

STATE BOARD OF LAND COMMISSIONERS

October 18, 2022

Regular Agenda

Subject

Adoption of Pending Fee Rule, IDAPA 20.03.17 *Rules Governing Leases on State-Owned Navigable Waterways*

Question Presented

Shall the Land Board adopt the pending fee rule for IDAPA 20.03.17?

Background

Negotiated rulemaking for these rules was approved by the Land Board on February 15, 2022. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying the rules for increased clarity and ease of use.

The Idaho Department of Lands (Department) manages the beds of navigable lakes and rivers for the benefit of the public. IDAPA 20.03.17 establishes a consistent process to authorize specific uses on state-owned submerged lands and collect annual rent for those uses. These uses typically include marinas, community docks, non-navigational encroachments, and oversized private docks, which occupy the state's lakes.

Discussion

The Department's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin.
- Created a rulemaking webpage to post documents, scheduling information, and comments.
- Issued a press release.
- Emailed 143 customers and other interested parties.
- Mailed postcards to 236 customers.

Negotiated rulemaking meetings were held on April 27 and May 18, 2022. A total of 18 non-agency affiliated people attended these meetings, and two sets of written comments were received. Much of the discussion and one of the written comments centered on artificial high water mark versus ordinary high water mark. As defined in the rule, leasing would only occur on lands below the ordinary high water mark where the state owns the beds of the navigable waters. No changes were made based on written or oral comments. Some minor changes to the initial draft were made based on internal discussions and to further reduce

word count. Substantive comments and the Department's responses are summarized in Attachment 1.

The proposed rule was published in the September 7, 2022 Administrative Bulletin. The Notice of Proposed Rulemaking and published rule text are in Attachment 2. No comments were received and the Department recommends no changes for the Pending Rule.

The proposed rule reduces the overall regulatory burden by reducing the total word count and the number of restrictive words. The proposed rule includes the following changes:

- The \$150 application fee in place since 2008 is increased to \$425. This will cover the Department's cost of reviewing and issuing these leases.
- Assignment fee is raised from \$150 to \$200 to cover Department costs.
- Late payment policy is updated, and payment extensions are eliminated.
- Appraisals, if needed, will be paid for by the applicant and will not be performed by qualified Department staff.

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Fee Rule (Attachment 3) to the Office of the Administrative Rules Coordinator for the 2023 legislative session.

Recommendation

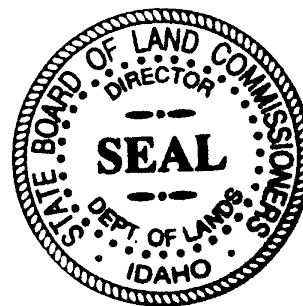
Adopt the pending fee rule for IDAPA 20.03.17 *Rules Governing Leases on State-Owned Navigable Waterways*.

Board Action

A motion was made by Attorney General Wasden that the Land Board adopt the pending fee rule for IDAPA 20.03.17 Rules Governing Leases on State-Owned Navigable Waterways. Secretary of State Denney seconded the motion. The motion carried on a vote of 4 0.

Attachments

1. Summary of Negotiated Rulemaking
2. Notice of Proposed Rulemaking with Rule Text
3. Draft Notice of Adoption of Pending Fee Rule



Idaho Department of Lands
Response to Comments on Draft Negotiated Rule
IDAPA 20.03.17, Rules Governing Leases on State-Owned Navigable Waterways

Comment	Rule Section	Response	Commenter
<p>I am concerned that the proposed rule changes exceed the state's authority and conflict with the Lake protection Act 58-1301, Idaho code 42-101, Idaho code 58-1201 the Public Trust Doctrine, Idaho code 58-1310, Idaho Code 58-1311 and the State Constitution by asserting ownership of private property. Why is definition of "artificial high water mark" deleted?</p>	<p>General and 010.01</p>	<p>1. No conflict is present because these rules do not apply to private property above the ordinary high water mark of navigable waterways. The definition of "Artificial high water mark" is proposed for deletion because it is not actually used in the rule. Under the guidance for Executive Order 2020-01, definitions that are not used in a rule must be deleted from that rule. The leasing authority under this rule is clearly limited to "state-owned navigable waterways" as stated in Subsection 001.01. "State-owned navigable waterways" are then defined in Subsection 010.15: "As used in these rules, the beds of all navigable waterways up to the natural or ordinary high water mark as of the date Idaho was admitted into statehood. This includes any such bed that was formerly submerged and subsequently filled and is now uplands because of human activity (e.g., dikes, berms, jetties) or by natural processes, and includes islands within navigable waterways resulting from human activity or by natural processes."</p>	<p>Ralph Sletager 5/2/2022</p>
<p>Can the state treat lakes, rivers and streams the same? For example, on Lake Pend Oreille there is an easement to store water on private property in between the Ordinary High Water and the Artificial High Water in the summer. Many docks and encroachments are over private land not public land. Riparian owners have the "right" to wharf out to the line of navigability to exercise their riparian rights. These rights date back to English common law. Can the state charge rent for a property owner using his/her property?</p>	<p>Title</p>	<p>2. See above explanation under Response #1 for the change in terminology. IDL does not currently charge rent for those portions of an encroachment over private submerged lands, and the proposed rule changes will continue that practice.</p>	<p>Ralph Sletager 5/2/2022</p>

ATTACHMENT 1

Comment	Rule Section	Response	Commenter
Definition of navigable waterways? Different than navigable waters. Clean water Act? Idaho code 36-1601 was an attempt to change the navigable water definition. Navigable waters was defined in 1890 at statehood. See 58-1201 below.	001.01	3. See above explanation under Response #1 for the change in terminology. This has no relation to the Clean Water Act, which is a federal statute written for a completely different issue. Idaho Code § 36-1601 is a Fish and Game statute that also has no bearing on these rules. The proposed definition in Subsection 010.15 references navigable waterways at statehood and borrows existing language from the current definition of "Formerly Submerged Lands" in Subsection 010.11.	Ralph Sletager 5/2/2022
Concerns implied about Subsection 001.02	001.02	4. This subsection was moved up from Subsection 025.10. It has been in this location since the rule was first adopted in 1997, although the wording has been slightly altered since then. This rule is not in conflict with the Lake Protection Act, as that act provides a regulatory oversight for all lake encroachments. This rule, however, exercises an ownership right over both state-owned navigable lakes and rivers.	Ralph Sletager 5/2/2022
Why are appeals eliminated?	002	5. They are not eliminated. This deletion was done under the guidance of Executive Order 2020-01. Appeals are still available under Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01. Removing those references from the rule does not affect their applicability to appeals under this rule, and Title 67, Chapter 52, Idaho Code is now referenced on the new cover sheet that all rule chapters have. See https://adminrules.idaho.gov/rules/current/20/200317.pdf	Ralph Sletager 5/2/2022
Why is the definition of "ordinary high water mark" different than the one in 20.03.04 (Encroachment rules)?	010.11	6. The definition is the same one used in IDAPA 20.03.09, "Easements on State-Owned Navigable Waterways", and more closely follows the definition in Idaho Code § 58-1202(2). IDL prefers this wording because it is more applicable to both rivers and lakes, whereas the definition in 20.03.04.010.23 only applies to lakes. Also, definitions apply only to the chapter, act, or rule in which they appear (Maguire v. Yanke, 99 Idaho 829, 836, 590 P.wd 85, 92 (1978)), so no conflict occurs with the different definitions.	Ralph Sletager 5/2/2022

Comment	Rule Section	Response	Commenter
Are out of state people not qualified to do business (or) qualify for a permit?	010.12	7. Individuals are always qualified to do business, regardless of being in-state or out-of-state, as that individual. When they wish to do business as a corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity they must first take the necessary steps to be qualified to do their business in the State of Idaho.	Ralph Sletager 5/2/2022
Potential conflict with the Lake Protection Act's definition of "riparian or littoral rights".	010.13	8. No conflict is present because these rules do not get their authority from the Lake Protection Act. The authority of these rules is shown in Section 000. Definitions apply only to the chapter, act, or rule in which they appear (Maguire v. Yanke, 99 Idaho 829, 836, 590 P.wd 85, 92 (1978)).	Ralph Sletager 5/2/2022
Potential conflicts with the definition of "state-owned navigable waterways".	010.15	9. See Response #1 above. These rules apply to both lakes and rivers, so the Lake Protection Act's definitions are not suitable for this rule.	Ralph Sletager 5/2/2022
Five or 10 years is not bankable or enough time to recoup a commercial investment. What difference does it make to the state? Why not a longer-term plan?	010.17	10. A temporary permit is for short duration uses that typically do not require commercial loans. A marina or similar commercial investment that will last 10 or more years would require a lease.	Ralph Sletager 5/2/2022
Concerns implied about Subsection 025.03 and how encroachment permit decisions are made on private submerged lands above the ordinary high water mark.	025.03	11. These rules are not concerned with issuing lake encroachment permits. The rules apply only to the leasing of lakes and rivers below the ordinary high water mark, and seek to provide a predictable method for IDL to generate revenue from specific commercial and private uses of these waterways. In almost all cases, permits have already been obtained before a lease is applied for.	Ralph Sletager 5/2/2022
Concerns implied about Subsection 025.08 and how the line of navigability is related to the low water mark, and how these might affect the waiver of lease requirements.	025.08	12. The line of navigability and the low water mark have no bearing on the location of the ordinary high water mark that determines the limit of applicability of these rules. The phrase "for water craft customarily in use on that particular lake" is ambiguous, has not been used by any potential lessee in an effort to waive lease requirements, and is not needed in this rule. IDL commonly waives lease requirements where need is demonstrated. As required by Executive Order 2020-01, unused or unnecessary language should be removed from the rule.	Ralph Sletager 5/2/2022
This appears to provide that leases may be required for encroachments already authorized by existing permits issued	001.02	13. This subsection was moved up from Subsection 025.10. It has been in this location since the rule was first adopted in 1997, although the wording has been slightly altered since then. This rule is not overbroad	John F. Magnuson 5/25/2022

Comment	Rule Section	Response	Commenter
decades ago. This appears overbroad and potentially in excess of IDL's authority.		and allows the state to generate revenue from commercial or private uses of navigable waterways. This rule is just exercising the state's ownership rights over both state-owned navigable lakes and rivers. Legally permitted encroachments are not in jeopardy due to this rule, but if an encroachment does not fall under an exception listed in Section 020, then a lease may be required in addition to the encroachment permit.	

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.17 – RULES GOVERNING LEASES ON STATE-OWNED NAVIGABLE WATERWAYS

DOCKET NO. 20-0317-2201 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, 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 21, 2022.

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:

The Idaho Department of Lands initiated this rulemaking in compliance with [Executive Order 2020-01: Zero-Based Regulation](#). This rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

The overall regulatory burden has been reduced by decreasing both total word count (-17%) and the number of restrictive words (-23%) in the proposed rule. Application and assignment fees have been increased to cover the costs of reviewing applications. Late payment policy is updated, and payment extensions are eliminated. Appraisals, if needed, will now be paid for by the applicant and will not be performed by qualified Department staff.

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

The \$150 application fee in place since 2008 is increased to \$425. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-603, Idaho Code. The \$150 assignment fee is increased to \$200. This fee is being imposed pursuant to Sections 58-104 and 58-127, Idaho Code.

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 6, 2022, Idaho Administrative Bulletin, [Vol. 22-4, pages 39-40](#).

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 Eric Wilson at (208) 334-0261 or ewilson@idl.idaho.gov.

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 28, 2022.

DATED this 7th day of September, 2022.

Eric Wilson, Resource Protection and Assistance Bureau Chief
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, Idaho 83720-0050
P.O. Box 83720
Phone: (208) 334-0261
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 20-0317-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

20.03.17 – RULES GOVERNING LEASES ON STATE-OWNED NAVIGABLE WATERWAYS

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Title 58, Chapter 1, Idaho Code, Sections 58-104(6), 58-104(9), and 58-105; Title 58, Chapter 3, Idaho Code, Sections 58-304 through 58-312; Title 58, Chapter 6, Idaho Code; Title 58, Chapter 12; and Title 67, Chapter 52, Idaho Code. ()

001. SCOPE.

01. Scope. These rules govern the issuance of leases on state-owned navigable waterways. While the State asserts the right to issue leases for all encroachments, navigational or non-navigational, upon, in or above the beds or waters of navigable lakes and rivers, nothing in these rules may be construed to vest in the state of Idaho any property, right or claim of such right to any private lands lying above the natural or ordinary high water mark of any navigable lake or river. ()

02. Rules Applicable To All Existing And Proposed Uses And Encroachments. These rules apply to all existing and proposed uses and encroachments, whether or not authorized by permit under the Lake Protection Act, Title 58, Chapter 13, Idaho Code, or the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. These rules provide that a lease may be required in addition to existing permits. See Section 020 of these rules for information about exceptions to lease requirements. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners or its designee. ()

02. Commercial Marina. A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. ()

03. Commercial Navigational Encroachment. A navigational encroachment used for commercial purposes. ()

04. Community Dock. A structure that provides private moorage for more than two (2) adjacent

littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to, homeowners' associations. No public access is required for a community dock. ()

05. Department. The Idaho Department of Lands or its designee. ()

06. Director. The director of the Idaho Department of Lands or his designee. ()

07. Dock Surface Area. Includes docks, slips, piers, and ramps and is calculated in square feet. Dock surface area does not include pilings, submerged anchors, or undecked breakwaters. ()

08. Encroachments in Aid of Navigation. Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake, river or stream. The term "encroachments in aid of navigation" is used interchangeably with "navigational encroachments." ()

09. Encroachments Not in Aid of Navigation. Includes all other encroachments on, in, or above the beds or waters of a navigable lake, river or stream, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It also includes float homes and floating toys. The term "encroachments not in aid of navigation" is used interchangeably with "non-navigational encroachments." ()

10. Market Value. The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which the property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. ()

11. Natural or Ordinary High Water Mark. The line that the water impresses upon the soil by covering it for a sufficient period of time to deprive the soil of its vegetation and destroy its value for agricultural purposes. If, however, the soil, configuration of the surface, or vegetation has been altered by man's activity, the ordinary high water mark is located where it would have been if the alteration had not occurred. ()

12. Person. An individual, corporation, partnership, limited liability company, association, trust, unincorporated organization or other legal entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. ()

13. Riparian or Littoral Rights. The rights of owners or lessees of land adjacent to navigable lakes, rivers or streams to maintain their adjacency to the lake, river, or stream and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters. ()

14. Single-Family Dock. A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. ()

15. State-Owned Navigable Waterways and Navigable Waterways. As used in these rules, the beds of all navigable waterways up to the natural or ordinary high water mark as of the date Idaho was admitted into statehood. This includes any such bed that was formerly submerged and subsequently filled and is now uplands because of human activity (e.g., dikes, berms, jetties) or by natural processes, and includes islands within navigable waterways resulting from human activity or by natural processes. ()

16. Submerged Lands. The state-owned beds of navigable lakes, rivers, and streams below the natural or ordinary high water marks. ()

17. Temporary Permit. A revocable instrument authorizing a specific use on navigable waterways usually issued for five (5) years or less, but that may be issued for up to ten (10) years. ()

18. Two-Family Dock. A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is

located on the common littoral property line. ()

19. Uplands. The land bordering on navigable waterways. ()

011. -- 019. (RESERVED)

020. APPLICABILITY.

Leases are required for all encroachments defined in subsections 010.08 and 010.09 that are above, across, over, in, through, upon, and under the beds of navigable waterways except: ()

01. Single -Family Docks. Single-family docks constructed: ()

a. On or before July 1, 1993, that occupy less than eleven hundred (1,100) square feet of dock surface area, and for which all required permits and approvals have been obtained. ()

b. After July 1, 1993, that occupy less than seven hundred (700) square feet of dock surface area, and for which all required permits and approvals have been obtained. ()

02. Two-Family Docks. Two-family docks that occupy less than eleven hundred (1,100) square feet of dock surface area, and for which all required permits and approvals have been obtained. ()

03. Noncommercial Encroachments Free to the Public. Noncommercial encroachments owned by any municipality, county, state, or federal agency for which the complete use is offered free to the public. ()

04. Temporary Permits or Easements. Uses or encroachments that are customarily authorized by temporary permits or easements, such as roads, railroads, overhead utility lines, submerged cables, and pipelines. Information on easements can be found in IDAPA 20.03.09, "Easements on State-Owned Navigable Waterways." ()

021. -- 024. (RESERVED)

025. POLICY.

01. Policy of the State of Idaho. It is the policy of the state of Idaho to regulate and control the use and disposition of the beds of navigable waterways so as to provide for their commercial, navigational, recreational or other public use; provided that the Board will take no action in derogation of or seeking to interfere with the riparian or littoral rights of upland landowners. ()

02. Director May Grant Leases. The Director may grant leases for uses that are in the public interest and consistent with these rules. ()

03. Requests or Inquiries Regarding Navigability. The State owns the beds of all lakes, rivers, and streams that were navigable in fact at statehood. Information about lakes, rivers, and streams deemed navigable by the State of Idaho is available from the Department. ()

04. Stream Channel Alteration Permit or Encroachment Permit. Issuance of a lease is contingent upon the applicant obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Title 42, Chapter 38, Idaho Code, or an encroachment permit if required by the Department pursuant to the Lake Protection Act, Title 58, Chapter 13, Idaho Code. ()

05. Submerged Lands Lease Required Upon Notification. All persons using submerged lands in a manner that requires a submerged land lease must obtain such a lease from the Director when notified to do so. ()

06. Term of Lease, Renewal of Lease. Leases are issued for a term of ten (10) years or as determined by the Board. Leases may be renewed for additional periods as determined by the Department based upon satisfactory performance during the present term. Renewals will be processed with a minimum of procedural requirements and

will not be denied except in the most unusual circumstances or noncompliance with the terms and conditions of the previous lease. A lease application fee is required for leases that are renewed upon expiration. Lease renewals are initiated by the Department. ()

07. Rights Granted. The lease grants only such rights as are specified in the lease. The right to use the navigable waterways for all other purposes that do not interfere with the rights authorized in the lease remains with the state. ()

08. Waiver of Lease Requirements. The Director may, in his discretion, waive lease requirements for single-family or two-family dock encroachments whose dock surface areas exceed square footages described in Subsections 020.01 through 020.02 of these rules when the additional dock surface area square footage is necessary to gain or maintain access to water of sufficient depth to sustain dock use. ()

09. Private Moorage at Commercial Marinas. ()

a. This Subsection does not apply to community docks. ()

b. Private moorage at commercial marinas is allowed as long as the requirements of IDAPA 20.03.04.015.03 are met. ()

c. The sale, lease, or rental of private moorage is not an encumbrance on navigable waterways. All transactions related to private moorage are subject to the submerged lands lease's terms. ()

d. Acquisition of private moorage must be documented with a disclosure that the transaction does not convey navigable waterways and only conveys the right to use the designated portion of the marina. ()

e. The Department does not regulate the cost of private moorage or resolve disputes between a marina and private moorage owners. ()

026. -- 029. (RESERVED)

030. LEASE APPLICATION, FEE, AND PROCEDURE.

01. Fee. The non-refundable lease application fee is four hundred twenty-five dollars (\$425) for new and existing encroachments. ()

02. Application to Lease and Fee. The lease application and fee must be submitted with the following information, in sufficient detail for the Department to determine an appropriate lease rate: ()

a. A completed application form. ()

b. A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s). An encroachment or stream channel alteration permit may satisfy this requirement. ()

03. Notification of Approval or Denial. The Department will notify the applicant in writing if the lease application is approved or denied, and if any additional requirements will be included. ()

031. -- 034. (RESERVED)

035. RENTAL.

Rental rates for submerged land leases are set by Board policy, which is available on the Department website at <http://www.idl.idaho.gov/>. ()

01. Standardized Rental Rates. The Board sets standard submerged land lease rental rates for common uses such as commercial marinas, community docks, float homes, restaurants, and retail stores. Rental rates for commercial marinas and other uses that produce revenue for the lessee will commonly be calculated as a

percentage of gross receipts, however, other methods may be used as the Board deems appropriate. ()

02. Nonstandard Rental Rates. The Board directs the Department to use a percentage of market value or gross receipts, or other methods determined appropriate by the Board, as the submerged lands lease rental rate for non-navigational encroachments or other uncommon uses. ()

036. YEARLY REPORTING.

01. Annual Report. Lessees must provide an annual report to the Department that includes: ()

a. A schedule of moorage rental rates, including moorage sizes and types. ()

b. The number and size of all public boat and float home moorages. ()

c. The number and size of all private boat and float home moorages. ()

d. Current proof of insurance as required by the lease. ()

02. Failure to Report. Failure to provide the annual report information is a violation of these rules. ()

037. -- 039. (RESERVED)

040. LATE PAYMENT.

01. Late Payment of Rent. Rent not paid by the due date is considered late and will result in the following monthly charges. ()

a. A late charge of \$25.00 or 1% of the unpaid principal obligation, whichever is greater. ()

b. An interest charge of 1% on the unpaid principal obligation. ()

02. Late Charge Accrual. The Department will send monthly statements with the outstanding balance that will remain on the account and will continue to accrue late charges and interest each month, or any portion of a month, until the balance is paid in full. All payments will be applied first to accrued interest and late charges, and then to principal. ()

041. -- 044. (RESERVED)

045. APPRAISAL PROCEDURES.

Appraisals may be used to determine the market value of adjacent uplands for calculating submerged lease rental rates. An appraisal will be conducted by a licensed appraiser selected by the Department, although the applicant may propose an appraiser to the Department. The Department will provide appraisal instructions. The appraisal will be performed in a timely manner, and a copy sent to the Department and the applicant. The expense of the appraisal will be borne by the applicant. ()

046. -- 049. (RESERVED)

050. LEASE AMENDMENT.

01. Encroachment Amendment. A lease amendment must first be authorized through a lake encroachment or stream alteration permit or permit amendment, if required. ()

02. Amendment of Existing Lease. Amendment of an existing lease will be processed in the same manner as a new lease application, but no fee will be required. Amendment includes change of use, location, size or scope of the lease site, but does not include ordinary maintenance, repair or replacement of existing structures or facilities. ()

03. Modification of Interior Facilities. If the proposed changes to a facility do not require a new encroachment permit, a lease amendment may still be needed as described in Subsection 050.02 of these rules. The lessee must give written notice to the Department at least ten (10) days in advance of making such changes. The Department will determine if a lease amendment is needed due to the proposed changes. When requested, the lessee must also furnish one (1) set of as-built plans to the Department within thirty (30) days following completion of changes. ()

051. -- 054. (RESERVED)

055. ASSIGNMENTS, ASSIGNMENT FEE.

01. Assignment of Lease. Leases may be assigned upon approval of the Director provided that the lease conforms with Subsection 025.02 and all other provisions of these rules. The assignor and assignee must complete the Department's standard assignment form and forward it to any Department office. ()

02. Assignment Fee. The assignment fee is two hundred dollars (\$200). ()

03. Permit Assignment. The encroachment permit/stream alteration permit pertinent to a lease must be assigned to a purchaser simultaneously with a lease assignment. A lease assignment will not be approved unless the permit is assigned. ()

04. Approval Required for Assignment. An assignment is not valid until it has been approved by the Director. ()

056. -- 059. (RESERVED)

060. CANCELLATION AND ADDITIONAL REMEDIES.

01. Cancellation of Lease for Violation of Terms. Any violation of the lease by the lessee, including non-payment of rent or any violation by lessee of any rule now in force or hereafter adopted by the Board may subject the lease to cancellation. The Department will provide the lessee with written notification specifying the violation, corrective action necessary, and a reasonable time to make the correction. If the corrective action is not taken within the specified time, the Department will notify the lessee of cancellation of the lease no later than thirty (30) days prior to the cancellation's effective date. ()

02. Lease Reinstatement. A lease may be reinstated within ninety (90) days after cancellation for non-payment by paying the rental, plus interest, and a reinstatement fee to be determined by the Board. ()

03. Cancellation of Lease for Use Other Than Intended Purpose. A lease not used for the purpose for which it was granted may be canceled. The Department will notify the lessee in writing of any proposed cancellation. The lessee has thirty (30) days to reply in writing to the Department to show cause why the lease should not be canceled. Within sixty (60) days, the Department will notify the lessee of the Department's decision in writing. The lessee has thirty (30) days to appeal an adverse decision to the Director. ()

04. Removal of Improvements Upon Cancellation. Upon cancellation, the Director will provide the lessee with a specific amount of time, not to exceed six (6) months from the date of final notice, to remove any facilities and improvements. Failure to remove any facilities or structures within such time period established by the Director will be deemed a trespass on navigable waterways. ()

05. Additional Remedies Available. In addition to termination of the lease for the material default of the lessee, the lease may provide for other remedies to non-monetary breach of the lease including, but not limited to: ()

a. Civil penalties as determined by the Board and to be collected as additional rent; ()

b. The reasonable costs of remedial action undertaken by the Department as a result of the lessee's

failure to perform a requirement of the lease. These costs will be collected as additional rent; and ()

c. Such other remedies as the Board deems appropriate. ()

061. -- 064. (RESERVED)

065. BOND.

01. Bond Requirement Determined by Director. Bonds may be required for commercial navigational, community dock, and nonnavigational leases. The need for bond will be at the discretion of the Director, who will consider the potential for abandonment of the facility, harm to state-owned submerged land and water resources, the personal and real property of adjacent upland owners and the personal and real property owned by the encroachment owner that is appurtenant to and supportive of the encroachment. ()

02. Performance Bond. In the event a bond is necessary, the lessee must submit a performance bond in favor of the state of Idaho and in a format acceptable to the Director before a lease is issued. Acceptable bonds include surety, collateral, and letters of credit. The amount of bond is the estimated cost of restoration as established by the Director in consultation with the lease applicant on a case by case basis. To determine restoration costs, the Director may consider the potential for damage to land, to improvements, and the cost of structure removal. ()

066. -- 074. (RESERVED)

075. OTHER RULES AND LAWS.

The lessee must comply with all applicable state, federal, and local rules and laws insofar as they affect the use of the lands described in the lease. ()

076. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.17 - RULES GOVERNING LEASES ON STATE-OWNED NAVIGABLE WATERWAYS

DOCKET NO. 20-0317-2201

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2023 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 rule. The action is authorized pursuant to Section 58-104(6), Idaho Code.

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

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2022 with the goal of simplifying the rules for increased clarity and ease of use. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. Application and assignment fees have been increased to cover the costs of reviewing applications. Late payment policy is updated, and payment extensions are eliminated. Appraisals, if needed, will now be paid for by the applicant and will not be performed by qualified Department staff.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 7, 2022, Idaho Administrative Bulletin, Vol. 22-9, pages 209-216. An unofficial strikethrough version of the proposed rule, which shows the changes made through the rulemaking process, is available on the agency website at <https://www.idl.idaho.gov/rulemaking/docket-20-0317-2201/>.

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

The \$150 application fee in place since 2008 is increased to \$425. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-603, Idaho Code. The \$150 assignment fee is increased to \$200. This fee is being imposed pursuant to Sections 58-104 and 58-127, Idaho Code.

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 rule, contact Eric Wilson at (208) 334-0261 or ewilson@idl.idaho.gov.

DATED this 18th day October, 2022.

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