

Dear Senators SCHROEDER, Bair & Stennett, and
Representatives STEVENSON, Paul Shepherd & Saylor:

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

- 1. IDAPA 20.02.11 – Timber Supply Stabilization Act of 1989 On State Forests –
Docket No. 20-0211-1001 (Chapter Repeal)**
- 2. IDAPA 20.02.14 - Rules For Selling Forest Products on State-Owned Endowment Lands
- Docket No. 20-0214-1001**
- 3. IDAPA 20.03.04 - Rules Governing The Regulation Of Beds, Waters, And Airspace
Over Navigable Lakes In The State Of Idaho - Docket No. 20-0304-1001.**

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by
the co-chairmen 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 10-27-10. 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 11-29-10.

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 334-4845, or send a written request to the
address or FAX number indicated on the memorandum attached.



Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee

FROM: Katharine Gerrity, Principal Legislative Research Analyst **KAG**

DATE: October 7, 2010

SUBJECT: Idaho Department of Lands

- 1. IDAPA 20.02.11 – Timber Supply Stabilization Act of 1989 On State Forests – Docket No. 20-0211-1001 (Chapter Repeal)**
- 2. IDAPA 20.02.14 - Rules For Selling Forest Products on State-Owned Endowment Lands - Docket No. 20-0214-1001**
- 3. IDAPA 20.03.04 - Rules Governing The Regulation Of Beds, Waters, And Airspace Over Navigable Lakes In The State Of Idaho - Docket No. 20-0304-1001**

1. IDAPA 20.02.11 – Timber Supply Stabilization Act of 1989 On State Forests

The Department of Lands submits notice of proposed rule at IDAPA 20.02.11 – Timber Supply Stabilization Act of 1989 On State Forests. According to the Department, this is a chapter repeal based on repeal of Chapter 10, Title 58, Idaho Code (Timber Supply Stabilization Act of 1989), during the 2010 legislative session. The repeal has made the rule obsolete. Negotiated rulemaking was not conducted. The rulemaking appears to be authorized by Sections 58-104 and 58-105, Idaho Code.

2. IDAPA 20.02.14 - Rules For Selling Forest Products on State-Owned Endowment Lands

The Department of Lands submits notice of proposed rule at IDAPA 20.02.14 - Rules For Selling Forest Products on State-Owned Endowment Lands. The Department states that the proposed changes will authorize the Department to sell state timber as delivered products, expand state timber auction to allow additional bidding methods, authorize the Director to set permit rates and values and clarifies existing rules for state timber purchasers and the Department. Negotiated rulemaking was not conducted.

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Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

The rule appears to be authorized pursuant to Sections 58-104, 58-105, 58-403 and 58-412, Idaho Code.

3. IDAPA 20.03.04 - Rules Governing The Regulation Of Beds, Waters, And Airspace Over Navigable Lakes In The State Of Idaho

The Department of Lands submits notice of proposed rule at IDAPA 20.03.04 - Rules Governing The Regulation Of Beds, Waters, And Airspace Over Navigable Lakes In The State Of Idaho. This is a fee rule. According to the Department, this rulemaking will resolve an issue regarding covered slips that arose late in the prior rulemaking process. In addition, the Department notes that a statutory change enacted during the 2010 legislative session requires a rule conflict to be removed relating to the replacement of some single and two-family docks without a permitting process. The Department also states that another statutory change during the last session allows the Department to raise the application fees for some encroachment types. The Department proposes to lower the application fee for small domestic waterlines.

In terms of the fee change, the Department states that the application fees for single and two-family docks will be increased from \$250 to \$300, and for bank stabilization and erosion control from \$250 to \$550. The Department indicates that these changes should result in approximately \$34,000 in additional revenue and will reduce the navigable waters program's impact on Idaho's general fund.

The Department notes that the application fee for domestic water intake lines that serve four houses or less will be decreased from \$1,000 to \$300. According to the Department, small waterlines for domestic water use do not require the same level of review as most non-navigational encroachments. The Department notes that numerous applications for waterlines are being processed in northern Idaho due to the initiation of the water rights adjudication there. The Department states that with the large volume of permits currently being processed, this change in fee should not have an appreciable effect on the program's average income and that the Department is working with the Department of Water Resources to maximize efficiency in processing the permits.

Negotiated rulemaking was conducted. The rulemaking appears to be authorized by Section 58-104, Idaho Code.

cc: Idaho Department of Lands
Bob Helmer
Eric Wilson

IDAPA 20 - DEPARTMENT OF LANDS

20.02.11 - TIMBER SUPPLY STABILIZATION ACT OF 1989 ON STATE FORESTS

DOCKET NO. 20-0211-1001 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Department of Lands has proposed rulemaking. The action is authorized by Sections 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Informal public meetings were held in September pursuant to separate public notice. Additional Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

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

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

The repeal of the "Timber Supply Stabilization Act of 1989," Title 58, Chapter 10, Idaho Code, during the 2010 legislative session has made IDAPA 20.02.11 obsolete. It is hereby repealed in its entirety.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted because the authorizing statute was repealed by the 2010 Legislature.

GENERAL INFORMATION: For more information about IDL's programs and activities, visit IDL's web site at <http://www.idl.idaho.gov>.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact the undersigned.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The IDL will consider all written comments received by the undersigned on or before October 27, 2010.

DATED this 31st day of August, 2010.

Bob Helmer
Bureau Chief, Forest Management
Idaho Department of Lands
3284 West Industrial Loop
Coeur d'Alene, Idaho 83815
(208) 666-8610
Fax No. (208) 769-1524

IDAPA 20.02.11 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 20 - DEPARTMENT OF LANDS

20.02.14 - RULES FOR SELLING FOREST PRODUCTS ON STATE OWNED ENDOWMENT LANDS

DOCKET NO. 20-0214-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Department of Lands has proposed rulemaking. The action is authorized by Sections 58-104(6), 58-105, 58-403 and 58-412, Idaho Code.

PUBLIC HEARING SCHEDULE: Informal public meetings were held in September pursuant to separate public notice. Additional Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

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

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

The proposed changes to IDAPA 20.02.14 will: 1) authorize the IDL to sell state timber as delivered products, 2) expand state timber auction to allow additional bidding methods, 3) authorize the Director to set permit rates and values and 4) clarify existing rules for state timber purchasers and the IDL.

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

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

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted because the proposed rules impose no new fee or charge and because of the diverse interests of potentially affected parties.

GENERAL INFORMATION: For more information about IDL's programs and activities, visit IDL's web site at <http://www.idl.idaho.gov>.

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

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact the undersigned.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The IDL will consider all written comments received by the undersigned on or before October 27, 2010.

DATED this 31st day of August, 2010.

Bob Helmer
Bureau Chief, Forest Management
Idaho Department of Lands
3284 West Industrial Loop
Coeur d'Alene, Idaho 83815
(208) 666-8610 Fax No. (208) 769-1524

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0214-1001

010. DEFINITIONS.

01. **Board.** The Idaho State Board of Land Commissioners. (5-8-09)
02. **Cable Yarding.** Transportation of forest products from stump to road by means of a suspended, powered cable system. (5-8-09)
03. **Cedar.** Western Red Cedar (*Thuja plicata*). (5-8-09)
04. **Cedar Pole.** A segment or portion of a western red cedar tree that can be manufactured into a utility pole meeting current ANSI Specifications. (5-8-09)
05. **Contract.** Timber sale contract in a form prescribed by the Department. (5-8-09)
06. **Department.** The Idaho Department of Lands. (5-8-09)
07. **Development Credits.** A stumpage credit received by the purchaser for the construction or reconstruction of roads, bridges, or other permanent improvements. (5-8-09)
08. **Director.** The director of the Idaho Department of Lands or his authorized representative. (5-8-09)
09. **Extreme Circumstances.** Catastrophic circumstances including, but not limited to, fire, downed timber due to a wind event, flood, earthquake, destruction of a purchaser's milling facilities or equipment by fire, or milling operation shut down due to a court order related to compliance with state or federal environmental laws. (5-8-09)
10. **Forest Products.** Marketable forest materials. (5-8-09)
11. **Ground-Based Yarding.** Transportation of forest products from stump to road using tractors, forwarders, or rubber-tired skidders. (5-8-09)
12. **Length.** The length of a pole in five (5) foot increments. (5-8-09)
13. **Measurement.** Weight, length, board foot volume, cubic volume, or any other means or procedure for determining quantity of forest products. (5-8-09)
14. **Net Appraised Value.** The minimum estimated sale value of the forest products after deducting the development credit. (5-8-09)
15. **Net Sale Value.** The final sale bid value of the forest products after deducting the development credit. (5-8-09)
16. **Public Auction.** Any advertised sale with notice to the general public at which bids are made and accepted. Public auctions include, but are not limited to, oral auctions and the announcement of sealed or electronically submitted bids. ()
167. **Pulp.** Any portion of a tree that does not meet the sawlog merchantability specifications of thirty-three and one-third percent (33 1/3%) net scale. (5-8-09)
178. **Purchaser.** A successful bidder for forest products from a state sale who has executed a timber sale contract. (5-8-09)

- ~~189.~~ **Roads.** Forest access roads used for the transportation of forest products. (5-8-09)
- ~~1920.~~ **Scaling.** Quantitative measurement of logs or other forest products by a log rule. (5-8-09)
- ~~201.~~ **Scribner Decimal "C" Board Foot Measure.** The measurement of forest products in accordance with the log rule described in Title 38, Chapter 12, Idaho Code, and the rules promulgated thereunder. (5-8-09)
- ~~212.~~ **State.** The State of Idaho. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

019. FIREWOOD AND OTHER PERSONAL USE PRODUCT PERMITS.

~~Permits for the sale of dead and down forest products~~ permits for personal use will be sold on a charge basis ~~at a rate determined by the Board. Permits will not exceed a maximum value established by the Director.~~ The Director shall determine permit rates and maximum permit values. (5-8-09)(____)

020. DIRECT SALES.

The ~~direct~~ sale of forest products without advertisement may be authorized by the Director if the net appraised value does not exceed the maximum value established by the Board. This type of sale is to be used to harvest isolated or bypassed parcels of timber of insufficient value and volume to justify a salvage sale (refer to Rule Section 021). The direct sale shall not be used when two (2) or more potential purchasers may be interested in bidding on the forest products offered for sale. The initial duration of a direct sale shall ~~not exceed an initial period of~~ be six (6) months with a provision for one six (6) month extension. The purchaser shall furnish an acceptable performance bond in the amount of thirty percent (30%) of the sale value with a minimum bond of one hundred dollars (\$100). Advance payment will be required and all sales will be on a lump sum basis. (5-8-09)(____)

(BREAK IN CONTINUITY OF SECTIONS)

023. DELIVERED PRODUCT SALES.

The Director may contract logging services and sell forest products at public auction. Purchasers of delivered forest products will be required to provide a ten percent (10%) initial deposit and a guarantee of payment bond. (____)

~~0234. SALE OF CEDAR POLES SALE SELECTION.~~

01. Requirements for Cedar Poles Sale. ~~Pole quality cedar shall be reserved for a cedar pole sale if the proposed sale area contains at least one hundred fifty (150) cedar poles in a density of at least five (5) poles per acre on ground based yarding areas, the and at least ten (10) poles per acre on cable yarding areas. Areas with a lower density of poles may be offered as a pole sale if the Department determines that such sale is economically feasible. If a proposed sale area contains at least one hundred fifty (150) cedar poles in a density of at least five (5) poles per acre on ground based yarding areas and at least ten (10) poles per acre on cable yarding areas, the pole quality cedar shall be reserved and sold separately as a pole sale or as a separate product sort in a delivered products sale. Pole quality cedar in areas with a lower density of poles may be offered as poles.~~ (5-8-09)(____)

02. Maximum Amount of Sawlogs. Sawlogs and other forest products shall not exceed fifty percent (50%) of the total sale volume, excluding materials generated through the construction of roads and development sites. (5-8-09)

03. Poles within Sawlog Sale. If any area within a proposed timber sale contains two hundred fifty (250) cedar poles or more in a density of at least ten (10) poles per acre, the poles shall be reserved for a pole-quality cedar sale or sold as a separate product sort in a delivered products sale. (5-8-09)(____)

~~024. CEDAR POLE SALE PROCEDURES.~~

~~044. Length Appraisal.~~ Cedar poles shall be appraised by length and bid on a lineal foot basis. The conversion table set out below shall be used to establish the corresponding board foot volume. (5-8-09)

~~025. Length to Volume Conversion Table for Western Red Cedar Poles:~~

Pole Length	Board Feet Each*
30'	50
35'	70
40'	101
45'	161
50'	239
55'	261
60'	304
65'	418
70'	462
75'	512
80'	595
85'	736
90'	792
95'	892
100'	929
105'	1113
110'	1132
115'	1420
120'	1475

* Based on Scribner Decimal "C" board foot measure

(5-8-09)

~~036. Bidding Limited to Cedar.~~ When cedar represents eighty percent (80%) or more of the total appraised value, bidding shall be limited to cedar poles and cedar sawlogs only. (5-8-09)

~~047. Purchaser's Option.~~ The purchaser may opt to remove cedar as poles, sawlogs, and products or as sawlogs and products. Such choice shall be made at the completion of the auction. If the purchaser opts to manufacture the cedar as poles, the poles and sawlog material shall be removed at bid prices (lineal foot basis for poles and MBF basis for sawlogs). Pole-quality cedar trees containing thirty (30) foot cedar poles may be harvested as poles or sawlogs at the purchaser's discretion unless such trees are designated reserve. If the purchaser elects to manufacture cedar poles as sawlogs, the bid values of cedar poles and cedar sawlog material shall be weighted by volume to determine the selling value for all cedar sawlogs. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

031. TIMBER SALE AUCTIONS.

~~01.~~ Requirements. Timber, Salvage, and Delivered Products sales shall be sold at public auction. ()

~~02.~~ Requirements for Bidding. (5-8-09)

a. Bidders shall present a bid deposit in a form acceptable to the State in the amount of ten percent (10%) of the net appraised value. (5-8-09)

b. Bidders shall not be delinquent on any payments to the State at the time of sale. (5-8-09)

c. Bidders shall not be a minor as defined in Section 32-101, Idaho Code. (5-8-09)

d. Foreign corporations, as defined in Section 30-1-106, Idaho Code, shall procure a certificate of authority to do business in Idaho to be eligible to bid on and purchase State timber. (5-8-09)

~~02. Opening the Auction. The Director's representative will open the sale, read the advertisement, ask for questions, and then accept bid deposits. Each eligible bidder will select a numbered card to determine who will be allowed the first bid. The person entitled to the first bid may bid the minimum appraised or any higher price. Any bidder is then entitled to bid and bidding progresses with each previous bid being accepted by the last bidder. All bidding is done in the form of an oral auction.~~ (5-8-09)

~~03. Closing the Auction. The Director's representative will close the auction and award the sale to the successful bidder. Bid deposits will be returned to the unsuccessful bidders. Sale values and charges will be calculated on the day of sale. Within ten (10) days the successful bidder will be required to pay ten percent (10%) of the final net sale value. Surety bid bonds must be replaced with cash within ten (10) days of the date of sale, either separately or as part of the total ten percent (10%) initial deposit.~~ (5-8-09)

~~032. TIMBER SALE CONTRACT SIGNATURES.~~

~~The Department shall prepare and make available to the purchaser a contract and supplemental documents, including bond forms, with appropriate instructions. The purchaser shall return the signed contract and bonds for appropriate State signatures. The State will return a fully executed contract to the purchaser.~~ (5-8-09)

032. INITIAL DEPOSIT AND BONDS.

01. Initial Deposit. The initial deposit (ten percent (10%) of net sale value) shall be paid in cash and shall be retained by the state as a cash reserve for the duration of the contract; the purchaser shall not be entitled to any interest earned thereon. All or a portion of the initial deposit may be applied to charges as the contract nears completion. Any remaining initial deposit shall be forfeited in the event the contract is terminated without being completed. (5-8-09)()

02. Performance Bond. A bond of sufficient amount for carrying out in good faith all applicable laws and all the terms and conditions imposed by the Board and the sale contract or fifteen percent (15%) of the net sale value of the forest products (whichever is greater) shall be executed within thirty (30) days from the date of sale ~~but~~ and prior to execution of the contract. Failure to perform on the contract may result in forfeiture of all or a portion of the performance bond. (5-8-09)()

03. Guarantee of Payment. Prior to cutting of any forest products, the purchaser shall provide a bond acceptable to the Department as assurance of payment for products to be cut and/or removed during the next ninety (90) days. Guarantee of payment on delivered product sales shall be as determined by the Department. This bond is in addition to the required initial deposit. Failure to make full and timely payment as per contract terms may result in

forfeiture of all or a portion of the guarantee of payment.

(5-8-09)()

0343. -- 040. (RESERVED).

041. STUMPAGE AND INTEREST PAYMENT.

A stumpage summary of forest products measured during the prior month and a statement of account will be prepared by the Department and forwarded to the purchaser monthly. The statement shall include interest computed from the date of sale to the date of the billing at a rate specified in the contract. The purchaser shall make payments within thirty (30) days of the end of the billing period or the payment shall be considered delinquent. Interest will not be charged on delivered product sales.

(5-8-09)()

042. TIMBER SALE CANCELLATION.

It is the purchaser's responsibility to initiate cancellation by submitting such request in writing to the respective supervisory area office. ~~A signed and notarized early release form must be completed by the purchaser when cancellation is requested prior to the original contract expiration date.~~ When all contractual requirements have been completed, final payments have been received, all load tickets have been accounted for, and a written request for cancellation has been received by the Department, any credit balances and all cash bonds will be returned and/or transferred to other timber sale accounts within forty-five (45) days, as requested by the purchaser ~~within forty five (45) days.~~

(5-8-09)()

043. PREMATURE TIMBER SALE TERMINATION.

01. Request. A timber sale purchaser may, for reasons of hardship, make written request to terminate a timber sale contract before harvesting is completed. In such cases, the Board will determine if a hardship exists and if the contract should be terminated.

(5-8-09)

02. Premature Termination Policy.

(5-8-09)

a. The Board may authorize premature termination of any sale under any terms considered reasonable and appropriate. Any remaining amount of the ten percent (10%) initial deposit will be retained ~~as a penalty, which amount may not be used as payment for forest products cut and/or removed. Additionally, the Board will seek payment of the value of the overbid for the uncut residual volume. For example, if white pine had been bid up by five dollars (\$5) per thousand board feet over the appraised price and there are one hundred thousand (100,000) board feet of white pine remaining on the sale area, the purchaser will have to pay five hundred dollars (\$500) upon termination~~ in full and applied towards assessed damages and may not be used as payment for forest products cut and/or removed. Assessed damages in excess of the initial deposit will be applied against the performance bond.

(5-8-09)()

b. The following damages will be assessed by the Board for premature sale terminations. ()

i. The Board will seek payment of the value of the overbid for the uncut residual volume. For example, if white pine had been bid up by five dollars (\$5) per thousand board feet over the appraised price and there are one hundred thousand (100,000) board feet of white pine remaining on the sale area, the purchaser will be assessed five hundred dollars (\$500) upon termination. ()

ii. The Board will seek payment of the accrued stumpage interest due the endowed institutions based on the interest rate specified in the contract and calculated on all remaining volume from the date of sale to the date the Board approved termination of the contract. ()

iii. The Board will seek payment for any credits given for developments that remain incomplete at the time of termination. ()

iv. The Board will seek payment for estimated Department costs associated with reoffering the timber sale. ()

v. The Board may also seek payment for other expenses including, but not limited to, legal costs and Department staff time. ()

bc. If logging has occurred on the sale, the purchaser must complete the units that have been partially logged according to contract standards and complete all development work as specified in the contract to the extent of allowances that have been credited to the purchaser. (5-8-09)

ed. The purchaser who has terminated a timber sale contract will not be eligible to rebid that particular sale unless specifically authorized to do so by the Board. (5-8-09)

IDAPA 20 - DEPARTMENT OF LANDS

20.03.04 - RULES GOVERNING THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

DOCKET NO. 20-0304-1001 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1) Idaho Code and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners (Board), Sections 830 through 835, notice is hereby given that this agency has initiated proposed rulemaking procedures. This proposed rulemaking is authorized pursuant to Section 58-104(6), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

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

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

This rulemaking will resolve an issue regarding covered slips that arose late in the prior rulemaking process. Also, a statutory change enacted during the 2010 legislative session requires a rule conflict to be removed. The latter allows the replacement of some single and two-family docks without a permitting process. Another statutory change enacted during the 2010 legislative session allows the Department to raise the application fees for some encroachment types. Lastly, the Department proposes to lower the application fee for small domestic waterlines.

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

Application fees will be increased from \$250 to \$300 for single and two-family docks, and from \$250 to \$550 for bank stabilization and erosion control. In addition, application fees for domestic water intake lines that serve four houses or less will be decreased from \$1,000 to \$300.

FISCAL IMPACT: This is a general fund program. The department does not anticipate a negative fiscal impact on the state general fund due to the proposed changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. A meeting with parties interested in the covered slip issue was held in April, 2010, and interested parties from prior rulemakings were notified of all the draft rule changes. Notification was provided via e-mail and the Department's web site, and comments were solicited.

INCORPORATION BY REFERENCE: Nothing was incorporated by reference during this rulemaking. N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov. More information is also at <http://www.idl.idaho.gov/adminrule/rulemaking.html>.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 20th day of August, 2010.

Eric Wilson
Navigable Waters/Minerals Program Manager
Idaho Department of Lands
PO Box 83720, Boise, Idaho 83720
(208) 334-0261/ Fax (208) 334-3698
ewilson@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0304-1001

010. DEFINITIONS.

01. **Adjacent.** Contiguous or touching, and with regard to land or land ownership having a common boundary. (7-1-98)
02. **Aids to Navigation.** Buoys, warning lights, and other encroachments in aid of navigation intended to improve waterways for navigation. (4-2-08)
03. **Artificial High Water Mark.** The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. (4-2-08)
04. **Beds of Navigable Lakes.** The lands lying under or below the “natural or ordinary high water mark” of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. (9-13-90)
05. **Board.** The Idaho State Board of Land Commissioners or its designee. (4-2-08)
06. **Boat Garage.** A structure with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area. (4-2-08)
07. **Boat Lift.** A mechanism for mooring boats partially or entirely out of the water. (4-2-08)
08. **Boat Ramp.** A structure or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers. (4-2-08)
09. **Commercial Marina.** A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. (4-2-08)
10. **Commercial Navigational Encroachment.** A navigational encroachment used for commercial purposes. (4-2-08)
11. **Community Dock.** A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner’s associations. No public access is required for a community dock. (4-2-08)
12. **Covered Slip.** A slip, or group of slips, with a ~~tubular~~ frame, fabric canopy, and eaves that do not extend beyond the underlying dock. (~~3-29-10~~)()
13. **Department.** The Idaho Department of Lands or its designee. (4-2-08)
14. **Director.** The head of the Idaho Department of Lands or his designee. (4-2-08)
15. **Encroachments in Aid of Navigation.** Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term “encroachments in aid of navigation” may be used interchangeably herein with the term “navigational encroachments.” (4-2-08)
16. **Encroachments Not in Aid of Navigation.** Includes all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It shall also include float homes and boat garages. The term “encroachments not in aid of navigation” may be used interchangeably herein with the term “nonnavigational encroachments.” (3-29-10)

17. Floating Home or Float Home. A structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling and is not self-propelled. These structures are usually dependent for utilities upon a continuous utility linkage to a source originating on shore, and must have either a permanent continuous connection to a sewage system on shore, or an alternative method of sewage disposal that does not violate local, state, or federal water quality and sanitation regulations. (4-2-08)

18. Floating Toys. Trampolines, inflatable structures, water ski courses, and other recreational equipment that are not permanently anchored to the lake bed or an encroachment and are either located between the shoreline and the line of navigability or are waterward of the line of navigability for less than twenty-four (24) consecutive hours. (3-29-10)

19. Jet Ski Ramp, Port, or Lift. A mechanism for mooring jet skis or other personal watercraft similar to a boat lift. The lifts may be free standing or attached to a dock or pier. (4-2-08)

20. Line of Navigability. A line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question. (4-2-08)

21. Low Water Mark. That line or elevation on the bed of a lake marked or located by the average low water elevations over a period of years, and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation. (4-2-08)

22. Moorage. A place to secure float homes and watercraft including, but not limited to, boats, personal watercraft, jet skis, etc. (4-2-08)

23. Natural or Ordinary High Water Mark. The high water elevation in a lake over a period of years, uninfluenced by man made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. (9-13-90)

24. Navigable Lake. Any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes. This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency. (4-2-08)

25. Party. Each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. (3-29-10)

26. Person. A partnership, association, corporation, natural person, or entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. (4-2-08)

27. Piling. A metal, concrete, plastic, or wood post that is placed into the lakebed and used to secure floating docks and other structures. (4-2-08)

28. Plans. Maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same. (9-13-90)

29. Public Hearing. The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who shall act as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the Department by tape recorder. The hearing coordinator shall exercise such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. (4-2-08)

- 30. Public Trust Doctrine.** The duty of the State to its people to ensure that the use of public trust resources is consistent with identified public trust values. This common law doctrine has been interpreted by decisions of the Idaho Appellate Courts and is codified at Title 58, Chapter 12, Idaho Code. (3-19-99)
- 31. Pylon.** A metal, concrete, or wood post that is placed into the lakebed and used to support fixed piers. (4-2-08)
- 32. Riparian or Littoral Rights.** The rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake. (4-2-08)
- 33. Riparian or Littoral Owner.** The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed, lease, or other grant. (3-29-10)
- 34. Riparian or Littoral Right Lines.** Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline. (4-2-08)
- 35. Side Tie.** Moorage for watercraft where the dock or pier is on only one (1) side of the watercraft. (4-2-08)
- 36. Single-Family Dock.** A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. (4-2-08)
- 37. Slip.** Moorage for boats with pier or dock structures on at least two (2) sides of the moorage. (4-2-08)
- 38. Submerged Lands.** The state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks. (9-13-90)
- 39. Two-Family Dock.** A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line. (4-2-08)
- 40. Upland.** The land bordering on navigable lakes, rivers, and streams. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

020. APPLICATIONS.

- 01. Encroachment Applications.** No person shall hereafter make or cause to be made any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the department. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an encroachment and written approval by the department is required. If demolition is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued. (4-2-08)
- 02. Signature Requirement.** Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock

rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit.

(4-2-08)

03. Other Permits. Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies. (9-13-90)

04. Repairs, Reinstallation of Structures. No permit is required to clean, maintain, or repair an existing permitted encroachment, but a permit is required to completely replace, enlarge, or extend an existing encroachment. Replacement of single-family and two-family docks may not require a permit if they meet the criteria in Section 58-1305(e), Idaho Code. Reinstalling the top or deck of a dock, wharf or similar structure shall be considered a repair; reinstallation of winter damaged or wind and water damaged pilings, docks, or float logs shall be considered a repair. Repairs, or replacements under Section 58-1305(e), Idaho Code, that adversely affect the bed of the lake will be considered a violation of these rules. (4-2-08)()

05. Dock Reconfiguration. (4-2-08)

a. Rearrangement of single-family and two-family docks will require a new application for an encroachment permit. (4-2-08)

b. Rearrangement of community docks and commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal. The department shall be consulted prior to modifications being made, and shall use the following criteria to help determine if a new permit must be submitted: (4-2-08)

i. Overall footprint does not change in dimension or orientation; (4-2-08)

ii. No increase in the square footage, as described in the existing permit and in accordance with Paragraph 015.13.a., occurs. This only applies to community docks; (3-29-10)

iii. The entrances and exits of the facility do not change. (4-2-08)

06. Redredging. Redredging a channel or basin shall be considered a new encroachment and a permit is required unless redredging is specifically authorized by the outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how redredging is addressed in any existing or future permit. (4-2-08)

07. Forms, Filing. Applications must be in writing on forms provided by the Department or copies. Applications and plans shall be filed in the local office of the Department, whose location is available on the internet at www.idl.idaho.gov, or the director's office in Boise, together with filing fees and costs of publication when required by these rules. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. (4-2-08)

a. Plans shall include the following information on paper no larger than eight and one half by fourteen (8 1/2"x14") inches: (4-2-08)

i. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. (4-2-08)

ii. Copy of most recent survey or county plat showing the full extent of the applicant's lot and the adjacent littoral lots. (4-2-08)

iii. Proof of current ownership or control of littoral property or littoral rights. (4-2-08)

iv. A general vicinity map. (4-2-08)

- v. Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake. (4-2-08)
- vi. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. (4-2-08)
- vii. Names and current mailing addresses of adjacent littoral landowners. (4-2-08)
- b.** Applications must be submitted or approved by the littoral owner or, if the encroachment will lie over or upon private lands between the natural or ordinary high water mark and the artificial high water mark, the application must be submitted or approved by the owner of such lands. When the littoral owner is not the applicant, the application shall bear the owner's signature as approving the encroachment prior to filing. (4-2-08)
- c.** If more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of a designated homeowner's or property management association. (4-2-08)
- d.** Applications for noncommercial encroachments intended to improve waterways for navigation, wildlife habitat and other recreational uses by members of the public must be filed by any municipality, county, state, or federal agency, or other entity empowered to make such improvements. Application fees are not required for these encroachments. (4-2-08)
- e.** The following applications shall be accompanied by the respective nonrefundable filing fees together with a deposit toward the cost of newspaper publication, which deposit shall be determined by the director at the time of filing: (4-2-08)
- i. Nonnavigational encroachments require a fee of one thousand dollars (\$1,000); (4-2-08)
- ii. Commercial navigational encroachments require a base fee of two thousand dollars (\$2,000). If the costs of processing an application exceed this amount, then the applicant may be charged additional costs as allowed by Title 58, Chapter 13, Section 58-1307, Idaho Code; (4-2-08)
- iii. Community navigational encroachments require a fee of two thousand dollars (\$2,000); and (4-2-08)
- iv. Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars (\$1,000). (4-2-08)
- f.** Applicants shall pay any balance due on publication costs before written approval will be issued. The Department shall refund any excess at or before final action on the application. (9-13-90)
- g.** Application for a single-family or two-family dock not extending beyond the line of navigability or a nonnavigational encroachment for ~~bank stabilization and erosion control or for fisheries and wildlife habitat improvements~~ a buried or submerged water intake line serving four or less households shall be accompanied by a nonrefundable filing fee of ~~two hundred fifty~~ three hundred dollars (\$~~250~~300). (4-2-08)()
- h.** A nonnavigational encroachment for bank stabilization and erosion control shall be accompanied by a nonrefundable filing fee of five hundred fifty dollars (\$550). ()
- ki.** No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines. (9-13-90)
- ji.** Applications and plans shall be stamped with the date of filing. (7-1-98)
- jk.** Applications that are incomplete, not in the proper form, not containing the required signature(s), or

not accompanied by filing fees and costs of publication when required, shall not be accepted for filing. The department shall send the applicant a written notice of incompleteness with a listing of the application's deficiencies. The applicant will be given thirty (30) days from receipt of the notice of incompleteness to resubmit the required information. The deadline may be extended with written consent of the department. If the given deadline is not met, the department will notify the applicant that the application has been denied due to lack of sufficient information. The applicant may reapply at a later date, but will be required to pay another filing fee and publication fee, if applicable.

(4-2-08)