



Senate Resources and Environment Committee

IDAPA 20.03.04 – Rules for the Regulation of Beds, Waters, and Airspace
Over Navigable Lakes in the State of Idaho

February 6, 2019

Mr. Chairman and members of the Committee, my name is Andrew Smyth. I am the Public Trust Program Manager at the Idaho Department of Lands. Thank you for the opportunity to testify. The Department is seeking your approval of pending rule docket number 20-0304-1801. This is found in your 2019 Pending Rules Review Book, starting on page 111.

I will talk briefly about the Department's authority and the reasons for entering the negotiated rulemaking process. I will then provide a summary of the rulemaking process and finally discuss the pending rule changes themselves.

Upon statehood, Idaho obtained title to the beds and banks of navigable waterways under the Equal Footing Doctrine. The state holds title to these submerged lands in trust for the benefit of its citizens. The Idaho Legislature granted authority to the State Board of Land Commissioners to regulate and control the use and disposition of these lands.

The Department of Lands, as the administrative staff for the Land Board, carries out these duties under the Public Trust Program. Part of managing these lands is administering the Lake Protection Act (Idaho Code Title 58, Chapter 13) and the corresponding administrative rules (IDAPA 20.03.04). These statute and rules require lakefront owners to obtain a permit from the Department prior to placing an encroachment, such as a dock or marina, on a lake.

The Department entered negotiated rulemaking to allow applicants to file their applications electronically, to address complaints regarding height increases of existing permitted boat garages, and to align with other statute and rules.

In June and July, 2018, the Department held four negotiated rulemaking meetings in McCall, Coeur d'Alene, Sandpoint, and Idaho Falls. In addition, the department received two letters. Comments received in opposition to draft rule changes were related to the Department's initial proposal to strike the term 'dock rights'. Based on feedback, the Department did not include this change in the proposed rules and the term 'dock rights' remains intact.

The Department worked with the Office of Administrative Rules to bring incorporations by reference into conformance with the Administrative Procedures Act.

Following publication of the proposed rules, the Department did not receive any comments or objections.



There are six rule sections to be changed.

Section 004 – Incorporation by Reference (page 114)

This section would be updated to incorporate by reference rules of the Idaho Electrical and Plumbing Boards, as well as the Code of Federal Regulations on the United States Aids to Navigation System.

Section 015.05 Encroachment Standards – Boat Garages (page 116)

The rules currently in effect allow existing permitted boat garages to be maintained or replaced at their current size. This proposed change is more specific by allowing existing permitted boat garages to be maintained or replaced at the existing height and at the same square footage of the existing footprint.

Section 015.10 Encroachment Standards – Float Homes (page 117)

To match the incorporation by reference section, this section would be updated to require float homes to meet the Rules Concerning the Idaho State Plumbing Code and the Rules Governing the Use of National Electrical Code.

Section 020.07 – Applications (page 122)

This section would be updated to allow people to file applications for encroachment permits either on paper or electronically.

Section 020.07 – Applications (pages 122 and 123)

This section would be changed to align with statute and clarify that a deposit toward the cost of publication is required with an application for an encroachment permit for bank stabilization projects.

Section 080.02 – Violations – Penalties (page 123)

This rule change provides clarification that notices of noncompliance may be issued to anyone, regardless if they hold a permit or not.

Thank you again for the opportunity to provide testimony, and I'll stand for questions.