

Dear Senators BAIR, SIDDOWNAY, 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 20.03.04 - Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in
the State of Idaho - Proposed Rule (Docket No. 20-0304-1801).

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 09/24/2018. 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 10/23/2018.

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.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

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: September 07, 2018

SUBJECT: Idaho Department of Lands

IDAPA 20.03.04 - Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho - Proposed Rule (Docket No. 20-0304-1801)

Summary and Stated Reasons for the Rule

The Idaho Department of Lands submits notice of proposed rule at IDAPA 20.03.04 - Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho. According to the department, the rulemaking would allow applicants for encroachment permits to submit applications either on paper or electronically, allow existing permitted boat garages to be maintained or replaced at the existing height and at the same square footage of the existing footprint, change references from the 2003 Uniform Plumbing Code and the 2008 National Electrical Code to specified Idaho administrative rules, align the rule with statutory provisions to provide that the publication deposit for applicants for nonnavigational encroachments for bank stabilization and erosion control be submitted with an application to permit riprap, which is the primary form of nonnavigational encroachment for bank stabilization and erosion control used in Idaho, and clarify that the department shall provide notice to anyone who may be in violation of rules, whether they be permittees or non-permittees.

The department has included an incorporation by reference synopsis. The department notes that the Idaho Electrical Board has adopted rules governing the use of the National Electrical Code (NEC), which prescribe which NEC edition is to be administered by the board. The department is proposing to incorporate by reference that rule as opposed to the NEC. In addition, according to the department, the Idaho Plumbing Board has adopted rules concerning the Idaho State Plumbing Code which, instead of incorporating by reference the Uniform Plumbing Code (UPC), incorporates the Idaho State Plumbing Code which is based on the UPC. The department is proposing to incorporate by reference those rules. Finally, the department indicates that the United States Aids to Navigation System was first incorporated by reference in 2008 but was not identified with specificity. The proposed change will include the date when the code, standard or rule was published, approved or became effective.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted. No fiscal impact to the general fund is anticipated.

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
www.legislature.idaho.gov

Statutory Authority

The rulemaking appears to be authorized pursuant to Sections 58-104, 58-105 and 58-1304, Idaho Code.

cc: Idaho Department of Lands
Amy Johnson

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules must 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.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

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

DOCKET NO. 20-0304-1801

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6), 58-105, and 58-1304, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Thursday, September 20, 2018 – 10:00 a.m.

Idaho State Capitol
Room WW55
700 West Jefferson Street
Boise, ID 83702

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

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

Currently, IDAPA 20.03.04.020 requires submission of paper copies of applications for encroachment permits. The Idaho Department of Lands (Department) is developing a web-based portal and information management system that will allow applications to be submitted electronically. The proposed changes would allow applicants to submit applications either on paper or electronically.

Currently, IDAPA 20.03.04.015.05 allows existing permitted boat garages to be maintained or replaced at their current size. The proposed change would allow existing permitted boat garages to be maintained or replaced at the existing height and at the same square footage of the existing footprint.

Currently, IDAPA 20.03.04.015.10 requires float homes to comply with the 2003 Uniform Plumbing Code and the 2008 National Electrical Code. These referenced codes are not current. The Department is proposing to reference IDAPA 07.02.06 and IDAPA 07.01.06 in this paragraph to match the proposed change to the incorporation by reference in IDAPA 20.03.04.004.

Section 58-1306, Idaho Code, requires that a notice of application for nonnavigational encroachments be published in the local newspaper. Section 58-1307, Idaho Code, provides that the applicant is responsible for the cost of publication of the notice. Currently, IDAPA 20.03.04.020 does not indicate the cost of publication is to be paid by the applicant for nonnavigational encroachments for bank stabilization and erosion control. The proposed change would align rule with statute and provide that the publication deposit be submitted with an application to permit riprap, which is the primary form of nonnavigational encroachment for bank stabilization and erosion control used in Idaho.

Currently, IDAPA 20.03.04.080 provides that the Department shall provide permittees with a notice of noncompliance/proposed permit revocation when it has determined the rules have been violated and/or a cause exists for revocation of an encroachment permit. However, non-permittees may be in violation of the rules and should receive notification as well. The proposed change would clarify that the Department shall provide notice to anyone who may be in violation of the rules.

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:

No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

NEGOTIATED RULEMAKING: Negotiated rulemaking was conducted pursuant to Section 67-5220(1), Idaho Code. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin **Volume 18-6, Page 84**.

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:

Currently, IDAPA 20.03.04.004.01 incorporates by reference the 2008 National Electric Code (NEC). Since 2008, the NEC has been updated three times (2011, 2014, and 2017). Furthermore, the Idaho Electrical Board has adopted IDAPA 07.01.06, the Rules Governing the Use of National Electrical Code, which prescribe which NEC edition is to be administered by the Idaho Electrical Board and identifies certain amendments to the NEC. In order to align with the Idaho Electric Board, the Idaho Department of Lands is proposing to incorporate by reference IDAPA 07.01.06, as opposed to the NEC.

Currently, IDAPA 20.03.04.004.02 incorporates by reference the 2003 Uniform Plumbing Code (UPC). Since 2003, the UPC has been updated five times (2006, 2009, 2012, 2015, and 2018). Furthermore, the Idaho Plumbing Board has adopted IDAPA 07.02.06, the Rules Concerning Idaho State Plumbing Code, which—instead of incorporating by reference the UPC—incorporates the Idaho State Plumbing Code, which is based on the UPC. In order to align with the Idaho Plumbing Board, the Idaho Department of Lands is proposing to incorporate by reference IDAPA 07.02.06, as opposed to the UPC.

The United States Aids to Navigation System was first incorporated by reference in IDAPA 20.03.04 in 2008; however, this incorporated material was not identified with specificity and will now include the date when the code, standard or rule was published, approved or became effective as required by Idaho Code § 67-5229(3). The United States Aids to Navigation System is found in 33 CFR Part 62. Since 2008, two sections have been modified, both in 2015:

1. Section 62.21(c) was modified to reflect discontinuation of print publication of Light List, United States Coast Pilot, Local Notices to Mariners, and Notice to Mariners, in favor of electronic-only publication.
2. § 62.52 Automatic Identification System Aids to Navigation (AIS AtoN) was added, reading:
 - (a) Aids to Navigation (AtoN) may be enhanced by the use of an automatic identification system (AIS). AIS is a maritime navigation safety communications protocol standardized by the International Telecommunication Union and adopted by the International Maritime Organization for the broadcast or exchange of navigation information between vessels, aircraft, and shore stations. AIS AtoN can autonomously and at fixed intervals broadcast the name, position, dimensions, type, characteristics and status from or concerning an aid to navigation.
 - (b) AIS AtoN can be either real (physically fitted to the AtoN), synthetic (physically fitted somewhere other than to the AtoN) or virtual (physically nonexistent, but capable of being portrayed on AIS-capable displays).
 - (c) AIS AtoN can also be used to broadcast both laterally (e.g., Port Hand Mark) and non-laterally significant marine safety information (e.g., environmental data, tidal information, and navigation warnings).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Andrew Smyth, Public Trust Program Manager, at (208) 334-0248.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

Dated this 5th day of September, 2018.

Andrew Smyth, Public Trust Program Manager
Resource Protection and Assistance
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, ID 83720-0050
Phone: (208) 334-0248
Fax: (208) 769-3698

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0304-1801
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (4-2-08)

01. ~~2008 National Electrical Code~~ IDAPA 07.01.06, “Rules Governing the Use of National Electrical Code” revised as of March 29, 2017. ~~The 2008 National Electrical Code is available at the office of the Division of Building Safety at 1090 E. Watertower St., Meridian, Idaho 83642~~ IDAPA 07.01.06 is available at <https://adminrules.idaho.gov/rules/current/07/070106.pdf>. (3-29-10)()

02. ~~2003 Uniform Plumbing Code~~ IDAPA 07.02.06, “Rules Concerning Idaho State Plumbing Code” revised as of March 29, 2017. ~~The 2003 Uniform Plumbing Code is available at the Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642; and at the Division of Building Safety, 1250 Ironwood Dr., Ste. 220, Coeur d’Alene, Idaho 83814~~ This rule is available at <https://adminrules.idaho.gov/rules/current/07/070206.pdf>. (3-29-10)()

03. ~~United States Aid to Navigation System~~ 33 CFR Part 62, revised as of July 27, 2015 (United States Aids to Navigation System). ~~Prepared by the United States Coast Guard and available on the Internet at <http://www.uscgboating.org/safety/aton/system.htm>~~ The Electronic Code of Federal Regulations (eCFR) is available at <http://www.ecfr.gov/cgi-bin/ECFR>. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

015. ENCROACHMENT STANDARDS.

01. Single-Family and Two-Family Docks. The following parameters govern the size and dimensions of single-family docks and two-family docks. (7-1-98)

a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width, excluding the slip cut out. (4-2-08)

b. Total surface decking area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and shall not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. (4-2-08)

c. No portion of the docking facility shall extend beyond the line of navigability. Shorter docks are

encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of navigability. (3-29-10)

d. A variance to the standards contained in Subsection 015.01 of these rules may be approved by the department where it can be justified by site specific considerations such as the distance to the established line of navigability. (3-29-10)

02. Community Docks. (7-1-98)

a. A community dock shall be considered a commercial navigational aid for purposes of processing the application. (4-2-08)

b. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the department. (4-2-08)

c. A community dock shall not have less than fifty (50) feet combined shoreline frontage. Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock shall be limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. (4-2-08)

d. If a breakwater will be incorporated into the structure of a dock, and a need for the breakwater can be demonstrated, the department may allow the surface decking area to exceed the size limitations of Paragraph 015.02.c of these rules. (4-2-08)

e. A person with an existing community dock that desires to change the facility to a commercial marina must submit the following information to the department: (4-2-08)

i. A new application for an encroachment permit. (4-2-08)

ii. Text and drawings that describe which moorage will be public and which moorage will be private. (4-2-08)

03. Commercial Marina. (4-2-08)

a. Commercial marinas must have a minimum of fifty percent (50%) of their moorage available for use by the general public on either a first come, first served basis for free or rent, or a rent or lease agreement for a period of time up to one (1) year. Moorage contracts may be renewed annually, so long as a renewal term does not exceed one (1) year. Moorage for use by the general public may not include conditions that result in a transfer of ownership of moorage or real property, or require membership in a club or organization. (3-29-10)

b. Commercial marinas that are converted to a community dock must conform to all the community dock standards, including frontage requirements and square footage restrictions. This change of use must be approved by the department through a new encroachment permit prior to implementing the change. (3-29-10)

c. If local city or county ordinances governing parking requirements for marinas have not been adopted, commercial marinas must provide a minimum of upland vehicle parking equivalent to one (1) parking space per two (2) public watercraft or float home moorages. If private moorage is tied to specific parking spaces or designated parking areas, then one (1) parking space per one (1) private watercraft or float home moorage shall be provided. In the event of conflict, the local ordinances shall prevail. (3-29-10)

d. If a commercial marina can be accessed from a road, marina customers must be allowed access via that road. (4-2-08)

e. Moorage that is not available for public use as described in Paragraph 015.03.a. of these rules is private moorage. (3-29-10)

f. When calculating the moorage percentage, the amount of public moorage shall be compared to the amount of private moorage. Commercial marinas with private float home moorage shall be required to provide either non-private float home moorage or two (2) public use boat moorages for every private float home moorage in addition to any other required public use boat moorages. (4-2-08)

g. When private moorage is permitted, the public moorage must be of similar size and quality as private moorage, except for float home moorage as provided in Paragraph 015.03.f. of these rules. (3-29-10)

h. Commercial marinas with private moorage must form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present. This entity is responsible for obtaining and maintaining an encroachment permit under these rules and a submerged lands lease under IDAPA 20.03.17, "Rules Governing Leases on State-Owned Submerged lands and Formerly Submerged Lands." (4-2-08)

i. Existing commercial marinas that desire to change their operations and convert some of their moorage to private use must keep at least fifty percent (50%) of their moorage available for use by the general public. This change in operations must be approved by the department through a new encroachment permit prior to implementation of the change. The permit application shall describe, in text and in drawings, which moorage will be public and which moorage will be private. (4-2-08)

04. Covered Slip. (4-2-08)

a. Covered slips, regardless of when constructed, may not have a temporary or permanent residential area. (4-2-08)

b. Slip covers should have colors that blend with the natural surroundings and are approved by the department. (4-2-08)

c. Covered slips may not be supported by extra piling nor constructed with hard roofs. (3-29-10)

d. Slip covers with permanent roofs and up to three (3) walls may be maintained or replaced at their current size if they were previously permitted or if they were constructed prior to January 1, 1975. These structures may not be expanded nor converted to boat garages. (3-29-10)

e. Fabric covered slips must be constructed as canopies without sides unless the following standards are followed: (4-2-08)

i. At least two (2) feet of open space is left between the bottom of the cover and the dock or pier surface; and (4-2-08)

ii. Fabric for canopy and sides will transmit at least seventy-five percent (75%) of the natural light. (4-2-08)

05. Boat Garage. (4-2-08)

a. Boat garages are considered nonnavigational encroachments. (4-2-08)

b. Applications for permits to construct new boat garages, ~~or to~~ expand the total square footage of the existing footprint, or raise the height will not be accepted unless the application is to support local emergency services. (4-2-08)()

c. Existing permitted boat garages may be maintained or replaced ~~at their~~ with the current ~~size square~~ footage of their existing footprint and height. (4-2-08)()

d. Relocation of an existing boat garage will require a permit. (4-2-08)

06. Breakwaters. Breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need, provided, however that this shall not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave, or ice damage, or used to control traffic in busy areas of lakes. The breakwater shall be designed to counter wave actions of known wave heights and wave lengths. (4-2-08)

07. Seawalls. Seawalls should be placed at or above the ordinary high water mark, or the artificial high water mark, if applicable. Seawalls are not an aid to navigation, and placement waterward of the ordinary or artificial high water mark will generally not be allowed. (4-2-08)

08. Riprap. (4-2-08)

a. Riprap used to stabilize shorelines will consist of rock that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock shall be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap shall overlie a distinct filter layer which consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer shall be keyed into the bed below the ordinary or artificial high water mark, as applicable. If the applicant wishes to install riprap with different standards, they must submit a design that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho. (4-2-08)

b. Riprap used to protect the base of a seawall or other vertical walls may not need to be keyed into the bed and may not require a filter layer, at the department's discretion. (4-2-08)

09. Mooring Buoys. Buoys shall be installed a minimum of thirty (30) feet away from littoral right lines of adjacent littoral owners. One (1) mooring buoy per littoral owner shall be allowed. (4-2-08)

10. Float Homes. (4-2-08)

a. Applications for permits to construct new float homes, or to expand the total square footage of the existing footprint, will not be accepted. (4-2-08)

b. Applications for relocation of float homes within a lake or from one (1) lake to another shall be subject to the following requirements: (4-2-08)

i. Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the Department. (7-1-98)

ii. The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Environmental Quality or the appropriate local health authority. Applicant must either obtain a letter from the local sewer district stating that the district will serve the float home or demonstrate that sewage will be appropriately handled and treated. Applicant must also provide a statement from a professional plumber licensed in the state of Idaho that the plumbing was designed ~~according to the 2003 Uniform Plumbing Code~~ in accordance with IDAPA 07.02.06, "Rules Concerning the Idaho State Plumbing Code," as incorporated by reference in Subsection 004.02 of these rules, installed properly, and has been pressure tested. (3-29-10)()

c. Encroachment applications and approved local permits are required for replacement of, or adding another story to, a float home. (4-2-08)

d. All plumbing ~~and electrical~~ work on float homes must be done in accordance with ~~the 2003 Uniform Plumbing Code and the 2008 National Electrical Code~~ IDAPA 07.02.06, "Rules Concerning the Idaho State Plumbing Code" and IDAPA 07.01.06, "Rules Governing the Use of National Electrical Code," as incorporated by reference in Section 004 of these rules. (3-29-10)()

e. All float homes in Idaho that connect with upland sewer or septic systems must implement the following standards by December 31, 2012: (3-29-10)

i. The holding tank with pump or grinder unit shall be adequately sealed to prevent material from escaping and to prevent lake water from entering. The tank lid shall have a gasket or seal, and the lid shall be securely fastened at all times unless the system is being repaired or maintained. An audible overflow alarm shall also be installed. (3-29-10)

ii. Grinders or solids handling pumps shall be used to move sewage from the float home to the upland system. (3-29-10)

iii. If solids handling pumps are used, they shall have a minimum two (2) inch interior diameter discharge, and the pipe to the shoreline shall also have a minimum two (2) inch interior diameter. Connectors used on either end of this pipe shall not significantly reduce the interior diameter. (3-29-10)

iv. The pipeline from the float home to the shoreline shall be a continuous line with no mechanical connections. Check valves and manual shutoff valves shall be installed at each end of the line. Butt fused HDPE, two hundred (200) psi black polyethylene pipe, or materials with similar properties shall be used. The pipeline shall contain sufficient slack to account for the maximum expected rise and fall of the lake or river level. The pipeline shall be buried in the lakebed for freeze protection where it will be exposed during periods of low water. Pipelines on the bed of the lake shall be appropriately located and anchored so they will not unduly interfere with navigation or other lake related uses. (3-29-10)

v. Manifolds below the ordinary, or artificial if applicable, high water mark that collect two (2) or more sewer lines and then route the discharge to the shore through a single pipe are not allowed. All float homes must have an individual sewer line from the float home to a facility on the shore. (3-29-10)

f. All float home permittees will have their float homes inspected by a professional plumber licensed in the state of Idaho by December 31, 2012. The inspection will be documented with a report prepared by the inspector. The report will document whether or not the float homes meet the standards in Paragraph 015.10.e. of these rules, and will be provided to the department before the above date. (3-29-10)

g. A float home permittee must request an extension, and give cause for the extension, if their float home does not meet the standards in paragraph 015.01.e. of these rules by December 31, 2012. Extensions beyond December 31, 2016 will not be allowed. A permittee's failure to either request the extension, if needed, or to meet the December 31, 2016 deadline will be a violation subject to the provisions of Section 080 of these rules. (3-29-10)

h. Construction or remodel work on a float home that costs fifty percent (50%) or more of its assessed value will require an encroachment application and construction drawings stamped by an engineer licensed in the state of Idaho. (3-29-10)

11. Excavated or Dredged Channel. (4-2-08)

a. Excavating, dredging, or redredging channels shall require an encroachment permit and shall be processed in accordance with Section 030 of these rules. (4-2-08)

b. An excavated or dredged channel or basin to provide access to navigable waters must have a clear environmental, economic, or social benefit to the people of the state, and shall not result in any appreciable environmental degradation. A channel or basin shall not be approved if the cumulative effects of these features in the same navigable lake would be adverse to fisheries or water quality. (3-29-10)

c. Whenever practical, such channels or basins shall be located to serve more than one (1) littoral owner or a commercial marina; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonlittoral owners. (3-29-10)

12. ATONs. Aids to Navigation will conform to the requirements established by the United States Aid to Navigation system. (4-2-08)

13. General Encroachment Standards. (4-2-08)

- a.** Square Footage. The square footage limitations in Subsections 015.01 and 015.02 include all structures beyond the ordinary or artificial high water mark such as the approach, ramp, pier, dock, and all other floating or suspended structures that cover the lake surface, except for: (3-29-10)
- i. Boat lifts as allowed pursuant to Paragraph 015.13.b. (3-29-10)
 - ii. Jet ski ramp, port, or lift as allowed pursuant to Paragraph 015.13.b. (3-29-10)
 - iii. Slip covers. (4-2-08)
 - iv. Undecked portions of breakwaters. (4-2-08)
- b.** Boat Lifts and Jet Ski Lifts. (4-2-08)
- i. Single-family docks are allowed a single boat lift and two (2) jet ski lifts, or two (2) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)
 - ii. Two-family docks are allowed two (2) boat lifts and four (4) jet ski lifts, or four (4) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)
 - iii. A boat lift or jet ski lift within lines drawn perpendicular from the shore to the outside dock edges will not require a separate permit if the lift is outside the ten (10) foot adjacent littoral owner setback, the lift does not extend beyond the line of navigability, and the lift does not count toward the square footage of the dock as outlined in Subparagraphs 015.13.b.i. and 015.13.b.ii. The permittee shall send a revised permit drawing with the lift location as an application to the department. If the lift meets the above conditions, the application shall be approved as submitted. Future applications shall include the lifts. (3-29-10)
 - iv. Community docks are allowed one (1) boat lift or two (2) jet ski lifts per moorage. Boat lifts placed outside of a slip shall be oriented with the long axis parallel to the dock structure. Additional lifts will require that fifty percent (50%) of their footprint be included in the allowable square footage of the dock or pier as per Subsection 015.02. (3-29-10)
- c.** Angle from Shoreline. (4-2-08)
- i. Where feasible, all docks, piers, or similar structures shall be constructed so as to protrude as nearly as possible at right angles to the general shoreline, lessening the potential for infringement on adjacent littoral rights. (4-2-08)
 - ii. Where it is not feasible to place docks at right angles to the general shoreline, the department shall work with the applicant to review and approve the applicant's proposed configuration and location of the dock and the dock's angle from shore. (4-2-08)
- d.** Length of Community Docks and Commercial Navigational Encroachments. Docks, piers, or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, designate a line of navigability for the purpose of effective administration of these rules. (4-2-08)
- e.** Presumed Adverse Effect. It will be presumed, subject to rebuttal, that single-family and two-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet from adjacent littoral right lines, and that commercial navigational encroachments, community docks or

nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. Written consent of the adjacent littoral owner or owners will automatically rebut the presumption. All boat lifts and other structures attached to the encroachments shall be subject to the above presumptions of adverse affects. (4-2-08)

f. Weather Conditions. Encroachments and their building materials shall be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures shall be adequately secured to pilings or anchors to prevent displacement due to ice, wind, and waves. Flotation devices for docks, float homes, etc. shall be reasonably resistant to puncture and other damage. (4-2-08)

g. Markers. If the department determines that an encroachment is not of sufficient size to be readily seen or which poses a hazard to navigation, the permit shall specify that aids to navigation be used to clearly identify the potential hazard. (4-2-08)

h. Overhead Clearance. (4-2-08)

i. Overhead clearance between the natural or ordinary high water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the encroachment. In no case will the clearance be required to exceed thirty (30) feet unless the department determines after public hearing that it is in the overall public interest that the clearance be in excess of thirty (30) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The department shall specify in the permit the amount of overhead clearance and markings required. (4-2-08)

ii. When the permit provides for overhead clearance or safety markings under Paragraph 015.13.h., the department shall consider the applicable requirements of the United States Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state, or local regulations. (4-2-08)

i. Beaded Foam Flotation. Beaded foam flotation shall be completely encased in a manner that will maintain the structural integrity of the foam. The encasement shall be resistant to the entry of rodents. (4-2-08)

14. Floating Toys. (3-29-10)

a. Encroachment permits are not required for floating toys, except where noted in Paragraph 015.14.b. Counties and cities may regulate floating toys for public safety and related concerns. (3-29-10)

b. A floating toy becomes a nonnavigational encroachment, and an encroachment permit is required, when one (1) of the following occurs: (3-29-10)

i. It is anchored to the bed of the lake with a device that requires equipment to remove it from the bed of the lake, or; (3-29-10)

ii. It is located waterward of the line of navigability for more than twenty-four (24) consecutive hours. (3-29-10)

15. Lake Specific Encroachment Permit Terms. (3-29-10)

a. The department may use encroachment permit conditions specific to individual lakes if the permit conditions are needed to protect public trust values and the permit condition is approved by the Land Board. (3-29-10)

b. Lake specific encroachment permit conditions may supplement, negate, or alter encroachment standards established in Section 015 of these rules. (3-29-10)

c. Lake specific encroachment permit conditions shall be used to assist with implementing lake

management plans authorized by Title 39, Chapter 66, Idaho Code; Title 39, Chapter 85, Idaho Code; Title 67, Chapter 43, Idaho Code; and Title 70, Chapter 2, Idaho Code. The purpose for using such lake specific permit conditions is to address lake specific environmental concerns that require attention and create a need for a variance from what is allowed on other lakes. (3-29-10)

d. Lake specific encroachment permit terms may be read at the Idaho Department of Lands website: <http://www.idl.idaho.gov/>. (3-29-10)

016. -- 019. (RESERVED)

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. (4-7-11)

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 dredging is specifically authorized by the outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how dredging 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,~~ **on forms provided by the Department** 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~~ **at a scale sufficient to show the information requested:** (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); **except that nonnavigational encroachments for bank stabilization and erosion control require a fee of five hundred fifty dollars (\$550).** (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 a buried or submerged water intake line serving four or less households shall be accompanied by a nonrefundable filing fee of three hundred dollars (\$300). (4-7-11)
- ~~h. A nonnavigational encroachment for bank stabilization and erosion control shall be accompanied by a nonrefundable filing fee of five hundred fifty dollars (\$550). (4-7-11)~~
- ~~i. 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)
- ~~kj. 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)~~

(BREAK IN CONTINUITY OF SECTIONS)

080. VIOLATIONS - PENALTIES.

01. Cease and Desist Order. When the department determines that a violation of these rules is occurring due to the ongoing construction of an unauthorized encroachment or an unauthorized modification of a permitted encroachment, it may provide the landowner, contractor, or permittee with a written cease and desist order that shall consist of a short and plain statement of what the violation is, the pertinent legal authority, and how the violation may be rectified. This order will be served by personal service or certified mail. The cease and desist order shall be used to maintain the status quo pending formal proceedings by the department to rectify the violation. (4-2-08)

02. Notice of Noncompliance/Proposed Permit Revocation. When the department determines that these rules have been violated, a cause exists for revocation of a lake encroachment permit, or both of these have occurred, it shall provide the permittee or offending person with a notice of noncompliance/proposed permit revocation that shall consist of a short and plain statement of the violation including any pertinent legal authority. This notice shall also inform the permittee or offending person of what steps are needed to either bring the encroachment into compliance, if possible, or avoid revocation, or both. (4-2-08)()

03. Noncompliance Resolution. The department will attempt to resolve all noncompliance issues through conference with the permittee or other involved party. Any period set by the parties for correction of a violation shall be binding. If the department is unsuccessful in resolving the violations, then the department may pursue other remedies under Section 080 of these rules. (4-2-08)

04. Violations. The following acts or omissions shall subject a person to a civil penalty as allowed by Title 58, Chapter 13, Section 58-1308, Idaho Code: (4-2-08)

a. A violation of the provisions of Title 58, Chapter 13, Idaho Code, or of the rules and general orders adopted thereunder and applicable to navigable lakes; (4-2-08)

b. A violation of any special order of the director applicable to a navigable lake; or (4-2-08)

c. Refusal to cease and desist from any violation in regards to a navigable lake after having received a written cease and desist order from the department by personal service or certified mail, within the time provided in the notice, or within thirty (30) days of service of such notice if no time is provided. (4-2-08)

d. Willfully and knowingly falsifying any records, plans, information, or other data required by these rules. (4-2-08)

e. Violating the terms of an encroachment permit. (4-2-08)

05. Injunctions, Damages. The Board expressly reserves the right, through the director, to seek injunctive relief under Title 58, Chapter 13, Section 58-1308, Idaho Code and mitigation of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties provided for in Subsection 080.04 of these rules. (4-2-08)

06. Mitigation, Restoration. The board expressly reserves the right, through the director, to require mitigation and restoration of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties and injunctive relief provided for in Subsections 080.04 and 080.05 of these rules. The department may consult with other state agencies to determine the appropriate type and amount of mitigation and restoration required. (4-2-08)

07. Revocation of Lake Encroachment Permits. (4-2-08)

a. The department may institute an administrative action to revoke a lake encroachment permit for violation of the conditions of a permit, or for any other reason authorized by law. All such proceedings shall be conducted as contested case hearings subject to the provisions of Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01, "Rules of Practice and Procedure before the State Board of Land Commissioners." (4-2-08)

b. A hearing officer appointed to conduct the revocation hearing shall prepare recommended findings of fact and conclusions of law and forward them to the director for final adoption or rejection. (4-2-08)

c. An aggrieved party who appeared and testified at a hearing shall have the right to have the proceedings and final decision of the director reviewed by the district court of the county in which the violation or revocation occurred by filing a notice of appeal within twenty-eight (28) days from the date of the final decision. (4-2-08)

INCORPORATION BY REFERENCE SYNOPSIS

In compliance with Section 67-5223(4), Idaho Code, the following is a synopsis of the differences between the materials previously incorporated by reference in this rule that are currently of full force and effect and newly revised or amended versions of these same materials that are being proposed for incorporation by reference under this rulemaking.

The following agency of the state of Idaho has prepared this synopsis as part of the proposed rulemaking for the chapter cited here under the docket number specified:

IDAHO DEPARTMENT OF LANDS
IDAPA 20.03.04 - Rules Governing. . .
Proposed Rulemaking - Docket No. 20-0304-1801

IDAPA 07.01.06, Rules Governing the Use of National Electrical Code

Currently, IDAPA 20.03.04.004.01 incorporates by reference the 2008 National Electric Code (NEC). Since 2008, the NEC has been updated three times (2011, 2014, and 2017). Furthermore, the Idaho Electrical Board has adopted IDAPA 07.01.06, the Rules Governing the Use of National Electrical Code, which prescribe which NEC edition is to be administered by the Idaho Electrical Board and identifies certain amendments to the NEC. In order to align with the Idaho Electric Board, the Idaho Department of Lands is proposing to incorporate by reference IDAPA 07.01.06, as opposed to the NEC.

IDAPA 07.02.06, Rules Concerning Idaho State Plumbing Code

Currently, IDAPA 20.03.04.004.02 incorporates by reference the 2003 Uniform Plumbing Code (UPC). Since 2003, the UPC has been updated five times (2006, 2009, 2012, 2015, and 2018). Furthermore, the Idaho Plumbing Board has adopted IDAPA 07.02.06, the Rules Concerning Idaho State Plumbing Code, which—instead of incorporating by reference the UPC—incorporates the Idaho State Plumbing Code, which is based on the UPC. In order to align with the Idaho Plumbing Board, the Idaho Department of Lands is proposing to incorporate by reference IDAPA 07.02.06, as opposed to the UPC.

33 CFR Part 62, revised as of July 27, 2015

The United States Aids to Navigation System was first incorporated by reference in IDAPA 20.03.04 in 2008; however, this incorporated material was not identified with specificity and will now include the date when the code, standard or rule was published, approved or became effective as required by Idaho Code § 67-5229(3).

The United States Aids to Navigation System is found in 33 CFR Part 62. Since 2008, two sections have been modified, both in 2015:

1. Section 62.21(c) was modified to reflect discontinuation of print publication of Light List, United States Coast Pilot, Local Notices to Mariners, and Notice to Mariners, in favor of electronic-only publication.
2. § 62.52 Automatic Identification System Aids to Navigation (AIS AtoN) was added, reading:
 - (a) Aids to Navigation (AtoN) may be enhanced by the use of an automatic identification system (AIS). AIS is a maritime navigation safety communications protocol standardized by the International Telecommunication Union and adopted by the International Maritime Organization for the broadcast or exchange of navigation information between vessels, aircraft, and shore stations. AIS AtoN can autonomously and at fixed intervals broadcast the name, position, dimensions, type, characteristics and status from or concerning an aid to navigation.
 - (b) AIS AtoN can be either real (physically fitted to the AtoN), synthetic (physically fitted somewhere other than to the AtoN) or virtual (physically nonexistent, but capable of being portrayed on AIS-capable displays).
 - (c) AIS AtoN can also be used to broadcast both laterally (e.g., Port Hand Mark) and non-laterally significant marine safety information (e.g., environmental data, tidal information, and navigation warnings).