

Dear Senators HEIDER, Brackett, Stennett, and
Representatives GIBBS, Gestrin, Erpelding:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Idaho Department of Lands:

IDAPA 20.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking (Docket
No. 20-0000-1900) - Idaho Department of Lands.

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 07/19/2019. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 08/16/2019.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Legislative Services Office Idaho State Legislature

Eric Milstead
Director

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee
FROM: Deputy Division Manager - Katharine Gerrity
DATE: July 1, 2019
SUBJECT: Idaho Department of Lands

IDAPA 20.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking (Docket No. 20-0000-1900) - Idaho Department of Lands

The Idaho Department of Lands submits notice of temporary and proposed rules that reauthorize and re-publish the following previously approved chapters at:

20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners – All rules except the following Sections: 790 through 860. According to the department, these sections have been superseded by statute: See Chapter 52, Title 67, Idaho Code;
20.02.01, Rules Pertaining to the Idaho Forest Practices Act;
20.04.01, Rules Pertaining to Forest Fire Protection

These rules were previously analyzed and reviewed by the Legislative Services Office upon their initial promulgation. **Changes from the previously approved rules are noted above.**

Rulemaking appears to be authorized pursuant to Sections 38-115, 38-132, 38-402, 38-1304, 58-104, 58-105, 67-5201 et seq., and 67- 5206(5)(b), Idaho Code.

cc: Idaho Department of Lands
Dustin Miller

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-1900

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 38-115, 38-132, 38-402, 38-1304, 58-104, 58-105, 67-5201 et seq., and 67-5206(5)(b), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 20, rules of the Idaho Department of Lands:

IDAPA 20

20.01.01, *Rules of Practice and Procedure Before the State Board of Land Commissioners – All rules except the following Sections: 790 through 860*

20.02.01, *Rules Pertaining to the Idaho Forest Practices Act*

20.04.01, *Rules Pertaining to Forest Fire Protection*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The rules of the Idaho Department of Lands serve the public interest by, for example, regulating forestland management practices to maintain and enhance benefits such as job creation, tax generation, and distributions to endowment beneficiaries, and by conserving resources such as forest tree species, soil, air, water, and wildlife habitat.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Amy Johnson at (208) 334-0255 or rulemaking@idl.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Dustin Miller, Director
Idaho Department of Lands
300 N. 6th St, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0242
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**IDAPA 20
TITLE 01
CHAPTER 01**

IDAPA 20 – DEPARTMENT OF LANDS

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

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Sections 58-104 and 67-5206(5)(b), Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

The title of this chapter is “Rules of Practice and Procedure Before the State Board of Land Commissioners.” These rules govern the practice and procedure in contested cases and rulemaking before the Board and the Idaho Department of Lands. These rules do not govern practice and procedure during regular or special meetings of the Board. Furthermore, these rules are not intended to create the substantive right to a contested case hearing; any right to a contested case hearing must be established by other provision of law. (7-1-93)

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 2).

The Board does not rely on any written interpretive statements concerning these rules. (7-1-93)

003. ADMINISTRATIVE APPEAL (RULE 3).

There is no provision for administrative appeals under this chapter. This chapter governs contested cases and rulemaking before the Board. (7-1-93)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All records relating to this chapter are public records except to the extent such records are by law exempt from disclosure. (7-1-93)

005. DEFINITIONS (RULE 5).

As used in this chapter: (7-1-93)

- 01. Administrative Code.** The Idaho administrative code established in chapter 52, title 67, Idaho Code. (7-1-93)
- 02. Agency.** The state board of land commissioners and the Idaho department of lands. (7-1-93)
- 03. Agency Action.** Agency action means: (7-1-93)
 - a.** The whole or part of a rule or order; (7-1-93)
 - b.** The failure to issue a rule or order; or (7-1-93)
 - c.** An agency’s performance of, or failure to perform, any duty placed on it by law. (7-1-93)
- 04. Agency Head.** The state board of land commissioners and the board secretary, the director of the Idaho department of lands. (7-1-93)
- 05. Board.** The State Board of Land Commissioners. (7-1-93)
- 06. Bulletin.** The Idaho Administrative Bulletin established in chapter 52, title 67, Idaho Code. (7-1-93)
- 07. Contested Case.** A proceeding which results in the issuance of an order. (7-1-93)

- 08. Coordinator.** The administrative rules coordinator prescribed in Section 67-5202, Idaho Code. (7-1-93)
- 09. Document.** Any proclamation, executive order, notice, rule or statement of policy of an agency. (7-1-93)
- 10. License.** The whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes. (7-1-93)
- 11. Official Text.** The text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. (7-1-93)
- 12. Order.** An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. (7-1-93)
- 13. Party.** Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (7-1-93)
- 14. Person.** Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. (7-1-93)
- 15. Publish.** To bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law. (7-1-93)

006. CITATION (RULE 6).

The official citation of this chapter is IDAPA 20.01.01, et seq. For example, this section's citation is IDAPA 20.01.01.006. In documents submitted to an agency or issued by an agency, these rules may be cited as IRAP (Idaho Rules of Administrative Procedure) and action number less leading zeroes. For example, this rule may be cited as IRAP 6. (7-1-93)

007. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS (RULE 7).

01. Department and Board Office. The office of the Board and the Department of Lands is the Director's Office of the Department of Lands, 300 North 6th Street, Suite 103, P.O. Box 83720, Boise, Idaho 83720-0050, telephone number (208) 334-0200, and fax number (208) 334-2339. The Board's website is <http://www.idl.idaho.gov/>. Office hours are from 8 a.m. to 5 p.m., Monday through Friday. Subsection 007.02 lists another Department of Lands facility from which information on various Board matters may be obtained, or where comments on rulemaking may be filed in some instances. (3-29-10)

02. Coeur d'Alene Headquarters. 3780 Industrial Avenue South, Coeur d'Alene, Idaho 83815, telephone number (208) 769-1525, fax number (208) 769-1524. (3-29-10)

008. FILING OF DOCUMENTS -- NUMBER OF COPIES (RULE 8).

01. Where to File. In general, all documents in contested cases may be filed with the Board Secretary/Department of Lands Director at the address set forth in Rule 007 if no other officer is designated for the particular proceeding. When a specific officer is designated to receive documents in a particular proceeding, documents may be filed with the designated officer as set forth in the order appointing a hearing officer or in the rulemaking notice. (7-1-93)

02. Number of Copies. An original and five (5) legible copies of all documents shall be filed with the Board in all contested cases wherein a hearing officer has not been appointed by the Board. If a hearing officer has been appointed to hear a contested case, then one (1) original and one (1) legible copy of all documents shall be filed with the hearing officer. One (1) original shall be filed with the designated officer in all rulemaking matters. (7-1-93)

009. -- 049. (RESERVED)

050. PROCEEDINGS GOVERNED (RULE 50).

01. Contested Case and Rulemaking. Rules 100 through 799 govern procedure before the board in contested cases, unless otherwise provided by statute, rule, notice or order of the Board. Rules 800 through 860 govern procedure before the Board in rulemaking unless otherwise provided by rule or notice of the Board. (7-1-93)

02. Other Specified Procedures. Where another statute or rule requires specific procedures in a contested case before the Board, such other procedures will preempt these rules to the extent that these rules conflict with the other procedures. To the extent the other statute or rule does not address any matter of practice and procedure set forth in these rules, however, these rules shall govern. (7-1-93)

03. Rules Not Applicable to Board Meetings. These rules do not govern practice and procedure before regular or special board meetings. Board meetings are conducted informally and are not contested case hearings. A person who is dissatisfied with any decision of the Board may apply to appear before and be heard by the Board. Such appearances are informal and minutes will be taken and recorded the same as for regular Board meetings, unless application is made for a contested case hearing. A contested case hearing is available only where authorized by statute. See Rule 104.02. (7-1-93)

04. Rules Not Applicable to Proceedings or Public Hearings. These rules do not govern proceedings in any public comment hearing that the Board may direct for the purpose of taking public comment on any matter. (7-1-93)

051. REFERENCE TO AGENCY (RULE 51).

Reference to the agency in these rules includes the Board and its Secretary, the Director of the Department of Lands, the hearing officer appointed by the agency, or the presiding officer, as context requires. Reference to the agency head means to the Board and its Secretary, the Director of the Department of Lands, as context requires, or such other officer designated by the agency head to review recommended or preliminary orders. (7-1-93)

052. LIBERAL CONSTRUCTION (RULE 52).

The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. Unless required by statute, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. (7-1-93)

053. COMMUNICATIONS WITH AGENCY (RULE 53).

All written communications and documents that are intended to be part of an official record for a decision in a contested case must be filed with the Board's Secretary/Director of the Department of Lands, or such officer appointed by the Board. Unless otherwise provided by statute, rule, order or notice, documents are considered filed when received by the officer designated to receive them, not when mailed. (7-1-93)

054. IDENTIFICATION OF COMMUNICATIONS (RULE 54).

Parties' communications addressing or pertaining to a given proceeding must be written under that proceeding's case caption and case number. General communications by other persons should refer to case captions, case numbers, permit or license numbers, or the like, if this information is known. (7-1-93)

055. SERVICE BY AGENCY (RULE 55).

Unless otherwise provided by statute or these rules, the officer designated by the agency to serve rules, notices, summonses, complaints, and orders issued by the agency may serve these documents by certified mail, return receipt requested, to a party's last known mailing address or by personal service. Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail or the Statehouse mail, if the party is a state employee or state agency. The officer designated by the agency to serve documents in a proceeding must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency. (7-1-93)

056. COMPUTATION OF TIME (RULE 56).

Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count. If the day the act must be done is Saturday, Sunday or a legal holiday, the act may be done on the first day following that is not Saturday, Sunday or a legal holiday. (7-1-93)

057. FEES AND REMITTANCES (RULE 57).

Fees and remittances to the agency must be paid by money order, bank draft or check payable to agency. Remittances in currency or coin are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss. (7-1-93)

058. -- 099. (RESERVED)

100. INFORMAL PROCEEDINGS DEFINED (RULE 100).

Informal proceedings are proceedings in contested cases authorized by statute, rule or order of the agency to be conducted using informal procedures, i.e., procedures without a record to be preserved for later agency or judicial review, without the necessity of representation according to Rule 231, without formal designation of parties, without the necessity of hearing examiners or other presiding officers, or without other formal procedures required by these rules for formal proceedings. Unless prohibited by statute, an agency may provide that informal proceedings may precede formal proceedings in the consideration of a rulemaking or a contested case. (7-1-93)

101. INFORMAL PROCEDURE (RULE 101).

Statute authorizes and these rules encourage the use informal proceedings to settle or determine contested cases. Unless prohibited by statute, the agency may provide for the use of informal procedure at any stage of a contested case. Informal procedure may include individual contacts by or with the agency staff asking for information, advice or assistance from the agency staff, or proposing informal resolution of formal disputes under the law administered by the agency. Informal procedures may be conducted in writing, by telephone or television, or in person. (7-1-93)

102. FURTHER PROCEEDINGS (RULE 102).

If statute provides that informal procedures shall be followed with no opportunity for further formal administrative review, then no opportunity for later formal administrative proceedings must be offered following informal proceedings. Otherwise, except as provided in Rule 103, any person participating in an informal proceeding must be given an opportunity for a later formal administrative proceeding before the agency, if such person is entitled to a contested case hearing, at which time the parties may fully develop the record before the agency. (7-1-93)

103. INFORMAL PROCEEDINGS DO NOT EXHAUST ADMINISTRATIVE REMEDIES (RULE 103).

Unless all parties agree to the contrary in writing, informal proceedings do not substitute for formal proceedings and do not exhaust administrative remedies, and informal proceeding are conducted without prejudice to the right of the parties to present the matter formally to the agency. Settlement offers made in the course of informal proceedings are confidential. (7-1-93)

104. FORMAL PROCEEDINGS (RULE 104).

01. Initiation of Proceedings. Formal proceedings, which are governed by rules of procedure other than Rules 100 through 103, must be initiated by a document (generally a notice, order or complaint if initiated by the agency) or another pleading listed in Rules 220 through 260 if initiated by another person. Formal proceedings may be initiated by a document from the agency informing the party(ies) that the agency has reached an informal determination that will become final in the absence of further action by the person to whom the correspondence is addressed, provided that the document complies with the requirements of Rules 211 through 281. Formal proceedings can be initiated by the same document that initiates informal proceedings. (7-1-93)

02. Right to Contested Case, Board Discretion. Formal proceedings may be initiated by a party only where such party is given the statutory right to a contested case hearing. The Board may, in its discretion, direct that a contested case hearing be held in a contested case, or on any matter. The Board may, in its discretion, deny any request for a contested case hearing on any matter that is not a contested case. (7-1-93)

105. -- 149. (RESERVED)

150. PARTIES TO CONTESTED CASES LISTED (RULE 150).

Parties to contested cases before the agency are called applicants or claimants or appellants, petitioners, complainants, respondents, protestants, or intervenors. On reconsideration or appeal within the agency parties are called by their original titles listed in the previous sentence. (7-1-93)

151. APPLICANTS/CLAIMANTS/APPELLANTS (RULE 151).

Persons who seek any right, license, award or authority from the agency are called “applicants” or “claimants” or “appellants.” (7-1-93)

152. PETITIONERS (RULE 152).

Persons not applicants who seek to modify, amend or stay existing orders or rules of the agency, to clarify their rights or obligations under law administered by the agency, to ask the agency to initiate a contested case (other than an application or complaint), or to otherwise take action that will result in the issuance of an order or rule, are called “petitioners.” (7-1-93)

153. COMPLAINANTS (RULE 153).

Persons who charge other person(s) with any act or omission are called “complainants.” In any proceeding in which the agency itself charges a person with an act or omission, the agency is called “complainant.” (7-1-93)

154. RESPONDENTS (RULE 154).

Persons against whom complaints are filed or about whom investigations are initiated are called “respondents.” (7-1-93)

155. PROTESTANTS (RULE 155).

Persons who oppose an application or claim or appeal and who have a statutory right to contest the right, license, award or authority sought by an applicant or claimant or appellant are called “protestants.” (7-1-93)

156. INTERVENORS (RULE 156).

Persons, not applicants or claimants or appellants, complainants, respondents, or protestants to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354 are called “intervenors.” (7-1-93)

157. RIGHTS OF PARTIES AND OF AGENCY STAFF (RULE 157).

Subject to Rules 558, 560, and 600, all parties and agency staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (7-1-93)

158. PERSONS DEFINED -- PERSONS NOT PARTIES -- INTERESTED PERSONS (RULE 158).

The term “person” includes natural persons, partnerships, corporations, associations, municipalities, government entities and subdivisions, and any other entity authorized by law to participate in the administrative proceeding. Persons other than the persons named in Rules 151 through 156 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. In kinds of proceedings in which persons other than the applicant or claimant or appellant, petitioner, complainant, or respondent would be expected to have an interest, persons may request the agency in writing that they be notified when proceedings of that kind are initiated. These persons are called “Interested Persons.” Interested persons may become protestants, intervenors or public witnesses. The agency must serve notice of such proceedings on all interested persons. (7-1-93)

159. -- 199. (RESERVED)

200. INITIAL PLEADING BY PARTY -- LISTING OF REPRESENTATIVES (RULE 200).

The initial pleading of each party at the formal stage of a contested case (be it an application or claim or appeal, petition, complaint, protest, motion, or answer) must name the party’s representative(s) for service and state the representative’s (s’) address(es) for purposes of receipt of all official documents. Service of documents on the named representative (s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party’s representative, the person signing the pleading will be considered the party’s representative. (7-1-93)

201. TAKING OF APPEARANCES -- PARTICIPATION BY AGENCY STAFF (RULE 201).

The presiding officer at a formal hearing or prehearing conference will take appearances to identify the

representatives of all parties or other persons. In all proceedings in which the agency staff will participate, or any report or recommendation of the agency staff (other than a recommended order or preliminary order prepared by a hearing officer) will be considered or used in reaching a decision, at the timely request of any party the agency staff must appear at any hearing and participate in the same manner as a party. (7-1-93)

202. REPRESENTATION OF PARTIES AT HEARING (RULE 202).

01. Appearances and Representation. To the extent authorized or required by law, appearances and representation of parties or other persons at formal hearing or prehearing conference must be as follows: (7-1-93)

- a.** Natural person. A natural person may represent himself or herself or be represented by a duly authorized employee, attorney, family member, or next friend. (7-1-93)
- b.** A partnership may be represented by a partner, duly authorized employee, or attorney. (7-1-93)
- c.** A corporation may be represented by an officer, duly authorized employee, or attorney. (7-1-93)
- d.** A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. (7-1-93)

02. Representatives. The representatives of parties at hearing, and no other persons or parties appearing before the agency, are entitled to examine witnesses and make or argue motions. (7-1-93)

203. SERVICE ON REPRESENTATIVES OF PARTIES AND OTHER PERSONS (RULE 203).

From the time a party files its initial pleading in a contested case, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties' representatives designated pursuant to Rule 200, unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The presiding officer may order parties to serve past or future documents filed in the case upon persons not parties to the proceedings before the agency. (7-1-93)

204. WITHDRAWAL OF PARTIES (RULE 204).

Any party may withdraw from a proceeding in writing or at hearing. (7-1-93)

205. SUBSTITUTION OF REPRESENTATIVE -- WITHDRAWAL OF REPRESENTATIVE (RULE 205).

A party's representative may be changed and a new representative may be substituted by notice to the agency and to all other parties so long as the proceedings are not unreasonably delayed. The presiding officer at hearing may permit substitution of representatives at hearing in the presiding officer's discretion. Persons representing a party who wish to withdraw their representation of a party in a proceeding before the agency must immediately file in writing a notice of withdrawal of representation and serve that notice on the party represented and all other parties. (7-1-93)

206. CONDUCT REQUIRED (RULE 206).

Representatives of parties and parties appearing in a proceeding must conduct themselves in an ethical and courteous manner. (7-1-93)

207. -- 209. (RESERVED)

210. PLEADINGS LISTED -- MISCELLANEOUS (RULE 210).

Pleadings in contested cases are called applications or claims or appeals, petitions, complaints, protests, motions, answers, and consent agreements. Affidavits or declarations under penalty of perjury may be filed in support of any pleading. A party's initial pleading in any proceeding must comply with Rule 200, but the presiding officer may allow documents filed during informal stages of the proceeding to be considered a party's initial pleading without the requirement of resubmission to comply with this rule. All pleadings filed during the formal stage of a proceeding must be filed in accordance with Rules 300 through 303. A party may adopt or join any other party's pleading. Two (2) or more separately stated grounds, claims or answers concerning the same subject matter may be included in one (1) pleading. (7-1-93)

211. -- 219. (RESERVED)

220. APPLICATIONS/CLAIMS/APPEALS -- DEFINED -- FORM AND CONTENTS (RULE 220).

All pleadings requesting a right, license, award or authority from the agency are called “applications” or “claims” or “appeals.” Applications or claims or appeals must: (7-1-93)

01. Facts. Fully state the facts upon which they are based. (7-1-93)

02. Refer to Provisions. Refer to the particular provisions of statute, rule, order, or other controlling law upon which they are based. (7-1-93)

03. Other. State the right, license, award, or authority sought. (7-1-93)

221. -- 229. (RESERVED)

230. PETITIONS -- DEFINED -- FORM AND CONTENTS (RULE 230).

01. Pleadings Defined. All pleadings requesting the following are called “petitions”: (7-1-93)

a. Modification, amendment or stay of existing orders or rules; (7-1-93)

b. Clarification, declaration or construction of the law administered by the agency or of a party’s rights or obligations under law administered by the agency; (7-1-93)

c. The initiation of a contested case not an application, claim or complaint or otherwise taking action that will lead to the issuance of an order or a rule; (7-1-93)

d. Rehearing; or (7-1-93)

e. Intervention. (7-1-93)

02. Petitions. Petitions must: (7-1-93)

a. Fully state the facts upon which they are based; (7-1-93)

b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; (7-1-93)

c. State the relief desired; and (7-1-93)

d. State the name of the person petitioned against (the respondent), if any. (7-1-93)

231. -- 239. (RESERVED)

240. COMPLAINTS -- DEFINED -- FORM AND CONTENTS (RULE 240).

01. Defined. All pleadings charging other person(s) with acts or omissions under law administered by the agency are called “complaints.” (7-1-93)

02. Form and Contents. Complaints must: (7-1-93)

a. Be in writing; (7-1-93)

b. Fully state the acts or things done or omitted to be done by the persons complained against by reciting the facts constituting the acts or omissions and the dates when they occurred; (7-1-93)

- c. Refer to statutes, rules, orders or other controlling law involved; (7-1-93)
- d. State the relief desired; and (7-1-93)
- e. State the name of the person complained against (the respondent). (7-1-93)

241. -- 249. (RESERVED)

250. PROTESTS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 250).

- 01. Defined.** All pleadings opposing an application or claim or appeal as a matter of right are called “protests.” (7-1-93)
- 02. Form and Contents, Time for Filing.** Protests must: (7-1-93)
 - a.** Fully state the facts upon which they are based, including the protestant’s claim of right to oppose the application or claim; (7-1-93)
 - b.** Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; and (7-1-93)
 - c.** State any proposed limitation (or the denial) of any right, license, award or authority sought in the application. (7-1-93)

251. -- 259. (RESERVED)

260. MOTIONS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 260).

- 01. Defined.** All other pleadings requesting the agency to take any other action in a contested case, except consent agreements or pleadings specifically answering other pleadings, are called “motions.” (7-1-93)
- 02. Form and Contents.** Motions must: (7-1-93)
 - a.** Fully state the facts upon they are based; (7-1-93)
 - b.** Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and (7-1-93)
 - c.** State the relief sought. (7-1-93)
- 03. Other.** If the moving party desires oral argument or hearing on the motion, it must state so in the motion. Any motion to dismiss, strike or limit an application or claim or appeal, complaint, petition, or protest must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within fourteen (14) days after service of the answer. Other motions may be filed at any time upon compliance with Rule 604. (7-1-93)

261. -- 269. (RESERVED)

270. ANSWERS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 270).

- All pleadings responding to the allegations or requests of applications or claims or appeals, complaints, petitions, protests, or motions are called “answers.” (7-1-93)
- 01. Answers to Pleadings Other Than Motions.** Answers to applications, claims, or appeals, complaints, petitions, or protests must be filed and served on all parties of record within twenty-one (21) days after service of the pleading being answered, unless order or notice modifies the time within which answer may be made, or a motion to dismiss is made within twenty-one (21) days. When an answer is not timely filed under this rule, the presiding officer may issue a notice of default against the respondent pursuant to Rule 711. Answers to applications

or claims, complaints, petitions, or protests must admit or deny each material allegation of the applications or claims, complaint, petition or protest. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. (7-1-93)

02. Answers to Motions. Answers to motions may be filed by persons or parties who are the object of a motion or by parties opposing a motion. The person or party answering the motion must do so with all deliberate and reasonable speed. In no event is a party entitled to more than fourteen (14) days to answer a motion or to move for additional time to answer. The presiding officer may act upon a prehearing motion under Rule 604. (7-1-93)

271. -- 279. (RESERVED)

280. CONSENT AGREEMENTS -- DEFINED -- FORM AND CONTENTS (RULE 280).

Agreements between the agency or agency staff and another person(s) in which one or more person(s) agree to engage in certain conduct mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, case decision, or other provision of law, are called "consent agreements." Consent agreements are intended to require compliance with existing law. (7-1-93)

01. Requirements. Consent agreements must: (7-1-93)

a. Recite the parties to the agreement; and (7-1-93)

b. Fully state the conduct proscribed or prescribed by the consent agreement. (7-1-93)

02. Additional. In addition, consent agreements may: (7-1-93)

a. Recite the consequences of failure to abide by the consent agreement; (7-1-93)

b. Provide for payment of civil or administrative penalties authorized by law; (7-1-93)

c. Provide for loss of rights, licenses, awards or authority; (7-1-93)

d. Provide for other consequences as agreed to by the parties; and (7-1-93)

e. Provide that the parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent agreement. (7-1-93)

281. -- 299. (RESERVED)

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

An original and necessary copies (if any are required by the agency) of all documents intended to be part of an agency record must be filed with the officer designated by the agency to receive filing in the case. Pleadings and other documents not exceeding ten (10) pages in length requiring urgent or immediate action may be filed by facsimile transmission (FAX) if the agency's individual rule of practice lists a FAX number for that agency. Whenever any document is filed by FAX, if possible, originals must be delivered by overnight mail the next working day. (7-1-93)

301. FORM OF PLEADINGS (RULE 301).

01. Pleadings. All pleadings submitted by a party and intended to be part of an agency record must: (7-1-93)

a. Be submitted on white, eight and one-half by eleven inch (8 1/2" x 11") paper copied on one (1) side only; (7-1-93)

b. State the case caption, case number and title of the document; (7-1-93)

c. Include on the upper left corner of the first page the name(s), mailing and street address(es), and

telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; and (7-1-93)

d. Have at least one inch (1”) left and top margins. (7-1-93)

02. Form. Documents complying with this rule will be in the following form:

Name of Representative
Mailing Address of Representative
Street Address of Representative (if different)
Telephone Number of Representative
FAX Number of Representative (if there is one)
Attorney/Representative for (Name of Party)

BEFORE THE AGENCY

(Title of Proceeding))
)
)
)

CASE NO.
(TITLE OF DOCUMENT)

(7-1-93)

302. SERVICE ON PARTIES AND OTHER PERSONS (RULE 302).

All documents intended to be part of the agency record for decision must be served upon the representatives of each party of record concurrently with filing with the officer designated by the agency to receive filings in the case. When a document has been filed by FAX, it must be served upon all other parties with FAX facilities by FAX and upon the remaining parties by overnight mail, hand delivery, or the next best available service if these services are not available. The presiding officer may direct that some or all of these documents be served on interested or affected persons who are not parties. (7-1-93)

303. PROOF OF SERVICE (RULE 303).

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

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

(Signature)

(7-1-93)

304. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 304).

Defective, insufficient or late pleadings may be returned or dismissed. (7-1-93)

305. AMENDMENTS TO PLEADINGS -- WITHDRAWAL OF PLEADINGS (RULE 305).

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective fourteen (14) days after filing. (7-1-93)

306. -- 349. (RESERVED)

350. ORDER GRANTING INTERVENTION NECESSARY (RULE 350).

Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a

proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party. (7-1-93)

351. FORM AND CONTENTS OF PETITIONS TO INTERVENE (RULE 351).

Petitions to intervene must comply with Rules 200, 300, and 301. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. (7-1-93)

352. TIMELY FILING OF PETITIONS TO INTERVENE (RULE 352).

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing or prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. (7-1-93)

353. GRANTING PETITIONS TO INTERVENE (RULE 353).

If a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding. (7-1-93)

354. ORDERS GRANTING INTERVENTION -- OPPOSITION (RULE 354).

No order granting a petition to intervene will be acted upon fewer than seven (7) days after its filing, except in a hearing in which any party may be heard. Any party opposing a petition to intervene by motion must file the motion within seven (7) days after receipt of the petition to intervene and serve the motion upon all parties of record and upon the person petitioning to intervene. (7-1-93)

355. PUBLIC WITNESSES (RULE 355).

Persons not parties and not called by a party who testify at hearing are called "public witnesses." Public witnesses do not have parties' rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses' written or oral statements and exhibits are subject to examination and objection by parties. Subject to Rules 557 and 559, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits introduced at hearing, except that public witnesses offering expert opinions at hearing or detailed analysis or detailed exhibits must comply with Rule 528 with regard to filing and service of testimony and exhibits to the same extent as expert witnesses of parties. (7-1-93)

356. -- 399. (RESERVED)

400. FORM AND CONTENTS OF PETITION FOR DECLARATORY RULINGS (RULE 400).

Any person petitioning for a declaratory ruling on the applicability of a statute, rule or order administered by the agency must substantially comply with this rule. (7-1-93)

01. Form. The petition shall: (7-1-93)

a. Identify the petitioner and state the petitioner's interest in the matter; (7-1-93)

b. State the declaratory ruling that the petitioner seeks; and (7-1-93)

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. (7-1-93)

02. Legal Assertions. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (7-1-93)

401. NOTICE OF PETITION FOR DECLARATORY RULING (RULE 401).

Notice of petition for declaratory ruling may be issued in a manner designed to call its attention to persons likely to be

interested in the subject matter of the petition. (7-1-93)

402. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER (RULE 402).

01. Final Agency Action. The agency’s decision on a petition for declaratory ruling on the applicability of any statute, rule, or order administered by the agency is a final agency action decided by order. (7-1-93)

02. Content. The order issuing the declaratory ruling shall contain or must be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a final agency action issuing a declaratory ruling. (7-1-93)

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this declaratory ruling may appeal to district court by filing a petition in the District Court in the county in which: (7-1-93)

i. A hearing was held; (7-1-93)

ii. The declaratory ruling was issued; (7-1-93)

iii. The party appealing resides; or (7-1-93)

iv. The real property or personal property that was the subject of the declaratory ruling is attached. (7-1-93)

c. This appeal must be filed within twenty-eight (28) days of the service date of this declaratory ruling. See Section 67-5273, Idaho Code. (7-1-93)

403. -- 409. (RESERVED)

410. APPOINTMENT OF HEARING OFFICERS (RULE 410).

A hearing officer is a person other than the agency head appointed to hear contested cases on behalf of the agency. Unless otherwise provided by statute or rule, hearing officers may be employees of the agency or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the agency. The appointment of a hearing officer is a public record available for inspection, examination and copying. (7-1-93)

411. HEARING OFFICERS CONTRASTED WITH AGENCY HEAD (RULE 411).

Agency heads are not hearing officers, even if they are presiding at contested cases. The term “hearing officer” as used in these rules refers only to officers subordinate to the agency head. (7-1-93)

412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES (RULE 412).

Pursuant to Section 67-5252, Idaho Code, hearing officers are subject to disqualification for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified. Any party may promptly petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or upon discovering facts establishing grounds for disqualification, whichever is later. Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting the designation by a presiding officer. A hearing officer whose disqualification is requested shall determine in writing whether to grant the petition for disqualification, stating facts and reasons for the hearing officer’s determination. Disqualification of agency heads, if allowed, will be pursuant to Sections 59-704 and 67-5252(4), Idaho Code. (7-1-93)

413. SCOPE OF AUTHORITY OF HEARING OFFICERS (RULE 413).

The scope of hearing officers’ authority may be restricted in the appointment by the agency. (7-1-93)

01. Scope of Authority. Unless the agency otherwise provides, hearing officers have the standard scope of authority, which is: (7-1-93)

a. Authority to schedule cases assigned to the hearing officer, including authority to issue notices of prehearing conference and of hearing, as appropriate; (7-1-93)

b. Authority to schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency; (7-1-93)

c. Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, and otherwise oversee the orderly presentations of the parties at hearing; and (7-1-93)

d. Authority to issue a written decision of the hearing officer, including a narrative of the proceedings before the hearing officer and recommended findings of fact, conclusions of law, and recommended or preliminary orders by the hearing officer. (7-1-93)

02. Limitation. The hearing officer's scope of authority may be limited from the standard scope, either in general, or for a specific proceeding. For example, the hearing officer's authority could be limited to scope iii (giving the officer authority only to conduct hearing), with the agency retaining all other authority. Hearing officers can be given authority with regard to the agency's rules as provided in Rule 416. (7-1-93)

03. Final Decision by Board. All final decisions in contested cases will be made by the Board. A hearing officer will only issue recommended findings of fact, conclusions of law, and orders to the Board, and the Board will make the final decision to adopt, modify, or reject any or all of the proposed findings, conclusions, and order. (7-1-93)

414. PRESIDING OFFICER(S) (RULE 414).

One (1) or more members of the agency board, the agency director, or duly appointed hearing officers may preside at hearing as authorized by statute or rule. When more than one (1) officer sits at hearing, they may all jointly be presiding officers or may designate one of them to be the presiding officer. (7-1-93)

415. CHALLENGES TO STATUTES (RULE 415).

A hearing officer in a contested case has no authority to declare a statute unconstitutional. However, when a court of competent jurisdiction whose decisions are binding precedent in the state of Idaho has declared a statute unconstitutional, or when a federal authority has preempted a state statute or rule, and the hearing officer finds that the same state statute or rule or a substantively identical state statute or rule that would otherwise apply has been challenged in the proceeding before the hearing officer, then the hearing officer shall apply the precedent of the court or the preemptive action of the federal authority to the proceeding before the hearing officer and decide the proceeding before the hearing officer in accordance with the precedent of the court or the preemptive action of the federal authority. (7-1-93)

416. REVIEW OF RULES (RULE 416).

When an order is issued by the agency head in a contested case, the order may consider and decide whether a rule of that agency is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure. The agency head may delegate to a hearing officer the authority to recommend a decision on issues of whether a rule is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure or may retain all such authority itself. (7-1-93)

417. EX PARTE COMMUNICATIONS (RULE 417).

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

providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications. (7-1-93)

418. -- 499. (RESERVED)

500. ALTERNATIVE RESOLUTION OF CONTESTED CASES (RULE 500).

The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, factfinding, minitrials, and arbitration, or any combination of them. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. An agency may use ADR for the resolution of issues in controversy in a contested case if the agency finds that such a proceeding is appropriate. Reasons why an agency may find that using ADR is not appropriate may include, but are not limited to, a finding that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest. Nothing in this rule shall be interpreted to require the Board to utilize ADR procedures in a contested case, nor shall it require the Board to make any findings of fact, conclusions of law, or orders with respect to a decision concerning utilization of ADR procedures. A Board decision on utilization of ADR procedures is not reviewable. (7-1-93)

501. NEUTRALS (RULE 501).

When ADR is used for all or a portion of a contested case, the agency may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the agency or of another state agency or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. (7-1-93)

502. CONFIDENTIALITY (RULE 502).

Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or is required by court order, statute or agency rule to be made public. (7-1-93)

503. -- 509. (RESERVED)

510. PURPOSES OF PREHEARING CONFERENCES (RULE 510).

The presiding officer may by order or notice issued to all parties and to all interested persons as defined in Rule 158 convene a prehearing conference in a contested case for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. (7-1-93)

511. NOTICE OF PREHEARING CONFERENCE (RULE 511).

Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the prehearing conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference must contain the same information as notices of hearing with regard to an agency's obligations under the American with Disabilities Act. (7-1-93)

512. RECORD OF CONFERENCE (RULE 512).

Prehearing conferences may be held formally (on the record) or informally (off the record) before or in the absence of a presiding officer, according to order or notice. Agreements by the parties to the conference may be put on the record during formal conferences or may be reduced to writing and filed with the agency after formal or informal conferences. (7-1-93)

513. ORDERS RESULTING FROM PREHEARING CONFERENCE (RULE 513).

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

modified by the presiding officer for good cause. (7-1-93)

514. FACTS DISCLOSED NOT PART OF THE RECORD (RULE 514).

Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in prehearing conferences in a contested case are not part of the record. (7-1-93)

515. -- 519. (RESERVED)

520. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 520).

01. Kinds of Discovery. The kinds of discovery recognized and authorized by these rules in contested cases are: (7-1-93)

- a.** Depositions; (7-1-93)
- b.** Production requests or written interrogatories; (7-1-93)
- c.** Requests for admission; (7-1-93)
- d.** Subpoenas; and (7-1-93)
- e.** Statutory inspection, examination (including physical or mental examination), investigation, etc. (7-1-93)

02. Rules of Civil Procedure. Unless otherwise provided by statute, rule, order or notice, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)). (7-1-93)

521. WHEN DISCOVERY AUTHORIZED (RULE 521).

No party before the agency is entitled to engage in discovery unless the party moves to compel discovery and the agency issues an order directing that the discovery be answered, or upon agreement of all parties to the discovery that discovery may be conducted. The presiding officer shall provide a schedule for discovery in the order compelling discovery, but the order compelling and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. The agency or agency staff may conduct statutory inspection, examination, investigation, etc., at any time without filing a motion to compel discovery. (7-1-93)

522. RIGHTS TO DISCOVERY RECIPROCAL (RULE 522).

All parties to a proceeding have a right of discovery of all other parties to a proceeding according to Rule 521 and to the authorizing statutes and rules. The presiding officer may by order authorize or compel necessary discovery authorized by statute or rule. (7-1-93)

523. DEPOSITIONS (RULE 523).

Depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. (7-1-93)

524. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 524).

Production requests or written interrogatories and requests for admission may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. (7-1-93)

525. SUBPOENAS (RULE 525).

The agency may issue subpoenas as authorized by statute, upon a party's motion or upon its own initiative. The agency upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms. (7-1-93)

526. STATUTORY INSPECTION, EXAMINATION, INVESTIGATION, ETC. -- CONTRASTED WITH OTHER DISCOVERY (RULE 526).

This rule recognizes, but does not enlarge or restrict, an agency's statutory right of inspection, examination (including mental or physical examination), investigation, etc. This statutory right of an agency is independent of and cumulative to any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, examination, investigation, etc., may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. The rights of deposition, production request or written interrogatory, request for admission, and subpoena, can be used by parties only in connection with formal proceedings before the agency. (7-1-93)

527. ANSWERS TO PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND TO REQUESTS FOR ADMISSION (RULE 527).

Answers to production requests or written interrogatories and to requests for admission shall be filed or served as provided by the order compelling discovery. Answers must conform to the requirements of the Idaho Rules of Civil Procedure. The order compelling discovery may provide that voluminous answers to requests need not be served so long as they are made available for inspection and copying under reasonable terms. (7-1-93)

528. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS (RULE 528).

Notices of deposition, cover letters stating that production requests, written interrogatories or requests for admission have been served, cover letters stating answers to production requests, written interrogatories, or requests for admission have been served or are available for inspection under Rule 527, and objections to discovery must be filed and served as provided in the order compelling discovery. (7-1-93)

529. EXHIBIT NUMBERS (RULE 529).

The agency assigns exhibit numbers to each party. (7-1-93)

530. PREPARED TESTIMONY AND EXHIBITS (RULE 530).

Order, notice or rule may require a party or parties to file before hearing and to serve on all other parties prepared expert testimony and exhibits to be presented at hearing. Assigned exhibits numbers should be used in all prepared testimony. (7-1-93)

531. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (RULE 531).

The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery. (7-1-93)

532. PROTECTIVE ORDERS (RULE 532).

As authorized by statute or rule, the agency may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. (7-1-93)

533. -- 549. (RESERVED)

550. NOTICE OF HEARING (RULE 550).

Notice of the place, date and hour of hearing will be served on all parties at least fourteen (14) days before the time set for hearing, unless the agency finds by order that it is necessary or appropriate that the hearing be held earlier. Notices must comply with the requirements of Rule 551. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number or docket number, the names of the presiding officers who will hear the case, the name, address and telephone number of the person to whom inquires about scheduling, hearing facilities, etc., should be directed, and the names of persons with whom the documents, pleadings, etc., in the case should be filed if the presiding officer is not the person who should receive those documents. If no document previously issued by the agency has listed the legal authority of the agency to conduct the hearing, the notice of hearing must do so. The notice of hearing shall state that the hearing will be conducted under these rules of procedure and inform the parties where they may read or obtain a copy. (7-1-93)

551. FACILITIES AT OR FOR HEARING AND ADA REQUIREMENTS (RULE 551).

All hearings must be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act, and all notices of hearing must inform the parties that the hearing will be conducted in facilities meeting the accessibility requirements of the Americans with Disabilities Act. All notices of hearing must inform the parties and

other persons notified that if they require assistance of the kind that the agency is required to provide under the Americans with Disabilities Act (e.g., sign language interpreters, Braille copies of documents) in order to participate in or understand the hearing, the agency will supply that assistance upon request a reasonable number of days before the hearing. The notice of hearing shall explicitly state the number of days before the hearing that the request must be made. (7-1-93)

552. HOW HEARINGS HELD (RULE 552).

Hearings may be held in person or by telephone or television or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. (7-1-93)

553. CONDUCT AT HEARINGS (RULE 553).

All persons attending a hearing must conduct themselves in a respectful manner. Smoking is not permitted at hearing. (7-1-93)

554. CONFERENCE AT HEARING (RULE 554).

In any proceeding the presiding officer may convene the parties before hearing or recess the hearing to discuss formulation or simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer shall state the results of the conference on the record. (7-1-93)

555. PRELIMINARY PROCEDURE AT HEARING (RULE 555).

Before taking evidence the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements as necessary or appropriate to explain a party's presentation. (7-1-93)

556. CONSOLIDATION OF PROCEEDINGS (RULE 556).

The agency may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings the presiding officer determines the order of the proceeding. (7-1-93)

557. STIPULATIONS (RULE 557).

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented at hearing or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The agency may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The agency is not bound to adopt a stipulation of the parties, but may do so. If the agency rejects a stipulation, it will do so before issuing a final order, and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. (7-1-93)

558. ORDER OF PROCEDURE (RULE 558).

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. (7-1-93)

559. TESTIMONY UNDER OATH (RULE 559).

All testimony presented in formal hearings will be given under oath. Before testifying each witness must swear or affirm that the testimony the witness will give before the agency is the truth, the whole truth, and nothing but the truth. (7-1-93)

560. PARTIES AND PERSONS WITH SIMILAR INTERESTS (RULE 560).

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication, the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. (7-1-93)

561. CONTINUANCE OF HEARING (RULE 561).

The presiding officer may continue proceedings for further hearing. (7-1-93)

562. RULINGS AT HEARINGS (RULE 562).

The presiding officer rules on motions and objections presented at hearing. When the presiding officer is a hearing

officer, the presiding officer's rulings may be reviewed by the agency head in determining the matter on its merits and the presiding officer may refer or defer rulings to the agency head for determination. (7-1-93)

563. ORAL ARGUMENT (RULE 563).

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. (7-1-93)

564. BRIEFS -- MEMORANDA -- PROPOSED ORDERS OF THE PARTIES -- STATEMENTS OF POSITION -- PROPOSED ORDER OF THE PRESIDING OFFICER (RULE 564).

In any contested case, any party may ask to file briefs, memoranda, proposed orders of the parties or statements of position, and the presiding officer may request briefs, proposed orders of the parties, or statements of position. The presiding officer may issue a proposed order and ask the parties for comment upon the proposed order. (7-1-93)

565. PROCEDURE ON PREHEARING MOTIONS (RULE 565).

The presiding officer may consider and decide prehearing motions with or without oral argument or hearing. If oral argument or hearing on a motion is requested and denied, the presiding officer must state the grounds for denying the request. Unless otherwise provided by the presiding officer, when a motion has been filed, all parties seeking similar substantive or procedural relief must join in the motion or file a similar motion within seven (7) days after receiving the original motion. The party(ies) answering to or responding to the motion(s) will have fourteen (14) days from the time of filing of the last motion or joinder pursuant to the requirements of the previous sentence in which to respond. (7-1-93)

566. JOINT HEARINGS (RULE 566).

The agency may hold joint hearings with federal agencies, with agencies of other states, and with other agencies of the state of Idaho. When joint hearings are held, the agencies may agree among themselves which agency's rules of practice and procedure will govern. (7-1-93)

567. -- 599. (RESERVED)

600. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE (RULE 600).

Evidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence. (7-1-93)

601. DOCUMENTARY EVIDENCE (RULE 601).

Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original if available. (7-1-93)

602. OFFICIAL NOTICE -- AGENCY STAFF MEMORANDA (RULE 602).

Official notice may be taken of any facts that could be judicially noticed in the courts of Idaho and of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified of the specific facts or material noticed and the source of the material noticed, including any agency staff memoranda and data. Notice that official notice will be taken should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material officially noticed. Parties must be given an opportunity to contest and rebut the facts or material officially noticed. When the presiding officer proposes to notice agency staff memoranda or agency staff reports, responsible staff employees or agents shall be made available for cross-examination if any party timely requests their availability. (7-1-93)

603. DEPOSITIONS (RULE 603).

Depositions may be offered into evidence. (7-1-93)

604. OBJECTIONS -- OFFERS OF PROOF (RULE 604).

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection, or, if the presiding officer is a hearing officer, the presiding officer may receive the evidence subject to later ruling by the agency head or refer the matter to the agency head. (7-1-93)

605. PREPARED TESTIMONY (RULE 605).

The presiding officer may order a witness's prepared testimony previously distributed to all parties to be included in the record of hearing as if read. Admissibility of prepared testimony is subject to Rule 600. (7-1-93)

606. EXHIBITS (RULE 606).

Exhibit numbers may be assigned to the parties before hearing. Exhibits prepared for hearing must ordinarily be typed or printed on eight and one-half inch by eleven inch (8-1/2" x 11") white paper, except maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. Neither motion pictures, slides, opaque projections, videotapes, audiotapes nor other materials not capable of duplication by still photograph or reproduction on paper shall be presented as exhibits without approval of the presiding officer. (7-1-93)

607. -- 609. (RESERVED)

610. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS (RULE 610).

Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record. (7-1-93)

611. SUGGESTION FOR OR INQUIRY ABOUT SETTLEMENTS (RULE 611).

Through notice or order or on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. (7-1-93)

612. CONSIDERATION OF SETTLEMENTS (RULE 612).

Settlements must be reviewed under this rule. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the presiding officer could summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one (1) or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the agency's charge under the law. (7-1-93)

613. BURDENS OF PROOF (RULE 613).

Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. (7-1-93)

614. SETTLEMENT NOT BINDING (RULE 614).

The presiding officer is not bound by settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law. (7-1-93)

615. -- 649. (RESERVED)

650. RECORD FOR DECISION (RULE 650).

- 01. Requirement.** The agency shall maintain an official record for each for each contested case and (unless statute provides otherwise) base its decision in a contested case on the official record for the case. (7-1-93)
- 02. Contents.** The record for a contested case shall include: (7-1-93)
- a.** All notices of proceedings; (7-1-93)
 - b.** All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; (7-1-93)
 - c.** All intermediate or interlocutory rulings of hearing officers or the agency head; (7-1-93)
 - d.** All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); (7-1-93)
 - e.** All offers of proof, however made; (7-1-93)
 - f.** All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; (7-1-93)
 - g.** All evidentiary rulings on testimony, exhibits, or offers of proof; (7-1-93)
 - h.** All staff memoranda or data submitted in connection with the consideration of the proceeding; (7-1-93)
 - i.** A statement of matters officially noticed; and (7-1-93)
 - j.** All recommended orders, preliminary orders, final orders, and orders on reconsideration. (7-1-93)

651. RECORDING OF HEARINGS (RULE 651).

All hearings shall be recorded on audiotape or videotape at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. (7-1-93)

652. -- 699. (RESERVED)

700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR (RULE 700).

If an applicant or claimant or appellant, petitioner, complainant, or moving party fails to appear at the time and place set for hearing on an application or claim or appeal, petition, complaint, or motion, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim or appeal, petition, complaint, or motion. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the applicant or claimant or appellant, petitioner, complainant or moving party to appear at the time and place set for hearing. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted. (7-1-93)

701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER (RULE 701).

Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered. (7-1-93)

702. ISSUANCE OF DEFAULT ORDER (RULE 702).

The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven days for the party to file a petition contesting the default order or receipt of a petition. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default (if the defaulting party is not a movant) or upon the results of the denial of the motion (if the

defaulting party is a movant). All issues in the contested case shall be determined, including those affecting the defaulting party. If authorized by statute or rule, costs may be assessed against a defaulting party. (7-1-93)

703. -- 709. (RESERVED)

710. INTERLOCUTORY ORDERS (RULE 710).

Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the agency may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by reconsideration or appeal, but is not final on other issues. Unless an order contains or is accompanied by a document containing one of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. The following orders are always interlocutory: orders initiating complaints or investigations; orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the officer issuing the order pursuant to Rules 711, 760, and 770. (7-1-93)

711. REVIEW OF INTERLOCUTORY ORDERS (RULE 711).

Any party or person affected by an interlocutory order may petition the officer issuing the order to review the interlocutory order. The officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the officer's own motion, but will not on the officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. (7-1-93)

712. -- 719. (RESERVED)

720. RECOMMENDED ORDERS (RULE 720).

01. Definition. Recommended orders are orders issued by a person other than the agency head that will become a final order of the agency only after review of the agency head (or the agency head's designee) pursuant to Section 67-5244, Idaho Code. (7-1-93)

02. Content. Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a recommended order of the hearing officer. It will not become final without action of the agency head. Any party may file a petition for reconsideration of this recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. (7-1-93)

b. Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding. (7-1-93)

c. Written briefs in support of or taking exceptions to the recommended order shall be filed with the agency head (or designee of the agency head). Opposing parties shall have twenty-one (21) days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (7-1-93)

721. -- 729. (RESERVED)

730. PRELIMINARY ORDERS (RULE 730).

01. Definition. Preliminary orders are orders issued by a person other than the agency head that will

become a final order of the agency unless reviewed by the agency head (or the agency head's designee) pursuant to Section 67-5245, Idaho Code. (7-1-93)

02. Content. Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a preliminary order of the hearing officer. It can and will become final without further action of the agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officer's superiors in the agency. Any party may file a motion for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. (7-1-93)

b. Within twenty-one (21) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing appeal or take exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head). Otherwise, this preliminary order will become a final order of the agency. (7-1-93)

c. If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the agency. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head (or designee). The agency head (or designee) may review the preliminary order on its own motion. (7-1-93)

d. If the agency head (or designee) grants a petition to review the preliminary order, the agency head (or designee) shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The agency head (or designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (7-1-93)

e. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (7-1-93)

- i. A hearing was held; (7-1-93)
- ii. The final agency action was taken; (7-1-93)
- iii. The party seeking review of the order resides; or (7-1-93)
- iv. The real property or personal property that was the subject of the agency action is attached. (7-1-93)

f. This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (7-1-93)

731. -- 739. (RESERVED)

740. FINAL ORDERS (RULE 740).

01. Definition. Final orders are preliminary orders that have become final under Rule 730 pursuant to Section 67-5245, Idaho Code, or orders issued by the agency head pursuant to Section 67-5246, Idaho Code. (7-1-93)

02. Content. Every final order issued by the agency head must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5246(4), Idaho Code. (7-1-93)

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (7-1-93)

i. A hearing was held; (7-1-93)

ii. The final agency action was taken; (7-1-93)

iii. The party seeking review of the order resides; or (7-1-93)

iv. The real property or personal property that was the subject of the agency action is attached. (7-1-93)

c. An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (7-1-93)

741. -- 749. (RESERVED)

750. ORDER NOT DESIGNATED (RULE 750).

If an order does not designate itself as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate. (7-1-93)

751. -- 759. (RESERVED)

760. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION (RULE 760).

A hearing officer issuing a recommended or preliminary order may modify the recommended or preliminary order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended or preliminary order by withdrawing the recommended or preliminary order and issuing a substitute recommended or preliminary order. The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it. (7-1-93)

761. -- 769. (RESERVED)

770. CLARIFICATION OF ORDERS (RULE 770).

Any party or person affected by an order may petition to clarify any order, whether interlocutory, recommended, preliminary or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or appeal the order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration. (7-1-93)

771. -- 779. (RESERVED)

780. STAY OF ORDERS (RULE 780).

Any party or person affected by an order may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion. (7-1-93)

781. -- 999. (RESERVED)

**IDAPA 20
TITLE 02
CHAPTER 01**

20.02.01 – RULES PERTAINING TO THE IDAHO FOREST PRACTICES ACT

000. LEGAL AUTHORITY.

In accordance with Section 38-1304, Idaho Code, the Idaho Board of Land Commissioners has authority to adopt rules establishing minimum standards for the conduct of forest practices on forest land. (7-1-96)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.02.01, “Rules Pertaining to the Idaho Forest Practices Act.” (4-11-06)

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. (4-11-06)

002. WRITTEN INTERPRETATIONS.

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, 300 North 6th Street, Suite 103, Boise, Idaho 83702. (4-11-06)

003. ADMINISTRATIVE APPEALS.

All contested forest practice violations shall be governed by the provisions of Section 38-1307(3), Idaho Code. (7-1-96)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated herein by reference. (4-11-06)

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 300 North 6th Street, Suite 103, Boise, Idaho 83720 and is open from 8 a.m. to 5 p.m. Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200 and the fax number (208) 334-2339. (4-11-06)

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. (4-11-06)

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. 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)

10. Commercial Products. Saleable forest products of sufficient value to cover cost of harvest and transportation to available markets. (4-11-06)

11. 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)

12. 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, agricultural or recreational uses or to livestock, wildlife, fish or other aquatic life. (4-11-06)

13. 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)

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

15. Department. The Idaho Department of Lands. (10-14-75)

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

17. Director. The Director of the Idaho Department of Lands or his designee. (10-14-75)

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

20. 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)

21. 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)

- 22. 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)
- 23. 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)
- 24. Forest Type.** Five forest types in Idaho are defined as follows: (3-20-14)
- a.** North Idaho grand fir/western red cedar (NIGF): moist to wet interior forests with western red cedar, western hemlock, and grand fir being primary climax species, found in forests north of the Clearwater/ and Lochsa Rivers. (3-20-14)
- b.** Central Idaho grand fir/western red cedar (CIGF): productive conifer forests found in forests between the Lochsa River Basin and the Salmon River, characterized by stands having western red cedar and grand fir as climax species, with a mixed-conifer overstory increasingly comprised of ponderosa pine, Douglas-fir, and larch in the river breaks canyon-lands. Stocking levels are generally lower than that of the NIGF stands. (3-20-14)
- c.** South Idaho grand fir (SIGF): mixed-conifer forests, dominated by ponderosa pine and Douglas-fir, found south of the Salmon River with grand fir and occasionally western red cedar being the stand climax species. (3-20-14)
- d.** Western hemlock-subalpine fir (WH): higher-elevation, moist, cool interior forests dominated by western hemlock, mountain hemlock, and/or subalpine fir. (3-20-14)
- e.** Douglas-fir-ponderosa pine (PP): drier forests dominated by ponderosa pine and Douglas-fir, generally found in lower-elevation, dry sites. (3-20-14)
- 25. 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)
- 26. Ground Based Equipment.** Mobile equipment such as tractors, dozers, skidders, excavators, loaders, mechanized harvesters and forwarders used for harvesting, site preparation or hazard reduction. This does not include cable systems associated with stationary yarding equipment. (4-4-13)
- 27. Habitat Types.** Forest land capable of producing similar plant communities at climax. (7-1-96)

- 28. 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)
- 29. Hazard.** Any vegetative residue resulting from a forest practice which constitutes fuel. (1-24-78)
- 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)
- 31. 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)
- 32. 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)
- 33. 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)
- 34. Landowner.** A person, partnership, corporation, or association of whatever nature that holds an ownership interest in forest lands, including the state. (10-14-75)
- 35. 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)
- 36. 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)
- 37. 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)
- 38. Noncommercial Forest Land.** Habitat types not capable of producing twenty (20) cubic feet per acre per year. (7-1-96)
- 39. Operator.** A person who conducts or is required to conduct a forest practice. (10-14-75)
- 40. Operating Area.** That area where a forest practice is taking place or will take place. (1-24-78)
- 41. 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)
- 42. 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)
- 43. 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)
- 44. 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)
- 45. Present Condition of Area.** The amount or degree of hazard present before a thinning operation commences. (1-24-78)
- 46. Public Resource.** Water, fish, and wildlife, and in addition means capital improvements of the State or its political subdivisions. (10-14-75)
- 47. 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)
- 48. Relative Stocking.** A measure of site occupancy calculated as a ratio comparison of actual stand density to the biological maximum density for a given forest type. This ratio, expressed as a percentage, shows the extent to which trees utilize a plot of forestland. (3-20-14)
- 49. Relief Culvert.** A structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity. (10-14-75)
- 50. Rules.** Rules adopted by the Board pursuant to Section 38-1304, Idaho Code. (7-1-96)
- 51. Slash.** Any vegetative residue three inches (3”) and under in diameter resulting from a forest practice or the clearing of land. (7-1-96)
- 52. 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)
- 53. 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)
- 54. 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)
- 55. 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)
- 56. Snags.** Dead, standing trees twenty (20) feet and greater in height. (1-24-78)
- 57. Soil Erosion.** Movement of soils resulting from forest practices. (10-14-75)
- 58. Soil Stabilization.** The minimizing of soil movement. (10-14-75)
- 59. State.** The state of Idaho or other political subdivision thereof. (10-14-75)
- 60. 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

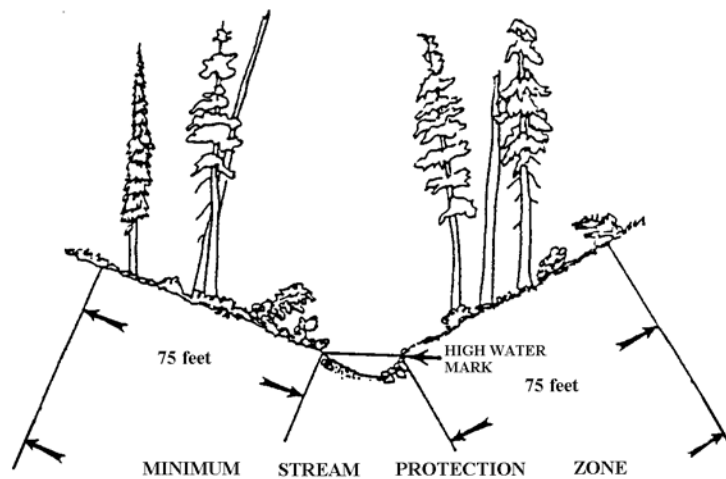
bottom which results from the scouring action of water flow. Any reference in these rules to Class I streams shall also apply to lakes. (7-1-96)

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 (1,320) 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.)

FIGURE 1
CLASS 1 STREAM PROTECTION ZONE

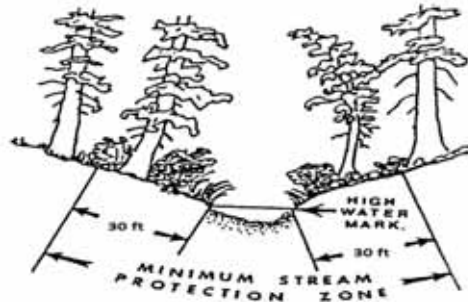


(7-1-96)

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.

FIGURE 2
CLASS II STREAM PROTECTION ZONE

CLASS II STREAM PROTECTION ZONE



(7-1-96)

61. 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)

62. 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)

011. -- 019. (RESERVED)

020. GENERAL RULES.

01. Compliance. Practices contained within a rule shall be complied with to accomplish the purpose to which the rule is related. (8-13-85)

a. If conditions of sites or activities require the application of practices which differ from those prescribed by the rules, the operator shall obtain a variance according to the following procedure: (8-13-85)

i. The operator shall submit a request for variance to the department in writing. The request shall include a description of the site and particular conditions which necessitate a variance, and a description of proposed practices which, if applied, will result in a violation of the rules. (8-13-85)

ii. Within fourteen (14) calendar days the department shall evaluate the request and notify the operator in writing of the determination to allow or disallow the variance request. (7-1-96)

iii. All practices authorized under this procedure shall provide for equivalent or better results over the long term than the rules which are superseded to insure site productivity, water quality and fish and wildlife habitat. A variance can be applied only at approved sites. (8-13-85)

b. Practices shall also be in compliance with the Stream Channel Alteration Act (Title 42, Chapter 38, Idaho Code), Idaho Water Quality Standards and Waste Water Treatment Requirements (Title 39, Chapter 1, Idaho Code), the Idaho Pesticide Law (Title 22, Chapter 34, Idaho Code), and the Hazardous Waste Management Act of 1983 (Title 39, Chapter 44, Idaho Code), and rules and regulations pursuant thereto. (8-13-85)

c. Water may be diverted from a stream and used at any time to carry out Idaho forest practices and for forest road dust abatement, provided that: 1) The total daily volume diverted is no greater than two-tenths (0.2) acre-feet (65,170 gallons) from a single stream; and 2) The rate of diversion shall never exceed twenty-five (25) percent of the rate of flow then available in the stream at the point of diversion for these purposes. (5-8-09)

i. No person shall, under this Section 020, divert water from an irrigation canal, irrigation reservoir, or other irrigation facility while water is lawfully diverted, stored, captured, conveyed, used or otherwise physically controlled by an irrigator, irrigation district or canal company. (5-8-09)

ii. If water is to be diverted from a stream within a water district, or from a stream from which an irrigation delivery entity diverts water, a person diverting water shall give notice to the watermaster of the intent to divert water for the purposes as authorized herein. (5-8-09)

iii. Water diversion intakes used for diversions under Subsection 020.01 shall be screened with a maximum screen mesh size as follows: 1) fish-bearing Class I streams: 3/32 inch, and 2) all other streams: 1/4 inch. (5-8-09)

d. Any alternative conservation measure having received a favorable Biological Opinion or Incidental Take Permit from the National Marine Fisheries Service or US Fish and Wildlife Service will be considered as complying with these rules. (4-4-13)

02. Conversion of Forest Lands. Conversions require a notification be filed, and compliance with all rules except those relating to reforestation. On converted parcels larger than one (1) acre, plant acceptable vegetative cover sufficient to maintain soil productivity and minimize erosion. Cover shall be established within one (1) year of completion of the forest practice except that the director may grant an extension of time if weather or other conditions interfere. Within three (3) years of completion of the forest practice, the director shall determine if the conversion has been accomplished by: (7-1-96)

a. The presence or absence of improvements necessary for use of land for its intended purpose; (7-1-96)

b. Evidence of actual use of the land for the intended purpose. (10-14-75)

c. If the conversion has not been accomplished within three (3) years of the completion of harvest, supplemental reforestation Subsection 050.06 applies. (7-1-96)

03. Annual Review and Consultation. The director shall, at least once each year, meet with other state agencies and the Forest Practices Advisory Committee and review recommendations for amendments to rules, new rules, or repeal of rules. He shall then report to the board a summary of such meeting or meetings, together with recommendations for amendments to rules, new rules, or repeal of rules. (10-14-75)

04. Consultation. The director shall consult with other state agencies and departments concerned with the management of forest environment where expertise from such agencies or departments is desirable or necessary. (10-14-75)

a. The Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 58.01.02, (Title 39, Chapter 1, Idaho Code) reference the Forest Practice Rules as approved best management practices and describe a procedure of modifying the practices based on monitoring and surveillance. The director shall review petitions from Idaho Department of Environmental Quality for changes or additions to the rules according to Administrative Procedures Act (Title 67, Chapter 52, Idaho Code) and make recommendations for modification to the Board of Land Commissioners. (9-20-88)

05. Notification of Forest Practice. (10-14-75)

a. Before commencing a forest practice or a conversion of forest lands the department shall be notified as required in Subsection 020.05.b. The notice shall be given by the operator. However, the timber owner or landowner satisfies the responsibility of the operator under this subsection. When more than one forest practice is to

be conducted in relation to harvesting of forest tree species, one notice including each forest practice to be conducted shall be filed with the department. (5-8-09)

b. The notification required by Subsection 020.05.a. shall be on forms prescribed and provided by the department and shall include the name and address of the operator, timber owner, and landowner; the legal description of the area in which the forest practice is to be conducted; whether the forest practice borders an outstanding resource water and other information the department considers necessary for the administration of the rules adopted by the board under Section 38-1304, Idaho Code. All notifications must be formally accepted by the department before any forest practice may begin. Promptly upon formal acceptance of the notice but not more than fourteen (14) calendar days from formal acceptance of the notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notification. The department shall make available to the operator, timber owner, and landowner a copy of the rules. (7-1-96)

c. An operator, timber owner, or landowner, whichever filed the original notification, shall notify the department of any subsequent change in the information contained in the notice within thirty (30) calendar days of the change. Promptly upon receipt of notice of change, but not to exceed fourteen (14) calendar days from receipt of notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notice of change. (7-1-96)

d. The notification is valid for the same period as set forth in the certificate of compliance under Section 38-122, Idaho Code. At the expiration of the notification, if the forest practice is continuing, the notification shall be renewed using the same procedures provided for in this section. (4-21-92)

e. If the notification required by Subsection 020.05.a. of this section indicates that at the expiration of the notification that the forest practice will be continuing, the operator, timber owner, or landowner, at least thirty (30) calendar days prior to the expiration of the notification, shall notify the department and obtain a renewal of the notification. Promptly upon receipt of the request for renewal, but not to exceed fourteen (14) calendar days from receipt of the request, the department shall mail a copy of the renewed notification to whichever of the operator, timber owner, or landowner that did not submit the request for renewal. (7-1-96)

06. Notification Exception. A notification of Forest Practice is required except for: (7-1-98)

a. Routine road maintenance, recreational uses, grazing by domestic livestock, cone picking, culture and harvest of Christmas trees on lands used solely for the production of Christmas trees, or harvesting of other minor forest products. (10-14-75)

b. Non-commercial cutting and removal of forest tree species by a person for his own personal use. (10-14-75)

c. Clearing forest land for conversion to surface mining or dredge and placer mining operations under a reclamation plan or dredge mining permit. (9-20-88)

07. Emergency Forest Practices. No prior notification shall be required for emergency forest practices necessitated by and commenced during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event. Within forty-eight (48) hours after commencement of such practice, the operator, timber owner, or landowner shall notify the director with an explanation of why emergency action was necessary. Such emergency forest practices are subject to the rules herein, except that the operator, timber owner, or landowner may take any reasonable action to minimize damage to forest lands, timber, or public resource from the direct or indirect effects of the catastrophic event. (7-1-96)

08. Duty of Purchaser. The initial purchaser of forest tree species which have been harvested from forest lands shall, before making such purchase or contract to purchase or accepting delivery of the same, receive and keep on file a copy of the notice required by Section 38-1306, Idaho Code relating to the harvesting practice for which the forest tree species are being acquired by the initial purchaser. Such notice shall be available for inspection upon request by the department at all reasonable times. (7-1-96)

09. State Divided into Regions. For the purpose of administering this Act, the State is divided into two

(2) forest regions: one (1) north of the Salmon River and one (1) south of the Salmon River. (7-1-96)

10. Regions Divided into Forest Habitat Types. For the purpose of further refining the on-the-ground administration of the Act, the forest regions can be divided into Habitat Types. (7-1-96)

021. -- 029. (RESERVED)

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. An operation that uses ground-based equipment 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 equipment shall not be used 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. (4-4-13)

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. Operations that utilize ground-based equipment that result in logs being skidded or forwarded 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. (4-4-13)

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 shrubs, grasses, and rocks wherever they afford shade over a stream or maintain the integrity of the soil near a stream. (3-20-14)

ii. Adjacent to all Class I streams, to maintain and enhance shade and large woody debris recruitment, landowners must comply with one of the two following options defining tree retention. The Relative Stocking per acre (RS) referenced in the options is calculated according to the relative-stocking-contribution table in Subsection 030.07.e.ii. (3-20-14)

(1) Option 1: Within twenty-five (25) feet from the ordinary high water mark on each side of the stream, live conifers and hardwoods will be retained to maintain a minimum relative stocking per acre of sixty (60). A relative stocking per acre of thirty (30) must be retained in the stream protection zone between twenty-five (25) feet and seventy-five (75) feet from the ordinary high water mark on both sides of the stream. (3-20-14)

(2) Option 2: Within fifty (50) feet from the ordinary high water mark on each side of a stream, live conifers and hardwoods will be retained to maintain a minimum relative stocking per acre of sixty (60). A relative stocking per acre of ten (10) must be retained in the stream protection zone between fifty (50) feet and seventy-five (75) feet from the ordinary high water mark on both sides of the stream. (3-20-14)

(3) Only one (1) option may be implemented within the stream protection zones of a harvesting unit covered by a single notification. Landowners are strongly encouraged to retain all trees immediately adjacent to the stream. (3-20-14)

Forest Type	Per Tree Contribution to Relative Stocking by Diameter Class						
	Diameter Class (DBH in inches)						
	4-7.9"	8-11.9"	12-15.9"	16-19.9"	20-23.9"	24-27.9"	28-31.9"
NIGF (North Idaho Grand Fir)	0.097	0.209	0.347	0.506	0.683	0.878	1.088
CIGF (Central Idaho Grand Fir)	0.113	0.244	0.405	0.59	0.797	1.024	1.27
SIGF (Southern Idaho Grand Fir)	0.136	0.293	0.486	0.708	0.957	1.229	1.524
WHSF (Western Hemlock-Subalpine Fir)	0.123	0.267	0.442	0.644	0.87	1.117	1.385
DFPP (Douglas-fir-Ponderosa Pine)	0.151	0.326	0.54	0.787	1.063	1.366	1.693

(3-20-14)

iii. To protect filtering and shade effects of streamside vegetation adjacent to all Class II streams following harvesting and hazard management activities, live trees will be retained or new trees established within thirty (30) feet on each side of the streams ordinary high water mark to comply with the minimum stocking standards expressed in Subsection 050.04. (3-20-14)

iv. During harvesting, carefully remove timber from the Stream Protection Zone in such a way that large organic debris, shading and filtering effects are 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. (4-11-06)

v. When harvesting portions of trees that have fallen naturally into or over a Class I stream, leave the portion(s) over the stream consistent with the LOD definition of Subsection 010.35. Leaving the section with the root ball attached is preferred. (4-11-06)

vi. 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. (4-11-06)

vii. To obtain a variance from the standing tree and shade requirements, the operator must develop a site specific riparian management prescription and submit it to the department for approval. The prescription should consider stream characteristics and the need for large organic debris, stream shading and wildlife cover which will achieve the objective of these rules. (4-11-06)

viii. 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. (4-11-06)

i. Hand piles shall be at least five (5) feet from the ordinary high water-mark of streams. (4-11-06)

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. (4-11-06)

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 aquatic or wildlife habitat, including snags, especially within stream protection zones. Wherever practical, preserve fruit, nut, and berry producing trees and shrubs. (4-4-13)

c. Avoid conducting operations along or through bogs, swamps, wet meadows, springs, seeps, wet draws or other locations where the presence of water is indicated by associated vegetation; temporary crossings can be used as referred to in Paragraph 030.07.b. Protect soil and vegetation from disturbance which would cause adverse affects on water quality, quantity and wildlife and aquatic habitat. (4-4-13)

d. Harvesting operations within a single ownership, in which essentially all trees have been removed in one operation, shall be planned so that adequate wildlife escape cover (e.g. topography, vegetation, stream protection zones, etc.) is available within one-quarter (¼) mile. (4-4-13)

031. CUMULATIVE WATERSHED EFFECTS.

01. Purpose. In accordance with Section 38-1305(8), Idaho Code, the department has developed methods for controlling cumulative watershed effects (CWE). The methods and procedures are described in the department manual entitled “Forest Practices Cumulative Watershed Effects Process for Idaho.” Proper application of this process will help ensure watersheds are managed to protect water quality so that beneficial uses are supported. This rule describes how the process is to be implemented on forest land. (7-1-98)

02. Process Application. (7-1-98)

a. Application of the CWE process and any resulting site-specific BMPs are encouraged but not mandatory. (7-1-98)

b. The process may be initiated by either the department, a watershed advisory group (WAG), or an individual landowner or group of landowners that collectively own at least twenty-five percent (25%) of the forested land in a watershed. In any case, a reasonable effort will be made to notify forest landowners within the watershed, and the landowners will be given the opportunity to participate in the process. (7-1-98)

c. The department shall be notified prior to the initiation of the CWE process. (7-1-98)

d. The department will review and approve the watershed assessment and CWE site-specific BMPs for compliance with the Forest Practices Act. (7-1-98)

03. Site-Specific BMP Implementation. Approved CWE site-specific BMPs are encouraged and applied on a voluntary basis. (7-1-98)

04. Site-Specific BMPs on Former Stream Segments of Concern. Practices approved by the department from 1989 through 1995 under former stream segments of concern rules remain in effect until revised by a CWE analysis, at which point the CWE site-specific BMPs would be mandatory. (7-1-98)

032. -- 039. (RESERVED)

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.

**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
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.

**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

Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)
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. (4-11-06)

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. (4-11-06)

h. Avoid reconstruction 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 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. (4-11-06)

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). (4-11-06)
- 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. (4-11-06)
- 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)

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)

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)

041. -- 049. (RESERVED)

050. RESIDUAL STOCKING AND REFORESTATION.

01. Purpose. The purpose of these rules is to provide for residual stocking and reforestation that will maintain a continuous growing and harvesting of forest tree species by describing the conditions under which reforestation will be required, specifying the minimum number of acceptable trees per acre, the maximum period of time allowed after harvesting for establishment of forest tree species, and for sites not requiring reforestation, to maintain soil productivity and minimize erosion. (7-1-96)

02. Quality of Residual Stocking. On any operation, trees left for future harvest shall be of acceptable species and adequately protected from harvest damage to enhance their survival and growth. This may be accomplished by locating roads and landings and by conducting felling, bucking, skidding, yarding, and decking operations so as to minimize damage to residual trees. Acceptable residual trees should have a minimum live crown ratio of thirty percent (30%), minimum basal scarring, and should not have dead or broken tops. When stands have a high percentage of unacceptable trees, consider stand replacement rather than intermediate cuttings. (7-1-96)

03. Sites Unpractical to Reforest. Sites unpractical to reforest, generally ponderosa pine and drier Douglas-fir habitat types, shall not be harvested below minimum stocking, unless the site is converted to some other use, or in instances of wildfire, insects, disease or other natural causes where salvage of the damaged timber is planned. (4-4-13)

a. When harvesting timber on these sites, one (1) of the following actions must be taken: (4-4-13)

i. Establish a new stand by leaving seed trees on the site and inter-planting at least once within five (5) years of completing the harvest, if needed to meet minimum stocking. (4-4-13)

ii. Establish a new stand of timber by planting the site with an acceptable tree species, and inter-planting at least once within five (5) years of the original planting, if needed to meet minimum stocking. (4-4-13)

b. If the efforts listed in Subparagraphs 050.03.a.i. and 050.03.a.ii. fall short of meeting the minimum stocking level, the landowner will be encouraged, but not required, to meet the minimum stocking level through additional reforestation efforts. (4-4-13)

04. Stocking. Stocking will be deemed adequate immediately following harvest if the following number of acceptable trees per acre, within each specified region, for at least one (1) size class, are reasonably well distributed over the area affected by forest harvesting. (NOTE: (1) DBH = Average Diameter (outside of the bark) of a tree four and one half (4.5) feet above mean ground level):

MINIMUM STOCKING - ACCEPTABLE TREES

Idaho Region	Size Class DBH (inches)	Average Number of Retained Trees Per Acre	Average Spacing (feet)
North	0" – 2.9"	170	16 x 16
South	0" – 2.9"	125	18 x 18
North	3.0" – 10.9"	110	19 x 19
South	3.0" – 10.9"	75	24 x 24
North	11.0" and greater	20	46 x 46
South	11.0" and greater	15	53 x 53

If immediately following harvest, the stand consists of retained trees of mixed size classes that are reasonably well distributed over the harvested area, and none of the size classes individually equal or exceed the minimum trees per acre shown above, stocking will also be deemed adequate if the weighted total of all of the size classes of the retained trees exceeds a value of one hundred seventy (170) for a stand in the North Region and one hundred twenty-five (125) in the South Region. The weighted total is calculated by multiplying the number of retained trees per acre in each size class by the weighting factors below, and adding all of these size class totals together.

Size Class	Weight
0" – 2.9"	1

Size Class	Weight
3.0" – 10.9"	1.6
11.0" and greater	8.4

Harvested stands which are not adequately stocked, as defined above, will be subject to supplemental reforestation requirements specified in Subsection 050.06. Minimum stocking requirements for Class I stream protection zones are specified in Subparagraphs 030.07.e.ii. and 030.07.e.vi. (4-4-13)

05. Reforestation Exemptions. (7-1-96)

a. Reforestation is not required for: (7-1-96)

i. Noncommercial forest land; (7-1-96)

ii. Land converted to another use. This may include land converted to roads used in a forest practice; (7-1-96)

iii. A forest practice which will result in ten (10) acres or less below minimum stocking levels. (7-1-96)

b. On lands exempted under Subsection 050.03, where reforestation is not being planned, some form of grass or planted cover shall be established within one (1) year in order to maintain soil productivity and minimize erosion. (7-1-96)

06. Supplemental Reforestation. Seeding and/or planting may be required if after three (3) growing seasons from the date of harvest, stocking levels do not meet the standards in Subsection 050.04. Required seeding and/or planting shall be completed before the end of the fifth growing season following the time of harvest, except that the director shall grant an extension of time if suitable seeds or seedlings are not available or if weather or other conditions interfere. (7-1-96)

a. Reforestation practices must ensure seedlings become established. This can be accomplished by adequate site preparation, utilizing acceptable seed or seedlings, following accepted planting or sowing practices, or by other suitable means. (7-1-96)

b. The party responsible for reforestation is the landowner during the harvest which reduced stand stocking below the minimum levels stated in Subsection 050.04. (4-4-13)

051. -- 059. (RESERVED)

060. USE OF CHEMICALS AND PETROLEUM PRODUCTS.

01. Purpose. Chemicals perform an important function in the growing and harvesting of forest tree species. The purpose of these rules is to regulate handling, storage and application of chemicals in such a way that the public health and aquatic and terrestrial habitats will not be endangered by contamination of streams or other bodies of water. In addition, the application of chemicals are regulated by the Commercial Fertilizer Law, Title 22, Chapter 6; the Soil and Plant Amendment Law, Title 22, Chapter 22, and the Idaho Pesticide Law, Title 22, Chapter 34, Idaho Code and IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." (7-1-98)

02. Petroleum Products. Petroleum storage containers with capacities of more than two hundred (200) gallons, stationary or mobile, will be located no closer than one hundred (100) feet from any stream, water course, lake, or area of open water. Dikes, berms or embankments will be constructed to contain at least one hundred ten percent (110%) of the volume of petroleum products stored within the tanks. Diked areas will be sufficiently impervious and of adequate capacity to contain spilled petroleum products. In the event any leakage or spillage enters any stream, water course, lake, or area of open water, the operator will immediately notify the department. (7-1-98)

a. Transferring petroleum products. During fueling operations or petroleum product transfer to other containers, there shall be a person attending such operations at all times. Fueling operations should not take place where, if spillage occurs, the fuel will enter streams, lakes or other areas of open water. (7-1-98)

b. Equipment and containers used for transportation, storage or transfer of petroleum products shall be maintained in a leakproof condition. If the department determines there is evidence of petroleum product leakage or spillage, the use of such equipment shall be suspended until the deficiency has been corrected. (7-1-98)

c. Waste resulting from logging operations, such as crankcase oil, filters, grease, oil containers, or other nonbiodegradable waste shall be removed from the operating area and disposed of properly. (7-1-98)

03. Licensing. Any person applying, mixing or loading pesticides shall comply with the licensing requirements of Idaho Pesticide Law and IDAPA 02.03.03, “Rules Governing Pesticide and Chemigation Use and Application.” This requirement does not pertain to individuals applying general use pesticides on their own property. (7-1-98)

04. Maintenance of Equipment. (10-14-75)

a. Equipment used for transportation, storage or application of chemicals shall be maintained in leakproof condition. If, in the director’s judgment, there is evidence of chemical leakage, he shall have the authority to suspend the further use of such equipment until the deficiency has been corrected. (10-14-75)

b. The storage of pesticide shall also be conducted in accordance with the requirements Rules of the Idaho Pesticide Law and IDAPA 02.03.03, “Rules Governing Pesticide and Chemigation Use and Application.” (7-1-98)

05. Mixing. (10-14-75)

a. When water is used in mixing chemicals: (10-14-75)

i. Provide an air gap or reservoir between the water source and the mixing tank. (10-14-75)

ii. Use uncontaminated tanks, pumps, hoses and screens to handle and transfer mix water for utilization in pesticide operations. (7-1-98)

b. Mixing and landing areas: (10-14-75)

i. Mix chemicals and clean tanks and equipment only where spills will not enter any water source or streams. (10-14-75)

ii. Landing areas shall be located where spilled chemicals will not enter any water source or stream. (8-13-85)

iii. Rinsate and wash water should be recovered and used for make-up water, be applied to the target area, or disposed of according to state and federal laws. (7-1-98)

06. Aerial Application: (10-14-75)

a. With the exception of pesticides approved for aquatic use and applied according to labeled directions, when applying pesticide leave at least one (1) swath width (minimum one hundred (100) feet) untreated on each side of all Class I streams, flowing Class II streams and other areas of open water. When applying pelletized fertilizer, leave a minimum of fifty (50) feet untreated on each side of all Class I streams, flowing Class II streams, and other areas of open water. (7-1-98)

b. Use a bucket or spray device capable of immediate shutoff. (10-14-75)

- c. Shut off chemical application during turns and over open water. (10-14-75)
- d. Aerial application of pesticides shall also be conducted according to the Idaho Pesticide Law and IDAPA 02.03.03, “Rules Governing Pesticide and Chemigation Use and Application.” (7-1-98)
- 07. Ground Application with Power Equipment.** (10-14-75)
- a. With exception of pesticides approved for aquatic use and applied according to labeled directions, when applying pesticide, leave at least twenty-five (25) feet untreated on each side of all Class I streams, flowing Class II streams and areas of open water. (7-1-98)
- b. When applying fertilizer, leave at least ten (10) feet untreated on each side of all streams and areas of open water. (10-14-75)
- 08. Hand Application.** (10-14-75)
- a. Apply only to specific targets; such as, a stump, burrow, bait, or trap. (10-14-75)
- b. Keep chemicals out of all water sources or streams. (10-14-75)
- 09. Limitations on Applications.** (10-14-75)
- a. Chemicals shall be applied in accordance with all limitations and instructions printed on the product registration labels, supplemental labels, and others established by regulation of the director. (7-1-98)
- b. Do not exceed allowable rates. (7-1-98)
- c. Prevent direct entry of chemicals into any water source or stream. (8-13-85)
- 10. Daily Records of Chemical Applications.** (10-14-75)
- a. When pesticides are applied on forest land, the operator shall maintain a daily record of spray operations which includes: (7-1-98)
- i. Date and time of day of application. (8-13-85)
- ii. Name and address of owner of property treated. (8-13-85)
- iii. Purpose of the application (control of vegetation, control of Douglas-fir tussock moth, etc.). (8-13-85)
- iv. Contractor’s name and pilot’s name when applied aerially. Contractor’s name or applicator’s name for ground application. (7-1-96)
- v. Location of project (section, township, range and county). (10-14-75)
- vi. Air temperature (hourly). (10-14-75)
- vii. Wind velocity and direction (hourly). (10-14-75)
- viii. Pesticides used including trade or brand name, EPA product registration number, mixture, application rate, carrier used and total amounts applied. (7-1-98)
- b. Whenever fertilizers or soil amendments are applied, the operator shall maintain a daily record of such application which includes Subsection 060.10 and the name of the fertilizer or soil amendment and application rate. (7-1-98)

c. The records required in Subsection 060.10 shall be maintained in compliance with the record-keeping requirements of IDAPA 02.03.03, “Rules Governing Pesticide and Chemigation Use and Application.” (7-1-98)

d. All records required in Subsection 060.10 shall be retained for three (3) years. (7-1-98)

11. Container Disposal. Chemical containers shall be: cleaned and removed from the forest and disposed of in a manner approved by the director in accordance with applicable local, state and federal regulations; or removed for reuse in a manner consistent with label directions and applicable regulations of a state or local health department. Open burning of containers is prohibited. (7-1-98)

12. Spills. Spills shall be reported and appropriate cleanup action taken in accordance with applicable state and federal laws and rules and regulations. (8-13-85)

a. All chemical accidents and spills shall be reported immediately to the director. (7-1-98)

b. If chemical is spilled, appropriate procedures shall be taken immediately to control the spill source and contain the released material. (7-1-98)

c. It is the applicator’s responsibility to collect, remove, and dispose of the spilled material in accordance with applicable local, state and federal rules and regulations and in a manner approved by the director. (7-1-98)

13. Misapplications. Whenever chemicals are applied to the wrong site or pesticides are applied outside of the directions on the product label, it is the responsibility of the applicator to report these misapplications immediately to the director. (7-1-98)

061. -- 069. (RESERVED)

070. SLASHING MANAGEMENT.

01. Purpose. To provide for management of slashing and fire hazard resulting from harvesting, forest management, or improvement of forest tree species, or defoliation caused by chemical applications in that manner necessary to protect reproduction and residual stands, reduce risk from fire, insects and disease or optimize the conditions for future regeneration of forest tree species and to maintain air and water quality, fish and wildlife habitat. (10-14-75)

02. Commercial Slash. Fuels and debris resulting from a forest practice involving removal of a commercial product shall be managed as set forth in the Idaho Forestry Act, Title 38, Chapters 1 and 4, Idaho Code and the rules and regulations pertaining to forest fire protection. (7-1-96)

03. Non-Commercial Slash. Fuels and debris resulting from a forest practice where no commercial product is removed shall be managed in a manner as hereinafter designated under authority of the Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code. (1-24-78)

a. Within ten (10) days or a time mutually agreed upon following receipt by the department of the “Notification of Forest Practice” as provided in Subsection 020.05, the department shall make a determination of the potential fire hazard and hazard reduction and/or hazard offsets, if any, needed to reduce, abate or offset the fire hazard. Such determination shall be based on a point system found in Subsection 070.03.e. (7-1-96)

b. The operator, timber owner and landowner shall be notified in writing of the determination made in Subsection 070.03.a. above (on forms provided by the department) and of the hazard reductions and/or hazard offsets, if any, that must be accomplished by the operator, timber owner or landowner. The notification shall specify a reasonable time period not to exceed twelve (12) months from the date the forest practice commenced in which to complete the hazard reduction and shall specify the number of succeeding years that on site improvements or extra protection must be provided. (7-1-96)

c. A release of all obligations under Subsection 070.03 shall be granted in writing on forms provided by the department when the hazard reduction and/or hazard offsets have been accomplished. When hazard offsets are to be accomplished during succeeding years, the release shall be conditioned upon the completion of the required hazard offsets. Notification of release shall be mailed to the operator, timber owner and landowner within seven (7) days of the inspection by the department. Inspections by the department shall be made within ten (10) days of notification by the operator, timber owner or landowner unless otherwise mutually agreed upon. (7-1-96)

d. If the department determines upon inspection that the hazard reduction or hazard offsets have not been accomplished within the time limit specified in Subsection 070.03.b., extensions of time, each not to exceed three months, may be granted if the director determines that a diligent effort has been made and that conditions beyond the control of the party performing the hazard reduction or hazard offsets prevented completion. If an extension is not granted the department shall proceed as required in Section 38-1307, Idaho Code (Idaho Forest Practices Act). (7-1-96)

e. For the purpose of determining the potential fire hazard and the appropriate hazard reduction and/or hazard offsets, a point system using the following rating guides will be used by the department. A value of eighty (80) points or less for any individual forest practice under Subsection 070.03, as determined by the department, will be sufficient to release the operator, timber owner and landowner of all further obligations under Subsection 070.03. Total points of the proposed forest practice will be determined from Tables I and II. If the total points are greater than eighty (80), modification of the thinning practice to reduce points may be made as determined by Tables I and II, slash hazard offsets may be scheduled to reduce points as determined by Table III or a combination of these options may be used to reduce the hazards to a point total of eighty (80) or less. Consideration will be given to the operator's, timber owner's and landowner's preference in selecting the options to reduce the points to eighty (80) or less.

TABLE I - HAZARD POINTS

Hazard Points for Ponderosa Pine, Western Red Cedar or Western Hemlock

Thinned Stems Per Acre											
Ave. DBH	250	500	750	1000	1250	1500	1750	2000	2500	3000	4000
1	1	2	3	3	4	5	6	7	9	10	16
2	3	6	9	13	16	22	25	30	36	42	51
3	7	16	25	32	38	46	51	52	56	59	
4	9	22	32	40	50	52	54	56	60		
5	13	28	40	51	54	56	59	60			
6	19	36	51	54	58	60	60				

Hazard Points for Douglas Fir, Grand Fir or Engelmann Spruce

Thinned Stems Per Acre											
Ave. DBH	250	500	750	1000	1250	1500	1750	2000	2500	3000	4000
1	1	2	3	4	6	7	8	9	13	16	22
2	4	7	13	16	22	28	32	36	42	50	54
3	8	19	28	36	44	51	53	54	58	60	
4	10	25	36	46	51	54	57	59	60		
5	16	32	46	52	56	59	60	60			
6	22	40	52	56	60	60	60				

Hazard Points for Western Larch, Lodgepole Pine or Western White Pine

Thinned Stems Per Acre											
Ave. DBH	250	500	750	1000	1250	1500	1750	2000	2500	3000	4000
1	1	2	2	3	4	4	5	6	8	9	13
2	3	6	8	11	16	19	22	28	32	38	48
3	6	16	25	32	38	46	51	52	56	59	
4	8	16	28	36	44	50	52	54	58		
5	9	22	32	42	50	53	55	57			
6	13	28	40	50	53	56	59				

TABLE II - HAZARD POINTS WORKSHEET

HAZARD CHARACTERISTICS

HAZARD POINTS

Fuel Quantity

Hazard points from Slash Hazard Table I 1/

Record number of trees/acre to be cut

Average D.B.H.

Predominant species

Size of thinning block

Points 0 - 15

16 - 30

31 - 45

46 - 60 1/

Acres 20

20 - 40

40 - 80

80

Site Factor

Record Slope _____ % Aspect _____

Determine points from table below 1/

ASPECT	PERCENT SLOPE			
	0 - 19	20 - 39	40 - 59	60
E or NE	0	5	10	20
E or NW	0	5	10	30
W or SE	0	10	30	40
S or SW	0	20	40	60
1/	Max. 60 points			

Other Factors	
Condition of operating area before forest practice commences	0 - 20 points
Condition of adjoining area	0 - 20 points
Presence of snags and culls	0 - 5 points
Deterioration rate of slash	0 - 5 points
Time of year forest practice operation	10 points
October thru December	2 points
August thru September	4 points
January thru April	7 points
May thru July	10 points
TOTAL FOREST PRACTICE AREA POINTS	(Max. 240 points)

TABLE III - HAZARD OFFSETS

Offsets	Hazard Point Deductions
Physical Changes to the Hazard (1)	
(1) Points will be proportional to the amount of hazard disposed of or modified.	
Disposal by burning or removal.	0 - 160
Modification by reducing depth through crushing, chipping or lopping.	0 - 60
On Site Improvements	
Condition of main access road to forest practice area should allow movement of heavy trucks without difficulty.	0 - 5

Offsets	Hazard Point Deductions
Access control to forest practice area provided by closure to public traffic.	0 - 5
Availability of water for tankers within one mile of forest practice area or within three miles for helicopter bucket use. Water supply to be sufficient to supply at least fifty thousand (50,000) gallons.	0 - 15
Buffer zones of unthinned areas at least two chains in width between roadways and thinned areas.	0 - 10
Fuel breaks with slash hazard removal around and/or through forest practice area, located so as to provide optimum fire control effect and of two to four chains in width.	0 - 25
Fire trails with fuel removed to expose mineral soil to a width of twelve (12) feet. Maximum points allowed if combined with a fuel break.	0 - 15
Extra Protection	
Increased attack capability such as retardant availability, increased attack manpower and equipment. Must be in addition to regular forces normally available during the fire season.	0 - 40
Fire detection and prevention increased beyond that normally available for lands in the fire protection district.	0 - 15
Initial attack time based on proximity of forest practice area to initial attack forces.	0 - 5
Landowner protection plan which would provide extra fire protection on a voluntary basis such as extra equipment and/or manpower.	0 - 5

(1-24-78)

071. PRESCRIBED FIRE.

01. Purpose. Prescribed fire is a tool with application in land management. Smoke from prescribed fires can have adverse impacts on ambient air quality or public health. It is the purpose of these rules to establish a management system for smoke from prescribed fires that will protect air quality. (7-1-96)

02. Notification. The use of prescribed fire requires a valid notification in accordance with Subsection 020.05 to maintain air quality and to protect public health. Possession of a valid notification will not preclude meeting the fire safety requirements specified in Section 38-115, Idaho Code. (7-1-96)

03. Recommended Practices. To maintain air quality and protect public health the following practices are recommended: (7-1-96)

a. Slash and large woody debris piles should be compact and free of stumps, soil, snow, and nonwoody organic material. (7-1-96)

b. Piles should be fully cured, dried at least two (2) months, prior to ignition. Piles should be at least partially covered with a water resistant material so they can be ignited after enough precipitation to lower the fire danger. (7-1-96)

c. Broadcast burns should be conducted within a prescription that minimizes adverse effects on air quality. (7-1-96)

d. Membership in good standing in a recognized Airshed Group is encouraged. (7-1-96)

072. -- 999. (RESERVED)

**IDAPA 20
TITLE 04
CHAPTER 01**

20.04.01 – RULES PERTAINING TO FOREST FIRE PROTECTION

000. AUTHORITY.

This chapter is adopted under the legal authority of Sections 38-115, 38-132, 38-402, 58-104(6), 58-105, and 67-5201 et seq., Idaho Code. (4-11-19)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.04.01, “Rules Pertaining to Forest Fire Protection.” (4-11-19)

02. Scope. These rules govern requirements pertaining to forest fire protection. (4-11-19)

002. WRITTEN INTERPRETATION.

The Idaho Department of Lands maintains written interpretations of its rules that may include, but not be limited to, written procedures manuals and operations manuals, Attorney General’s formal and informal opinions, and other written guidance that pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General’s opinions, and other written interpretations, if applicable, are available for public inspection and copying at the main office of the Idaho Department of Lands. (4-11-19)

003. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the BOARD is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, (the Administrative Procedure Act) and IDAPA 20.01.01.000, et seq., “Rules of Practice and Procedure Before the State Board of Land Commissioners.” (4-11-19)

004. INCORPORATION BY REFERENCE.

01. Incorporated Document. IDAPA 20.04.01 adopts and incorporates by reference the full text of the following documents published by the San Dimas Technology & Development Center (SDTDC). (4-11-19)

a. Spark Arrester Guide – General Purpose and Locomotive (GP/Loco), Volume 1, September 2012, 1251 1809-SDTDC. (4-11-19)

b. Spark Arrester Guide – Multiposition Small Engine (MSE), Volume 2, August 2012, 1251 1808-SDTDC. (4-11-19)

c. Spark Arrester Guide – Off- Highway Vehicles (OHV), Volume 3, April 2012, 1251 1805-SDTDC. (4-11-19)

02. Printed and Bound Copies. Printed copies or bound copies may be viewed at any District Office or requested through SDTDC, 444 E. Bonita Ave, San Dimas, 91773. (4-11-19)

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

The principal place of business of the Idaho Department of Lands is in Boise, Idaho. The office is located at 300 North 6th Street, Suite 103, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, ID 83720-0050. The telephone number is 208-334-0200. (4-11-19)

006. PUBLIC RECORDS ACT COMPLIANCE.

This rule is subject to and in compliance with the provisions the Public Records Act, Title 74, Chapter 1, Idaho Code. (4-11-19)

007. -- 009. (RESERVED)

010. DEFINITIONS.

- 01. Block.** A piece of logging equipment where steel rope or cable is actively turning the block's pulley and used as part of a cable logging/yarding system for the specific purposes of establishing tail hold anchor points, intermediate support of main lines, or carriage haul-back capability for the purposes of yarding or hauling of logs to a log landing for transportation to a mill or processing facility. (4-11-19)
- 02. Cable or Cable Assisted Logging.** A harvest system for felling or yarding of forest product materials consisting of the use of a cable assisted harvester or the use of a yarder, spar tree, or intermediate support with motorized or non-motorized carriage to transport logs to the landing for further processing purposes. (4-11-19)
- 03. Closed Fire Season.** The period from May 10 to October 20, inclusive, of each year or as designated by the Director due to conditions of unusual fire danger pursuant to Section 38-115, Idaho Code. (4-11-19)
- 04. Department.** The Idaho Department of Lands. (4-11-19)
- 05. Director.** The director of the Idaho Department of Lands or his authorized representative. (10-28-91)
- 06. District.** A designated forest protective district. (10-28-91)
- 07. Fire Warden.** A duly appointed fire warden or deputy. (10-28-91)
- 08. Forest Land.** Any land which has upon it sufficient brush or flammable forest growth of any kind or size, living or dead, standing or down, including debris or growth following a fire or removal of forest products, to constitute a fire menace to life (including animal) or property. (10-28-91)
- 09. Forest Operation.** An activity or service conducted on forest lands involving any of the operations as described below where a Certificate of Compliance is required pursuant to Section 38-122, Idaho Code. (4-11-19)
- a.** The harvesting of trees using equipment that includes, but is not limited to, felling, bucking, yarding, delimiting, and decking operations; (4-11-19)
- b.** Thinning or mastication operations for stand improvement, stand density management or fuel reduction purposes; (4-11-19)
- c.** Road construction or reconstruction of existing roads including installation or improvement of bridges, culverts or structures; and (4-11-19)
- d.** Slash management including chipping, grinding, or other mechanized reduction activities. (4-11-19)
- 10. Metal-Tracked Harvester.** Any machine with metal tracks used to fall, bunch or process trees into forest products at the stump. (4-11-19)
- 11. Operator.** A person who conducts a forest operation. (4-11-19)
- 12. Operating Area.** That area where a forest operation is taking place. (4-11-19)
- 13. Person.** Includes any person or persons, and any corporation, firm or other entity. (10-28-91)
- 14. Range Land.** Any land that is not cultivated and that has upon it native grasses or other forage plants making it best suited for grazing of domestic and wild animals and which land is adjacent to or intermingled with forest land. (10-28-91)
- 15. Slash.** Brush, severed limbs, poles, tops and/or other waste material incident to such cutting or to

the clearing of land that are four (4) inches and under in diameter. (10-28-91)

16. State. State of Idaho. (10-28-91)

011. -- 019. (RESERVED)

020. VARIANCE.

If conditions or activities require the application of practices that differ from those prescribed in these rules, the Operator must obtain a variance prior to employing any of those differing practices. (4-11-19)

01. Obtaining a Variance. In order to obtain a variance, the Operator must submit a written request for a variance to the local Fire Warden. The request shall include the following: (4-11-19)

a. A description of the specific Operating Area where the variance is being requested; (4-11-19)

b. The particular conditions that necessitate a variance; (4-11-19)

c. A detailed description of the alternative practice; and (4-11-19)

d. A detailed description of how the alternate practice, if applied, will provide fire protection that is equal to or greater than the fire protection provided by the standards set forth in these rules. (4-11-19)

02. Department Response to Request for Variance. Within five (5) business days from receipt of the variance request, the Department shall evaluate the request and notify the Operator in writing of the Department's determination to allow or disallow the variance request. (4-11-19)

021. -- 029. (RESERVED)

030. STANDARDS FOR FIRE PROTECTION BY INDIVIDUALS.

The following rules and standards for protection by owners of forest land who have elected to provide their own protection as provided by Section 38-111, Idaho Code, shall apply: (10-28-91)

01. Fire Plans. Each owner shall submit to the director for approval, through the district fire warden in charge of the district in which such forest land lies, before April 1, of each year, a written fire plan which shall include but not be limited to: (10-28-91)

a. A map, with scale of two (2) inches to the mile, revealing section, township, and range lines of the forest land involved and showing thereon roads, streams, trails, and the location of protection facilities for such land. (10-28-91)

b. A description of the system for discovering and reporting any and all fires originating on or spreading to the forest land involved. (10-28-91)

c. A statement showing the number of firefighters available for immediate action to suppress any fire on the forest land; and further, their sources of additional manpower available as firefighters. (10-28-91)

d. A statement showing the type and amount of firefighting equipment in serviceable condition including, but not limited to, fire hose, fire engines, portable pumps, dozers, and mobile equipment for the transportation of men and equipment. (10-28-91)

e. A statement as to the location of fire-tool caches and the number and kind of serviceable hand tools in each cache kept available for immediate use in firefighting, including shovels, hoes, axes, and fire-pump cans. (10-28-91)

f. The name, address, and telephone number of the person who is in charge of the protection facilities and obligated to carry out the provisions of the fire plan. (10-28-91)

02. Approval of Fire Plan Required. No plan shall become effective unless approved by the director. (10-28-91)

031. -- 039. (RESERVED)

040. COSTS OF FIRE SUPPRESSION AND PROTECTION.

Whenever the state shall incur costs in controlling or extinguishing a fire that any person willfully or is negligently responsible for, such costs shall include all actual costs to the state, including wages of full-time personnel and use of equipment of the forest protective district or districts where the fire originated or burned. (10-28-91)

041. -- 049. (RESERVED)

050. BURNERS.

Any sawmill, planing mill, shingle mill, or other woodworking plant, or plant manufacturing wood products, operating in or within five hundred (500) feet of forest land, and burning refuse wood material outside of and/or adjacent to such mill or plant, shall meet the terms of Section 38-108, Idaho Code. (10-28-91)

051. -- 059. (RESERVED)

060. BURNING PERMITS.

The burning permit specified in Section 38-115, Idaho Code, shall be used to protect public health, safety, and welfare. The permit shall be subject to the following conditions: (10-28-91)

01. When Permit Required. Permits issued for open fires shall be required from May 10 to October 20, inclusive, of each year and be limited to that period of time needed to accomplish the permitted burning; provided, however, in no event shall such permit be issued to cover a period of more than ten (10) days. (10-28-91)

02. Permit Conditions. Each permit shall contain all the terms and conditions deemed necessary by the director for such burning, which terms and conditions shall remain effective for the entire period of the permit. (10-28-91)

061. -- 069. (RESERVED)

070. PERMIT TO ENTER CLOSED AREA.

Pursuant to Section 38-115, Idaho Code, the director, because of critical fire hazard, may close specified areas to entry by any person or party. (10-28-91)

01. Notice of Closure. Notice of closure to specified areas shall be by proclamation of the director and shall be published at least once in a newspaper of general circulation throughout the county or counties affected. Such proclamation shall immediately be mailed to the fire wardens of the affected districts. (10-28-91)

02. Fire Warden Permits. The fire warden in charge of the forest protective district in which such areas are located may, in his discretion, issue permits to individuals to enter such closed areas. The permittee is required to carry a copy of the permit at all times while in the closed area. (10-28-91)

071. -- 079. (RESERVED)

080. SPARK ARRESTERS.

01. Requirements. The steam or internal combustion engines referred to in Section 38-121, Idaho Code, shall be equipped with properly installed, maintained, and effectively working spark arresters that comply with the standards set forth in the San Dimas Technology and Development Center's "Spark Arrester Guide(s)." (4-11-19)

02. Exemptions. The following are exempt from the requirements of the rule: (10-28-91)

a. Turbo-charged internal combustion engines in which one hundred percent (100%) of the exhaust gases pass through the turbo-charger. (10-28-91)

b. Engines of passenger-carrying vehicles and light trucks, equipped with baffle-type muffler and tailpipe through which all exhaust gasses pass, that are kept in good repair. (10-28-91)

c. Engines of heavy-duty trucks equipped with a vertical exhaust stack and muffler extending above the cab of the vehicle. (10-28-91)

d. Engines of water pumping equipment used in firefighting. (10-28-91)

e. Engines of helicopters and other aircraft. (10-28-91)

081. -- 089. (RESERVED)

090. SMOKING IN THE WOODS.

01. Smoking Prohibited. Smoking is prohibited on forest or range lands of the state during periods of critical fire danger as designated by the director. Logging operators shall post “NO SMOKING” signs conspicuously in their camps and operating areas when such periods of critical fire danger have been declared. (10-28-91)

02. Designated Smoking Areas. Fire wardens may designate those areas where smoking may be permitted upon approval of the director. (10-28-91)

091. -- 099. (RESERVED)

100. FIRE TOOLS AND FIRE EXTINGUISHERS.

During closed fire season the following fire tool requirements shall apply: (10-28-91)

01. Basic Fire Cache. Every Operator engaged in any Forest Operation on Forest Lands shall have available for firefighting purposes the number of tools and tool boxes set forth in Table 1. A Forest Operation having more than ten (10) people must use multiples of any of the columns in the table to arrive at a tool distribution equal to or in excess of the number of people in the Forest Operation.

TABLE 1			
People in Operation	2 - 5	6 - 8	9 - 10
Tool Box	1	1	1
Shovels	2	4	5
Pulaskis	2	4	4
5 gallon pump cans or bladder bags	1	1	2

(4-11-19)

a. The tool boxes required by this rule shall be clearly marked “FOR FIRE USE ONLY”; and (4-11-19)

b. The tools required by Subsection 100.01 shall be in a location immediately accessible for firefighting purposes, maintained in a serviceable condition and be fully functional at the time of deployment. (4-11-19)

02. Warming Fires or Campfires. Except when in designated developed campgrounds or when traveling as a pedestrian, all persons or parties igniting warming fires or campfires shall be equipped with the following: (10-28-91)

a. One (1) serviceable shovel at least twenty-four (24) inches in overall length with six (6) inch or

wider blade. (10-28-91)

b. One (1) water container, capacity one (1) gallon or more. (4-11-19)

03. Power Equipment. Each unit of mobile or stationary power equipment other than portable power saws, trail bikes, motorcycles, all-terrain vehicles and similar type vehicles operating on forest lands of the state shall be equipped with a minimum of one (1) chemical fire extinguisher rated by the Underwriters Laboratory as not less than 4-BC. (10-28-91)

04. Portable Power Saw. Any person using a portable power saw on forest land in the state shall have the following immediately available for the prevention and suppression of fire: (10-28-91)

a. A fully charged operable fire extinguisher of at least eight (8) ounce minimum capacity. (10-28-91)

b. A serviceable round-pointed size zero (0) or larger shovel. (10-28-91)

101. -- 109. (RESERVED)

110. FIRE CREWS.

When engaged in a Forest Operation on Forest Lands during closed fire season, the person responsible for the Forest Operation shall designate a fire crew and a fire foreman, with powers to act for their employer, to take immediate initial action within the scope of their knowledge, skills and abilities and make a reasonable effort to suppress any fire starting on the Operating Area without compromising the safety of the crew. (4-11-19)

111. -- 119. (RESERVED)

120. RESTRICTED ACTIVITIES.

01. Critical Fire Danger. During periods of critical fire danger, as determined by the director, all persons engaged in any activities in forest areas of the state, determined to be critical, may have those activities restricted to the least dangerous periods of the day. (10-28-91)

02. Notice. Notification of such restriction shall be by proclamation of the director and shall be published at least once in a newspaper of general circulation throughout the county or counties affected. (10-28-91)

121. -- 129. (RESERVED)

130. WATER SUPPLY AND EQUIPMENT.

Every Operator conducting a Forest Operation using a cable logging system or a metal tracked harvester during the period of July 1st through September 30th annually shall provide the following water supply and fire suppression equipment in the Operating Area. (4-11-19)

01. Water Supply. (4-11-19)

a. The water supply must consist of a self-propelled motor vehicle or trailer equipped with a water tank containing not less than two hundred (200) gallons of water. (4-11-19)

b. Trailers used for this purpose shall be equipped with a functional hitch attachment and have a serviceable tow vehicle immediately available to provide for timely fire suppression response. (4-11-19)

02. Water Delivery. (4-11-19)

a. Water pump. The size and capacity of the water pump must be sufficient to provide a discharge of not less than twenty (20) gallons per minute when pumping through fifty (50) feet of hose of not less than three quarter (¾) inch inside diameter with an adjustable nozzle at pump level. (4-11-19)

b. Hose and nozzle. The Operator must have at least five hundred (500) feet of serviceable hose of not

less than three quarter ($\frac{3}{4}$) inch inside diameter and a nozzle. (4-11-19)

03. Readiness. (4-11-19)

a. All hose, motor vehicles, trailers, tanks, nozzles and pumps shall be kept ready for immediate use during active operations, including fire watch service as set forth in Section 140 of these rules. (4-11-19)

b. The water supply, pump, a minimum of two hundred (200) feet of hose packaged in a suitable manner for immediate deployment, and the nozzle shall be maintained as a connected, operating unit ready for immediate use. (4-11-19)

04. Water Supply and Equipment Exemption. A Forest Operation conducted under an Option 1 Certificate of Compliance is exempt from the water supply and equipment requirements of Section 130. (4-11-19)

131. -- 139. (RESERVED)

140. FIRE WATCH SERVICE.

Every Operator engaged in a Forest Operation within a Stage 2 proclamation area shall provide Fire Watch Service in the Operating Area. (4-11-19)

01. Duties and Requirements. Fire Watch Service shall consist of at least one (1) person who shall: (4-11-19)

a. Constantly be on duty for three (3) hours after all power-operated equipment has been shut down for the day. (4-11-19)

b. Visually observe the Operating Area where activity occurred during the day. (4-11-19)

c. Have adequate equipment for transportation and communications to summon fire-fighting assistance in a timely manner; and (4-11-19)

d. Immediately respond to any fire in the Operating Area to initiate such fire suppression actions to suppress the fire within the scope of their knowledge, skills and abilities. (4-11-19)

02. Fire Watch Service Exemption. A Forest Operation conducted under an Option 1 Certificate of Compliance is exempt from the fire watch service requirements of Section 140. (4-11-19)

141. -- 149. (RESERVED)

150. OPERATION AREA FIRE PREVENTION.

To prevent the spread of fire on or from an Operating Area, every Operator conducting a Forest Operation during the period of July 1st through September 30th, annually, shall comply with the following precautions: (4-11-19)

01. Cable or Cable Assisted Logging. The following practices and equipment are required by the operator when conducting a cable logging operation on forest land. (4-11-19)

a. Clear the ground of all flammable debris for not less than ten (10) feet slope distance from the point directly below any block. (4-11-19)

b. Prevent moving lines from rubbing on rock or woody material in such a way to cause sparks or sufficient heat that may cause fuel ignition. (4-11-19)

c. Provide a water supply that complies with the capacity, pump, hose, nozzle and readiness requirements set forth in Section 130 of these rules. (4-11-19)

d. Provide at each Block: (4-11-19)

- i. One (1) pump equipped can or bladder containing not less than five (5) gallons of water; and (4-11-19)
 - ii. One (1) round pointed size zero (0) or larger shovel in a serviceable condition. (4-11-19)
- 151. -- 999. (RESERVED)**