

## IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

### 37.01.01 – RULES OF PROCEDURE OF THE IDAHO DEPARTMENT OF WATER RESOURCES AND IDAHO WATER RESOURCE BOARD

DOCKET NO. 37-0101-2101 (NEW CHAPTER)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2022 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 42-1701A(1), 42-1734(19), 42-1805(8), and 67-5206(5), Idaho Code.

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

This chapter sets forth procedural requirements for contested case proceedings before the Idaho Department of Water Resources and Idaho Water Resource Board. Allowance for electronic filing with the agencies was inadvertently left out of the proposed rule text of Rule 53.04. As a result, the rule was amended to include parameters for both electronic service between parties and electronic filing with the agencies. The change represents the general intent and shift to electronic filing expressed throughout the pending procedural rules.

The text of the pending fee rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 6, 2021, Idaho Administrative Bulletin, [Vol. 21-10, pages 86-105](#).

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

Fees relevant to the pending rule are set forth at Idaho Code § 42-221. This rulemaking does not impose new fees or increase any already-established statutory fees.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending fee rule, contact Mathew Weaver at [mathew.weaver@idwr.idaho.gov](mailto:mathew.weaver@idwr.idaho.gov), (208) 287-4800.

DATED this 4th day of November, 2021.

Gary Spackman, Director  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720  
Boise, ID 83720  
Phone: (208) 287-4800

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 42-1701A(1), 42-1734(19), 42-1805(8), and 67-5206(5), 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, 2021.

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 non-technical explanation of the substance and purpose of the proposed rule:

The Idaho Department of Water Resources (IDWR) and the Idaho Water Resource Board (IWRB) (the “Agencies”) initiated this rulemaking in compliance with [Executive Order No. 2020-01](#), Zero-Based Regulation (ZBR) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at [https://adminrules.idaho.gov/forms\\_menu.html](https://adminrules.idaho.gov/forms_menu.html). This rule chapter was scheduled for review in 2021.

With this Notice, the Agencies propose a new chapter of procedural rules. The new chapter is approximately 30% shorter than the existing chapter of procedural rules as a result of both internal agency analysis and external stakeholder negotiation, commentary, and editing. This reduction comes through a combination of: (a) removal of obsolete provisions (such as outdated references and processes for electronic signature); (b) the removal of Idaho Administrative Procedures Act provisions inapplicable to contested cases before the Agencies; and (c) a complete overhaul of the contested case process (including the condensing and use of plain language to describe intra-agency appeals, filing and service, and informal versus formal proceedings). Definitions previously spread throughout the rule chapter have been clarified and centralized in the definitional section. Distinctions between agency head, presiding officers, and hearing officers have been delineated and clarified. Updates have also been made to comply with the Agencies' understanding of current Idaho law (including clarification of party representation and administrative exhaustion). The following processes have also been more clearly defined and described: petitions for reconsideration, exceptions to final orders, contents of motions and pleadings, intervention versus protestation, and ex parte communications. The Agencies also propose to rename the rule chapter the “Rules of Procedure of the Idaho Department of Water Resources and Idaho Water Resource Board” to clarify that the chapter applies to both Agencies. The new proposed rule also recognizes electronic filing and service in many instances (both by email and through IDWR’s website).

Pursuant to the ZBR process, this Notice represents the promulgation of a new rule chapter. As a result, the proposed rule does not contain strike-out/underline text in legislative format. The old rule has been repealed and replaced in its entirety. However, the development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: <https://idwr.idaho.gov/legal-actions/rules/procedure-rules.html>. At the same website, the Agencies also developed and provided two exhaustive response documents, which provide the Agencies’ responses to each substantive comment received through the negotiated rulemaking process.

Citizens of the state of Idaho, the Idaho Water Bar and other attorneys and judges, water users, governmental agencies, and environmental groups may be interested in commenting on the proposed rule text. After consideration of public comments received in response to this Proposed Rule, the Agencies will present the final rule text to the Idaho Legislature in December of 2021.

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

Fees relevant to the proposed rule are set forth at Section 42-221, Idaho Code. This rulemaking does not impose new fees or increase any already-established statutory fees.

**FISCAL IMPACT STATEMENT:** 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: NA

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 7, 2021, Idaho Administrative Bulletin, [Vol. 21-4, pages 51-52](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning this proposed rulemaking, contact Mathew Weaver at [mathew.weaver@idwr.idaho.gov](mailto:mathew.weaver@idwr.idaho.gov), (208) 287-4800.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before October 27, 2021.

Dated this 30th day of August, 2021.

**Substantive changes have been made to the pending rule.**  
*Italicized red text* indicates changes between the text of the proposed rule as adopted in the pending rule.

**THE FOLLOWING IS THE TEXT OF PENDING FEE DOCKET NO. 37-0101-2101**

### **37.01.01 – RULES OF PROCEDURE OF THE IDAHO DEPARTMENT OF WATER RESOURCES AND THE WATER RESOURCE BOARD**

#### **000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Sections 42-1701A(1), 42-1734(19), 42-1737(c), 42-1805(8), and 67-5206(5), Idaho Code. ( )

#### **001. SCOPE.**

This chapter contains the rules of procedure that govern contested case proceedings before the Idaho Department of Water Resources and the Idaho Water Resource Board. These rules do not apply to enforcement actions under Section 42-1701B, Idaho Code. ( )

#### **002. DEFINITIONS.**

**01. Agency.** The Idaho Department of Water Resources or the Idaho Water Resource Board acting within their respective authority to determine contested cases. The term “agency” may include the Director of the

Department, members of the Board, employees of the Department or Board, and any duly appointed hearing officers. ( )

**02. Agency Action.** Agency action means: ( )

**a.** The whole or part of an order; ( )

**b.** The failure to issue an order; or ( )

**c.** An agency’s performance of, or failure to perform, any duty placed on it by law. ( )

**03. Agency Head.** The Board or Director of the Department. ( )

**04. Board.** The Idaho Water Resource Board. ( )

**05. Contested Case.** A formal or informal proceeding which results in the issuance of an order. ( )

**06. Department.** The Idaho Department of Water Resources. ( )

**07. Director.** The director of the Idaho Department of Water Resources. ( )

**08. Exceptions.** A petition asking the agency head to review a recommended or preliminary order. ( )

**09. Hearing Officer.** A hearing officer is a person other than the agency head appointed to preside over a formal proceeding in a contested case on behalf of the agency. Agency heads are not hearing officers, even if they are presiding at contested cases. The term “hearing officer” as used in these rules refers only to officers subordinate to the agency head. ( )

**10. License.** The whole or part of any agency permit, license, approval, or similar form of authorization required by law, but does not include a license required solely for revenue purposes. ( )

**11. Order.** An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. ( )

**12. Party.** Each person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, including an applicant, petitioner, respondent, protestant or intervenor. ( )

**13. Person.** Any individual, partnership, corporation, association, governmental subdivision, or public or private organization or entity of any character. ( )

**14. Petition.** A pleading requesting a modification, amendment or stay of an existing order of the agency, the clarification, declaration or construction of the law administered by the agency, the clarification, declaration or construction of a person’s rights or obligations under law administered by the agency, rehearing of a contested case, or intervention, or to otherwise request the agency take action that will result in the issuance of an order. ( )

**15. Presiding Officer.** One (1) or more members of the Board, the Director, or duly appointed hearing officer presiding over a formal proceeding as authorized by statute or rule. When more than one (1) member of the Board conducts a formal proceeding, they may all jointly be presiding officers or may designate one (1) of them to be the presiding officer. ( )

**16. Protest.** A pleading opposing or seeking to alter the outcome of an application. ( )

**17. Response.** A pleading responding to a motion or petition. ( )

**003. -- 049. (RESERVED)**

**050. PROCEEDINGS GOVERNED.**

These rules govern contested cases before the Department and the Board, unless otherwise provided by order of the agency. The Department and the Board through the promulgation of these rules decline to adopt in whole the contested case portions of the “Idaho Rules of Administrative Procedure of the Attorney General,” IDAPA 04.11.01.100 through 04.11.01.799. However, the majority of the rules adopted here are consistent with the provisions of the Attorney General Rules. Certain provisions of the Attorney General Rules are not adopted or are modified to reflect both the statutory authority of and administrative practice before the Department and the Board. Rulemaking before the Department and the Board is governed by the Attorney General Rules, at IDAPA 04.11.01.05 and 04.11.01.800 through 860. ( )

**051. LIBERAL CONSTRUCTION.**

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

**052. IDENTIFICATION OF CASE.**

Communications pertaining to a contested case before the agency should include a reference to the case number or case name. ( )

**053. FILING AND SERVICE OF DOCUMENTS.**

**01. Filing of Documents with the Agency.** ( )

**a.** Documents may be filed with the agency by mail or personal delivery to the Department’s main office or any of the Department’s regional or field offices. See <https://idwr.idaho.gov/contact-us.html> for address and contact information. The agency will not accept filings by facsimile. A document sent by mail is considered filed on the date received by the agency. A document required to be accompanied by a filing fee is not considered filed with the agency until the fee is received. ( )

**b.** Documents may be filed by email as an alternative to filing by mail or personal delivery, at the following email address: [file@idwr.idaho.gov](mailto:file@idwr.idaho.gov). For purposes of filing by email, a “day” begins at 12:01 a.m. and ends at midnight, Mountain Time. Unless otherwise provided by statute, rule, order or notice, a document is considered filed on the day the email is sent if done so before midnight, Mountain Time, unless that date is a Saturday, Sunday or legal holiday, in which case it is deemed filed on the next available business day. Documents filed by email shall include the case number or, if none, other identifying information in the email caption. A document required to be accompanied by a filing fee is not considered filed with the agency until the fee is received. ( )

**c.** If the Department establishes an online process for filing specific applications or notices, filings may occur through the specific online data submittal portal. ( )

**02. Service on Parties and Other Persons.** ( )

**a.** All documents filed with the agency must be sent by mail or delivered personally to the representatives of each party concurrently with filing the original with the agency. ( )

**b.** If authorized by the presiding officer, documents that must be sent by mail or delivered personally to the representatives of each party may be served by email as an alternative to service by mail or personal service. It is not necessary to serve copies by mail or personal service if service is completed by email. ( )

**03. Service of Documents by Agency.** ( )

**a.** Any person designated by the agency to serve notices or orders issued by the agency shall serve these documents by regular mail, or by certified mail, return receipt requested, or by personal service on the representatives of each party designated pursuant to these rules. ( )

b. If authorized by the presiding officer, the person designated to serve notices and orders in a contested case may serve those notices and orders by email as an alternative to service by mail or personal service. It is not necessary to serve copies by mail or personal service if service is completed by email. ( )

**04. Format for Electronic *Filing and Service*.** Documents *filed or* served by email must be in Portable Document Format (PDF) and be text searchable. Each email *filing or* serving a document cannot be larger than 15 megabytes in size. Documents exceeding 15 megabytes in size may be divided into multiple documents and *filed or* served in multiple emails. ( )

**05. Proof of Service.** Every document filed or served must be accompanied by a proof of service similar to the following certificate:

**CERTIFICATE OF SERVICE**

I certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I served or caused to be served the *[insert title of document]* to the parties by the following method(s):

*[Insert name of party or attorney]  
[Insert email address or mailing address]*

- Email
- USPS Mail (postage paid)
- Certified Mail / Return Receipt Requested
- Hand Delivery

*[Signature]*

*[Insert name of person responsible for service]*

( )

**06. When Service Complete.** Unless otherwise provided by statute, these rules, order or notice, service is complete when a copy, properly addressed and stamped, is deposited in the United States mail or the Statehouse mail, if the party is a State employee or State agency, or when there is an electronic verification that an email has been sent. ( )

**054. COMPUTATION OF TIME.**

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

**055. FEES.**

If submitted by mail or in person, fees paid to the agency may be paid by cash, money order, bank draft or check payable to the agency. Payments in cash, submitted by mail, are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss. Fees may also be paid by credit card or other digital methods, if allowed by the agency. Filings required to be accompanied by a fee are not complete until the fee is paid. ( )

**056. -- 099. (RESERVED)**

**100. INFORMAL AND FORMAL PROCEEDINGS.**

Contested cases before the agency shall be conducted as informal or formal proceedings. ( )

**01. Informal Proceedings Defined.** Informal proceedings are wholly administrative evaluations and processes, without a presiding officer and hearing record to be preserved for later agency or judicial review, and with representation according to Rule 201.01. ( )

**02. Formal Proceedings Defined.** Formal proceedings are quasi-judicial proceedings conducted by a presiding officer, with a hearing record to be preserved for later agency or judicial review, and with representation according to Rule 201.02. ( )

**03. Order of Proceedings.** Unless otherwise directed by the agency, informal proceedings will be used first in an effort to resolve the issues presented in a contested case. If, after the agency has commenced a formal proceeding, the parties to a contested case settle or resolve the issues of the case, the case may return to an informal proceeding. The agency may also utilize informal proceedings, such as settlement conferences, any time after commencement of a formal proceeding. ( )

**101. INFORMAL PROCEEDINGS.**

**01. Initial Processing.** Informal proceedings include correspondence and the exchange of information between the agency and an applicant or petitioner during the agency's review of an application or petition. If a protest is filed opposing an application, or a response is filed to a petition, the agency will issue a Notice of Informal Settlement Conference. The agency may also issue a Notice of Informal Settlement Conference in un-protested one-party contested cases, where a party has requested a hearing before the agency. ( )

**02. Informal Settlement Conference.** All parties to a contested case or their representatives must attend the informal settlement conference. The informal settlement conference may be conducted by an agency employee. Informal settlement conferences are used to discuss applications or pleadings, explore settlement options, discuss the commencement and scheduling of formal proceedings, discuss additional informational needs, and evaluate the need for additional informal proceedings or alternative dispute resolution options such as mediation. The agency may conduct additional informal proceedings, which all parties or their representatives must attend, to assess the potential for settlement or resolution of all or a portion of the issues in a contested case. ( )

**03. Stay of Informal Proceedings.** During informal proceedings the agency may stay the contested case at the request of the applicant or petitioner, upon stipulation of the parties, when the agency determines that such delay will assist the agency in resolving or deciding the contested case, or when an agency moratorium prevents consideration of the application or petition. ( )

**102. FORMAL PROCEEDINGS.**

When the agency determines that informal proceedings are unlikely to resolve a contested case, the agency will initiate formal proceedings by issuing a Notice of Prehearing Conference and identifying a presiding officer. Representation of parties and other persons in formal proceedings is governed by Rule 201.02. ( )

**103. -- 149. (RESERVED)**

**150. PARTIES TO CONTESTED CASES LISTED.**

Parties to contested cases before the agency are called applicants, petitioners, respondents, protestants, or intervenors. On reconsideration or exceptions within the agency parties are called by their original titles from the previous sentence. ( )

**151. APPLICANTS.**

Persons who seek any right, license, award or authority from the agency. ( )

**152. PETITIONERS.**

Persons not applicants who seek to modify, amend or stay existing orders of the agency, to clarify or have the agency declare or construe the law administered by the agency or a person's rights or obligations under law administered by the agency, to ask the agency to initiate or rehear a contested case (other than an application), to intervene in a contested case, or to otherwise take action that will result in the issuance of an order. ( )

**153. RESPONDENTS.**

Persons who file responses to a petition. ( )

**154. PROTESTANTS.**

Persons who oppose or seek to alter an application and who have a statutory right to contest or seek to alter the right, license, or authority sought by an applicant. ( )

**155. INTERVENORS.**

Persons, not applicants, petitioners, respondents, or protestants to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354. ( )

**156. RIGHTS OF PARTIES AND OF AGENCY STAFF.**

Subject to Rules 558, 559, and 600, all parties and agency staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in a contested case before the agency. ( )

**157. -- 199. (RESERVED)**

**200. IDENTIFICATION OF REPRESENTATIVES AND ADDRESS FOR SERVICE.**

The initial pleading of a party (be it application, petition, protest, or motion) must identify the party's representative, if any, and state the mailing address and email address, if any, to be used for service of all documents. If a representative is identified, service of documents on the named representative is considered valid service upon the party. If an initial pleading is signed by more than one (1) person without identifying a representative for service of documents, the agency may select the person upon whom documents are to be served. A party is responsible for updating the agency with changes to its contact information for service of documents. ( )

**201. REPRESENTATION OF PARTIES.**

**01. Representation at Informal Proceedings.** Appearances and representation of parties or other persons at an informal proceeding described in Rule 100 and Rule 101 must be as follows: ( )

**a.** Natural Person. A natural person may represent himself or herself or be represented by an authorized employee, attorney, or family member, or by a next friend if the person lacks full legal capacity to act for himself or herself. ( )

**b.** A partnership may be represented by a partner, authorized employee, or attorney. ( )

**c.** A corporation may be represented by an officer, authorized employee, or attorney. ( )

**d.** A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an official, officer, authorized employee, or attorney. ( )

**e.** A state, federal or tribal governmental entity or agency may be represented by an officer, authorized employee, or attorney. ( )

**02. Appearances and Representation at Formal Proceedings.** Appearances and representation of parties or other persons at a formal proceeding described in Rule 100 and Rule 102 must be as follows: ( )

**a.** A party who is a natural person may represent himself or herself or be represented by an attorney. ( )

**b.** A federal or tribal governmental entity or agency may be represented as provided by law. ( )

**c.** All other parties shall appear and be represented by an attorney admitted to practice and in good standing in the state of Idaho. ( )

**d.** Only parties or their representatives at hearing are entitled to examine witnesses and file, make or argue motions. ( )

**202. SERVICE ON PARTIES AND THEIR REPRESENTATIVES.**

From the time a party files its initial pleading in a contested case, that party must serve all documents filed with the



agency upon all other parties or their designated representatives unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon parties or their representatives. ( )

**203. WITHDRAWAL OF PARTIES.**

Any party may withdraw from a contested case in writing or by confirming the withdrawal on the record at a conference or hearing. ( )

**204. SUBSTITUTION OR WITHDRAWAL OF REPRESENTATIVE.**

A party's representative may be changed by notice to the agency and all other parties. A presiding officer, if assigned, may reject the substitution of representative if the substitution would result in an unreasonable delay of the proceeding. Persons representing a party in a contested case before the agency who wish to withdraw their representation must immediately file with the agency a notice of withdrawal of representation and serve that notice on the party represented, and all other parties. ( )

**205. STANDARDS OF CONDUCT.**

All persons participating in or attending a contested case proceeding before the agency must conduct themselves in an ethical, courteous, and respectful manner during all phases of the proceeding. The presiding officer may exclude a person from a proceeding who in manner or appearance is disruptive or disrespectful. Disruptive conduct or appearance that is serious in nature may be cause for dismissal of the disrupting party from the proceeding. ( )

**206. -- 209. (RESERVED)**

**210. PLEADINGS ALLOWED IN CONTESTED CASES.**

In contested cases, the agency allows the following pleadings to be filed: applications, petitions, protests, and responses. ( )

**211. -- 219. (RESERVED)**

**220. MOTIONS.**

**01. Motion - Defined.** A "motion" is a request to the agency to take an action in a contested case. ( )

**02. Procedure on Written Motions.** ( )

**a.** A written motion, affidavit(s) supporting the motion, and briefs supporting the motion, if any, must be filed with the agency and served on the parties. ( )

**b.** Briefs or affidavits responding to the motion, if any, must be filed with the agency and served on the parties within fourteen (14) days of the filing of a motion. ( )

**c.** The moving party may file a reply brief, which must be filed with the agency and served on the parties within 7 days of the filing of the responsive affidavits or briefs. ( )

**d.** The moving party must indicate on the face of the motion whether oral argument is desired. ( )

**e.** If oral argument has been requested on any motion, the presiding officer may grant or deny oral argument by written or oral notice. The presiding officer may limit oral argument at any time. ( )

**f.** Modifications to the time limits in this rule may be granted by the presiding officer for good cause shown. ( )

**03. Motions for Summary Judgment.** Motions for summary judgment may be filed in any contested case. Rule 56(a), (c), (d), (e), and (f) of the Idaho Rules of Procedure, apply to such motions before the agency. ( )

**221. -- 299. (RESERVED)**

**300. FORM AND CONTENT OF PLEADINGS AND WRITTEN MOTIONS.**

**01. Form.** Pleadings should be filed on standard forms created by the agency, if available. Pleadings and written motions not filed on standard forms should include a caption identifying the case at the top of the first page and shall: ( )

**a.** Be submitted on white, eight and one-half inch (8 1/2”) by eleven inch (11”) paper printed on one (1) side only; ( )

**b.** Identify the case name, case number (if applicable), and title of the document; ( )

**c.** Include the mailing address, telephone number, and email address of the person(s) filing the document; and ( )

**d.** Have at least one inch (1”) margins on the sides, top, and bottom. ( )

**02. Content of Pleadings and Written Motions.** A pleading or written motion shall fully state: ( )

**a.** The facts upon which it is based; ( )

**b.** The provision of statute, rule, order, or other controlling law upon which it is based; and ( )

**c.** The relief sought, including any proposed limitation (or the denial) of any right, license, or permit sought in an application. ( )

**d.** Petitions for declaratory orders shall state the declaratory ruling that the petitioner seeks. ( )

**301. NOTICE OF PETITION FOR DECLARATORY RULING.**

The agency may provide notice of a petition for declaratory ruling in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition. ( )

**302. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS.**

Defective, insufficient or late pleadings may be returned or dismissed. ( )

**303. AMENDMENTS TO PLEADINGS -- WITHDRAWAL OF PLEADINGS.**

The agency may allow amendments to pleadings during informal proceedings. The presiding officer may allow amendments to pleadings during formal proceedings. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective seven (7) days after filing. ( )

**304. -- 349. (RESERVED)**

**350. PETITIONS TO INTERVENE.**

A person who is not already a party to a contested case and who has a direct and substantial interest in the proceeding may petition for an order granting intervention as a party to the contested case. ( )

**351. FORM AND CONTENTS OF PETITIONS TO INTERVENE.**

Petitions to intervene must comply with Rules 52, 200, and 300. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. ( )

**352. TIMELY FILING OF PETITIONS TO INTERVENE.**

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the initial prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions

filed after this deadline are considered late and must state a good cause for delay. ( )

**353. DECIDING PETITIONS TO INTERVENE.**

**01. Timely-Filed Petitions.** If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a contested case and does not unduly broaden the issues, the agency shall grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. ( )

**02. Late Petitions.** The agency may grant late petitions to intervene for good cause shown or may deny or conditionally grant petitions to intervene that are late for failure to state good cause for the late filing, to prevent disruption, to prevent prejudice to existing parties, to prevent undue broadening of the issues, or for other reasons. ( )

**03. Order and Notices Issued Prior to Intervention.** Intervenors are bound by orders and notices entered in the contested case prior to the approval of the petition to intervene. ( )

**354. ORDERS GRANTING INTERVENTION -- OPPOSITION.**

Any party opposing a petition to intervene must file an objection within (7) days of the date the petition is filed. Responses to the objection must be filed within seven (7) days of the service date of the objection. The objection and responses to the proposed intervention must be served on all parties of record and on the person petitioning to intervene. ( )

**355. PUBLIC WITNESSES.**

A person who is not a party and is not called by a party as a witness who desires to testify at hearing is a public witness. Public witnesses do not have the right to examine witnesses or otherwise participate in the proceedings as parties. Subject to Rules 555 and 557, public witnesses have a right to introduce evidence at hearing by written or oral statements and to offer exhibits at hearing. Public witnesses are bound by scheduling orders issued in a contested case regarding disclosure of expert reports and exhibits prior to the hearing. A person intending to present public witness testimony shall notify the agency in writing at least five (5) days prior to the hearing and include the name and address of the witness and the general nature or subject matter of the testimony to be given. If the notice is not given, the public witness testimony will only be allowed at the discretion of the presiding officer upon a finding of good cause. Public witnesses are subject to cross-examination and exhibits offered by public witnesses are subject to objection. Public witnesses have no right to seek reconsideration, file exceptions, or appeal. ( )

**356. -- 409. (RESERVED)**

**410. APPOINTMENT OF HEARING OFFICERS.**

Unless otherwise provided by statute or rule, hearing officers may be employees of the agency or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the agency. The appointment of a hearing officer is a public record available for inspection, examination and copying. ( )

**411. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES.**

Presiding officers may be disqualified as provided in Section 67-5252, Idaho Code. ( )

**412. SCOPE OF AUTHORITY OF HEARING OFFICERS.**

The scope of hearing officers' authority may be restricted in the appointment by the agency. ( )

**01. Scope of Authority.** Unless specified in an order from the agency, hearing officers have the authority to: ( )

**a.** Decide petitions to intervene and motions; ( )

**b.** Schedule cases assigned to the hearing officer, including authority to issue notices of default, of prehearing conference and of hearing; ( )

c. Schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency; ( )

d. Consider stipulations and settlements; ( )

e. Preside at and conduct conferences and hearings, accept evidence into the record, rule upon objections to evidence, rule on dispositive motions, and otherwise oversee the orderly presentation of evidence at hearing in accordance with these Rules; and ( )

f. Issue a written decision for a contested case, including a narrative of the proceedings, findings of fact, conclusions of law, and a recommended or preliminary order. ( )

**02. Limitation.** The hearing officer's scope of authority may be limited from the standard scope, either in general, or for a specific proceeding. ( )

**413. CHALLENGES TO STATUTES.**

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

**414. EX PARTE COMMUNICATIONS.**

Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Communications with a presiding officer regarding non-substantive issues from members of the general public not associated with any party are not required to be reported by this rule. A party to a contested case before the agency shall not communicate directly or indirectly with the presiding officer or the agency head regarding any substantive issue in the contested case. When a presiding officer becomes aware of a communication regarding any substantive issue from a party or representative of a party or a member of the general public during a contested case, the presiding officer shall place a copy or written summary of the communication in the file for the case and order the party providing the communication to serve a copy of the communication or written summary upon all parties of record. Repeated violations of this rule are cause for the presiding officer to dismiss an action or to dismiss a party from a contested case. Written communications from a party showing service upon all other parties are not ex parte communications. ( )

**415. -- 509. (RESERVED)**

**510. PURPOSES OF PREHEARING CONFERENCE.**

To initiate formal proceedings in a contested case pursuant to Rule 102, the agency will issue a Notice of Prehearing Conference, identifying the presiding officer for the case and setting the date and time for prehearing conference. The prehearing conference shall be convened for purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. ( )

**511. ADDITIONAL CONFERENCES.**

The presiding officer may, following the initial prehearing conference, convene additional conferences. Additional conferences will address the topics identified in Rule 510, unless the topics are further defined in the notice of such conference. ( )

**512. NOTICE OF CONFERENCE.**

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

**513. RECORD OF CONFERENCE.**

Prehearing conferences or status conferences may be held on the record or off the record. Agreements entered into by the parties during a conference may be put on the record during the conference or may be reduced to writing and filed with the agency after the conference. ( )

**514. ORDERS RESULTING FROM CONFERENCE.**

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

**515. FACTS DISCLOSED NOT PART OF THE RECORD.**

Facts disclosed, settlement offers made and all other aspects of negotiation (except agreements reached) in conferences in a contested case are not part of the record unless ordered by the presiding officer upon a stipulation by all parties to a contested case. ( )

**516. -- 519. (RESERVED)**

**520. DISCOVERY IN CONTESTED CASES.**

**01. Kinds of Discovery.** The following kinds of discovery may be authorized by presiding officers in contested cases before the agency: ( )

- a. Deposition through oral examination or written questions; ( )
- b. Written interrogatories; ( )
- c. Requests for Admission; ( )
- d. Requests for production of documents, electronically stored information or tangible things; and ( )
- e. Entry upon land or other property for inspection or other purposes; ( )

**02. Rules of Civil Procedure.** Unless otherwise provided by statute, rule, order or notice, the scope of discovery is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26). ( )

**521. WHEN DISCOVERY AUTHORIZED.**

No party in a contested case before the agency is entitled to engage in discovery unless the presiding officer issues an order authorizing discovery, or upon agreement of all parties that discovery may be conducted. The presiding officer may provide a schedule for discovery in an order authorizing discovery, but the order authorizing and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. The order authorizing discovery may provide that voluminous records need not be served in a discovery response so long as the records are made available for inspection and copying under reasonable terms. A party, upon reasonable notice to other parties and all persons affected thereby, may seek an order compelling discovery in a manner consistent with the provisions of Rule 37(a) of the Idaho Rules of Civil Procedure. The presiding officer may limit the type and scope of discovery. ( )

**522. RIGHTS TO DISCOVERY RECIPROCAL.**

All parties to a proceeding have a right of discovery of all other parties to a proceeding according to Rule 521 and to the authorizing statutes and rules. ( )

**523. SUBPOENAS.**

The presiding officer may issue subpoenas upon a party's motion or upon its own initiative. The presiding officer upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms. ( )

**524. STATUTORY INSPECTION, EXAMINATION, INVESTIGATION, ETC.**

This rule recognizes, but does not enlarge or restrict, the agency's statutory right of inspection, examination, or investigation. This statutory right of the agency is independent of any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, examination, or investigation may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. ( )

**525. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS.**

Parties shall send the presiding officer copies of any notices of deposition or certificates of service stating that discovery requests or responses have been served. Parties shall serve discovery requests and responses on all other parties. Parties shall not serve the presiding officer copies of discovery responses unless it is part of a motion to compel discovery. A motion to compel discovery must be filed within twenty-one (21) days from the day a discovery response was due or twenty-one (21) days from the day a deficient response was served on the moving party. ( )

**526. PREPARED TESTIMONY AND REPORTS.**

Presiding officers may require parties to exchange prepared testimony, expert witness reports or rebuttal reports, prior to the hearing. ( )

**527. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY.**

The presiding officer may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery, including but not limited to the sanctions listed in paragraphs (A), (B), and (C) of Rule 37(b)(2) of the Idaho Rules of Civil Procedure. ( )

**528. PROTECTIVE ORDERS.**

As authorized by statute or rule, the presiding officer may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. ( )

**529. -- 549. (RESERVED)**

**550. NOTICE OF HEARING.**

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

**551. FACILITIES AT OR FOR HEARING AND A.D.A. REQUIREMENTS.**

All hearings must be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act, and all notices of hearing must inform the parties that the hearing will be conducted in facilities meeting the accessibility requirements of the Americans with Disabilities Act. All notices of hearing must inform the parties and other persons notified that if they require assistance of the kind that the agency is required to provide under the Americans with Disabilities Act in order to participate in or understand the hearing, the agency will supply that assistance upon request a reasonable number of days before the hearing. The notice of hearing shall explicitly state the number of days before the hearing that the assistance request must be made. ( )

**552. METHODS FOR CONDUCTING HEARINGS.**

Hearings may be held in person or by telephone, video or other electronic means, as long as each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. ( )

**553. CONFERENCE AT HEARING.**

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

**554. PRELIMINARY PROCEDURE AT HEARING.**

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

**555. CONSOLIDATION OF PROCEEDINGS.**

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

**556. STIPULATIONS.**

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

**557. ORDER OF PROCEDURE.**

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. ( )

**558. TESTIMONY UNDER OATH.**

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

**559. PARTIES AND PERSONS WITH SIMILAR INTERESTS.**

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

**560. CONTINUANCE OF HEARING.**

The presiding officer may continue proceedings for further hearing. ( )

**561. ORAL ARGUMENT.**

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

**562. BRIEFS -- MEMORANDA -- PROPOSED ORDERS OF THE PARTIES -- STATEMENTS OF POSITION -- PROPOSED ORDER OF THE PRESIDING OFFICER.**

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

**563. -- 599. (RESERVED)**

**600. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE.**

Evidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that

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

**601. DOCUMENTARY EVIDENCE.**

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

**602. OFFICIAL NOTICE -- AGENCY STAFF MEMORANDA.**

The presiding officer may take official notice of any facts that could be judicially noticed in the courts of Idaho, of generally recognized technical or scientific data or facts within the agency's specialized knowledge and records of the agency. The presiding officer may ask agency staff to prepare reports or memoranda to be used in deciding a contested case, and all such reports and memoranda shall be officially noticed by the presiding officer. The presiding officer shall notify the parties of specific facts or material noticed and the source of the material noticed, including any agency staff memoranda and data. This notice should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material officially noticed. Parties must be given an opportunity to contest and rebut the facts or material officially noticed. When the presiding officer proposes to take official notice of agency staff memoranda or agency staff reports, responsible staff employees or agents shall be made available for cross-examination if any party timely requests their availability. ( )

**603. OBJECTIONS -- OFFERS OF PROOF.**

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection. ( )

**604. EXHIBITS.**

The presiding officer may assign exhibit numbers to be used by the parties in preparation of proposed exhibits. Exhibits prepared for hearing should ordinarily be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except that maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. ( )

**605. -- 609. (RESERVED)**

**610. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS.**

Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record unless ordered by the presiding officer upon a stipulation by all parties to a contested case. If the parties to a contested case participate in mediation, I.R.E. 507 applies and the mediation privilege is recognized. ( )

**611. SUGGESTION FOR OR INQUIRY ABOUT SETTLEMENTS.**

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

**612. CONSIDERATION OF SETTLEMENTS.**

The presiding officer is not bound by settlement agreements and will independently review any proposed settlement. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. ( )



**613. -- 649. (RESERVED)**

**650. RECORD FOR DECISION.**

**01. Official Record.** The agency shall maintain an official record including the items described in section 67-5249, Idaho Code for each contested case and (unless statute provides otherwise) base its decision in a contested case on the official record for the case. ( )

**651. RECORDING OF HEARINGS.**

The agency shall make an audio or video recording of all hearings at the agency's expense. The agency may provide a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. If the transcript prepared at the expense of a party is deemed by the presiding officer to be the official transcript of the hearing, the party shall furnish the agency a copy of the transcript without charge. ( )

**652. -- 699. (RESERVED)**

**700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR OR RESPOND.**

If a party fails to appear at the time and place set for hearing, prehearing conference, status conference, or informal settlement conference, or fails to respond to a written information inquiry, the agency may serve upon all parties a notice of a proposed default against the absent or non-responsive party. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the subject party to appear at the time and place set for hearing or prehearing conference, or informal settlement conference or to respond to an information inquiry. The notice of proposed default order shall be served consistent with Rule 53. ( )

**701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER.**

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

**702. ISSUANCE OF DEFAULT ORDER.**

The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven (7) day time period to file a petition challenging the proposed default order. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default. All issues in the contested case shall be determined, including those affecting the defaulting party. ( )

**703. -- 709. (RESERVED)**

**710. INTERLOCUTORY ORDERS.**

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

**711. REVIEW OF INTERLOCUTORY ORDERS.**

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

**712. CONTENTS OF ORDERS.**

The contents of an order shall comply with Section 67-5248, Idaho Code. ( )

**713. -- 719. (RESERVED)**

**720. RECOMMENDED ORDERS.**

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

**02. Contents.** Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ( )

**a.** This is a recommended order of the hearing officer. It will not become final without action of the agency head. ( )

**b.** Any party may file a petition for reconsideration of this recommended order with the hearing officer within fourteen (14) days of the service date of this order. The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. ( )

**c.** Any party may in writing support or file exceptions to any part of this recommended order and file briefs in support of the party's position with the agency head or designee on any issue in the proceeding within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order. ( )

**d.** If no party files exceptions to the recommended order with the agency head or designee, the agency head or designee will issue a final order within fifty-six (56) days after: ( )

i. The last day a timely petition for reconsideration could have been filed with the hearing officer; ( )

ii. The service date of a denial of a petition for reconsideration by the hearing officer; or ( )

iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer. ( )

**e.** Written briefs in support of or taking exceptions to the recommended order shall be filed with the agency head (or designee of the agency head). Opposing parties shall have fourteen (14) days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head or designee may hold additional hearings or may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. ( )

**721. -- 729. (RESERVED)**

**730. PRELIMINARY ORDERS.**

**01. Definition.** Preliminary orders are orders issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head or designee pursuant to Section 67-5245, Idaho Code. ( )

**02. Contents.** Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ( )

**a.** This is a preliminary order of the agency. It can and will become final without further action of the

agency unless a party petitions for reconsideration, files exceptions with the agency head, or requests a hearing pursuant to Section 42-1701A(3), Idaho Code. Filing exceptions to the agency head is not required in order to exhaust administrative remedies. ( )

**b.** A party may file a petition for reconsideration of this preliminary order with the agency within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. ( )

**c.** Any party may in writing file exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head) within fourteen (14) days after: ( )

i. The service date of this preliminary order; ( )

ii. The service date of the denial of a petition for reconsideration from this preliminary order; or ( )

iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order. ( )

**d.** If any party files exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's exceptions. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head or designee. The agency head or designee may review the preliminary order on its own motion. ( )

**e.** The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless extended for good cause. The agency head or designee may hold additional hearings or may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. ( )

**f.** Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Director or the Board is otherwise provided by statute, any person aggrieved by any action of the Director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the Director, who is aggrieved by the action of the Director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the Director to contest the action. The person shall file with the Director, within fifteen (15) days after receipt of written notice of the action issued by the Director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the Director and requesting a hearing. A preliminary order shall not become final if a request for hearing under Section 42-1701A(3), Idaho Code is filed with the Department within the time prescribed for filing a petition for reconsideration. ( )

**g.** Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, all administrative remedies shall be deemed exhausted, and any party aggrieved by the final order or orders previously issued in this case may file a petition for judicial review of the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: ( )

i. A hearing was held; ( )

ii. The final agency action was taken; ( )

iii. The party seeking review of the order resides; or ( )

iv. The real property or personal property that was the subject of the agency action is located. ( )

**h.** A petition for judicial review must be filed within twenty-eight (28) days of this preliminary order

becoming final. See Section 67-5273, Idaho Code. The filing of a petition for judicial review does not stay the effectiveness or enforcement of the order under review. ( )

**731. -- 739. (RESERVED)**

**740. FINAL ORDERS.**

**01. Definition.** Final orders are preliminary orders that have become final pursuant to Section 67-5245, Idaho Code, or orders issued by the agency head pursuant to Section 67-5246, Idaho Code, or emergency orders, including cease and desist or show cause orders, issued by the agency head pursuant to Section 67-5247, Idaho Code. ( )

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

**a.** This is a final order of the agency. ( )

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

**c.** Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Director or the Board is otherwise provided by statute, any person aggrieved by any action of the Director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the Director, who is aggrieved by the action of the Director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the Director to contest the action. The person shall file with the Director, within fifteen (15) days after receipt of written notice of the action issued by the Director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the Director and requesting a hearing. This order shall not be subject to judicial review in district court if a request for hearing under Section 42-1701A(3), Idaho Code is filed with the Department within the time prescribed for filing a petition for reconsideration. ( )

**d.** Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case shall be deemed to have exhausted all administrative remedies and may file a petition for judicial review of this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: ( )

i. A hearing was held; ( )

ii. The final agency action was taken; ( )

iii. The party seeking review of the order resides; or ( )

iv. The real property or personal property that was the subject of the agency action is located. ( )

**e.** A petition for judicial review must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code, and Rule 84 of the Idaho Rules of Civil Procedure. The filing of a petition for judicial review does not stay the effectiveness or enforcement of the order under review. ( )

**741. -- 749. (RESERVED)**

**750. ORDER NOT DESIGNATED.**

If an order does not designate itself as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary

order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary, or final, as appropriate. ( )

**751. -- 759. (RESERVED)**

**760. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION.**

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

**761. -- 769. (RESERVED)**

**770. CLARIFICATION OF ORDERS.**

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

**771. -- 779. (RESERVED)**

**780. STAY OF ORDERS.**

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

**781. -- 789. (RESERVED)**

**790. PERSONS WHO MAY FILE A PETITION FOR JUDICIAL REVIEW.**

Pursuant to Section 67-5270, Idaho Code, any party aggrieved by a final order of an agency in a contested case may file a petition for judicial review with the district court. Pursuant to Section 67-5271, Idaho Code, a party is not entitled to judicial review of an agency action in district court until that person has exhausted all administrative remedies available with the agency, but a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable in district court if review of the final agency action would not provide an adequate remedy. ( )

**791. -- 999. (RESERVED)**

## IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

### 37.03.07 – STREAM CHANNEL ALTERATION RULES

#### DOCKET NO. 37-0307-2101 (NEW CHAPTER)

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2022 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 42-1734(19), 42-1805(8), and 42-3803, Idaho Code.

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

This chapter sets forth procedures for processing and considering applications for stream channel alterations under the provisions of Title 42, Chapter 38, Idaho Code.

There are no changes to the pending fee rule, and it is being adopted as originally proposed. The complete description and text of the proposed rule was published in the September 1, 2021, Idaho Administrative Bulletin, [Vol. 21-9, pages 108-132](#).

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

Idaho Code § 42-3803(a) authorizes the Idaho Water Resource Board to collect “statutory filing fees” in association with stream channel alteration activities. This rulemaking does not change current application filing fee amounts.

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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending fee rule, contact Mathew Weaver at [mathew.weaver@idwr.idaho.gov](mailto:mathew.weaver@idwr.idaho.gov), (208) 287-4800.

DATED this 4th day of November, 2021.

Gary Spackman, Director  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720  
Boise, ID 83720  
Phone: (208) 287-4800

**THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 42-1734(19), 42-1805(8), and 42-3803, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2021.

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:

Idaho Code § 42-3803(c) states that “[r]ules, regulations and orders adopted or issued pursuant to this section may include, but are not limited to, minimum standards to govern projects or activities for which a permit or permits have been received . . .” Idaho Code § 42-3803(d) states that “the [Idaho Water Resource] Board may, by regulation, dispense with procedural requirements for permit application and approval contained in this chapter for projects and activities which, in all respects, at least meet minimum standards adopted pursuant to this section.”

Existing IDAPA 37.03.07 Rule 61 – Suction Dredges and Non-Powered Sluice Equipment (Rule 61), describes minimum standards that allow the Idaho Department of Water Resources (IDWR) to expedite authorization of select qualifying suction dredge mining operations in Idaho streams and rivers. Proposed projects meeting the minimum standards removes the necessity for IDWR to furnish copies of applications to other state and federal agencies and seek comment from those agencies. IDWR currently expedites authorization of suction dredge operations meeting minimum standards with the Idaho Recreational Mining Authorization Letter Permit (“Letter Permit”). The Letter Permit is an immediate authorization with no agency comment process. The Letter Permit is analogous to an Idaho fishing license; it only requires an applicant to give his or her name, address, the name or names of streams the applicant plans to dredge, and submission of a fee (\$10 for Idaho resident, \$30 for non-resident). The applicant’s signature to the Letter Permit certifies that the applicant agrees to conduct his or her operations in accordance with Letter Permit conditions and instructions, and the minimum standards set forth in Rule 61.

The Proposed Rule incorporates changes to Rule 61 as a result of negotiated rulemaking conducted as a part of the Governor’s Executive Order 2020-01 zero-based regulation initiative and in response to concerns raised by certain small scale suction dredge miners during the 2020 Legislative Session. The Proposed Rule makes certain changes to the existing expedited minimum standard-based Idaho Recreational Mining Authorization Letter Permit (“Letter Permit”), replacing it with a similarly functioning Small Scale Mining Permit regime. The majority of stakeholders expressed support during negotiated rulemaking to maintain an expedited permit process for small scale dredge mining (and similar) de minimis mining activities with some changes to the current requirements. The Proposed Rule maintains and clarifies the expedited permitting processes, clarifies current permit exemptions for select non-powered mining activities, and modifies and updates some of the minimum standards associated with Rule 61 that allow for an expedited permit process. Other areas of the Stream Channel Alteration Rules, such as the definitional section at IDAPA 37.03.07.010, also needed to be updated as a result of changes made to Rule 61.

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

Idaho Code § 42-3803(a) authorizes the Idaho Water Resource Board to collect “statutory filing fees” in association with stream channel alteration activities including permitted activities authorized under Rule 61. This Proposed Rule does not change current application filing fee amounts.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 7, 2021 Idaho Administrative Bulletin, [Vol. 21-4, pages 53-54](#).

**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, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mathew Weaver at (208) 287-4800.

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 22, 2021.

DATED this July 30, 2021.

**THE FOLLOWING IS THE TEXT OF PENDING FEE DOCKET NO. 37-0307-2101**

### **37.03.07 – STREAM CHANNEL ALTERATION RULES**

**000. LEGAL AUTHORITY (RULE 0).**

The purpose of these rules and minimum standards is to specify procedures for processing and considering applications for stream channel alterations under the provisions of Title 42, Chapter 38, Idaho Code. ( )

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** These rules are titled IDAPA 37.03.07, “Stream Channel Alteration Rules.” ( )

**02. Scope.** The minimum standards are intended to enable the Director to process, in a short period of time, those applications which are of a common type and which do not propose alterations which will be a hazard to the stream channel and its environment. It is intended that these rules and minimum standards be administered in a reasonable manner, giving due consideration, to all factors affecting the stream and adjacent property. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 10).**

**01. Alteration.** To obstruct, diminish, destroy, alter, modify, relocate or change the natural existing shape of the channel or to change the direction of flow of water of any stream channel within or below the mean high water mark. It includes removal of material from the stream channel and emplacement of material or structures in or across the stream channel where the material or structure has the potential to affect flow in the channel as determined by the director. ( )

**02. Applicant.** Any individual, partnership, company, corporation, municipality, county, state or federal agency, their agent, or other entity proposing to alter a stream channel or actually engaged in constructing a channel alteration, whether authorized or not. ( )

**03. Base Flood Elevation.** The Base Flood (BF) is referred to as the one hundred (100) year flood and is a measure of flood magnitude based on probability. The BF has a one percent chance of occurring or being



exceeded in any given year, with the Base Flood Elevation (BFE) being the level of flooding reached during the BF or the one hundred (100) year flood event. ( )

**04. Board.** The Idaho Water Resource Board. ( )

**05. Continuously Flowing Water.** A sufficient flow of water that could provide for migration and movement of fish, and excludes those reaches of streams which, in their natural state, normally go dry at the location of the proposed alteration. IDWR will assume, subject to information to the contrary, that the USGS quadrangle maps accurately depict whether a stream reach is continuously flowing, at the location of the proposed alteration. Such exclusion does not apply to minor flood channels that are a part of a stream which is continuously flowing in the reach where the alteration is located. Also, such exclusion does not apply to streams which may be dry as a result of upstream diversion or storage of water. ( )

**06. Department.** The Idaho Department of Water Resources. ( )

**07. Drop Structures, Sills and Barbs.** Physical obstructions placed within a stream channel for the purpose of stabilizing the channel by decreasing stream gradient and velocity and by dissipating stream energy. ( )

**08. Director.** The Director of the Idaho Department of Water Resources. ( )

**09. Human Life Support System.** Any artificial or natural system that provides all or some of the items (such as oxygen, food, water, control of temperature, or disposition of carbon dioxide) necessary for maintaining human life or health. ( )

**10. Mean High Water Mark.** As defined in Idaho Code, § 42-3802(h), the mean high water mark is water level corresponding to the “natural or ordinary high water mark” and is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its terrestrial vegetation and destroy its value for commonly accepted agricultural purposes. ( )

**11. Non-Powered Equipment.** Equipment which is powered only by human strength. ( )

**12. Plans.** Maps, sketches, engineering drawings, photos, work descriptions and specifications sufficient to describe the extent, nature, and location of the proposed stream channel alteration and the proposed method of accomplishing the alteration. ( )

**13. Powered Equipment.** Equipment which is powered by means other than human strength such as a gasoline engine or electric motor. ( )

**14. Repair.** Any work needed or accomplished, to protect, maintain, or restore any water diversion structure and the associated stream channel upstream and downstream as necessary for the efficient operation of the water diversion structure. ( )

**15. Stream Channel.** A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously flowing water. The channel referred to is that which exists at the present time, regardless of where the channel may have been located at any time in the past. For the purposes of these rules only, the beds of lakes and reservoir pool areas are not considered to be stream channels. ( )

**011. -- 024. (RESERVED)**

**025. EXEMPTIONS (RULE 25).**

**01. Work on Existing or Proposed Reservoir Projects.** Permits are not required under the provisions of Title 42, Chapter 38 for construction work on any existing or proposed reservoir project, including the dam, and such areas downstream as the Director may determine is reasonably necessary for construction and maintenance of the dam. ( )

**02. Snake and Clearwater Rivers.** Permits are not required for work within that portion of the Snake and Clearwater rivers from the state boundary upstream to the upper boundary of the Port of Lewiston Port District as it now exists or may exist in the future. ( )

**03. Cleaning, Maintenance, Construction or Repair Work.** No permit is required of a water user or his agent to clean, maintain, construct, or repair any diversion structure, canal, ditch, or lateral or to remove any obstruction from a stream channel which is interfering with the delivery of any water under a valid existing water right or water right permit. ( )

**04. Removal of Debris.** No permit is required for removal of debris from a stream channel provided that no equipment will be working in the channel and all material removed will be disposed of at some point outside the channel where it cannot again reenter the channel. ( )

**05. Mining Operations Using Non-Powered Equipment.** No permit is required for mining activities using non-powered equipment to move one-quarter (1/4) cubic yard per hour or less below the mean high water mark, except as otherwise described in Rule 61.05. ( )

**026. -- 029. (RESERVED)**

**030. APPLICATIONS (RULE 30).**

**01. Alteration of Stream Channels Permit Required.** No person shall engage in any activity which will alter a stream channel without first applying for a permit as provided by § 42-3803, Idaho Code. ( )

**02. Joint Application Permit Form.** The Department of Water Resources, Department of Lands, and the U.S. Army Corps of Engineers have developed a joint application for permit form which will suffice for the required permit application under the Stream Protection Act. An application should be filed at least sixty (60) days before the applicant proposes to start the construction and shall be upon the joint application form furnished by the Department. The application shall be accompanied by plans which clearly describe the nature and purpose of the proposed work. ( )

**03. Applicant Following Minimum Standards.** In those cases where the applicant intends to follow the minimum standards (Rule 055), detailed plans may be eliminated by referring to the specific minimum standard; however, drawings necessary to adequately define the extent, purpose, and location of the work may be required. Plans shall include some reference to water surface elevations and stream boundaries to facilitate review. The application should show the mean high water mark on the plans; however, any water surface or water line reference available will be helpful as long as this reference is described. (Examples: present water surface, low water, high water.) ( )

**04. Submission of Copies.** The applicant shall submit one (1) copy of all necessary plans along with the application form. When drawings submitted are larger than eight and one half by eleven (8 1/2 x 11), the applicant shall provide the number of copies specified by the department. ( )

**031. -- 034. (RESERVED)**

**035. APPLICATION REVIEW (RULE 35).**

**01. Prior to Issuance of Permit.** The following items shall be among those considered by the Director prior to issuing a permit: ( )

- a. What is the purpose of doing the work? ( )
- b. What is the necessity and justification for the proposed alteration? ( )
- c. Is the proposal a reasonable means of accomplishing the purpose? ( )
- d. Will the alteration be a permanent solution? ( )

- e. Will the alteration pass anticipated water flows without creating harmful flooding or erosion problems upstream or downstream? ( )
- f. What effect will the alteration have on fish habitat? ( )
- g. Will the materials used or the removal of ground cover create turbidity or other water quality problems? ( )
- h. Will the alteration interfere with recreational use of the stream? ( )
- i. Will the alteration detract from the aesthetic beauty of the area? ( )
- j. What modification or alternative solutions are reasonably possible which would reduce the disturbance to the stream channel and its environment and/or better accomplish the desired goal of the proposed alteration? ( )
- k. Is the alteration to be accomplished in accordance with the adopted minimum standards? ( )
- l. Are there public safety factors to consider? ( )

**02. Proposed Alteration Which Does Not Follow Minimum Standards.** In those cases where a proposed alteration does not follow the minimum standards, a copy of the application will be sent for review to those state agencies requesting notification. The Director shall provide for review by the Department of Lands, copies of applications on navigable rivers. The Director will provide a copy of any other application requested by the Department of Lands and may request review by other state agencies regardless of whether or not the proposed alteration will comply with the minimum standards. ( )

**036. -- 039. (RESERVED)**

**040. APPROVAL (RULE 40).**

**01. Conformance to Application.** All work shall be done in accordance with the approved application, subject to any conditions specified by the department. ( )

**02. Permits Allowed Without Review.** A permit may be approved by the Director of the Department of Water Resources without review by other agencies in situations where the work is of a nature not uncommon to the particular area and where it is clear that the work will not seriously degrade the stream values except on navigable rivers which require review by the Department of Lands. All work approved in this manner shall be accomplished in accordance with the minimum standards. ( )

**03. Reinstatement of Expired Permit.** A permit which has expired may be reinstated by the Director after review by other agencies as determined by the Director. ( )

**041. -- 044. (RESERVED)**

**045. ENFORCEMENT OF ACT (RULE 45).**

**01. Written Orders Issued by Designated Employees of Department.** Employees of the Department designated by the Director may issue written orders directing an applicant to cease and desist, to ensure proper notice to applicants who are found to be altering a stream without a permit or not in compliance with the conditions of a permit. Such orders shall be in effect immediately upon issuance and will continue in force until a permit is issued or until the order is rescinded by the Director. ( )

**02. Failure to Comply with Stream Protection Act.** Failure to comply with any of the provisions of the Stream Protection Act (Chapter 38, Title 42, Idaho Code), may result in issuance of an Idaho uniform citation and/or the cancellation of any permit by the Director without further notice and the pursuit in a court of competent

jurisdiction, such civil or criminal remedies as may be appropriate and provided by law. The Director may allow reasonable time for an applicant to complete stabilization and restoration work. ( )

**046. -- 049. (RESERVED)**

**050. EMERGENCY WAIVER (RULE 50).**

**01. Waiver of Provisions of Stream Protection Act.** Section 42-3808, Idaho Code, provides for waiver of the provisions of the Stream Protection Act in emergency situations where immediate action must be taken to protect life or property including growing crops. The Director will not consider failure to submit an application for a stream channel alteration far enough ahead of the desired starting time of the construction work as an emergency situation. ( )

**02. Verbal Waivers.** A verbal waiver may be granted initially; however, all verbal requests for waivers shall be followed up by the applicant in writing within fifteen (15) days of any initial authorization to do work. If the applicant is unable to contact the Director to obtain an emergency waiver, he may proceed with emergency work; however, he must contact the Director as soon as possible thereafter. Proving that a bonafide emergency did actually exist will be the responsibility of the applicant. ( )

**03. Emergency Waiver.** Work authorized by an emergency waiver shall be limited to only that which is necessary to safeguard life or property, including growing crops, during the period of emergency. ( )

**04. Conformance to Conditions of Waiver.** The applicant shall adhere to all conditions set by the Director as part of a waiver. ( )

**05. Waivers Granted by Designated Employees.** The Director may delegate the authority to grant waivers to designated employees of the Department. Names and telephone numbers of such employees will be made available to any interested applicant upon request. ( )

**051. -- 054. (RESERVED)**

**055. MINIMUM STANDARDS (RULE 55).**

These standards are intended to cover the ordinary type of stream channel alteration and to prescribe minimum conditions for approval of such construction. Unless otherwise provided in a permit, these standards shall govern all stream channel alterations in this state. An applicant should not assume that because an application utilizes methods set forth in these standards it will automatically be approved. These minimum standards include the following items: ( )

- 01. Construction Procedures.** ( )
- 02. Dumped Rock Riprap.** ( )
- 03. Drop Structures, Sills and Barbs.** ( )
- 04. Culverts and Bridges.** ( )
- 05. Removal of Sand and Gravel Deposits.** ( )
- 06. Small Scale Mining with Suction Dredges, Powered Sluices, or Non-Powered Equipment.** ( )
- 07. Piling.** ( )
- 08. Pipe Crossings.** ( )
- 09. Concrete Plank Boat Launch Ramps.** ( )

**056. CONSTRUCTION PROCEDURES (RULE 56).**

**01. Conformance to Procedures.** Construction shall be done in accordance with the following procedures unless specific approval of other procedures has been given by the Director. When an applicant desires to proceed in a manner different from the following, such procedures should be described on the application. ( )

**02. Operation of Construction Equipment.** No construction equipment shall be operated below the existing water surface without specific approval from the Director except as follows: Forging the stream at one (1) location only will be permitted unless otherwise specified; however, vehicles and equipment will not be permitted to push or pull material along the streambed below the existing water level. Work below the water which is essential for preparation of culvert bedding or approved footing installations shall be permitted to the extent that it does not create unnecessary turbidity or stream channel disturbance. Frequent forging will not be permitted in areas where extensive turbidity will be created. ( )

**03. Temporary Structures.** Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction shall be designed to handle high flows that could be anticipated during the construction period. All structures shall be completely removed from the stream channel at the conclusion of construction and the area shall be restored to a natural appearance. ( )

**04. Minimizing Disturbance of Area.** Care shall be taken to cause only the minimum necessary disturbance to the natural appearance of the area. Streambank vegetation shall be protected except where its removal is absolutely necessary for completion of the work adjacent to the stream channel. ( )

**05. Disposal of Removed Materials.** Any vegetation, debris, or other material removed during construction shall be disposed of at some location out of the stream channel where it cannot reenter the channel during high stream flows. ( )

**06. New Cut of Fill Slopes.** All new cut or fill slopes that will not be protected with some form of riprap shall be seeded with grass and planted with native vegetation to prevent erosion. ( )

**07. Fill Material.** All fill material shall be placed and compacted in horizontal lifts. Areas to be filled shall be cleared of all vegetation, debris and other materials that would be objectionable in the fill. ( )

**08. Limitations on Construction Period.** The Director may limit the period of construction as needed to minimize conflicts with fish migration and spawning, recreation use, and other uses. ( )

**057. DUMPED ROCK RIPRAP (RULE 57).**

**01. Placement of Riprap.** Riprap shall be placed on a granular bedding material or a compact and stable embankment. ( )

**02. Sideslopes of Riprap.** Sideslopes of riprap shall not be steeper than 2:1 (2' horizontal to 1' vertical) except at ends of culverts and at bridge approaches where a 1 1/2:1 sideslope is standard. ( )

**03. Minimum Thickness of Riprap.** The minimum thickness of the riprap layer shall equal the dimension of the largest size riprap rock used or be eighteen (18) inches, whichever is greater. When riprap will be placed below high water level, the thickness of the layer shall be fifty percent (50%) greater than specified below. ( )

**04. Riprap Protection.** Riprap protection must extend at least one (1) foot above the anticipated high water surface elevation in the stream. ( )

**05. Rock Used for Riprap.** Rock for riprap shall consist of sound, dense, durable, angular rock fragments, resistant to weathering and free from large quantities of soil, shale, and organic matter. The length of a rock shall not be more than three (3) times its width or thickness. Rounded cobbles, boulders, and streambed gravels are not acceptable as dumped riprap. ( )

**06. Size and Gradation of Riprap.** Riprap size and gradation are commonly determined in terms of the weight of riprap rock. The average size of riprap rock shall be at least as large as the maximum size rock that the stream is capable of moving. The maximum size of riprap rock used shall be two (2) to five (5) times larger than the average size. ( )

**07. Methods Used for Determining Gradation of Riprap.** There are many methods used for determining the gradation of riprap rock. One of these many acceptable methods is shown in Table 1 below. Another acceptable method is the Far West States (FWS) method shown in APPENDIX A - Table 1A.

| Table 1 – GRADATION OF RIPRAP IN POUNDS |   |   |
|---|---|---|
| Max. Weight of Stone required (lbs)     | Min. and Max. Range in weight of Stones (lbs) | Weight Range 75 percent of Stones (lbs) |
| 150                                     | 25 - 150                                      | 50 - 150                                |
| 200                                     | 25 - 200                                      | 50 - 200                                |
| 250                                     | 25 - 250                                      | 50 - 250                                |
| 400                                     | 25 - 400                                      | 100 - 400                               |
| 600                                     | 25 - 600                                      | 150 - 600                               |
| 800                                     | 25 - 800                                      | 200 - 800                               |
| 1000                                    | 50 - 1000                                     | 250 - 1000                              |
| 1300                                    | 50 - 1300                                     | 325 - 1300                              |
| 1600                                    | 50 - 1600                                     | 400 - 1600                              |
| 2000                                    | 75 - 2000                                     | 600 - 2000                              |
| 2700                                    | 100 - 2700                                    | 800 - 2700                              |

**08. Use of Filter Material.** A blanket of granular filter material or filter fabric shall be placed between the riprap layer and the bank in all cases where the bank is composed of erodible material that may be washed out from between the riprap rock. Filter material shall consist of a layer of well-graded gravel and coarse sand at least six (6) inches thick. ( )

**09. Toe Protection.** Some suitable form of toe protection shall be provided for riprap located on erodible streambed material. ( )

**a.** Various acceptable methods of providing toe protection are shown in APPENDIX B, Figure 2 at the end of this chapter. ( )

**b.** In addition to the approved methods of providing toe protection as shown in APPENDIX B, any other reasonable method will be considered by the Director during review of a proposed project. ( )

**10. Extension of Riprap Area.** Riprap shall extend far enough upstream and downstream to reach stable areas, unless the riprap is protected against undermining at its ends by the method shown in APPENDIX C, Figure 3 at the end of this chapter. On extremely long riprap sections, it is recommended that similar cutoff sections be used at several intermediate points to reduce the hazard that would be created if failure of the riprap occurred at any one (1) location. ( )

**11. Finished Surface.** Placement shall result in a smooth, even finished surface. Compaction is not necessary. ( )

**12. Placement of Riprap.** The full course thickness of the riprap shall be placed in one (1) operation. Dumping riprap long distances down the bank or pushing it over the top of the bank with a dozer shall be avoided if possible. Material should be placed with a backhoe, loader, or dragline. Dumping material near its final position on the slope or dumping rock at the toe and bulldozing it up the slope is a very satisfactory method of placement, if approval is obtained for the use of equipment in the channel. ( )

**13. Design Procedure.** Design procedure using the Far West States (FWS) method. ( )

**a.** The FWS method uses a single equation to deal with variables for riprap. ( )

$$D75 = 3.5/CK \text{ WDS for Channel Banks}$$

where: D75 = Size of the rock at seventy five percent (75%) is finer in gradation, in inches.

|   |   |  |
|---|---|--|
| W | = | Specific weight of water, usually 62.4 lbs./cu.ft. |
| D | = | Depth of flow in stream, in feet in flood stage    |
| S | = | Channel slope or gradient, in ft/ft.               |
| C | = | A coefficient relating to curvature in the stream  |
| K | = | A coefficient relating to steepness of bank slopes |

( )

**b.** The coefficient, C, is based on the ratio of the radius of curvature of the stream, (CR), to the water surface width, (WSW), so it is necessary for the user to make field determination of these values. The coefficient varies from 0.6 for a curve ratio of 4 to 6, up to 1.0 for a straight channel. If the computed ratio for a particular project is less than 4, the designer should consider some modification less than 4.

| CR/WSW           | C    |
|------------------|------|
| 4 - 6            | 0.60 |
| 6 - 9            | 0.75 |
| 9 - 12           | 0.90 |
| Straight Channel | 1.00 |

( )

**c.** The coefficient, K, ranges from 0.5 for a 1.5:1 sideslope to 0.87 for 3:1 sideslope. No values are given for steeper or flatter slopes. Slopes steeper than 1.5:1 are not recommended. If slopes flatter than 3:1 are desired, it would be conservative to use the K-value for 3:1 slopes.

| Bankslope | K    |
|-----------|------|
| 1.5:1     | 0.50 |
| 1.75:1    | 0.63 |
| 2.0:1     | 0.72 |
| 2.5:1     | 0.80 |
| 3.0:1     | 0.87 |

( )

**058. DROP STRUCTURES, SILLS AND BARBS (RULE 58).**

**01. Drop Structures.** A drop structure shall be constructed of rocks, boulders and/or logs placed within a stream channel to act as a low level dam. Placement of a drop structure perpendicular to stream flow will decrease the stream gradient, dissipate stream energy and decrease stream velocity through an increase in water surface elevation immediately above the structure. Drop structures shall comply with the following criteria: ( )

**a.** Maximum water surface differential across (upstream water surface elevation minus downstream water surface elevation) a drop structure shall not exceed two (2) feet. The department shall approve the final elevation of any structure. ( )

**b.** Rock drop structures shall be constructed of clean, sound, dense, durable, angular rock fragments, and/or boulders of size and gradation, such that the stream is incapable of moving the material during peak flows. Rocks shall be keyed into the stream banks to minimize the likelihood of bank erosion, (See APPENDIX D located at the end of this chapter). ( )

**c.** Log drop structures are acceptable in four (4) designs including the single log dam, the stacked log dam, the three (3) log dam, and the pyramid log dam. Log ends shall be keyed into both banks at least one-third (1/3) of the channel width or a distance sufficient to prevent end erosion. To prevent undercutting, the bottom log shall be imbedded in the stream bed or hardware cloth, cobbles or boulders shall be placed along the upper edge. Minimum log size for a single log structure shall be determined by on-site conditions and shall be placed to maintain flow over the entire log to prevent decay. Each log drop structure must be accompanied by downstream scour protection, such as a rock apron (See APPENDIX E located at the end of this chapter). ( )

**d.** All drop structures shall be constructed to facilitate fish passage and centralized scour pool development. ( )

**02. Sills.** A sill shall be constructed of the same material and in the same manner as a drop structure. The top of the sill may not exceed the elevation of the bottom of the channel. The purpose of a sill is to halt the upstream movement of a headcut, thus precluding the widening or deepening of the existing channel. (See APPENDIX F located at the end of this chapter). ( )

**03. Barb or Partial Drop Structure.** A barb or partial drop structure shall be constructed in the same manner and of the same material as a drop structure and placed into the stream channel to act as a low level dam and grade control structure. The barb will decrease stream gradient, dissipate stream energy and redirect stream flow. ( )

**a.** Barbs shall be constructed of clean, sound, dense, angular rock fragments, of size and gradation such that the stream is incapable of moving the material during peak flows. ( )

**b.** Barbs shall be constructed with a downstream angle of no less than one hundred (100) degrees and no greater than one hundred thirty-five (135) degrees unless otherwise specified. ( )

**c.** Barbs shall “extend” into the channel a distance of not more than twenty percent (20%) of the width of the channel unless otherwise specified by the Director. ( )

**d.** Barbs shall be keyed into the bank a distance equal to or greater than the width of the structure and down to bed level. Whenever moisture is encountered in the construction of the keyways, willow cuttings or clumps shall be placed before and during rock placement in such a manner that the base of the cutting is in permanent moisture and the top extends a minimum of six (6) inches above grade (see APPENDIX G located at the end of this chapter). ( )

**059. CULVERTS AND BRIDGES (RULE 59).**

**01. Culverts and Bridges.** Culverts and bridges shall be capable of carrying streamflows and shall not significantly alter conditions upstream or downstream by causing flooding, turbidity, or other problems. The appearance of such installations shall not detract from the natural surroundings of the area. ( )



**02. Location of Culverts and Bridges.** Culverts and bridges should be located so that a direct line of approach exists at both the entrance and exit. Abrupt bends at the entrance or exit shall not exist unless suitable erosion protection is provided. ( )

**03. Ideal Gradient.** The ideal gradient (bottom slope) is one which is steep enough to prevent silting but flat enough to prevent scouring due to high velocity flows. It is often advisable to make the gradient of a culvert coincide with the average streambed gradient. ( )

**a.** Where a culvert is installed on a slope steeper than twenty percent (20%), provisions to anchor the culvert in position will be required. Such provisions shall be included in the application and may involve the use of collars, headwall structures, etc. Smooth concrete pipe having no protruding bell joints or other irregularities shall have such anchoring provisions if the gradient exceeds ten percent (10%). ( )

**04. Size of Culvert or Bridge Opening.** The size of the culvert or bridge opening shall be such that it is capable of passing design flows without overtopping the streambank or causing flooding or other damage. ( )

**a.** Design flows shall be based upon the following minimum criteria:

| Drainage Area           | Design Flow Frequency                                  |
|-------------------------|--|
| Less than 50 sq. mi.    | 25 Years   |
| Over 50 sq. mi. or more | 50 years or greatest flow of record, whichever is more |

( )

**b.** For culverts and bridges located on U.S. Forest Service or other federal lands, the sizing should comply with the Forest Practices Act as adopted by the federal agencies or the Department of Lands. ( )

**c.** For culverts or bridges located in a community qualifying for the national flood issuance program, the minimum size culvert shall accommodate the one hundred (100) year design flow frequency. ( )

**d.** If the culvert or bridge design is impractical for the site, the crossing may be designed with additional flow capacity outside the actual crossing structure, provided there is no increase in the Base Flood Elevation.  
 (NOTE: When flow data on a particular stream is unavailable, it is almost always safe to maintain the existing gradient and cross-section area present in the existing stream channel. Comparing the proposed crossing size with others upstream or downstream is also a valuable means of obtaining information regarding the size needed for a proposed crossing.) ( )

**e.** Minimum clearance shall be at least one (1) foot at all bridges. This may need to be increased substantially in the areas where ice passage or debris may be a problem. Minimum culvert sizes required for stream crossings: ( )

**i.** Eighteen (18) inch diameter for culverts up to seventy (70) feet long; ( )

**ii.** Twenty-four (24) inch diameter for all culverts over seventy (70) feet long. ( )

**f.** In streams where fish passage is of concern as determined by the director, an applicant shall comply with the following provisions and/or other approved criteria to ensure that passage will not be prevented by a proposed crossing. ( )

**g.** Minimum water depth shall be approximately eight (8) inches for salmon and steelhead and at least three (3) inches in all other cases. ( )

**h.** Maximum flow velocities for streams shall not exceed those shown in Figure 17 in APPENDIX H, ( )

located at the end of this chapter, for more than a forty-eight (48) hour period. The curve used will depend on the type of fish to be passed. ( )

**i.** Where it is not feasible to adjust the size or slope to obtain permissible velocities, the following precautions may be utilized to achieve the desired situation. ( )

**j.** Baffles downstream or inside the culvert may be utilized to increase depth and reduce velocity. Design criteria may be obtained from the Idaho Fish and Game Department. ( )

**k.** Where multiple openings for flow are provided, baffles or other measures used in one (1) opening only shall be adequate provided that the opening is designed to carry the main flow during low-flow periods. ( )

**05. Construction of Crossings.** When crossings are constructed in erodible material, upstream and downstream ends shall be protected from erosive damage through the use of such methods as dumped rock riprap, headwall structures, etc., and such protection shall extend below the erodible streambed and into the banks at least two (2) feet unless some other provisions are made to prevent undermining. ( )

**a.** Where fish passage must be provided, upstream drops at the entrance to a culvert will not be permitted and a maximum drop of one (1) foot will be permitted at the downstream end if an adequate jumping pool is maintained below the drop. ( )

**b.** Downstream control structures such as are shown in Figure 18 in APPENDIX I, located at the end of this chapter, can be used to reduce downstream erosion and improve fish passage. They may be constructed with gabions, pilings and rock drop structures. ( )

**06. Multiple Openings.** Where a multiple opening will consist of two (2) or more separate culvert structures, they shall be spaced far enough apart to allow proper compaction of the fill between the individual structures. The minimum spacing in all situations shall be one (1) foot. In areas where fish passage must be provided, only one (1) opening shall be constructed to carry all low flows. Low flow baffles may be required to facilitate fish passage. ( )

**07. Areas to be Filled.** All areas to be filled shall be cleared of vegetation, topsoil, and other unsuitable material prior to placing fill. Material cleared from the site shall be disposed of above the high water line of the stream. Fill material shall be reasonably well-graded and compacted and shall not contain large quantities of silt, sand, organic matter, or debris. In locations where silty or sandy material must be utilized for fill material, it will be necessary to construct impervious sections both upstream and downstream to prevent the erodible sand or silt from being carried away (see Figure 19, APPENDIX J, located at the end of this chapter), Sideslopes for fills shall not exceed one and one half to one (1.5:1). Minimum cover over all culvert pipes and arches shall be one (1) foot. ( )

**08. Installation of Pipe and Arch Culvert.** All pipe and arch culverts shall be installed in accordance with manufacturer's recommendations. ( )

**a.** The culvert shall be designed so that headwaters will not rise above the top of the culvert entrance unless a headworks is provided. ( )

**060. REMOVAL OF SAND AND GRAVEL DEPOSITS (RULE 60).**

**01. Removal of Sand and Gravel.** This work consists of removal of sand and gravel deposits from within a stream channel. The following conditions shall be adhered to unless other methods have been specified in detail on the application and approved by the Director. ( )

**02. Removal Below Water Surface.** Sand and gravel must not be removed below the water surface existing at the time of the work. Where work involves clearing a new channel for flow, removal of material below water level will be permitted to allow this flow to occur; however, this must not be done until all other work in the new channel has been completed. ( )

**03. Buffer Zone.** A buffer zone of undisturbed streambed material at least five (5) feet in width or as otherwise specified by the Director shall be maintained between the work area and the existing stream. The applicant shall exercise reasonable precautions to ensure that turbidity is kept to a minimum and does not exceed state water quality standards. ( )

**04. Movement of Equipment.** Equipment may cross the existing stream in one (1) location only, but shall not push or pull material along the streambed while crossing the existing stream. ( )

**05. Disturbing Natural Appearance of Area.** Work must be done in a manner that will least disturb the natural appearance of the area. Sand and gravel shall be removed in a manner that will not leave unsightly pits or other completely unnatural features at the conclusion of the project. ( )

**061. SMALL SCALE MINING WITH SUCTION DREDGES, POWERED SLUICES, OR NON-POWERED EQUIPMENT (RULE 61).**

**01. Small Scale Mining Permit.** The Director may issue a permit for the operation of a powered suction dredge or power sluice, or certain qualified non-powered mining activities that follow minimum standards (Rule 61), within stream channels designated as open by the Department or Board. A powered suction dredge or power sluice shall only be operated in accordance with the conditions of the Small Scale Mining Permit. A power sluice and a high-banker are synonymous for the purposes of these rules. ( )

**02. Standards for Small Scale Mining Permits.** The following standards shall apply only to uses of suction dredges and power sluices below the mean high water mark with nozzle diameters of five (5) inches or less and powered equipment rated at fifteen (15) HP or less, or the use of non-powered sluice equipment moving more than one-quarter (1/4) cubic yard per hour. ( )

**03. Powered Equipment Prohibited Below High Water Mark.** There shall be no use of powered equipment below the mean high water mark except for the suction dredge, or power sluice and any human life support system necessary to operate the suction dredge or power sluice. ( )

**04. Protection of Streambanks.** The operation of a suction dredge or power sluice, or the use of non-powered equipment shall be carried out in a manner that prevents the undercutting of streambanks. ( )

**05. Permit Required for Certain Non-Powered Operations.** A Small Scale Mining Permit is required for non-powered mining activities when those activities include: (1) the use of non-powered equipment by more than five (5) people mining the same area; or (2) the use of non-powered equipment where the disturbed area at the mining location exceeds thirty three (33) percent of the width of the wetted stream channel. ( )

**06. Limitation of Mining Sites.** Only one (1) mining site per one hundred (100) linear feet of stream channel shall be worked at one (1) time unless waived by the Director. ( )

**062. PILING (RULE 62).**

**01. Standards for Pilings.** The following standards apply to a piling associated with a boat or swimming dock, a log boom, a breakwater, or bridge construction. ( )

**02. Replacement of Pilings.** In replacing a piling the old piling shall be completely removed from the channel, secured to the new piling or cut at stream bed level. ( )

**03. Condition of Pilings.** Chemicals or compounds used for protection of piles and lumber shall be thoroughly dried to prevent bleeding, weeping or dissolution before placing such piles and lumber over, in or near water. ( )

**04. Prohibited Materials.** The application of creosote, arsenicals or pentachlorophenol (Penta) to timber shall not occur in, or over water. ( )

**063. PIPE CROSSINGS (RULE 63).**

**01. Standards for Pipe Crossings.** The following standards apply to pipe crossings to be installed below the bed of a stream or river such as utility crossings of a gas line, sewer line, electrical line, communication line, water line or similar line. ( )

**02. Depth of Line.** The line shall be installed below the streambed to a depth which will prevent erosion and exposure of the line to free flowing water. In areas of high stream velocity where scouring may occur, the pipe shall be encased in concrete or covered with rock riprap to prevent the pipeline from becoming exposed. ( )

**03. Pipe Joints.** The joints shall be welded, glued, cemented or fastened together in a manner to provide a water tight connection. ( )

**04. Construction Methods.** Construction methods shall provide for eliminating or minimizing discharges of turbidity, sediment, organic matter or toxic chemicals. A settling basin or cofferdam may be required for this purpose. ( )

**05. Cofferdam.** If a cofferdam is used, it shall be completely removed from the stream channel upon completion of the project. ( )

**06. Revegetation of Disturbed Areas.** Areas disturbed as a result of the alteration shall be revegetated with plants and grasses native to these areas. ( )

**064. CONCRETE PLANK BOAT LAUNCH RAMPS (RULE 64).**

**01. Construction of Concrete Plank Boat Launch Ramps.** Concrete plank boat launch ramps, shall be constructed with individual sections of precast, reinforced concrete planks linked together to provide a stable non-erosive water access (see Figure 20, APPENDIX K, located at the end of this chapter). ( )

**02. Construction of Concrete Planks.** Typical concrete plank size is twelve feet by fourteen inches by four inches (12' x 14" x 4"). All planks shall be constructed with Type II low alkali cement. All planks shall have a broom form finish, free of rock pockets and loose materials. Figures 21 and 22 shows a typical launch plank detail. (See APPENDIXES L and M). ( )

**03. Assembly of Planks.** The planks shall be assembled out of the water and slid into place on a constructed launch ramp where water velocities do not exceed two (2) feet per second. In waters exceeding (2) feet per second the ramp sections shall be linked together and fastened to pre-positioned stringers anchored into the launch ramp. (See Figure 23, APPENDIX N, located at the end of this chapter). ( )

**04. Water Depth.** The water depth above the lower end of the ramp section shall not be less than three (3) feet during low level or low flow periods. (See Figure 20, APPENDIX K, located at the end of this chapter). ( )

**05. Construction of Boat Ramp.** The boat launch ramp shall have a base constructed of sound, dense, durable, angular rock resistant to weathering and free from soil, shale and organic materials. Rounded cobbles, boulders and streambed material are not acceptable as base material in areas with stream flow velocities greater than two (2) fps. Base materials shall be covered with a layer of (three-fourths inches (3/4") min.) crushed rock with a minimum depth of two inches (2"). The ramp shall have a minimum and maximum slope of ten percent (10%) and fifteen percent (15%) respectively, and shall be constructed in a manner to avoid long incursions into the stream channel. All ramps and fill material shall be protected with rock riprap in accordance with Rule 057 when stream flow velocities exceed two (2) fps. (See Figure 24, APPENDIX O, located at the end of this chapter). ( )

**065. -- 069. (RESERVED)**

**070. HEARINGS ON DENIED, LIMITED, OR CONDITIONED PERMIT OR OTHER DECISIONS OF THE DIRECTOR (RULE 70).**

Any applicant who is granted a limited or conditioned permit, or who is denied a permit, may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within

fifteen (15) days of receipt of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in the Rules promulgated by the Board under the provisions of Title 67, Chapter 52, Idaho Code. ( )

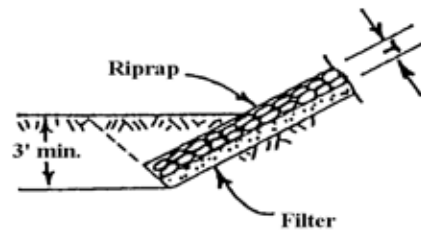
071. -- 999. (RESERVED)

**APPENDIX A**  
**Table 1A**

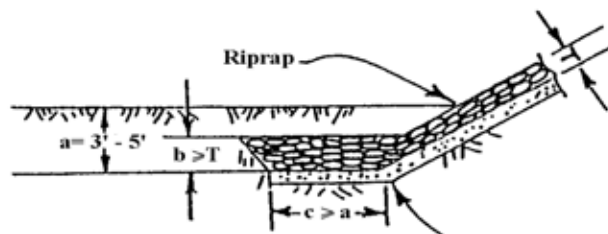
**Riprap Gradation Using FWS Method**

| <b>% Finer by Weight<br/>(Lbs.)</b> | <b>Minimum Size<br/>(Lbs.)</b> | <b>Maximum Size<br/>(Lbs.)</b> |
|-------------------------------------|--------------------------------|--------------------------------|
| D <sub>100</sub>                    | 1.33 X D <sub>75</sub>         | 2.0 X D <sub>75</sub>          |
| D <sub>75</sub>                     | 1.0 X D <sub>75</sub>          | 1.67 X D <sub>75</sub>         |
| D <sub>50</sub>                     | 0.67 X D <sub>75</sub>         | 1.17 X D <sub>75</sub>         |
| D <sub>25</sub>                     | 0.33 X D <sub>75</sub>         | 0.77 X D <sub>75</sub>         |
| D <sub>0</sub>                      | None                           | 0.33 X D <sub>75</sub>         |

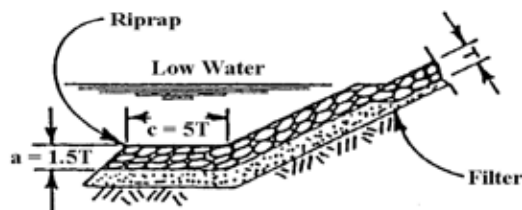
APPENDIX B



**METHOD 1:** This is most suited to areas where the toe is dry during construction.



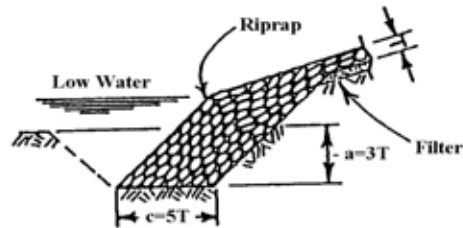
**METHOD 2:** Used when streambed is very wet or groundwater present makes using Method 1 impractical.



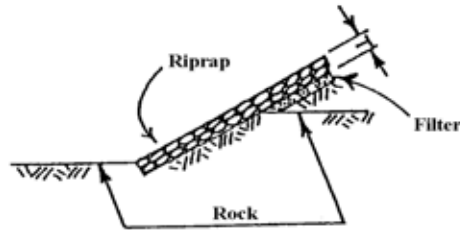
**METHOD 3:** Often used when toe is underwater during construction. Both Methods 2 and 3 utilize the idea that undermining will cause rock at toe blanket to settle into eroded area providing protection during scouring.

FIGURE 2. Acceptable toe protection

APPENDIX B (CONTINUED)



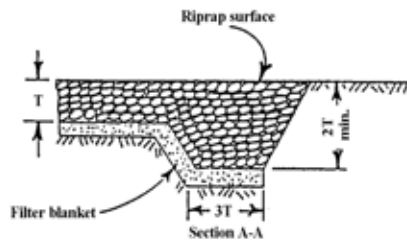
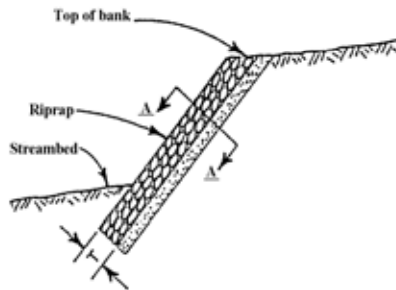
**METHOD 4:** Used underwater in areas with extremely bad streambed erosion conditions which make Method 3 unfeasible. This method may also be preferred where Method 3 would destroy fish spawning beds.



**METHOD 5:** When the streambed is non-erodible, no special provisions for toe protection are needed other than insuring that the riprap is well keyed to the rock.

FIGURE 2. Acceptable toe protection *continued*

APPENDIX C

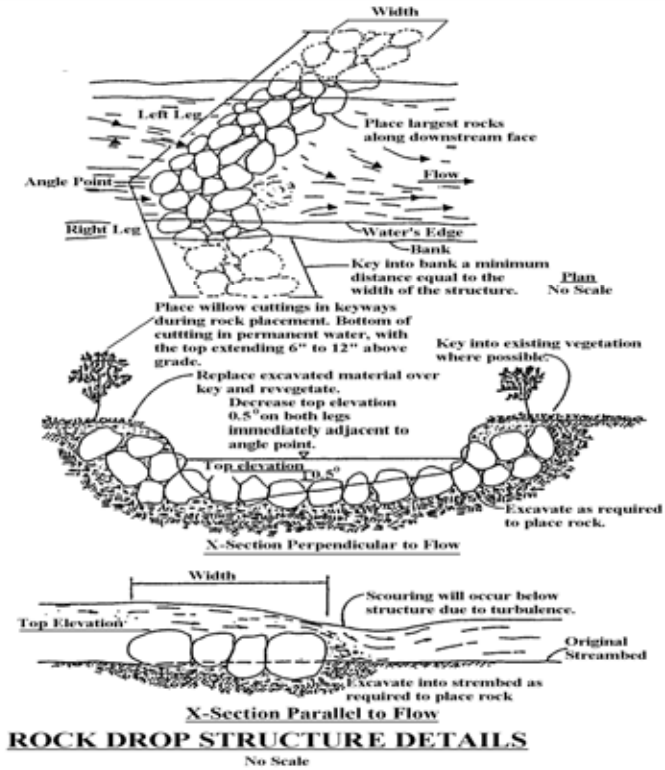


View shown above is cross section at end of riprap looking down along the sideslope toward streambed.

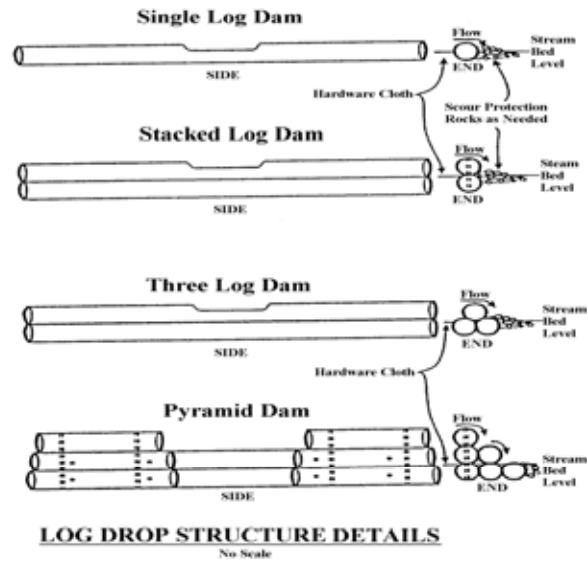
FIGURE 3. Protection against undermining



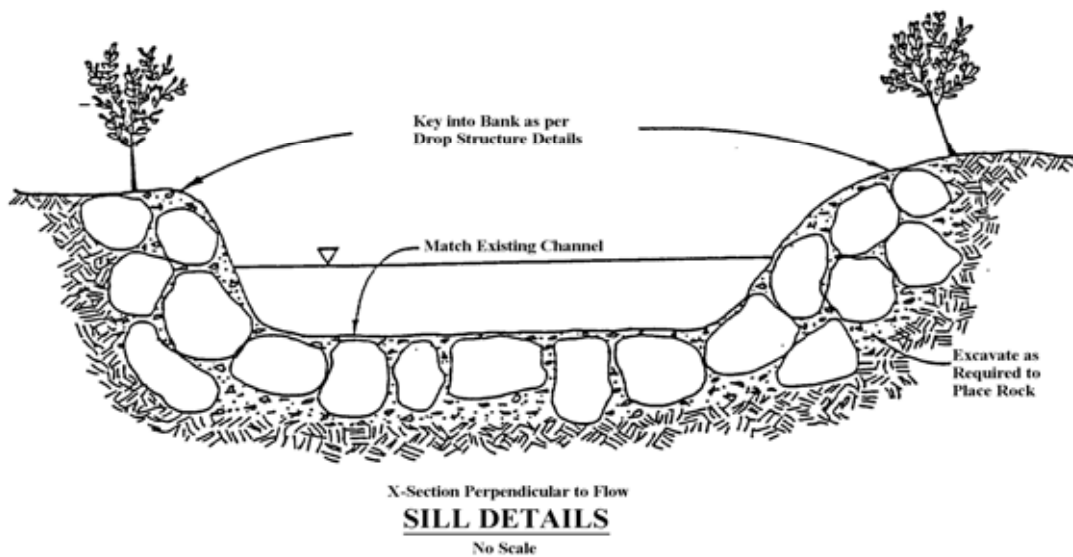
APPENDIX D



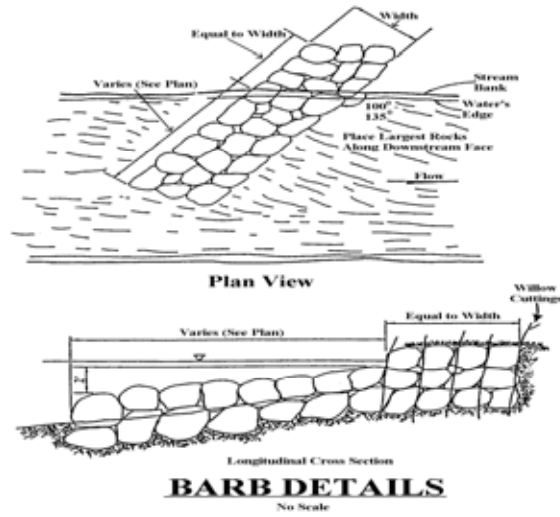
APPENDIX E



APPENDIX F



APPENDIX G



APPENDIX H

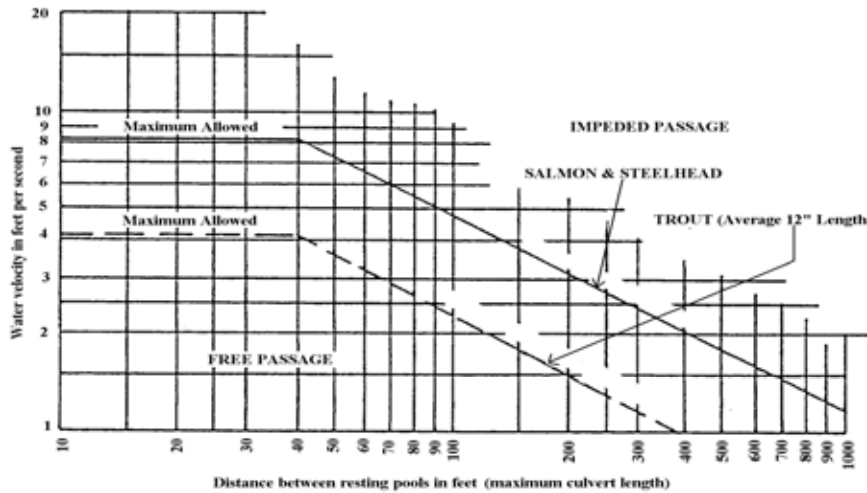
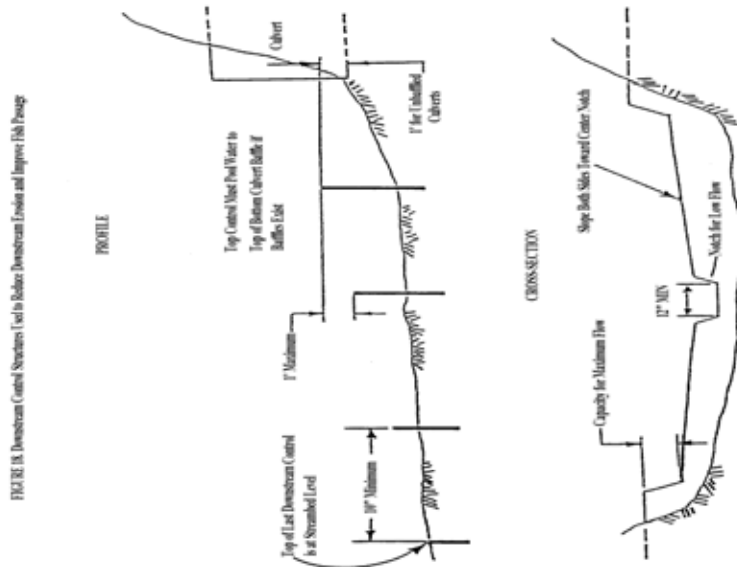


FIGURE 17. Swimming capability of migrating salmon and trout (Alaskan Curve)

APPENDIX I



APPENDIX J

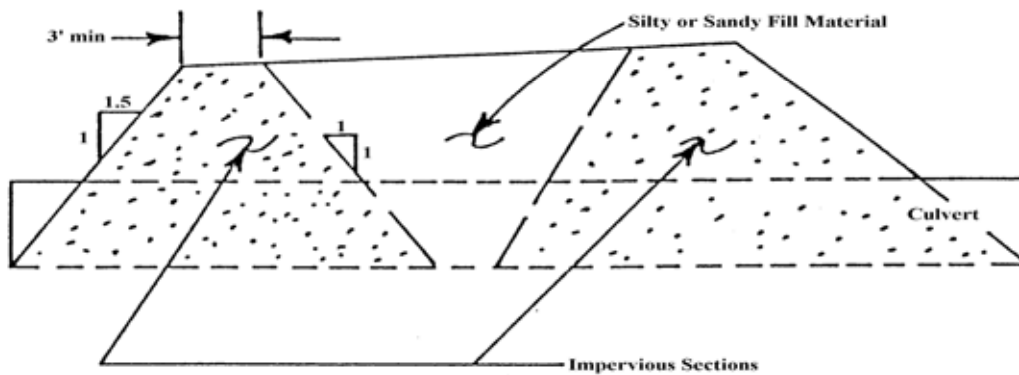
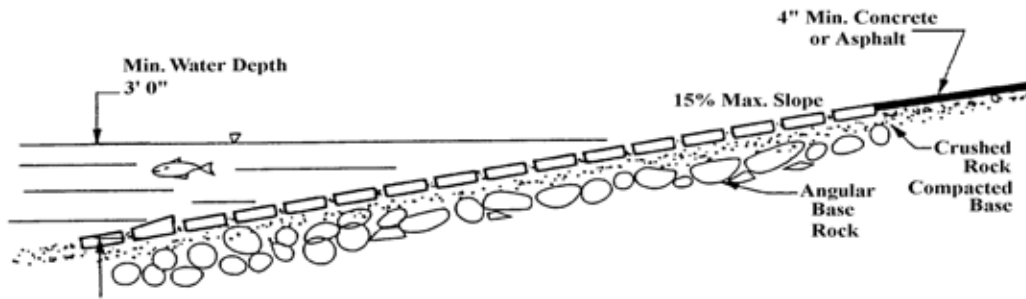


FIGURE 19. Culvert Backfill Using Silty or Sandy Material

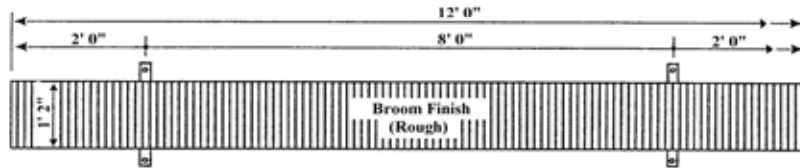
APPENDIX K



**LAUNCH RAMP SECTION**

No Scale  
Figure 20

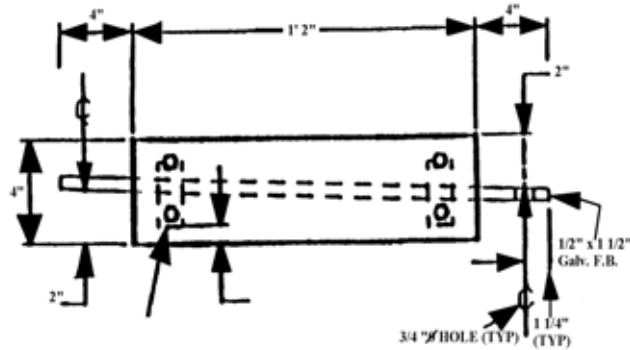
APPENDIX L



**CONCRETE PLANK**

No Scale  
Figure 21

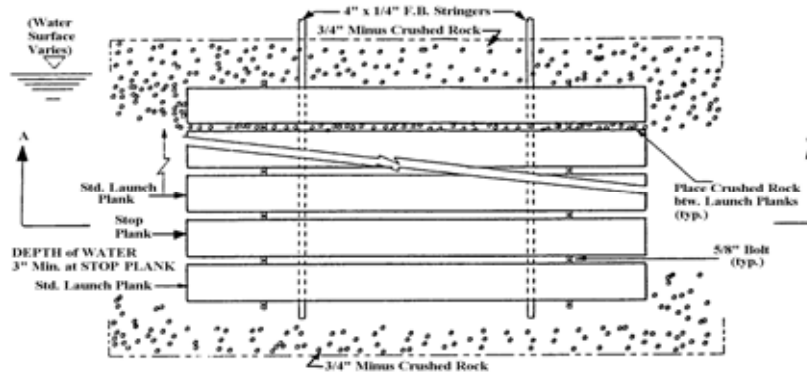
APPENDIX M



**CONCRETE LAUNCH PLANK DETAIL**

No Scale  
Figure 22

APPENDIX N

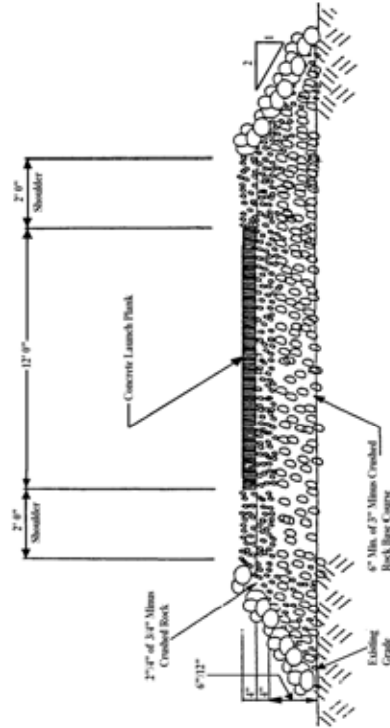


**CONCRETE LAUNCH-PLAN VIEW**

Figure 23  
No Scale

Place crushed rock as shown. Position stringers under planks in order shown and secure with 5/8" bolts. Slide planks on stringers, adding planks as needed, to desired water depth. Stringers consist of 2 - 4" x 1/4" x 20' lng. std. flat bar w/ clevis pin hole one end. Pull flat bar stringers up grade from water when planks are positioned and bolted together, remove when last plank has been set in place.

APPENDIX O



**CONCRETE LAUNCH - CROSS-SECTION**

No Scale  
Figure 24