but is not limited to, the following information: (4-6-05)

a. Documentation that organizational and financial arrangements are adequate to

construct and operate the Class A effluent reclaimed wastewater distribution system in accordance with these rules. This information can be provided by submitting estimated construction, operation, and maintenance costs, letters of credit, or other access to financial capital through public or private sources and, if available, a certified financial statement; (4-6-05)

b. Demonstration of revenue sufficiency that includes, but is not limited to, billing and collection procedures, a proposed rate structure which is affordable and ensures availability of operating funds, revenues for depreciation and reserves, and the ability to accrue a capital replacement fund. A preliminary operating budget shall be provided; (4-6-05)

c. Adequate fiscal controls shall be demonstrated; and (4-6-05)

d. Equipment inventory controls shall be in place. (4-6-05)

03. Managerial Capacity. In order to demonstrate adequate managerial capacity, the owner and/or operator of a new Class A effluent reclaimed wastewater system shall submit at least the following information to the Department: (4-6-05)

a. Clear documentation of legal ownership of the Class A effluent reclaimed wastewater system, including collection, treatment and effluent distribution systems, and any plans that may exist for transfer of that ownership on completion of construction or after a period of operation; (4-6-05)

b. The name, address, and telephone number of the person who will be accountable for ensuring that the Class A effluent reclaimed wastewater system is in compliance with these rules; (4-6-05)

c. The name, address, and telephone number of the system operator; (4-6-05)

d. A description of the manner in which the wastewater system will be managed. By-laws, restrictive covenants, articles of incorporation, or procedures and policy manuals which describe the management organization structure are a means of providing this information; (4-6-05)

e. Personnel management policies and a description of staffing, including training, experience, certification or licensing, and continuing education completed by the Class A effluent reclaimed wastewater system staff; (4-6-05)

f. An explanation of how the wastewater system operators will establish and maintain effective communications and relationships between the wastewater system management, its customers, professional service providers, and any applicable regulatory agencies; and (4-6-05)

g. Evidence of short-term and long-term planning for future growth, equipment repair and maintenance, and long term replacement of system components. (4-6-05)

~~04. Submittal Form~~. *~~The Department shall provide a standard form to be used in~~*

~~*preparing a new system capacity demonstration.*~~ ~~*(4-6-05)*~~

0~~5~~4. Consolidation. In demonstrating new system capacity, the owner of the proposed new Class A effluent reclaimed wastewater system shall investigate the feasibility of obtaining water service from an established public water system. If such service is available, but the owner elects to proceed with an independent system, the owner shall explain why this choice is in the public interest in terms of environmental protection, affordability to water users, and protection of public health. (4-6-05)

0~~6~~5. Exclusion. New Class A effluent reclaimed wastewater systems which are public utilities as defined in Sections 61-104 (Corporation), 61-124 (Water System), 61-125 (Water Corporation), and 61-129 (Public Utility), Idaho Code, shall meet the regulatory requirements of the Idaho Public Utilities Commission (IPUC) in Chapter 1, Title 61, Idaho Code, Public Utilities Law, and IDAPA 31.01.01, "Rules of Procedure of the Idaho Public Utilities Commission". Such wastewater systems shall not be required to meet any requirements of Section 602 which are in conflict with the provisions and requirements of the Idaho Public Utilities Commission. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

940. WAIVERS.
Waivers from the requirements of these rules may be granted by the Director on a case-by-case basis upon full demonstration by the person requesting the waivers that such activities for which the waivers are granted will not have a detrimental effect upon existing water quality and uses are adequately protected; and: ~~*(4-1-88)*~~(12-7-05)T

01. Effect. ~~*That such waivers will not have a detrimental effect upon existing water quality and uses are adequately protected; and*~~ That the proposed loadings on the site will be di minimus in both quantity and quality; ~~*(4-1-88)*~~(12-7-05)T

02. Treatment Requirements. That the treatment requirements are: (4-1-88)

a. Unreasonable with current technology; or (4-1-88)

b. Economically prohibitive. (4-1-88)

941. -- ~~*949*~~999.(RESERVED).

~~***950. PUBLIC AND CONFIDENTIAL INFORMATION.***~~

~~***01. Accessibility****. Except as provided in this section or other applicable law, information obtained or submitted pursuant to these rules will be available to the public for inspection and copying during normal working hours. Anyone requesting Department assistance in collecting, copying or mailing public information must tender, in advance, the reasonable cost of those services.*~~ ~~*(4-1-88)*~~

~~***02.*** ***Confidentiality****. Information concerning a pollution source and submitted to the Director, Board, or Hearing Officer pursuant to these rules which, as certified by the owner or operator of such source, relates to production or sales figures or to processes or production unique to the owner or operator, or tends to adversely affect the competitive position of such owner or operator, shall be only for the confidential use of the Board, Director and Hearing Officer unless: (4-1-88)~~

~~***a.*** *The Board, after a hearing, determines that a claim of uniqueness or adverse effect is unwarranted; (4-1-88)~~

~~***b.*** *The owner or operator expressly consents to disclosure; or (4-1-88)~~

~~***c.*** *Disclosure is required for prosecution of a violation of the Idaho Environmental Protection and Health Act, these rules or a permit, or order issued thereunder. (4-1-88)~~

~~***03.*** ***Department Discretion****. The Department may decline to release to the public: (4-1-88)~~

~~***a.*** *Inconclusive preliminary data or reports generated as part of ongoing studies; and (4-1-88)~~

~~***b.*** *Information obtained as part of ongoing investigations when release would: (4-1-88)~~

~~*i.* *Interfere with enforcement proceedings; (4-1-88)~~

~~*ii.* *Deprive a person of a fair or impartial adjudication; (4-1-88)~~

~~*iii.* *Discourage informants from disclosing information to the Department; (4-1-88)~~

~~*iv.* *Disclose investigative techniques or proceedings; or (4-1-88)~~

~~*v.* *Endanger the safety of Department personnel. (4-1-88)~~

~~***951. – 995. (RESERVED).***~~

SECTION 996 HAS BEEN RENUMBERED AND MOVED TO SECTION 004

SECTION 997 HAS BEEN RENUMBERED AND MOVED TO SECTION 005

~~***998. INCLUSIVE GENDER AND NUMBER.***~~
~~*For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate. (12-31-91)~~

~~***999. SEVERABILITY.***~~
~~*The provision of these rules are severable and if a provision or its application is declared invalid for any reason, that declaration will not affect the validity of the remaining provisions. (4-1-88)~~

RESOURCES & ENVIRONMENT

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.17 - WASTEWATER-LAND APPLICATION PERMIT RULES

DOCKET NO. 58-0117-0502

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-eighth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapter 1, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 3, 2005 Vol. 05-8, pages 411 through 413. One public comment was received. This comment was received during the negotiated rulemaking comment period and again during the proposed rulemaking comment period. The proposed rule was drafted in response to the concerns raised in the comment and has not been revised. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov or by contacting the undersigned.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Vol. 05-8, pages 411 through 413.

IDAHO CODE SECTION 39-107D STATEMENT: Section 39-107D, Idaho Code, provides that DEQ must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations. There is no federal law or regulation that is comparable to the Wastewater–Land Application Permit Rules. Therefore, the changes to these rules are not broader in scope or more stringent than federal law or regulations.

Section 39-107D, Idaho Code, also applies to a rule which "proposes to regulate an activity not regulated by the federal government". This Rule does regulate an activity not regulated by the federal government; however, Sections 39-107D(3) and (4), Idaho Code, do not apply because this rulemaking does not propose a standard necessary to protect human health and the environment.

IDAHO CODE SECTION 67-5224(2)(f) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this pending rule, contact Rick Huddleston at richard.huddleston@deq.idaho.gov, (208)373-0561.

Dated this 2nd day of November, 2005.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
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Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
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The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapter 1, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 17, 2005. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The Wastewater-Land Application Permit Rules do not currently require the Department of Environmental Quality (DEQ) to provide public notice or an opportunity for public comment during the wastewater land application permitting process although DEQ has been providing for this. The purpose of this rulemaking is to set out in rule the public participation provisions for the permitting process and to revise the permitting schedule to allow the director 60 days after issuance of a draft permit to issue the final permit. The rules currently allow the director 30 days to issue the final permit. In order to maintain the 180 day permitting schedule, the number of days allowed for the director to make an application completeness determination would decrease from 60 to 30 days. This proposed rule also adds a provision allowing for additional information or consultation between the applicant and the Department if necessary to clarify, modify, or supplement the application.

Idaho Association of Commerce and Industry, Idaho Association of Cities, consulting engineers, existing and potential permittees, and the development community may be interested commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete

is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2005 for adoption of a pending rule. The rule is expected to be final and effective upon the adjournment of the 2006 legislative session if approved by the Legislature.

IDAHO CODE SECTION 39-107D STATEMENT: Section 39-107D, Idaho Code, provides that DEQ must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations, or which propose to regulate an activity not regulated by the federal government. There is no federal law or regulation that is comparable to the Wastewater–Land Application Permit Rules. Therefore, the proposed changes to these rules are not broader in scope or more stringent than federal law or regulations.

Section 39-107D, Idaho Code, also applies to a rule which "proposes to regulate an activity not regulated by the federal government". The proposed rule changes the public participation provisions in an existing program authorized by the Idaho Legislature. It does not propose to expand a regulatory program to an area or activity not regulated by the federal government. Therefore, the rule change itself does not appear to be subject to the requirements of Section 39-107D, Idaho Code.

While the proposed rule just changes the public participation provisions in an existing program, and does not propose to expand regulation to a new activity, the existing program does regulate activities not regulated by the federal government. This existing rule chapter was first adopted in 1988 and therefore was not subject to the requirements of Section 39-107D, Idaho Code, which was enacted in 2002 and amended in 2003. This rulemaking does not propose a standard necessary to protect human health and the environment.

IDAHO CODE SECTION 67-5221(1)(c) FISCAL IMPACT STATEMENT: No negative impact occurs from this rulemaking; provision is not applicable.

NEGOTIATED RULEMAKING: On June 1, 2005 the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 05-6, page 49, and a preliminary draft negotiated rule was made available for public comment. A meeting was held on June 14, 2005. No members of the public attended the meeting; however, one written comment was received during the negotiated rulemaking period. The proposed rule has been drafted in response to the concerns raised in the written comment.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.deq.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Rick Huddleston at (208)373-0561, richard.huddleston@deq.idaho.gov.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address

below. DEQ will consider all written comments received by the undersigned on or before August 31, 2005.

Dated this 1st day of July, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

400. APPLICATION PROCESSING PROCEDURE.

01. Complete Application. If the application is determined to be complete the Director shall provide written notice to the applicant within ~~*sixty*~~ thirty (~~*6*~~30) days after receipt of the application which shall specify: ~~*(4-1-88)*~~(____)

a. The effective date of application, which will be the date of the notice; and (4-1-88)

b. A projected schedule for processing the permit which lists the tentative dates for: (4-1-88)

i. Publication of the preliminary permit decision or application denial; and (4-1-88)

ii. The date of issuance of a final permit. (4-1-88)

02. Incomplete Application. If the application is determined to be incomplete the Director shall provide written notice to the applicant within ~~*sixty*~~ thirty (~~*6*~~30) days after receipt of the application which specifies deficiencies and specifies additional required information. The Director shall not process an application until it is determined to be complete in accordance with these rules. ~~*(4-1-88)*~~(____)

03. Preliminary Decision/Application Denial. Within thirty (30) days of the effective date of the application the Director shall issue a preliminary decision to prepare a draft permit, or issue a decision denying the application. The applicant shall be notified in writing of the Director's preliminary decision or application denial. Notification shall include a staff analysis of the application and a draft permit if appropriate. (4-1-88)

04. Contents of the Staff Analysis. The staff analysis shall briefly state the principal facts and the significant questions considered in preparing the draft permit conditions or the intent to deny, and a summary of the basis for the draft conditions or denial with references to applicable requirements and supporting materials. (4-1-88)

05. Information or Consultation Before Issuance of Draft Permit or Application Denial. After the application is determined to be complete, additional information or consultation between the applicant and the Department may be needed to clarify, modify, or supplement the application. This action may be initiated by the Director or the applicant. (____)

0~~5~~6. Issuance and Contents of the Draft Permit. (____)

a. Issuance and Contents of the Draft Permit. The Director shall issue a draft permit to the applicant within sixty (60) days of issuing a preliminary decision to prepare a draft permit. The draft permit shall be in the same form as a final permit and shall specify conditions of operation and management which will be required for the issuance of the permit. Permit conditions shall protect the environment and the public health from the hazard potential of an existing or proposed wastewater treatment system. ~~*(4-1-88)*~~( )

b. Public Comments. The Department shall provide notice to the public of its issuance of a draft permit. The public may provide written comments for a period of time and in a manner specified in the Department's notice. The Department may, in its discretion, provide an opportunity for the public to provide oral comments. ( )

~~***06. Information Requested After Effective Date of Application****. The Director may, by written request, require additional information after the effective date of application to clarify, modify, or supplement the application.* *(4-1-88)***~~

07. Issuance of the Final Permit. The Director shall issue a final permit decision in writing to the applicant within ~~*thirty*~~ sixty (~~*3*~~60) days from the issuance of the draft permit, except the Director may issue the decision at ~~*either an earlier or*~~ a later date in response to a written request ~~*by the applicant*~~ to extend the public comment period. ~~*(4-1-88)*~~( )

08. Effective Date of Final Permit. The final permit shall become effective upon date of issue unless a later effective date is specified in the permit. (4-1-88)